

January 28, 2016

**Comments on Review of CCWG-Accountability Draft Annexes 8, 9, 10 and 11**

Draft Annexes	Suggested Edits
Global	Replace “Icann” with “ICANN”
Global	Consider replacing and/or supplementing the sections discussing “Changes from the Second Draft Proposal on Work Stream 1 Recommendations” with sections discussing changes from the Third Draft Proposal (where appropriate)
Global	Consider conforming references to “CWG-Stewardship proposal” and “IANA Stewardship Transition proposal” where appropriate; terms are currently used interchangeably
Global	Replace references to “SOs and ACs” and “SOs/ACs” with “Decisional Participants” as appropriate; “Decisional Participants” (as opposed to “SOs and ACs” or “SOs/ACs”) should be used when referring to the following subset of SOs and ACs that will participate in the Empowered Community: ASO, GNSO, ccNSO, ALAC and GAC
Global	After a name has been selected for the sole designator unincorporated association, references to “Sole Designator,” “Empowered Community” and “community” will need to be updated as appropriate; the name selected should be the only term used to refer to the sole designator unincorporated association
<b>Annex 8: Recommendation #8: Fortifying ICANN’s Request for Reconsideration Process</b> <i>(Paragraph numbers refer to the 1<sup>st</sup> reading conclusions draft)</i>	
Generally	Add page numbers
Title	“Recommendation #8: <del>Fortifying</del> <u>Improving</u> ICANN’s Request for Reconsideration Process”
1 <sup>st</sup> reading conclusions	“ii. <del>•</del> Concern was raised that the <del>e</del> <u>O</u> mbudsman...” “iii. <del>•</del> There...”
Paragraph 2	“Making <u>the</u> ICANN Board of Directors responsible...”
Paragraph 3	“Recordings/transcripts of Board discussion should be posted <u>at the option of the requestor</u> ”

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	<p>“A <del>Provision of a</del> rebuttal opportunity to the Board Governance Committee’s final recommendation <u>before a final decision by the ICANN Board should be provided</u>”</p>
Paragraph 5	<p>“<u>Narrowing the</u> <del>The</del> grounds for summary dismissal <del>have been narrowed</del>”</p> <p>“<u>Requiring The ICANN Board of Directors must make</u> determinations on all requests <u>to be made by the ICANN Board of Directors</u> (rather than a committee handling staff issues)”</p> <p>“<u>Requiring</u> ICANN’s Ombudsman <del>to</del> <u>should</u> make the initial substantive evaluation...”</p> <p>“<u>Requiring r</u> Recordings/transcripts of Board discussion <del>to</del> <u>should</u> be posted <u>at the option of the requestor</u>”</p> <p>“<u>Providing</u> <del>Provision of a</del> rebuttal opportunity to the Board Governance Committee’s final recommendation <u>before a final decision by the ICANN Board</u>”</p> <p>“<u>Adding h</u> Hard deadlines <del>should be added</del> to the process...”</p>
Paragraph 7, Diagram	<p>“BGC <del>Determination or</del> Recommendation”</p> <p>Consider adding “Rebuttal opportunity” between “BGC Recommendation” and “ICANN Board Action on Recommendation”</p>
Paragraph 10	<p>Add at the bottom of the paragraph:</p> <p>“<u>Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability’s external legal counsel and the ICANN legal team will draft final language for these revisions to the Bylaws.</u>”</p>
Paragraph 11	<p>Consider using “re-delegation” instead of “revocation” if those terms refer to the same thing</p>
Paragraph 14	<p>“Broaden the types of decisions that can be re-examined to include Board/staff action/inaction <u>that contradicts</u> <del>against</del> ICANN’s Mission, Commitments, and/or Core Values...”</p> <p>“Provide more transparency in the dismissal <u>and reconsideration</u> processes”</p> <p>“Provide the Board <u>Governance Committee</u> with <u>the</u> reasonable right to dismiss frivolous requests...”</p> <p>“Propose to amend paragraph nine on BGC summary dismissal as follows:</p> <ul style="list-style-type: none"> <li>○ The Board Governance Committee ... if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; <u>or</u> (ii) it is frivolous <del>querulous or vexatious</del> <del>;- of</del>”</li> </ul>

