

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

<https://www.icann.org/public-comments/draft-new-bylaws-2016-04-21-en>

Bylaws Section	Submitted by	Comment	Response/Analysis
General	ALAC	Alan Greenberg’s previous comments have been reviewed by the ALAC and are now both endorsed by a consensus decision of the ALAC. The first was approved without any dissent, and the second with just one ALAC member not supporting it. See Comments above under Alan Greenberg	The support for Alan Greenberg’s comment is noted.
General	CCWG-Accountability	<p><u>Introduction</u></p> <p>Because of the complexity of the Draft ICANN Bylaws and the limited time that was available to the CCWG-Accountability (“CCWG”) to review the most recent draft prior to publication for comment, the CCWG elected to use the ICANN public consultation to perform a more complete analysis the Draft ICANN Bylaws dated 20 April 2016 that were posted for public comment (“Draft Bylaws”).</p> <p>These comments are not offered as criticism of the outstanding work performed by the legal drafting team in producing these Draft Bylaws. The CCWG tasked the two law firms that have advised the CCWG when it prepared the CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations (“CCWG Proposal”) to be part of the legal drafting team. The drafting exercise was a collaborative effort between the law firms and ICANN’s legal department. We commend the lawyers involved for the collegial manner in which this exceptionally complex task was undertaken, and for the work product, which with the few exceptions noted here embodies the spirit of the CCWG Proposal.</p> <p>Given the necessary complexity of the Draft Bylaws and the short timeframes we are working under, the CCWG participants were unable to conduct a thorough review prior to publication for public consultation. To remedy this situation, the CCWG has held a series of meetings since the publication of the Draft Bylaws for public</p>	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>consultation to identify any remaining issues its participants, as a group, had with the Draft Bylaws.</p> <p>Each issue presented in this document has been discussed by the CCWG participants at meetings or on the list and has been agreed to as a CCWG comment on the Draft Bylaws. The list of topics mentioned in this CCWG public comment might appear to be long, but many of the points cited are included as a final check to ensure that the CCWG Proposal requirements have been implemented in the ICANN Bylaws.</p> <p>CCWG members and participants may also submit comments in their individual or organizational roles.</p>	
General	CCWG-Accountability	<p>Conclusion</p> <p>In conclusion, we reiterate that these comments are not offered as criticism of the outstanding work performed by the legal drafting team in producing these Draft Bylaws. We applaud the lawyers involved for their outstanding support.</p> <p>Our group looks forward to the adoption of these Bylaws and is committed to remaining fully engaged in their finalization, as well as the rest of the implementation effort.</p>	Thank you for your comment.
General	CENTR	<p>When it comes to the IANA operations, there should not be any form of discrimination in the treatment of ccTLDs that are members of the ccNSO and those that are not. While this issue has not been dealt with in the draft Bylaws, we underline our strongest support for the CWG conclusions in this respect.</p>	<p>We note that there are no particular clauses raised as a matter of concern. To make sure that future treatment of ccTLD operators remains consistent with the Framework of Interpretation for delegation and redelegation issues, ICANN will remove the phrase “sponsoring organizations” from the Bylaws.</p>
General	CENTR	<p>We recommend the ICANN Board makes sure both the CCWG-Accountability and the ICG are kept fully involved in the process of finalising the Bylaws. Not only because this process needs to be as</p>	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		transparent as possible, but it is also of paramount importance that the expertise of the aforementioned groups is adequately taken on board.	
General	CENTR	<p>The CENTR community welcomes the opportunity to present its opinion on the draft ICANN Bylaws developed to reflect the recommendations contained in the proposals by the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability).</p> <p>As CENTR has been actively contributing to the refinement of the ICANN Bylaws over the last decade – in particular those related to the ccNSO – it is with the greatest interest we have followed the development of the current draft Bylaws.</p> <p>We would like to acknowledge the complexity of the work and compliment the dedication of the working group membership and ICANN staff for having managed to review the Bylaws.</p> <p>We note that the proposal has received confirmation from both the independent counsel to the community groups and ICANN's General Counsel that the Draft New ICANN Bylaws are consistent with the community proposals relating to the IANA Stewardship Transition.</p> <p>We would like to make the following observations:</p>	Thank you for your comment.
