

**INTELLECTUAL PROPERTY CONSTITUENCY RESPONSE TO  
CCWG-ACCOUNTABILITY WORKSTREAM 2 SO/AC ACCOUNTABILITY  
SUBGROUP QUESTIONS REGARDING SO/AC ACCOUNTABILITY**

**Submitted: January 21, 2017**

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**QUESTIONS PRESENTED:**

1. What is your interpretation of the designated community defined in the Bylaws? For example, do you view your designated community more broadly or narrowly than the Bylaws definition?
  2. What are the published policies and procedures by which your AC/SO is accountable to the designated community that you serve?
    - 2a. Your policies and efforts in outreach to individuals and organizations in your designated community who do not yet participate in your AC/SO.
    - 2b. Your policies and procedures to determine whether individuals or organizations are eligible to participate in your meetings, discussions, working groups, elections, and approval of policies and positions.
    - 2c. Transparency mechanisms for your AC/SO deliberations, decisions and elections
    - 2d. Were these policies and procedures updated over the past decade? If so, could you clarify if they were updated to respond to specific community requests/concerns?
  3. Mechanisms for challenging or appealing elections. Does your AC/SO have mechanisms by which your members can challenge or appeal decisions and elections? Please include link where they can be consulted.
  4. Any unwritten policies related to accountability. Does your AC/SO maintain unwritten policies that are relevant to this exercise? If so, please describe as specifically as you are able.
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**IPC AS A “DESIGNATED COMMUNITY” WITHIN ICANN**

1. What is your interpretation of the designated community defined in the Bylaws? For example, do you view your designated community more broadly or narrowly than the Bylaws definition?

The Intellectual Property Constituency (IPC) is identified but not defined in the [ICANN Bylaws](#). The ICANN Bylaws state that the Generic Names Supporting Organization (GNSO) consists of “A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in [Section 11.5](#).”<sup>1</sup> Section 11.5(iii) defines the Commercial Stakeholder Group as “representing the full range of large and small commercial entities of the Internet”, and states that this “includes the ... Intellectual Property Constituency.”

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<sup>1</sup> ICANN Bylaws, Section 11.2(a).

As described in the [IPC Bylaws](#), the purposes of the IPC are to:

Represent the views and interests of owners of intellectual property worldwide with particular emphasis on trademark, copyright, and related intellectual property rights and their effect and interaction with Domain Name Systems (DNS), and to ensure that these views, including minority views, are reflected in the recommendations made by the GNSO Council to the ICANN Board.

More particularly, to review and raise all intellectual property matters including any proposals, issues, policies, or otherwise, which may affect intellectual property, particularly as it interfaces with the DNS, and to provide to the GNSO and the ICANN Board timely and expert advice before it must make any decision or take any position thereon.<sup>2</sup>

The members of the IPC are identified in the IPC Bylaws<sup>3</sup> as follows:

(A) In General

The IPC shall consist of organization and individuals:

- (1) committed to the advocacy and development of intellectual property as fundamental components of meaningful commercial activity in the national, regional, and global realms;
- (2) who are primarily and substantially involved in the field of intellectual property; and
- (3) who make a substantial contribution through its members or otherwise to the field of intellectual property.

(B) Categories of Membership

The categories of membership shall be:

- Category 3: Category 3 shall consist of international intellectual property organizations.
- Category 2: Category 2 shall consist of local, state or purely national intellectual property organizations.
- Category 1A: a company, firm, or organization, which does not fulfill the requirement for category 2 or category 3 membership, but has a demonstrated interest in the protection of intellectual property.
- Category 1B: an individual who has a demonstrated interest in the protection of intellectual property.

The IPC website identifies the IPC's community as follows (<http://www.ipconstituency.org/who-we-are>):

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<sup>2</sup> IPC Bylaws, Section I.

<sup>3</sup> IPC Bylaws, Section II.

We represent the views and interests of owners of intellectual property worldwide, with a particular emphasis on trademark, copyright, and related intellectual property rights and their effect and interaction with the DNS.

We also represent the interests and concerns of consumers who depend on strong intellectual property protections as an essential element of consumer confidence, consumer trust and consumer protection.

Our members include individuals, companies, law firms, and intellectual property organizations from around the world.

