

**Approved and Completed CCWG Clarifications for Bylaws Coordination Group**  
**April 7, 2016**

**RECONSIDERATION:**

3. On Reconsideration requests, the CCWG proposal provides that “[r]ecordings and transcripts should be posted of the substantive Board discussions at the option of the requestor” (Annex 8, Paragraphs 23, also Paragraphs 3 and 5). Concerns have been raised that requiring both a recording and a transcript of Board discussion may add substantial administrative burden and expense without commensurate benefits; further concerns have been raised about waiving attorney-client privilege, or breaching laws or contractual obligations. If the Bylaws Coordination Group wishes to address these concerns, the following provision may be considered:

*“If the party seeking reconsideration so requests, the Board shall post either a recording or a transcript of the substantive Board discussion from the meeting at which the Board considers the Board Governance Committee’s recommendation. The Board shall decide as between a recording and a transcript. The Board may only redact from the posted record that portion of the record that: (a) reflects privileged advice from legal counsel; (b) includes ICANN trade secrets; or (c) for which if disclosed would breach a binding contractual obligation or legal requirement to which ICANN is subject; or (d) if disclosed would present a material risk of negative impact to the security, stability or resiliency of the DNS.”*

**CCWG Response:**

The CCWG would prefer to keep up its recommendation to post both, and look for any “agreed language” existing in the Bylaws to enable their redaction when strictly required (we note that the proposed redaction items are also introduced in section 18.4 - IFR Required inputs) . The CCWG discussion has highlighted that the recording - which can be produced and published with little effort - is the most accurate representation of the discussion, while transcripts are of questionable quality at times.

The fact that redaction may be subject to challenge should be added as a reminder.

**REVIEWS:**

4. There has been further effort in identifying items that can be explained in Operating Standards, while maintaining high-level principles, to try to optimize the Bylaws while preserving key items in the Bylaws. Are these changes acceptable?

**CCWG Response:**

It is acceptable to state that Operating Standards will be “developed with the global Internet community for the conduct of reviews under this Section 4.6.” And draft bylaws Section 4.6 a (i) requires that “The Operating Standards must be aligned with the

following guidelines:” and then lists guidance that was approved by the CCWG for composition of Review Teams.

Operating Standards are also cited in Section 4.6 a (iii) regarding decision-making practices of review teams. However, there is no requirement to align with this guideline in the CCWG final report:

In the event a consensus cannot be found among the members, a majority vote of the members may be taken. In this case, both a majority recommendation and a minority response should be provided in the final report of the Review Team. (para 58, Annex 9)

Operating Standards are also cited in Section 4.6 a (iv) relating to review teams considering independent expert advice. This is acceptable, noting that the CCWG proposal stated, “the review team may choose to accept or reject all or part of this advice”. (para 60, Annex 9)

5. On the SSR Review, we note that the CCWG-Accountability removed reference to some of the introductory language for the review. With some of that introductory text removed, the explicit reference to a security “plan” doesn’t make sense, so ICANN proposes a to security “efforts” so that we didn’t need to make major modifications to address inserting new definitions of terms. In addition, ICANN proposes a more specific language to add clarity to the contingency planning review scope. Are these changes acceptable?

**CCWG Response:**

In Annex 9 of the Final CCWG report we included all of AoC Review except for the first sentence, which describes a SSR plan:

ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS.

We did not include that line since it refers to an existing plan, as opposed to a commitment to update/generate an SSR plan regularly.

Perhaps it would be best to add the AoC text referring to a plan for SSR. Let’s consult with ICANN management about how to describe this plan in the bylaws. Add the plan description to the Bylaws so that subsequent references to “plan” make sense

Ask ICANN management how they describe their SSR plan and how often it is updated. Add the plan description to the Bylaws so that subsequent references to “plan” make sense

## **BOARD:**

7. The CCWG proposal was silent on how the Interim Board is to consult with the community to make major decisions. We have included a suggestion that the Interim Board shall “(a) consult with the chairs of the Supporting Organizations and Advisory Committees before making major decisions (as if such action were a Rejection Action [as defined in Annex D]) and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section [ ] of Annex D)” prior to taking the action. Are these the right processes?