General	Centre for Internet and Society	<p>We at the Centre for Internet and Society are grateful for the opportunity to comment on the draft new ICANN by-laws. Before we comment on specific aspects of the Draft by-laws, we would like to make a few general observations:</p> <p>Broadly, there are significant differences between the final form of the by-laws and that which has been recommended by the participants in the IANA transition process through the ICG and the CCWG. They have been shown to be unnecessarily complicated, lopsided, and skewed towards U.S.-based businesses in their past form, which continues to reflect in the current form of the draft by-laws.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>The draft by-laws are overwrought, but some of that is not the fault of the by-laws, but of the CCWG process itself. Instead of producing a broad constitutional document for ICANN, the by-laws read like the worst of governmental regulations that go into unnecessary minutiae and create more problems than they solve. Things that ought not to be part of fundamental by-laws — such as the incorporating jurisdiction of PTI, on which no substantive agreement emerged in the ICG — have been included as well. Simplicity has been seen as a sin and has made participation in this complicated endeavour an even more difficult proposition for those who don't choose to participate in the dozens of calls held every month.</p> <p>On specific substantive issues, we have the following comments:</p>	
General	Communications Regulatory Commission of Colombia (CRC)	<p>The Colombian Government appreciates the opportunity to comment on Draft new ICANN Bylaws. By the time the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the IANA functions to the global multistakeholder community on March 2014, Colombia was participating as a member of the Government Advisory Committee (GAC). Through the last couple of years, we had been involved on this unprecedented effort from the ICANN community in developing a sound IANA stewardship transition proposal that meet NTIA requirements. Having reviewed sections and paragraphs of the Draft new ICANN Bylaws related to our specific government role as part of the GAC as well as the empowerment community, we have found this Draft reflects the spirit and understanding of what we had witnessed through this transition process proposals. We acknowledge different views have been submitted on this regard. Therefore, we understand fine tuning of the Draft new ICANN bylaws may be required before it is implemented and into effect in the event NTIA approves of the IANA Stewardship Transition Proposal and the IANA Functions Contract expires. At this stage, we expect some flexibility would be</p>	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>required to ensure that the transition process will take place on September 2016. Finally, we reiterate our support to the ICANN Accountability Proposal and to the unique opportunity represented by the IANA Stewardship Transition Proposal.</p>	
General	<p>Dot Registry LLC</p>	<p>Dot Registry is opposed to, and does not support, the following:</p> <ol style="list-style-type: none"> 1. A Standing Panel for IRPs. All such additional language should be stricken related to a “Standing Panel”; 2. A mandatory Ombudsman’s Review of Reconsideration Requests. The Ombudsman is compensated by the ICANN Board and can be terminated at will by the ICANN Board so his judgment is not “independent” of the Board; 3. The Board retaining sole authority and review of the Ombudsman’s contract and performance without Community input to ensure the Ombudsman is acting in the best interest of the Community, as well as ICANN; 4. All language contained in the proposed Bylaws which is implied, illusory, subjective and/or are ambiguous to interpretation of Board action such as the repetitive use of the words “may,” “could,” “reasonably,” etc. These words must be replaced with definitive requirements language such as “will,” “shall,” “must,” and “required.” In almost all IRP’s, ICANN’s main defense is “show me where the Board is required act.”; 5. ICANN hiding and concealing activity under the guise of overly broad confidentiality provisions contained in agreements with third party contractors; 6. Review cycles longer than one (1) or two (2) year(s) maximum. Five (5) year review cycles are way too long; 7. ICANN continued refusal of requestor action(s) to bring “substantive” reviews of material information or decisions under ICANN’s Accountability Mechanisms; 8. ICANN’s insistence on trying to slip in additional liability protections under the California Business Judgment Rule where the IRP Panel in .XXX has already stated that it does not apply to ICANN; and 9. ICANN not requiring conflict of interest certifications and verifications on all vendors, agents, experts and third party contractors 	<p>ICANN notes that a number of the items raised within the dotRegistry comments are not in alignment with the CCWG proposal, such as a rejection of the standing panel requirement, rejection of the Ombudsman’s new role in the Reconsideration Process; requesting for the IRP to be a place for substantive review of ICANN Board decisions; and review cycles mandated at less than five years. The comment also makes recommendations beyond the scope of the proposals, such as using the Bylaws, as opposed to contractual process, as a way to bind all ICANN contractors to follow the Bylaws..</p> <p>Both the revised IRP and the Reconsideration Process allow for broader challenges than currently exist, and it is important to allow for the community proposals to be implemented. Part of that implementation could require a new IRP provider to be selected in order to properly implement these changes. Reviews can and should occur over the implementation of these improvements, to see if additional modifications are needed. Some of the commenter’s notes, including the scope of the Ombudsman role and</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		<p>to ensure the stakeholder community and contracted parties (i.e., registries and registrars) that no conflicts, either perceived or actual, exist.</p> <p>In addition, Dot Registry supports the following:</p> <ol style="list-style-type: none"> 1. Creation of a reasonable timeframe in which to complete the Cooperative Engagement Process (“CEP”) so that it is not open ended and ripe for competing applicants to use it as a mechanism to cause undue delay to other applicants in future New gTLD rounds; 2. To the maximum extent possible, the Board must publish transcription of all Board and Committee meetings and to provide written justification on the record that material which will not be published only for the most narrowly construed reasons of privilege, as qualified under the law, or subject to confidentiality restrictions contained in contract; 3. Require ICANN to define “internet community” (is that contracted parties, members of stakeholders or stakeholder groups, is it the world?); 4. That all ICANN third party contractors are required to comply and be bound by ICANN’s Articles of Incorporation and Bylaws, as implied in the current Bylaws in force; 5. That ICANN allow for IRP Declarations to be binding upon ICANN and appealable to a court of competent jurisdiction; and 6. The current IRP process and that it should remain under ICDR rules, with abolishment of ICANN’s Supplemental Rules, so that the community has a fair opportunity to have their issue(s) heard before a independent neutral third party. 	