In addition to the above, the IPC views its community as including creators, distributors and end-users of intellectual property.

More information about the IPC can be found by visiting the IPC's website, <http://ipconstituency.org/>.

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## ACCOUNTABILITY RELATED POLICIES AND PROCEDURES

### **2. What are the published policies and procedures by which your AC/SO is accountable to the designated community that you serve?**

The IPC is a member of ICANN's Generic Names Supporting Organization (GNSO), and is located within the Commercial Stakeholders Group (CSG) in the Non-Contracted Parties House (NCPH). As such, IPC accountability is governed by the GNSO and CSG governing documents, as well as the IPC Bylaws. These include the ICANN Bylaws and Expected Standards of Behavior, GNSO Bylaws and Procedures, the CSG Charter, and the IPC Bylaws.

Specifically, IPC Officers and GNSO Councilors are held accountable through elections. Officers are elected annually, while Councilors serve two-year terms. Officers are limited to four consecutive terms in any particular office, while Councilors are limited to two consecutive two-year terms.

Furthermore, the IPC Bylaws provide for the "removal with cause" of any Officer or Councilor by a vote of the IPC Bylaws, Section III(D)(6):

(6) Any GNSO Council representative or IPC officer may be removed with cause, by a two-thirds majority vote of the sum of votes of category 1, 2, and 3 members. Amendments to the Bylaws, or the adoption of new by-laws, or the dissolution of IPC, also require a two-thirds majority vote of the sum of votes of category 1, 2, and 3 members.

Decisions of the IPC Officers are appealable, pursuant to Section IV(D) of the IPC Bylaws, which states: "Any decision of the IPC officers can be appealed to the IPCC, with the possibility of further review by the ICANN ombudsman in accordance with the ICANN Bylaws."

Section 1.2 of the CSG Charter also concerns accountability and transparency. The Section is quoted at the end of this answer.

IPC election procedures are set forth in Article VI of the IPC Bylaws:

(A) General Principles

- (1) Elections of the IPC shall be fair, open and transparent. IPC election for GNSO Council representatives shall comply with all applicable provisions of the ICANN Bylaws.
- (2) The IPC shall strive for geographical diversity in its elections for IPC officers.
- (3) No individual may serve as a GNSO Council representative and an IPC officer at the same time.
- (4) No individual may serve as an ICANN Board member and an IPC officer at any one time.
- (5) All Category 1, 2 and 3 members with rights to vote pursuant to Article III (D) shall have nomination and voting privileges.
- (6) Members shall have votes as outlined in Article III(D). They may cast all their votes for one candidate or spread them out accordingly.
- (7) Only members listed as members of the IPC and eligible to vote in IPC elections at the start of the election may participate in the elections.
- (8) Individuals from any of the three categories of membership, as described in Article II (B) of these Bylaws, may be nominated by eligible members.

(B) Election Procedure

(1) Nomination period

The election process will be initiated by a nomination period of one week. The secretary of the IPC shall begin the nomination period by sending a notice to the IPCC members calling for nominations. Nominations shall include:

- name of the nominating organization and membership category;
- name of the authorized representative making the nomination;
- nominee's name, contact information, membership category, and geographical region of citizenship; and
- a summary of why the nominee is a suitable candidate for the positions

(2) Circulation of List of Nominees

At the conclusion of the nomination period, the secretary shall circulate this information to the IPCC and work to post this information on the IPC website.

(3) Acceptance Period

The nomination period will be followed by a one-week acceptance period. During this period, each candidate nominee who chooses to accept the nomination, shall submit to the secretary for circulation to the IPCC and posting on the IPC website, a statement which shall include the following:

- formal acceptance of the nomination; and
- listing of IPC offices currently or formerly held by the nominee; and
- a brief curriculum vitae of no more than 250 words.

(4) Election Period

The acceptance period will be promptly followed by the election period, which shall last one full week. During this period, the secretary will receive votes from the IPCC members. Immediately following the election period, and as soon as practicable, the secretary will publish a full overview of the votes.

(C) Determining the Winner of IPC Elections

IPC officers and GNSO Council representatives shall be elected by a majority of the votes cast by eligible voters as defined by Article VI (A)(7) of these Bylaws.