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Paragraph 16	“...need to rely less on the ICANN legal department ( <del>which</del> <u>who</u> holds a strong legal obligation...”
Paragraph 17	“Requests should no longer go to ICANN’s lawyers (in-house or <del>external legal counsel</del> <u>out-house</u> )...” “...current practice of <u>using</u> ICANN’s lawyers to aid the BGC...”
Paragraph 18	“All final determinations of Requests for Reconsideration ( <del>other than requests that have been summarily dismissed by the BGC as discussed above</del> ) are to be made by the <del>entire</del> ICANN Board (not only requests about Board actions as is the current practice)”
Paragraph 22	“Recordings and transcripts should be posted of the substantive Board discussions <del>at</del> <u>on</u> the option of the requestor.”
Paragraph 23	“A rebuttal opportunity to the BGC’s final recommendation (although request <u>o</u> ers...”
Paragraph 25	“... <i>The Board Governance Committee (BGC) shall make a final <del>determination or a</del> recommendation...and its best estimate of the time required to produce such a final <del>determination or</del> recommendation... The final decision of the Board and its rationale shall...</i> ” “... <i>In any event, the Board’s final decision shall be made within 120 days of receipt of the request. The final <u>decision</u><del>recommendation</del> shall be promptly posted on ICANN’s website. <del>In any event, the Board’s final decision shall be made within 120 days of decision on the recommendation is final.</del></i> ”
Paragraph 27	“...extended from 15 to 30 days from when the requestor learns of the decision/inaction, <u>except as otherwise described below</u> ”
Paragraph 28	“Amend paragraph five <del>so that it reads as follows...</del> ”; alternatively, revise to indicate the changes that are being made to paragraph five of Article IV, Section 2 of the Bylaws (similar to how amendments are presented in Paragraphs 10 and 19)
Paragraphs 39, 40	“...the operational functioning of <u>the</u> organization.”
<b>Annex 9: Recommendation #9: Incorporation of the Affirmation of Commitments</b> <i>(Paragraph numbers refer to the 1<sup>st</sup> reading conclusions draft)</i>	
Generally	Add page numbers
Generally	“Review <del>t</del> <u>T</u> eam” “ <del>R</del> <u>R</u> eview <del>t</del> <u>T</u> eam” “periodic <del>R</del> <u>R</u> eview”

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	“a <del>R</del> review of”
Generally	“ <del>R</del> ecommendation #9”
Generally	“ <u>the</u> ICANN Bylaws”
Generally	“A <u>o</u> C”
Title	“Recommendation #9: Incorporating <del>on</del> of the Affirmation of Commitments <u>in ICANN’s Bylaws</u> ”
1 <sup>st</sup> reading conclusions	“The Compet <u>it</u> ion, Consumer Trust...” “7. Article XVIII of <u>the</u> ICANN Bylaws should <u>be classified as</u> <del>remain</del> a Standard Bylaw (see paragraph 5)”
Paragraphs 3, 8	“...used as guidance by <u>the</u> community, <u>ICANN</u> staff and <u>the</u> Board in conducting future reviews”
Paragraph 5	“ICANN Article XVIII is to <u>be classified as</u> <del>remain</del> a Standard Bylaw and not to be moved into the Core Values section with material derived from Affirmation of Commitments sections 8a and 8b.”
Paragraph 9	“A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws <u>and will be classified as Fundamental Bylaws</u> ”
Paragraph 10	“ICANN or NTIA chooses <u>s</u> to terminate . . .”
Paragraph 17	“...empower the <u>Empowered Community</u> <del>community</del> to veto...”
Paragraph 18	“If any of the AoC commitments <u>or review processes</u> were <u>classified</u> <del>designated</del> as Fundamental Bylaws...”
Paragraph 24	Delete footnote 2 (currently blank)
Paragraph 25	“...independent legal counsel advised that <u>the</u> ICANN Bylaws could not require...” Should the sentence at the end of this paragraph (“In Bylaws Article IV...”) be moved up to paragraph 24 and added to the list of bullet points?
Paragraph 26	Move the Note from Paragraph 132 to Paragraph 26 below the section title and before the chart, with the marked deletion:

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	<p><b>“Recommended Changes to ICANN Bylaws</b></p> <p><i><u>Note: Legal counsel has not reviewed the proposed Bylaw revisions at this stage. The proposed language for Bylaw revisions is conceptual in nature; once there is consensus about direction, legal counsel will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.</u></i>”</p>
Paragraph 45	Replace period with colon: “Proposed requirement for annual report, to be included in Bylaws section on required reviews <del>;</del> ”
Paragraph 49	“...technical Mission...”
Lead-in before Paragraph 51	“ <u>The Bylaws will</u> <del>to</del> provide a framework for all periodic reviews <del>;</del> <u>The left-hand column of the following chart shows proposed Bylaws language for periodic reviews (subject to revision by legal counsel during actual drafting), with comments on the right.</u> ”
Paragraph 57	Replace period with comma: “In this case <del>;</del> ”
Paragraph 60	“This was not stated in the Affirmation of Commitments, but experts have been appointed to <u>advise</u> some Affirmation of Commitments Review Teams.”
Paragraph 62	“A recommendation to amend or terminate an existing review would be subject to public comment, and the community would have power to <u>reject</u> <del>block</del> a change to <del>the Standard</del> Bylaws <u>and approve a change to Fundamental Bylaws.</u> ”
Paragraph 76	“ <u>Within six months of receipt of a recommendation, the</u> <del>The</del> Board shall consider approval and <u>promptly either</u> begin implementation <u>or publish a written explanation for why the recommendation was not approved</u> <del>within six months of receipt of the recommendations.</del> ”
Paragraphs 87-89	<p>“(d) assessing the extent to which ICANN’s decisions are embraced, supported, and accepted by the public and the Internet community; <del>and</del></p> <p>(e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development<del>;</del> <u>and</u></p> <p>(f) assessing and improving the Independent Review <del>p</del><u>P</u>rocess.”</p>
Paragraph 94	“A recommendation to amend or terminate an existing review would be subject to public comment. And the subsequent Bylaws change would be subject to <u>the escalation and enforcement processes described in Recommendation #4</u> <del>IRP challenge.</del> ”
Paragraph 105	Consider clarifying the meaning of “maintaining clear processes”

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Paragraphs 107	In the right-hand column of the chart, replace “Proposed revisions to ICANN Mission” with “ <a href="#">The new ICANN Mission Statement will include the following revision to reflect the incorporation of this AoC review into the Bylaws.</a> ”
Paragraph 132	“...once there is consensus about direction <del>developed through this comment process...</del> ” Move the “Note” to Paragraph 26 (below the section title) where the proposed bylaws begin
Paragraphs 133-169	Add introductory text to provide context to this table
Paragraph 170	“Following community feedback received during the Second Public Comment Period, the CCWG-Accountability is recommending that <a href="#">the location of ICANN’s principal office under</a> Section 8b of the Affirmation of Commitments, which is reflected in the existing content of ICANN Bylaws Article XVIII, not be made a Fundamental Bylaw, but <a href="#">be classified as</a> <del>remains</del> a Standard Bylaw”
Paragraph 173	“the Second Draft <a href="#">Proposal</a> <del>Report</del> ...”
Paragraph 175	“...table <del>;</del> however, to ensure that... in <del>contract</del> <a href="#">contrast</a> , the Board’s proposed text for that section could have resulted in six or seven years between reviews.”
Paragraph 177	“The CWG-Stewardship has proposed an IFR <a href="#">and Special IFR</a> that should be added to the ICANN Bylaws, as a Fundamental Bylaw.”
<b>Annex 10: Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees</b> <i>(Paragraph numbers refer to the 1st reading conclusions draft)</i>	
Generally	“with regard <del>s</del> to”
1 <sup>st</sup> reading conclusions	Delete the spaces before colons “:” In 1.a.ii: “ <del>a</del> <a href="#">Any</a> structural...” In 3.a.i-iv, delete bullets “•” Delete 3.a.iii (which is blank; unclear whether the text in the “Moved up” bubble is intended to form part of the text) and change 3.a.iv to 3.a.iii In 3.a.iv: “...and applying the Independent Review <del>p</del> <a href="#">P</a> rocess...”
Paragraph 3	“. . . include consideration <del>of</del> <a href="#">o</a> n the mechanisms . . .”