<p>clarification of the CEP process, are already scheduled for further consideration either through implementation work or WS2. As a result, a large majority the modifications requested by dotRegistry are not appropriate for inclusion in the Bylaws, as they would cause inconsistency with the proposals.</p> <p>The commenter’s request for a definition to be included for the ICANN community would require continued bottom-up work. The Bylaws reflect that there are different parts of the ICANN community that can impact ICANN in differing ways. There’s the broad multistakeholder policy work, the EC with defined participants (while still allowing for others to participate in the process), and the SOs and ACs, among other groupings. How different parts of the ICANN community remain accountable to each other will be considered in the CCWG-Accountability WS2 effort on community accountability.</p>
General	DotMusic	<p>In conclusion, if ICANN’s objective is to be truly independent of U.S. government oversight and hold the responsibility as the governing Internet domain space regulator, then ICANN should take full responsibility, accountability and liability for all its actions or inactions (including actions and inactions of the Board, staff, agents or contracted third-parties) that contravene the law, its Articles of Incorporation or Bylaws. A neutral and independent expert panelist in a recent IRP decision stated: “For the Panel to find that it cannot act except at best in an advisory</p>	<p>The revisions to the ICANN Bylaws are based in the community-developed transition proposals, and not from declarations in an IRP Panel. The community proposals embodied in the Bylaws include significant enhancements to ICANN’s accountability mechanisms, including the development of a binding (not advisory) independent review process</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>capacity, and that its neutered role is not a systemic problem, is unsatisfactory and unsatisfying”...”Every time the Board or its agents or delegated decision-makers consider action or inaction of any kind, in addressing the decision of the Board's delegated decision-maker, the Board is acting with and not without conflict of interest.”... “independent judgment, transparency and accountability, as to decision-making that is essentially judicial in nature, regarding matters of extreme public import and interest, should not be set aside by resort to technical rules of construction contrary both to equity and to applicable principles of law.”...“it disserves the integrity of the system for an opinion to rely upon whether the delegated decision-maker is an agent of the Board, a staff member reporting to the Board, a Board member, or an ‘independent contractor’ of the Board.”...</p> <p>Similarly, the distinction that is made regarding the DCA case is not only a technical one but one that exalts form over substance. There seems to be very little question that the odor of corruption and impropriety hung over the air of the DCA review; it was the fact that the decision presented a direct and blunt assault on the integrity of the entire process, that led to the DCA conclusion, not the distinctions that might be presented in some state's law between constituents, affiliates, agents, independent contractors, and the like.”... “If experts are appointed who are, charitably, unaware of the requirements of disclosure, unaware of the need to avoid the appearance of impropriety, or aware only of some allegedly lesser standard of disclosure, then that is the system's failure. Whether that is an inadequacy in training...whether that result is the failure to intervene in an egregious action...or whether that is the emergence of bias over reason...or all three, the result of this review should be the same. It is not acceptable to the integrity of the process to speculate that the expert's decision ‘might have been heart-felt.’” (DonutsInc. v. ICANN (.SPORTS/RUGBY), May 16, 2016, at https://icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf)</p>	<p>that will address some of the concerns and criticisms identified in this comment.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>A neutral U.S Federal Court Judge also determined that: “The evidence suggests that ICANN intended to deny DCA's application based on pretext...As such, the Court finds serious questions regarding the enforceability of the Release due to California Civil Code § 1668. Because the Court finds serious questions regarding the enforceability of the Release due to California Civil Code § 1668, the Court need not address DCA's arguments regarding unconscionability or procurement by fraud.” (R. Gary Klausner, U.S. District Judge, DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers & ZA Central Registry, Case No. 16- CV-00862, April 12, 2016, https://www.icann.org/en/system/files/files/litigation-dcaicann-motion-prelim-injunction-12apr16-en.pdf). Thus far, the Internet community has been ineffective in holding ICANN accountable and has been unable to increase ICANN’s transparency. Mechanisms to increase transparency and accountability measures, such as the IRP, the DIDP, the Request for Reconsideration process, the Ombudsman and many other mechanisms have been futile, a waste of resources and ineffective. As such, it is DotMusic’s opinion that the draft new ICANN Bylaws urgently require significantly more responsible, meaningful and impactful revisions to hold ICANN accountable and increase transparency (including those suggested by DotMusic earlier). Internet users deserve a stronger end product, especially since it is highly likely that any future Bylaws revisions will be many years away. DotMusic respectfully urges ICANN to allow more time so that the new ICANN Bylaws are fine-tuned and finalized in a more prudent manner, including giving constituents the ability to have additional discussions to settle overarching issues that impact the public interest and Internet users, some of which DotMusic has noted earlier.</p>	
General	DotMusic	DotMusic appreciates the opportunity to comment on the draft of ICANN’s new proposed Bylaws (See https://www.icann.org/public-comments/draft-new-bylaws-2016-04-21-en).	ICANN notes that a number of the items raised within the dotMusic comments are not in alignment with the CCWG