Other specific sections relevant to this question are cited below:

IPC Bylaws, Section IV(D):

(D) Decisions

Decisions of the IPC officers shall be taken by consensus, or where consensus cannot be achieved, by a simple majority of officers at meetings or by correspondence. The IPC officers have the right to invite other persons to attend their meetings without a right to vote. Any decision of the IPC officers can be appealed to the IPCC, with the possibility of further review by the ICANN ombudsman in accordance with the ICANN by-laws.

CSG Charter:

1.2 **Principles for Leaders and Member Constituencies.** The CSG is committed to:

- 1.2.1 Carrying out its mission in a fair, open and transparent manner and ensuring that new participants and Constituencies (a) are treated on a fair and equitable basis, and (b) can readily access and understand its operations and processes;
- 1.2.2 Carrying out service standards for leadership positions, including impartiality, accountability, and avoidance of conflict of interest;
- 1.2.3 Fulfilling behavioral expectations of all CSG Members (e.g. all constituency members), including without limitation adhering to ICANN Bylaws and policies; supporting the bottom-up consensus model; treating others with dignity and respect, courtesy and civility; listening attentively and seeking to understand others; acting with honesty, sincerity, and integrity; and maintaining community good standing; and
- 1.2.4 Promoting transparency by ensuring that the CSG Executive Committee and elected officers and councilors of each of the Recognized Constituencies, adhere to the operating procedures adopted by the GNSO Council, including a duty to consult with and take actions that reflect the guidance of the respective Recognized Constituency.

- 1.3 Recognized Constituencies shall establish and maintain effective processes to address the foregoing principles.

**RESOURCES:**

- *GNSO Bylaws (ICANN Bylaws, Article 11)*.  
<https://www.icann.org/resources/pages/governance/Bylaws-en/#article11>
- *GNSO Operating Procedures*: <https://gns0.icann.org/en/council/op-procedures-01sep16-en.pdf>
- *CSG Charter*: <http://www.bizconst.org/assets/docs/ICANNCSGCharter2010.pdf>
- *IPC Bylaws*: <http://www.ipconstituency.org/Bylaws>
- *ICANN's Expected Standards of Behavior*: <https://www.icann.org/resources/pages/expected-standards-2016-06-28-en>
- *ICANN's Core Values 1.2(b) of the ICANN Bylaws*:  
<https://www.icann.org/resources/pages/governance/Bylaws-en/#article1>

**2a. Your policies and efforts in outreach to individuals and organizations in your designated community who do not yet participate in your AC/SO.**

**Outreach & Engagement Committee - Overview**

Outreach policies and efforts are not outlined in the IPC Bylaws. The IPC has an Outreach and Engagement Committee, which is responsible for planning, oversight and some execution of the IPC's outreach and engagement strategy.

Outreach Strategy

The IPC Outreach and Engagement Committee is tasked with developing the Outreach Strategy for the upcoming year. The IPC Outreach and Engagement Strategic Plan for FY17 can be found at <https://community.icann.org/x/GgybAw>. After the Outreach and Engagement Committee develops a draft Plan, it is reviewed and approved first by IPC Leadership (Officers and Councilors) and then by IPC Membership.

The IPC participates in ICANN programs such as the Fellows program, the Leadership Training Program, CROPP, and various Business Engagement activities. The IPC organizes a planning team in advance of each ICANN meeting to coordinate the logistics and events of the IPC, including any outreach and engagement planned for the meeting.

The IPC holds an open meeting of the Constituency at each International Trademark Association (INTA) annual meeting and promotes the IPC at meetings of the INTA Internet Committee. The IPC also conducts informal outreach at other meetings where Intellectual Property Constituency stakeholders will be present (e.g., the annual meeting of MARQUES).

The IPC has a website and a print brochure for outreach purposes.

