

**Proposed Amendments to ICANN Articles of Incorporation  
As agreed to by CCWG Legal Counsel & ICANN Legal**

Proposed revisions marked to show changes from current text	Explanation/Comments
<p><b><u>AMENDED AND RESTATED</u></b>  <b>ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS</b></p>	
<p><del>As Revised November 21, 1998</del></p>	
<p>1. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the "<u>Corporation</u>").</p>	
<p><del>2. The name of the Corporation's initial agent for service of process in the State of California, United States of America is C-T Corporation System.</del></p>	<p>The name of the corporation’s agent is required to be included when Articles of Incorporation are initially filed with the Secretary of State. If the agent changes after that, the information in this provision is obsolete, but it cannot be amended to update the name of the agent. Section 5810(b) of the California Nonprofit Public Benefit Corporation Law does permit this provision to be deleted once the corporation has filed its initial biennial Statement of Information, and it is standard corporate practice to do so whenever the Articles are amended for other reasons.</p>
<p><u>3</u>2. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "<u>Code</u>"), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any <del>further</del><u>future</u> United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization,</p>	<p>The third sentence refers to the possibility of “future” versions of the Internal Revenue Code (“IRC”). While referring to a “further” law in the fourth sentence is not wrong, substituting “future” would be a more common and easily understood usage.</p>

<p>the Corporation shall, except as limited by <u>Article 54</u> hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet <del>by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).</del> <u>as such global public interest may be determined from time to time by the multistakeholder community through an inclusive bottom-up multistakeholder community process, by carrying out the mission set forth in the bylaws of the Corporation ("Bylaws").</u></p>	<p>Since the Articles govern the Bylaws in the event of any inconsistency between them, this text was deleted, and a reference was added at the end of the sentence to the mission as stated in the Bylaws, to ensure complete consistency between proposed new Bylaws provisions in Section 1.1(a)(i-iv) and these Articles.</p> <p>The reference to the multistakeholder community process was added as provided in the Proposal, at Annex 1, Para. 27.</p>
<p><u>43.</u> The Corporation shall operate <u>in a manner consistent with these Articles and its Bylaws</u> for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and <del>applicable</del> international conventions and <u>applicable</u> local law and, <del>to the extent appropriate and consistent with these Articles and its Bylaws,</del> through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.</p>	<p>The minor edits here are intended to make the Articles track more closely language in the Bylaws at Section 1.2(a), on the same subject. (Note that the quote from the Articles on this subject found in Annex 5, Para. 5 of the CCWG Proposal, is slightly inaccurate.)</p>
<p><u>54.</u> Notwithstanding any other provision <del>(other than Article 8)</del> of these Articles:</p>	
<p>a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United</p>	

<p>States income tax under § 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170(c)(2) of the Code.</p>	
<p>b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.</p>	
<p>c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.</p>	
<p>d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its <del>members,</del> directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in <u>Article 32</u> hereof.</p>	<p>Reference to members deleted to avoid any implication that ICANN has members.</p>
<p><del>e. In no event shall the Corporation be controlled directly or indirectly by one or more "disqualified persons" (as defined in § 4946 of the Code) other than foundation managers and other than one or more organizations described in paragraph (1) or (2) of § 509 (a) of the Code.</del></p>	<p>There is no legal requirement under California corporate law or related to ICANN’s tax-exempt status that ICANN’s Articles include this prohibition, although it may be a matter of ICANN internal policy. However, we recommend deleting this prohibition now, since it is unclear why control by only disqualified persons versus a subset of 501(c)(3) nonprofits is addressed. Moreover, we are not aware that ICANN has any disqualified persons under IRC Section 4946 other than its foundation managers (directors, officers, and senior executive staff). (If this subsection is retained, the reference to the IRC section defining “disqualified persons” should be corrected. IRC Section 4946 applies to private foundations; the applicable definition for a public charity like ICANN is Section 4958.)</p>

<p><u>65.</u> To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation <del>or its members, should the Corporation elect to have members in the future,</del> for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this <u>Article 65</u> shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.</p>	<p>We recommend reference to members be deleted, since ICANN has none.</p>
<p><u>76.</u> Upon the dissolution of the Corporation, the Corporation's assets shall be distributed for one or more of the exempt purposes set forth in <u>Article 32</u> hereof and, if possible, to a § 501(c)(3) organization organized and operated exclusively to lessen the burdens of government and promote the global public interest in the operational stability of the Internet, or shall be distributed to a governmental entity for such purposes, or for such other charitable and public purposes that lessen the burdens of government by providing for the operational stability of the Internet. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as such court shall determine, that are organized and operated exclusively for such purposes, unless no such corporation exists, and in such case any assets not disposed of shall be distributed to a § 501(c)(3) corporation chosen by such court.</p>	
<p><u>7.</u> <u>Any amendment to these Articles shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community, a California nonprofit association established by the Bylaws (the "Empowered Community"), following procedures set forth in Article 25.2 of the Bylaws.</u></p>	<p>New Article 7 implements the requirement found in the CCWG Proposal at Annex 3, Para. 29 that changes to the Articles require the same approval as Fundamental Bylaws amendments.</p>

<p><del>8. Notwithstanding anything to the contrary in these Articles, if the Corporation determines that it will not be treated as a corporation exempt from federal income tax under § 501(c)(3) of the Code, all references herein to § 501(c)(3) of the Code shall be deemed to refer to § 501(c)(6) of the Code and Article 5(a)(ii), (b), (c) and (e) shall be deemed not to be a part of these Articles. <u>Any transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community prior to the consummation of the transaction, following procedures set forth in Article 26 of the Bylaws.</u></del></p>	<p>The text we propose to delete addresses the possibility that ICANN might some day convert from 501(c)(3) public charity status to exemption as a trade or professional association under IRC Section 501(c)(6). Since ICANN's assets are now irrevocably dedicated to charitable purposes by both federal tax law and California charitable trust law, any such conversion would require all ICANN's assets prior to the conversion to be distributed to or for 501(c)(3) organizations or purposes, making the cost of any such conversion prohibitive. Keeping this provision at this point serves no practical function, and could confuse a reader regarding ICANN's long-standing and on-going tax-exempt status under IRC 501(c)(3). Accordingly, we have deleted this article in its entirety.</p> <p>New Article 8 implements the CCWG Proposal found in Annex 2, Para. 19, in order to ensure that ICANN cannot distribute its assets to a new entity and dissolve without approval from the Empowered Community. This provision protects ICANN's proposed governance structure from being avoided by such a maneuver.</p>
<p><del>9. These Articles may be amended by the affirmative vote of at least two-thirds of the directors of the Corporation. When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment.</del></p>	<p>This text has been replaced by new Article 7, which addressed the same topic.</p>