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		<p>DotMusic would like to thank the team drafting the new Bylaws, including the CCWG, the CWG, ICANN’s legal staff and all of those involved in this highly complex and important task in formulating ICANN’s new Bylaws before the proposed IANA transition.</p> <p>However, it is DotMusic’s opinion that the draft new ICANN Bylaws require more attention and revisions to create the most effective ICANN Bylaws reform to hold ICANN accountable and to increase ICANN’s transparency. While commendable and significant work has been made, it appears that these draft new ICANN Bylaws are being hurried to be accepted by the Board to accommodate the timing of the proposed IANA transition. The draft new ICANN Bylaws have many issues that require urgent attention, including more revisions to strengthen controls to hold ICANN accountable and increase ICANN’s transparency.</p> <p>DotMusic respectfully urges ICANN to allow more time so that the new ICANN Bylaws are done right and are not hurried solely to meet a deadline at the expense of creating new Bylaws that do not make a difference that matters. DotMusic requests that the draft new ICANN Bylaws are delayed slightly to assemble further feedback and to truly fine-tune the new Bylaws. DotMusic is aware that many within the ICANN community may be eager in finalizing the new Bylaws, which, in DotMusic’s view, still provide ICANN with lots of leeway to remain unaccountable and continue to lack transparency.</p> <p>Further, it is of great significance to remember that the revisions of the new Bylaws must only address functional changes that relate to ICANN. Any attempts by ICANN to use the new Bylaws as an opportunity to continue shielding itself from any liability and responsibility for its actions (or inactions) compromises true accountability and transparency and is against the global public interest.</p> <p>In addition, ICANN’s Bylaws state that ICANN should be accountable to “the Internet community.” But there is no such coherent or cohesive community that is unified under a common</p>	<p>proposal, such as a rejection of the standing panel requirement, rejection of the Ombudsman’s new role in Reconsideration Process; and requesting for the IRP to be a place for substantive review of ICANN Board decisions. The comment also makes recommendations beyond the scope of the proposals, such as using the Bylaws, as opposed to contractual process, as a way to bind all ICANN contractors to follow the Bylaws. Both the revised IRP and the Reconsideration Process allow for broader challenges than currently exist, and it is important to allow for the community proposals to be implemented. Part of that implementation could require a new IRP provider to be selected in order to properly implement these changes. Reviews can and should occur over the implementation of these improvements, to see if additional modifications are needed. Some of the commenter’s notes, including the scope of the Ombudsman role and clarification of the CEP process, are already scheduled for further consideration either through implementation work or WS2. As a result, a large majority the modifications requested by dotMusic are not appropriate for inclusion in the Bylaws, as they would cause inconsistency with the proposals.</p> <p>The commenter’s request for a definition to be included for the ICANN community</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		<p>ideal (such as in the case of the music community that is united in protecting music copyright under international law and international conventions). The ICANN community is diverse, made up of different public and private groups, with many different and often contradictory interests. While ICANN presents itself as only a body that performs technical functions, <u>these technical functions and responsibilities do have enormous public policy and global public interest implications.</u></p> <p>The biggest risk with an independent ICANN is less about being influenced by authoritarian states and more about being influenced by private and special interests that have vested interests and a strong stake in the New gTLD Program and ICANN’s decision-making. Such independence could implicate ICANN in anti-trust litigation if ICANN continues to favor of a few special interests and continue to go against its mandate to promote true competition and increase diversity in the domain namespace, including serving underserved communities, trustworthy communities and constituent groups. One of the goals of the New gTLD Program was to accommodate these communities that but has failed to do so in favor of a few special interests and in favor of those with deep pockets. It is noted that the majority of accountability mechanisms filed against ICANN during the New gTLD Program were in relation to some sort of “community” interest.</p> <p>As history has shown, the effectiveness of the arbitral process (that was successful in the ICM .XXX case) pushed ICANN to strip the IRP process of any value (after ICANN’s IRP loss to the ICM) to limit ICANN’s responsibility, accountability and transparency. DotMusic’s recommendations aim to increase ICANN’s accountability, transparency and responsibility to serve the global public interest and Internet users. DotMusic’s objective with its suggestions was to remove any language that is unclear, ambiguous and would create loopholes that would compromise transparency and accountability and be against the global public interest.</p> <p>As such, DotMusic supports the following:</p>	<p>would require continued bottom-up work. The Bylaws reflect that there are different parts of the ICANN community that can impact ICANN in differing ways. There’s the broad multistakeholder policy work, the EC with defined participants (while still allowing for others to participate in the process), and the SOs and ACs, among other groupings. How different parts of the ICANN community remain accountable to each other will be considered in the WS2 effort on community accountability.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		<p>1. Creation of a reasonable timeframe in which to complete the Cooperative Engagement Process (“CEP”) to prevent competing applicants from using CEP as a mechanism to cause undue delay to other applicants in future New gTLD rounds;</p> <p>2. To the maximum extent possible, the ICANN Board must publish the full transcriptions of all Board and Committee meetings and provide written justification for documentation which is not published solely for the most narrowly construed reasons of privilege, as qualified under the law, or subject to confidentiality restrictions contained in contract;</p> <p>3. Require ICANN to define “internet community” (is the “community” contracted parties, stakeholder groups, or is it all billions of Internet users?);</p> <p>4. That all ICANN third-party contractors are required to comply and be bound by ICANN’s Articles of Incorporation and Bylaws, as implied in the current Bylaws in force;</p> <p>5. Incorporate controls to ensure that the Ombudsman is independent, conflict-free and non-biased in their decision-making;</p> <p>6. That the ICANN Board must take action in any request that is petitioned by multiple organizations that relate to a community that is associated to specific string;</p> <p>7. That ICANN allow for IRP Declarations to be binding upon ICANN and appealable to a court of competent jurisdiction; and</p> <p>8. The current IRP process and that it should remain under ICDR rules, with abolishment of ICANN’s Supplemental Rules, so that the community has a fair opportunity to have their issue(s) heard before an independent neutral third party.