**RESOURCES:**

- *IPC Bylaws*: <http://www.ipconstituency.org/Bylaws>
- *IPC Outreach and Strategic Plan for FY17*: <https://community.icann.org/x/GgybAw>

- *IPC's CROPP travel forms for past and upcoming travel and outreach events in FY17 will be tracked in the CROPP space, <https://community.icann.org/x/2A2OAw>.*
- *ICANN Leadership Program: <https://community.icann.org/x/4hK4Aw>*
- *The IPC brochure can be found here: [https://ipc.memberclicks.net/assets/Fact-Sheets/ipc\\_onepager\\_2016.pdf](https://ipc.memberclicks.net/assets/Fact-Sheets/ipc_onepager_2016.pdf)*

**2.b. Your policies and procedures to determine whether individuals or organizations are eligible to participate in your meetings, discussions, working groups, elections, and approval of policies and positions.**

In order to be eligible to participate within the IPC, organizations, corporations, law firms and individuals must first become members of the IPC. Eligibility criteria are outlined in Section II(A)-(C) of the IPC Bylaws:

(A) In General

The IPC shall consist of organization and individuals:

- (1) committed to the advocacy and development of intellectual property as fundamental components of meaningful commercial activity in the national, regional, and global realms;
- (2) who are primarily and substantially involved in the field of intellectual property; and
- (3) who make a substantial contribution through its members or otherwise to the field of intellectual property.

(B) Categories of Membership

The categories of membership shall be:

- Category 3: Category 3 shall consist of international intellectual property organizations.
- Category 2: Category 2 shall consist of local, state or purely national intellectual property organizations.
- Category 1A: a company, firm, or organization, which does not fulfill the requirement for category 2 or category 3 membership, but has a demonstrated interest in the protection of intellectual property.
- Category 1B: an individual who has a demonstrated interest in the protection of intellectual property.

(C) Additional Factors

In determining eligibility for membership in the above-referenced categories of membership, the following additional factors shall be considered as applicable:

- (1) the number of members in the organization;
- (2) the international/geographic diversity of membership;
- (3) the extent to which the organization or individual is representative of a particular industry or industry segment;

- (4) the organization's standing before international bodies, including, but not limited to the World Intellectual Property Organization; and
- (5) the nature and structure of the organization.

Information on joining the IPC, including an online application, is on the IPC Website, in the “Join the IPC” section: <http://www.ipconstituency.org/join-the-ipc>. The membership application process is described in the IPC Bylaw, Section II(D) (Application for Membership):

- (1) Potential applicants shall complete an IPC application form that shall be publicly available on the IPC website or through contacting any IPC officer.
- (2) In applying for membership an applicant thereby agrees to abide by the written rules and regulations, including charters and Bylaws, of the Constituency and terms and conditions laid down by it.
- (3) All applications for membership shall be forwarded to the IPC officers for consideration and will be voted on by the IPC Council on a regular basis. All applicants may request the status of their application and admission decision and, in the event of any objection to said application, shall be given the opportunity to ask clarifying questions about the objection and shall be given the opportunity to reply with clarification or to reply in general.

Membership applications are first reviewed by the IPC Membership Committee, using the criteria set forth above. If approved by the Membership Committee, the application is then referred to IPC Leadership. If approved by IPC Leadership, the application is lastly referred to the IPCC (Intellectual Property Constituency Council), which consists of the IPC Category 2 (local, state or purely national intellectual property organizations) and 3 (international intellectual property organizations) members.

Members’ eligibility to participate in IPC activities is set out in the IPC Bylaws, Section II(F) (Participation):

- (1) Every member in good standing is eligible to participate in specific IPC initiatives, including the policy work of the constituency, IPC Committees, IPC discussions, working groups, and other Constituency issues. The IPC Officers shall reserve the right to appoint interested members to specific IPC initiatives.
- (2) Active participation by members on a committee or other IPC initiatives (including on GNSO working groups) is strongly encouraged for those members who wish to comment on prepared IPC statements, partake in debate on IPC statements, attend conference calls, and/or otherwise contribute in any way to a final IPC statement or policy. Active participation generally includes attending conference calls for the committee, assistance in the analysis of relevant documentation, preparation of draft written comments and/or statements on behalf of the IPC, and, where applicable, appropriate outreach to other members of the ICANN community.
- (3) Where applicable, members who actively participate will be eligible to receive constituency support, such as travel funding to ICANN meetings and related events, serving as IPC



representatives in ICANN working groups and related initiatives, and serving in leadership positions within the Constituency.

