

CCWG-Accountability Comments on ICANN Draft Restated Articles of Incorporation

The CCWG Accountability would like to begin by thanking its independent legal team and the ICANN legal team for producing such an excellent implementation of the recommendations into these Draft Restated Articles of Incorporation and confirming that these are consistent with those recommendations.

In reviewing these Draft Restated Articles of Incorporation the CCWG-Accountability raised a very limited number of questions. These comments are not offered as criticism of the outstanding work performed by the legal drafting team in producing these, but rather capture the concerns of the CCWG-Accountability.

Each issue presented in this document has been discussed by the CCWG participants and the points cited are included as a final check to ensure that the CCWG-Accountability recommendations have been accurately implemented in the Draft Restated Articles of Incorporation.

Comments:

1. Article 1 - Future v. further laws

1.1. Text from the Draft Restated Articles of Incorporation: “Any reference in these Articles to the Code shall include the corresponding provisions of any further United States tax code.”

1.2. Note – As confirmed this was a typo and should be corrected to “future”.

2. Article 2 - May v. Shall on global public interest

2.1. Text from the Draft Restated Articles of Incorporation: “, the Corporation shall, except as limited by Article 54 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 ~~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).~~ 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”).

2.2. Issue: Concerns were raised regarding the permissive use of the term “may” as opposed to the term “shall”, which would make this a requirement. Some felt this may lead to potential misunderstandings of the recommendations of the CCWG-Accountability on this topic which include:

2.2.1. CCWG-Accountability Final Recommendation 1, para 51: The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.

2.2.2. CCWG-Accountability Final Recommendation 5, para 153 (core values) 2: Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.

2.3. Recommendation: The CCWG-Accountability would request that ICANN use the following text instead of the proposed text: “, the Corporation shall, except as limited by Article 54 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 by carrying out the mission set forth in the bylaws of the Corporation (“Bylaws”). Such global public interest may be determined from time to time. Any determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process.”

Conclusion

In conclusion, we are grateful for the outstanding work performed by the legal drafting team in producing these Articles of Incorporation. We applaud the lawyers involved for their outstanding support.

Our group looks forward to the adoption of the Draft Restated Articles of Incorporation and is committed to remaining fully engaged in their finalization, as well as the rest of the implementation effort.