</p> <p>Further, DotMusic is opposed to the following:</p> <p>1. A Standing Panel for the IRP: All such additional language should be stricken related to a “Standing Panel” because of the appearance of conflicts of interest with ICANN, especially since an ICANN-run process that lacks true independence will be selecting the Standing Panel and will be deciding whether or not to renew specific members of the Standing Panel. This incentivizes Standing</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		<p>Panel members to rule in ICANN’s favor because their reappointment depends on it. Further ICANN is responsible for the Standing Panel’s compensation, which is a conflict of interest. The IRP process should be run independently and strictly under ICDR rules, which includes the right to appeal an IRP final declaration;</p> <p>2. A mandatory Ombudsman’s Review of Reconsideration Requests: The Ombudsman is reappointed (See https://features.icann.org/reappointment-ombudsman) and compensated by the ICANN Board and can be terminated at will by the ICANN Board. Further, the Ombudsman’s at-risk compensation is determined by the Board (See https://features.icann.org/ombudsmanfy15-risk-compensation). As such, the Ombudsman’s judgment is not entirely “independent” of the Board and an appearance of a conflict of interest exists;</p> <p>3. The Board retaining sole authority and review of the Ombudsman’s contract and performance without Community input to ensure the Ombudsman is acting in the best interest of the Community as well as ICANN. The community must be able to provide input and hold the Ombudsman accountable for their performance;</p> <p>4. All language contained in the proposed Bylaws which is implied, illusory, subjective or is ambiguous to interpretation of Board action (such as the repetitive use of the words “may,” “could,” “reasonably,” etc.). These words must be replaced with definitive requirements language such as “will,” “shall,” “must,” and “required.” In almost all IRP’s, ICANN’s main defense is “show me where the Board is required act,” which incentivizes the Board to do nothing in any affair;</p> <p>5. ICANN hiding and concealing activity under the pretext of overly-broad confidentiality provisions contained in agreements with third-party contractors;</p> <p>6. ICANN continued refusal of requestor action(s) to bring “substantive” reviews of material information or decisions under ICANN’s Accountability Mechanisms;</p> <p>7. ICANN’s insistence on trying to include additional liability</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		<p>protections under the California Business Judgment Rule, which should not apply to ICANN (See ICM IRP Declaration for .XXX); and</p> <p>8. ICANN not requiring conflict of interest certifications and verifications on all vendors, agents, experts and third-party contractors to ensure the stakeholder community and contracted parties (i.e., registries and registrars) that no conflicts, either perceived or actual, exist. ICANN must ensure that even the appearance of conflict is eliminated.</p>	
General	Google	<p>Google appreciates the opportunity to comment on the draft Internet Corporation for Assigned Names and Numbers (ICANN) Bylaws. Google depends on ICANN to perform both the Internet Assigned Number Authority (IANA) functions and its broader policymaking duties in a way that preserves the underlying security, stability, interoperability, resiliency, and openness of the global Internet. For this reason, we have long supported the National Telecommunications and Information Administration’s (NTIA) proposal to transition its stewardship role over the IANA functions to the global multistakeholder community, and are pleased at the progress that ICANN and the global community has made towards this transition.</p> <p>As one important element of this transition, the global Internet community came together to propose a series of reforms to ensure that ICANN would be truly accountable to the community after the IANA transition took place and that, among other things, ICANN would not be vulnerable to “capture” by a government or group of governments. The final transition proposal, which is currently being reviewed by NTIA, meets these criteria, and we applaud the community’s effort.</p> <p>The draft ICANN Bylaws largely reflect the community’s proposal and improve ICANN’s accountability to the technical experts, members of civil society, companies, and users who have and will continue to drive the Internet’s incredible growth. In particular, Google welcomes the document’s improvements to transparency</p>	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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		and incorporation of safeguards to ensure that no single stakeholder or group of stakeholders is able to exert undue influence over ICANN processes.	
General	Government of Peru	<p>The government of Peru appreciates the opportunity of reviewing and commenting the draft new ICANN Bylaws which, we understand, are set to be approved before the Helsinki meeting. In this context, we would like the Board and the Community to reflect on the following issues:</p> <p>1.- The bylaws represent the main legal body for ICANN. We believe it is only fair to highlight the efforts made by the drafters of the new bylaws. It is always difficult to choose accurate words and expressions. Moreover, it's difficult to avoid general or ambiguous terms when dealing with such vast amount of issues. We are certain the construction of each sentence and phrase has demanded a great deal of work.</p>	Thank you for your comment.
General	ICANN Business Constituency	<p>General Comment on Draft New Bylaws</p> <p>The Business Constituency (BC) supported the final proposals by the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). We generally believe that the draft new Bylaws published on 20-Apr-2016 faithfully reflect the final proposals, subject to several specific comments described below</p>	Thank you for your comment
General	International Trademark Association	<p>The International Trademark Association (INTA) submits the following comments regarding the Draft ICANN Bylaws dated 20 April 2016¹ that were posted for public comment (“Draft Bylaws”). INTA appreciates the work of the legal drafting teams and acknowledges their complex task.</p> <p>INTA has reviewed the Draft Bylaws with a view to ensuring that they align with the CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations (“CCWG Final Report”). In our view, the Draft Bylaws generally embody the CCWG Final Report. Our specific comments on the Draft Bylaws and some suggestions for their amendment, are set out below.</p>	Thank you for your comment

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>We ask that the drafting team take particular note of our comments regarding Recommendations 2 and 11 as we are concerned about the overuse of redaction in independent reports and the still murky language around the requirements of the Board rejecting GAC advice.</p>	
General	ISPCP Constituency	<p>The Internet Service Providers and Connectivity Providers (ISPCP) appreciates the opportunity to comment on the draft new Bylaws. The ISPCP constituency supports the new bylaws published for public comment on 20 April 2016, with the comments submitted by the ICG and the CCWG-Accountability.</p>	Thank you for your comment.