## **Appeals**

Appeal mechanisms for the refusal of a membership application or the expulsion of a member are as follows:

Any decision of the IPC officers can be appealed to the IPCC, with the possibility of further review by the ICANN ombudsman in accordance with the ICANN by-laws.<sup>4</sup>

[The IPCC may] refuse or expel any member where on reasonable grounds it feels it is in the best interest of the IPC to do so; provided, that any such action is subject to review by the ICANN Ombudsman in accordance with the ICANN by-laws.<sup>5</sup>

### **RESOURCES:**

- *IPC Bylaws:* <http://www.ipconstituency.org/Bylaws>
- *Membership list:* <http://www.ipconstituency.org/current-membership>
- *IPC Public Comments & Position Statements:* <http://www.ipconstituency.org/public-comments>

## **2.c. Transparency mechanisms for your AC/SO deliberations, decisions and elections**

The IPC has the following transparency mechanisms:

### **Deliberations and Decisions:**

Deliberations and decisions of the IPC membership take place in one or more of the following fora:

1. In monthly meetings of the membership by Adobe Connect and phone, which are recorded and transcribed; minutes are posted to the IPC website at <http://www.ipconstituency.org/meeting-minutes>,
2. In open meetings of the IPC at ICANN Public Meetings and at the INTA Annual Meeting, which offer remote participation, and which are recorded and transcribed, and minutes posted to the IPC website, and
3. On an IPC members mailing list.

Deliberations and decisions of the IPC leadership take place in one or more of the following fora:

1. In monthly meetings of the leadership, by Adobe Connect and phone, which are recorded and transcribed; minutes are distributed to leadership,

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<sup>4</sup> IPC Bylaws, Section IV(D).

<sup>5</sup> IPC Bylaws, Section III(B)(2).

2. In monthly meetings of the membership, as described above,
3. On an IPC members mailing list (to which all members are subscribed), and
4. In email exchanges. The IPC has recently commenced use of a mailing list for leadership; prior to this exchanges used emails addressed to each member of leadership.

Decisions of IPC leadership are announced at IPC membership meetings and/or on an IPC members mailing list.

### **Elections:**

The IPC Bylaws contain the following provisions relating to transparency of elections:

#### (A) General Principles

(1) Elections of the IPC shall be fair, open and transparent. IPC election for GNSO Council representatives shall comply with all applicable provisions of the ICANN Bylaws.

#### (B) Election Procedure

##### (1) Nomination period

The election process will be initiated by a nomination period of one week. The secretary of the IPC shall begin the nomination period by sending a notice to the IPCC members calling for nominations. Nominations shall include:

- name of the nominating organization and membership category;
- name of the authorized representative making the nomination;
- nominee's name, contact information, membership category, and geographical region of citizenship; and
- a summary of why the nominee is a suitable candidate for the positions

##### (2) Circulation of List of Nominees

At the conclusion of the nomination period, the secretary shall circulate this information to the IPCC and work to post this information on the IPC website.<sup>6</sup>

##### (3) Acceptance Period

The nomination period will be followed by a one-week acceptance period. During this period, each candidate nominee who chooses to accept the nomination, shall submit to the secretary for circulation to the IPCC and posting on the IPC website,<sup>7</sup> a statement which shall include the following:

- formal acceptance of the nomination; and
- listing of IPC offices currently or formerly held by the nominee; and
- a brief curriculum vitae of no more than 250 words.

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<sup>6</sup> This information is also circulated on an IPC member email list.

<sup>7</sup> This information is also circulated on an IPC member email list.

(4) Election Period

The acceptance period will be promptly followed by the election period, which shall last one full week. During this period, the secretary will receive votes from the IPCC members. Immediately following the election period, and as soon as practicable, the secretary will publish a full overview of the votes.

(C) Determining the Winner of IPC Elections

IPC officers and GNSO Council representatives shall be elected by a majority of the votes cast by eligible voters as defined by Article VI (A)(7) of these Bylaws [which states “Only members listed as members of the IPC and eligible to vote in IPC elections at the start of the election may participate in the elections”].

Voting for elections is covered by Section III(D) of the Bylaws, which states:

(D) Voting

(1) Category 1 Members shall collectively cast three votes. Collective votes shall be determined by a simple majority of Category 1 members voting.

(2) Category 2 Members shall each cast two votes.

(3) Category 3 Members shall each cast three votes.

