

## ICG Comments

- *To:* comments-draft-new-bylaws-21apr16@xxxxxxxxxx
- *Subject:* ICG Comments
- *From:* Alissa Cooper <alissa@xxxxxxxxxx>
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The ICG appreciates the opportunity to comment on the draft ICANN Bylaws.

The ICG previously communicated concerns about Section 1.1(d)(ii) to the Bylaws drafting group [1]. However, these concerns were not addressed in the draft Bylaws that were posted for public comment.

Section 1.1(d) "grandfathers" a number of agreements into the Bylaws in order to prevent parties from challenging those agreements on the basis that they violate the ICANN Mission statement. Under Section 1.1(d)(ii), (A) applies to RA/RAA agreements; (B)-(D) apply to agreements between ICANN and the NRO, ASO, IETF, RZM, and PTI; and (E) applies to ICANN's Five-Year Strategic Plan and Five-Year Operating Plan. (F) applies the grandfathering to renewals of the agreements appearing in (B)-(E).

The ICG process was fashioned to ensure that the transition plans reflected the consensus of the Internet community and allowed the operational communities to define their own transition plans. The ICG and the CCWG proposals define those wishes, and any changes to the Bylaws were to be to implement those wishes, nothing more. Yet Sections 1.1(d)(ii)(B)-(E) are outside the scope of both the ICG and the CCWG proposals. Unlike Section 1.1(d)(ii)(A), the substance of which was debated in the CCWG and is documented in paragraph 147 of the CCWG proposal, the substance of (B)-(E) have not enjoyed appropriate community involvement or review. These sections affect much of the Internet community since they apply to agreements with a variety of external parties, including all of the operational communities.

Because several of the referenced agreements have not yet been written and most have not yet been agreed to by the relevant parties, the draft Bylaws essentially allow these external agreements to define ICANN's Mission. This seems like a bad idea for many reasons, not the least of which is that it creates the possibility for the agreements to contradict or circumvent the desires of the community who worked hard to clarify and correctly state ICANN's Mission throughout the IANA stewardship transition process (see paragraphs 140-147 of the CCWG proposal).

The ICG believes that in order for the Bylaws to be considered consistent with the transition plans, Sections 1.1(d)(ii)(B)-(E) need to be removed, and

Section 1.1(d) (ii) (F) needs to be edited to apply only to Section 1.1(d) (ii) (A). This assumes that (F) is indeed called for by paragraph 147 of the CCWG proposal, which we leave for the CCWG to judge.

Regards,

Alissa Cooper on behalf of the ICG

[1] <http://mm.icann.org/pipermail/cwg-stewardship/2016-April/004877.html>  
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