General	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	<p>As an initial matter, KMC and Ping join their voices with others in stating that their support for many of the Accountability improvements are for those improvements alone and not for the concept of the termination of the oversight of ICANN and the IANA function by the NTIA and U.S. generally (the “Transition”).</p> <p>The threshold question of “if” and “when” the Transition should occur has never been asked of the ICANN community nor of the American voters. The plan to Transition is based on former president Bill Clinton’s 1997 “Framework for Global Electronic Commerce” and by a 19982 “green paper” titled “Improvement of Technical Management of Internet Names and Addresses”, not by any act of Congress. When these documents were written, the Internet was in its infancy and the U.S.’s position on the global political and economic stage was more predominant. Today, the global political framework looks much different than it did in 1997. Further, there is nearly universal use of domain names as a critical piece of infrastructure for business. Domain names are used to deliver content, place orders, and route email. Under the U.S.’s stewardship, the Internet has served as a global resource for the manufacturing community. It allows us to reach our consumers while protecting intellectual property and ensuring that our customers receive timely, trusted and secure information about manufacturers’ products and services. This trusted network is of</p>	<p>The dissatisfaction with the trademark protections specified in the community-developed transition proposals is noted. The commenter’s concern that the Bylaws “contravene the wishes of the multi-stakeholder community as found in the CCWG-Accountability recommendations” is also noted, though the comments do not make clear where the Bylaws are inconsistent with the Proposals. As a result, no revisions are made as a result of this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>utmost importance to American manufacturing competitiveness. Disruption of .com email addresses alone would grind business to a halt in the U.S. Manufacturers of products depend upon their customers being able to contact them via the Internet using their trademark-protected brand names, and depend upon their domain names utilizing the assigned numbers function to accurately locate them as opposed to counterfeiters or thieves. Consumers, likewise, depend on manufacturers’ trademark protected brand names, to identify quality and trustworthiness; without them, consumers harmed by low-quality, dangerous or fraudulent products would be unable to trace the product’s source. Our American innovators need to protect trade secrets from cyber theft and protect the privacy of electronic communications to compete on the global playing field. Without trusted communications between the military and its U.S. manufacturing suppliers, our nation’s security, which undergirds all our economic activities, would be at risk. KMC and Ping believe the Internet is too important to the American people and to our economy to allow transition of oversight from the U.S. Government to proceed without the approval of the American people through their Congressional representatives. Nonetheless, KMC and Ping are aware that the National Telecommunications and Information Administration has set the Transition to occur in September, 2016 without Congressional approval. Even assuming arguendo that the NTIA has sufficient authority to take this step, the ICANN Draft Bylaws as currently written undercut the assurances to businesses contained in the foundational Green Paper which promised “to provide trademark holders with the same rights they have in the physical world, to ensure transparency, [and] to guarantee a dispute resolution mechanism with resort to a court system”.</p> <p>These Draft Bylaws, as detailed below, contravene the wishes of the multi-stakeholder community as found in the CCWG-Accountability recommendations. Instead, the Draft Bylaws allow the denial of trademark holders’ rights which they acquired, enhanced, and protected under U.S. and international laws, enshrine</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>ICANN’s right to obscure transparency at its discretion, and wrongfully limit businesses’ access to U.S. courts. If a transition to global interests is to have any chance of success, it must, at a minimum, provide a cost-effective and trustworthy means of holding ICANN to its bylaws, contracts and other promises with resort to U.S. courts that can retain general jurisdiction over ICANN. Without this, the whole structure falls apart. For example, if a future ICANN Board, possibly with pressure from foreign governments, moved its headquarters to some other country in contravention of its Bylaws, how would ICANN be held accountable? Its headquarters no longer being in the U.S., the issue of U.S. courts having jurisdiction over ICANN might be called into question. Under the current Draft Bylaws, the entire global multistakeholder community would have to work together to hold ICANN to its commitments in its Bylaws to remain a California non-profit. But much of the global community would prefer to have ICANN housed in a more easily influenced jurisdiction, so the chances of the global community all working together to keep ICANN accountable to stay in the U.S. would be slim to none. We are not saying this is ICANN’s current intent or future plan, although we understand that there are those in the community who are already attempting to reopen this issue in the so-called “Work Stream 2”, only that the structure is deficient in being able to stop this should such an action be contemplated in the future. While KMC and Ping applaud the CCWG-Accountability Plan’s many needed improvements, the current Draft Bylaws depart from following the CCWG-Accountability’s Plan in many significant ways, and leave in place many structural deficiencies that will serve to allow denial of trademark holders’ rights. Moreover, such Draft Bylaws remain to be implemented and tested and should be subject to real world application before Transition to ensure the accountability mechanisms actually work as intended to protect the global Internet.</p>	