### **CCWG Response:**

Agreed with Option a)

## **ANNEX D:**

26. In rejection actions, transparency could be increased if there was a requirement for other Decisional Participants supporting a petition to give notice. The following language has been proposed: “Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Chairs Council, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition.” Though this is not in the CCWG Proposal, does the CCWG support this being incorporated into the Bylaws?

### **CCWG Response:**

Agreed.

27. PDP-Related Bylaws amendments. Given that there is a possibility that a Fundamental Bylaws change could result from a PDP, can the CCWG confirm that that in those instances, (a) the Fundamental Bylaws change process should apply, and not the Standard Bylaws change process contemplated in the Proposal, and/or (b) that the SO/AC that undertook the PDP relating to the Bylaws change is required to support such a Bylaws change?

### **CCWG Response:**

The CCWG agrees that the Fundamental Bylaws change process shall apply and that the SO/AC that undertook the PDP relating to the Bylaws change is required to support the Bylaws change for it to be accepted.

28. For Approval Actions, would it be appropriate for the Board to be able to request an additional community forum (likely for the purpose of helping to explain an action that the Board initiated, such as Fundamental Bylaws change or an asset sale)? This is not contemplated in the CCWG Proposal.

**CCWG Response:**

The CCWG agrees that it should be possible for the Board to request that a session of the community forum is held to discuss the matter. This should be optional and not mandatory for the Board to do. We would like to stress that the notion of additional community forum is understood as another session of the community forum, not a new, parallel body. Should the Board request such a session the community forum it would be required to publish a rationale for doing so.

30. Paragraph 56 of Annex 2 provides that the threshold to convene a Community Forum in relation to removing an SO/AC director is a “[m]ajority within nominating SO/AC” whereas Paragraph 68 of Annex 4 allows the approval to be “in accordance with the [SO/AC’s] own mechanisms. Please provide guidance on these inconsistencies.

**CCWG Response:**

The CCWG has always made clear that it does not wish to alter the methods based on which the SO/ACs make their decisions. Therefore, the language “in accordance with the SO/AC’s own mechanisms” is preferred.

31. In the SO/AC director removal process, the CCWG Proposal has exclusions on who could manage/moderate a community forum. Consider whether this exclusion (i.e., person who initiated a petition) as well as exclusion of the Decisional Participant’s designated liaisons, should be incorporated into the processes for managing/moderating Community Forums relating to other types of decisions by the EC (e.g., Board recall petitions), to ensure that the Community Forum is managed in a neutral manner. If so, Community Forums relating to what kinds of EC Decisions should include such an exclusion?

**CCWG Response:**

This exclusion might be difficult to manage in the case of decisions that affect ICANN’s general direction. It was specifically mentioned in the SO/AC director removal process because of the potential personal conflicts that might be associated with such a process. In that spirit, our recommendation is to extend this exclusion to all any Board director removal process, but leave it to the wisdom and good sense of the community to prevent any conflict of interest in the organization of the community forum in other cases.

32. During the SO/AC director removal process, should there be a requirement to hold a dialogue between the relevant director, the SO/AC and the Chair of the Board prior to the SO/AC accepting the removal petition? The CCWG Proposal contemplated such a dialogue in the context of NomCom director removal (Paragraph 57 of Annex 4) but did not specifically mention it in the context of SO/AC director removal.

**CCWG Response:**

The process should be as similar as possible for any Director's removal, and this informal discussion at the start of the process can only be helpful in resolving concerns or in showing that the removal process needs to proceed. Thus, the CCWG supports including this requirement.

34. Should the use of the EC's right to initiate a reconsideration request be limited to the EC's decision rights/powers, similar to the community IRP?

**CCWG Response:**

Since the EC shall be granted a limited and finite catalogue of powers, the answer is "yes".