(4) No Category 1, 2, or 3 Member may vote unless:

(1) its dues are paid; and

(2) it does not vote in any other constituency or stakeholder group. An individual Category 1 member may not vote if his or her employer votes in another constituency or stakeholder group.

**RESOURCES:**

- Minutes for IPC Membership calls: <http://www.ipconstituency.org/meeting-minutes>
- Elections – VI.B: Sample timeline (IPC Bylaws): <http://www.ipconstituency.org/Bylaws>

**IPC Officers Election Schedule:**

Nominations – 2 weeks

Consideration period – 1 week

Candidate call – held at the end of consideration period

Voting period – 1 week (may be extended to 10 days to account for weekends)

Announcement- Once votes from Category 1, 2, and 3 are counted, the officers will be announced

**2.d. Were these policies and procedures updated over the past decade? If so, could you clarify if they were updated to respond to specific community requests/concerns?**

The IPC Bylaws were adopted on November 15, 2010 and replace the Bylaws that were effective November 14, 2005. The Bylaws were updated, at least in part, to respond to specific community requests/concerns. For example, there were concerns that under the old Bylaws,

there was no voting role for individual members. Such a role was provided in the revised Bylaws.

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## CHALLENGING OR APPEALING DECISIONS AND ELECTIONS

### 3. Mechanisms for challenging or appealing elections. Does your AC/SO have mechanisms by which your members can challenge or appeal decisions and elections? Please include link where they can be consulted.

Section III(D)(6) of the IPC Bylaws states:

(6) Any GNSO Council representative or IPC officer may be removed with cause, by a two-thirds majority vote of the sum of votes of category 1, 2, and 3 members.

Section III(B) grants the following powers to the IPCC.<sup>8</sup>

#### (B) Powers

The IPCC shall be the governing and principal decision making body of the IPC and shall direct the IPC and pursue its objectives, and shall in particular:

...

(3) elect in accordance with the provisions herein or remove officers of the IPC;

(4) elect in accordance with the provisions provided herein or remove three representatives to the GNSO Council;

However, the IPCC is essentially dormant, except for a final non-objection process for membership applications.

Decisions of the IPC Officers are appealable, pursuant to Section IV(D) of the IPC Bylaws, which states, "Any decision of the IPC officers can be appealed to the IPCC, with the possibility of further review by the ICANN ombudsman in accordance with the ICANN Bylaws."

#### RESOURCES:

- IPC Bylaws: <http://www.ipconstituency.org/Bylaws>

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<sup>8</sup> "The IPC Council (IPCC) shall be composed of one designated representative and up to two alternative representatives of each member organization of category 3 and category 2 members. Members of the IPCC shall serve at the pleasure of their respective member organizations, which shall retain full responsibility for designating their representatives and alternative representatives. The term of each representative and his or her alternate shall be left to the discretion of each member organization. An individual can only represent one organization at the same time and may not serve as the representative for more than one category of membership." IPC Bylaws, Section III(A).

## UNWRITTEN ACCOUNTABILITY POLICIES

**4. Any unwritten policies related to accountability. Does your AC/SO maintain unwritten policies that are relevant to this exercise? If so, please describe as specifically as you are able.**

At the commencement of each election, the candidates participate in a “Candidate Call,” a conference call (by phone and Adobe Connect) in which the candidates respond to questions. Questions are posted to the IPC mailing list prior to the Call, and new questions are asked on the Call as well. This is not a written policy.

The IPC has an unwritten policy that all draft public comments should be posted to the IPC mailing list one week before the end of the comment period, so that the membership can review, discuss and revise the draft public comment before it is submitted.

Informally, IPC leadership can be held accountable on the IPC mailing list at any time, or on a membership call. Members can also raise any issue, at any time, on the IPC mailing list for the IPC’s consideration or awareness.

Current IPC practice varies from the Bylaws in certain ways. IPC is undertaking a Bylaws review and amendment process in order to bring the Bylaws in line with current practice.

Accountability of the IPC’s Councilors is informally maintained through the taking of detailed notes on the deliberations decisions and rationales of the GNSO Council in matters raised in Council meetings. These are circulated promptly to IPC members, who are invited to raise comments, concerns and questions on the IPC’s participation in these decisions.

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