General	Karsten	A related concern here is that final Bylaws are being rushed by	The concerns raised already appear to be

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Manufacturing Corporation and Ping Registry Provider, Inc	<p>arbitrary political deadlines. Given the significance of this document, attention must be given to the quality of the work, in a way that empowers the multistakeholder community and provides businesses access to U.S. courts to ensure ICANN fulfills its commitments. KMC and Ping urge ICANN to bring this language back to the CCWG to finish the work and allow it to limit ICANN’s mission, enumerate its powers, provide for multistakeholder community driven policy development and provide a place and process for challenging ICANN if it exceeds its scope of authority.</p>	<p>reflected in the Bylaws, including the statement of a limited technical mission; the development of a binding Independent Review Process that is enforceable in court, but does not preclude resort to courts; and the maintenance of the multistakeholder policy development processes that have long been in place within ICANN.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
General	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	<p>We appreciate the ICANN legal team, CWG-Stewardship, and ICANN Board’s efforts to develop the best Bylaws possible and thank each of them for carefully considering these comments and making suitable adjustments to the Draft Bylaws. We urge ICANN to implement the changes detailed above to bring it into compliance with the NTIA’s four criteria for approval of the Transition Plan. We also hope that someday the threshold question of “if” and “when” the Transition should occur will be put in front of the ICANN community and the American public in order to ensure the legitimacy and success of the Transition. We further hope that the assurances made to U.S. trademark holders in the foundational Green Paper to assure the same trademark rights as we hold in the physical world via a transparent process with access to the U.S. court system will be honored and lead to a truly accountable and successful ICANN. This will ensure an open and free global Internet system that remains an engine for continued innovation and economic growth</p>	<p>No edits are necessary to address this comment.</p>
General	Lauren Allison	<p>The Draft Bylaws have inconsistencies in the use of the titles, switching between 'Chair' and 'Chairman' (same issue with Vice-Chair and Vice-Chairman). Given the importance the Bylaws place on welcoming diversity at ICANN, it would be more</p>	<p>The titles have been modified to address this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		appropriate for ICANN to adopt gender neutral titles wherever possible.	
General	Institute of Internet Governance Research (IGR)	<p>Overall Comments</p> <p>We welcome all the efforts made by the ICANN legal team and the external counsels to include necessary changes proposed by ICG and CCWG-Accountability. The draft New Bylaws plays a vital role in gaining communities trust and the smooth transition of IANA stewardship. We have noticed that, ICANN has added four new Articles in relation to the IANA transition, which reflects community proposals in general. And we are aware of ICANN's determination in supporting Multi-stakeholder model and reiterate its initial role as a nonprofit organization to coordinate the maintenance and procedures of Internet infrastructural resources. We also recognized and agreed with the value of ICANN to remain open and transparent through inclusive organizational framework. Finally, we noticed an obvious change is that the legal basis on which the reformed ICANN is established is expanded to the whole California Cooperation Code (CCC). In the meantime, we suggest there are four issues need to be further discussed and clarified interactively within the same framework.</p>	Thank you for your comment.
General	Registries Stakeholder Group (RySG) <i>supported by the Registrars Stakeholder Group (RrSG)</i>	<p>The RySG commends the exceptional diligence, dedication, and cooperative spirit shown by the bylaws drafting-team, consisting of the independent counsels to both the CWG and the CCWG as well as ICANN legal staff, for producing draft bylaws in this complex transition in an extremely short amount of time.</p> <p>Overall, we believe that the draft bylaws changes have reflected the CWG and CCWG proposal suggestions very well.</p> <p>Please note that these comments were supported by the Registrar Stakeholder Group (RrSG) following a vote by the RrSG membership.</p> <p>The RySG offers its comments about the draft new ICANN Bylaws below.</p>	Thank you for your comment.