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Paragraph 9	Delete space: "...the CCWG–Accountability will discuss..."
Paragraph 10	"To avoid an infinite loop, it was suggested that the Supporting Organizations and Advisory Committees should be subject to an IRP when their actions/ <del>inactions violate go against</del> the ICANN <u>Articles of Incorporation or</u> Bylaws."
Paragraph 11	"...SO and AC accountability in <u>the Second Draft Proposal</u> <del>Draft Two</del> ..."
<b>Annex 11: Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice</b> <i>(Paragraph numbers refer to the 1st reading conclusions draft)</i>	
Title	"Board Obligations with Regards to..."
1 <sup>st</sup> reading conclusions	<p>We note that the following part of conclusion #5 is not reflected in the content of the latest draft: "The Board should determine whether the rationale is adequate."</p> <p>We note that conclusion #6 is not reflected in the content of the latest draft.</p>
1st reading conclusions	<p>"Replace "board" with "Board"</p> <p>"for <u>the ICANN</u> <del>b</del><u>B</u>oard"</p> <p>"GAC <u>A</u>dvise"</p> <p>"To address <del>the concerns regarding</del> GAC advice <u>that is</u> inconsistent with <u>the</u> Bylaws..."</p> <p>"Any aggrieved party or the <u>e</u>Empowered <u>e</u>Community will have standing to bring <u>claims through the an IRP that the Board acted (or failed to act) in a manner inconsistent with the ICANN Articles of Incorporation or Bylaws</u> <del>to challenge whether any board action or inaction that is inconsistent with its bylaws...</del>"</p>
Paragraph 2	<p>"Stress Test 18 considers a scenario where ICANN's GAC would amend <del>its</del><u>their</u> operating procedures..."</p> <p>"...Empowered Community<del>;</del><u>;</u> some stakeholders..."</p>
Paragraph 4	<p>We are not providing detailed edits at this time; we understand this language is still under discussion.</p> <p>Revise to indicate the changes that are being made to Article XI, Section 2(j) of the Bylaws (i.e., underline new additions)</p>
Paragraph 6	Consider making the second bullet point ("The language proposed...") a new paragraph in this section (that would not be a "Note" as it

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	is in Paragraph 6)
Paragraph 8	<p>“Stress Test 18 is related to a scenario where ICANN’s GAC would amend <del>its</del><u>their</u> operating procedures...”</p> <p>“In addition, if the GAC lowered its decision threshold while also participating in the new <u>Empowered Ce</u>community <del>mechanism</del>...”</p>
Paragraph 9	<p>“The GAC will not work on the basis of <u>a</u> simple majority for GAC advice.”</p> <p>“GAC advice needs to provide clear direction and <del>to</del> provide <u>a</u> rationale.”</p>
Paragraph 10	“The Second Draft <u>Proposal</u> <del>Report</del> ...”
Paragraph 11	“...Governmental Advisory Committee considered: <del>?</del> ...”
Paragraph 12	“Provide the full CCWG-Accountability with <u>a</u> brief summary of views and options.”
Paragraph 13	<p>“Not working on the basis of <u>a</u> simple majority for GAC advice.”</p> <p>“GAC advice needs to provide clear direction and <del>to</del> provide <u>a</u> rationale.”</p>
Paragraph 17	“After discussions within the <del>s</del> <u>Sub</u> group, and concerns raised by some stakeholders...”
Paragraph 19	“As some participants remained concern <u>eds</u> about...”
Paragraph 34	“...could challenge actions taken by the ICANN <u>Board</u> <del>Corperation</del> .”
Paragraph 37	“For these reasons...if the <del>b</del> <u>B</u> oard were obliged to seek a negotiated solution with the GAC.”
Paragraph 57, Table	Add paragraph numbers to all of the paragraphs in the right-hand column; only Paragraph 64 appears to be numbered
Section 7	<p>“...possibility of a large group of government<u>s</u> trying to overly influence the ICANN Board”</p> <p>“...where a single government would abuse <del>of</del> its ability...”</p>