General	U.S. Council for International	The U.S. Council for International Business (USCIB) welcomes this opportunity to provide feedback on the Draft New ICANN	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Business	<p>Bylaws developed to reflect the recommendations contained in a comprehensive package of proposals developed by IANA Stewardship Transition Coordination Group (ICG) and the Cross-Community Working Group on Enhancing ICANN Accountability (CCWG), which were provided to the ICANN Board on March 10, 2016 and transmitted to NTIA shortly thereafter. USCIB is a trade association composed of more than 300 multinational companies, law firms, and business associations, which includes a broad cross-section of the leading global companies in the information and communications technology (ICT) sector. USCIB members, which include parties to the non-contracted and contracted houses of ICANN, offer a cross-community, cross-sectoral perspective on this critically important development in the Internet ecosystem. USCIB actively contributed comments throughout the two-plus-year development of the ICG and CCWG-Accountability proposals. We endorsed the final package, expressing confidence that it will meet NTIA’s criteria for the transition of the IANA stewardship role and ensure the continued stability, security and resiliency of the domain name system as well as fundamental openness of the Internet. Equally important in USCIB’s view, the March 10 package includes safeguards to enable active involvement by the community in processes designed to hold ICANN accountable as an independent entity.</p> <p>We note that ICANN is requesting community comment concerning how the ICG and CCWG-Accountability proposals were brought into the Bylaws and not to reconsider the proposals themselves. Our comments are focused accordingly.</p> <p>Bylaws Elements that have been Priorities for USCIB</p> <p>Overall, the ICANN legal team and the external counsels to the CCWG-Accountability and Cross-Community Working Group Names (CWG-Stewardship) have done a good job in taking complex, publicly supported proposals calling for significant governance changes within ICANN and translating those into new Bylaws that will implement such changes as envisioned by the community. Specifically, we note with favor elements of the</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Bylaws that were USCIB priorities in our earlier comments concerning the ICG and CCWG-Accountability proposals:</p> <p>Empowered Community – The Bylaws provide a very clear definition of the Empowered Community (EC), which will hold ICANN accountable for its central mission to manage the domain names system (DNS) and all related policies and actions. Importantly, the Bylaws clarify the EC’s legal status, enumerate its powers and rights, and include ICANN’s formal acknowledgment of the EC’s legal personhood. USCIB believes these Bylaw provisions legitimize the EC as an entity capable of providing the oversight and accountability functions currently performed by NTIA.</p> <p>Post-Transition IANA (PTI) Entity – The Bylaws clearly describe the PTI’s legal status under California laws, set forth its governing structure, and provide details about the contract that will be concluded between the PTI and ICANN to perform the IANA naming functions. The latter feature, in particular, represents another important accountability feature; should the operational communities find recurrent fault with the PTI’s performance of naming functions, there is a process established to terminate the PTI contractor and select a new IANA name functions operator.</p> <p>Transparency – We are pleased to see language throughout the Bylaws that specifies how ICANN and its constituent bodies must operate in an open and transparent manner. These improvements range from the provision of more information on the website to enhance community engagement, to information on the ICANN budget, annual audit, and financial contributors, to documentation and public disclosure of rationales for decisions made by the Board and ICANN’s constituent bodies. These are welcome improvements which reflect both the text of the CCWG-Accountability proposals as well as the discussions and comments that shaped that text.</p>	
General	U.S. Council for International Business	<p>Final Thoughts</p> <p>In general, USCIB is inclined to support the manner in which ICANN counsel and external counsel have translated the ICG and</p>	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>CCWG-Accountability proposals into new Bylaws. With the important changes we have proposed to Section 1.1(d), Section 1.2(b)(viii), Section 4.3(a)(i), and Section 4.6, USCIB would offer our full support. We remain committed to participating in the bottom-up, multi-stakeholder process that produced the March 10 approved proposals. USCIB believes this package ultimately will enable a seamless IANA stewardship transition that meets the four NTIA requirements¹ and, thus, safeguard the continued the security, stability, and resiliency of the DNS and openness of the Internet.</p>	
1.0	<p>Karsten Manufacturing Corporation and Ping Registry Provider, Inc</p>	<p>ICANN inserted other new provisions not requested by the CCWG-Accountability plan. It is not appropriate to alter the Bylaws by including language which has not been subjected to prior community processes (no Supporting Organizations/Advisory Committees review or vote), thus there is no adequate transition plan sent to NTIA yet. Many provisions have not been vetted through the above process and are wholly made up. For example:</p> <p>A. Section 1.1(a)(i) Mission "...coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top level domains ("gTLDs")."</p> <p>a. The inclusion of this new concept in the bylaws evidences that the handing off of the bylaws drafting function to ICANN's legal team and other lawyers rather than the CCWG finishing its work, resulted from a rush imposed by arbitrary political deadlines rather than attention to the quality of the work.</p> <p>b. Also, this new language could be read to allow ICANN to interfere with a registry's right to set its own registration rules. This could have profound effects on .brand TLDs which need to keep third parties out in order to maintain safety for consumers.</p> <p>B. Section 1.1(d)(ii) As referenced earlier, this exculpatory language is against public policy (See U.S. District Court Central District of California 16-CV-008862 RGK April 12, 2016) and excludes registries and registrars from the benefits of Accountability, without notice in advance that the CCWG would</p>	<p>The CCWG Proposal was clear, at Annex 5, Paragraph 1, that "The language proposed in this recommendation for ICANN Bylaws revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws." The legal teams worked closely with the Bylaws Coordination Team and the impacted operational communities to make sure that the technical mission was appropriately drafted.</p> <p>There is no substantiation to the claim that preserving certain ICANN's existing agreements from challenge on the basis of being outside of ICANN's mission is against public policy. The Bylaws provision does not insulate ICANN against any challenge, or deprive registries or registrars from the benefits of ICANN's accountability mechanism. Contracted parties do not lose any of their</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>exclude them (vote on CCWG Plan could be considered based on false inducement).</p> <p>C. Section 1.2(a)(ii) “Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet”— new and very vague, what is “the overall level”?</p>	<p>contracted-for benefits through the transition proposals.</p> <p>No revisions to the ICANN Bylaws are needed in response to this comment.</p>
1.1	Dot Registry LLC	<p>(a) The mission of the Internet Corporation for Assigned Names and Numbers (“ICANN”) is to ensure the stable and secure operation of the Internet’s unique identifier systems as described in this Section 1.1(a) (the “Mission”).</p> <p>Specifically, ICANN:</p> <p>(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”) and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains (“gTLDs”). In this role, ICANN’s scope is to coordinate the development and implementation of policies:</p> <ul style="list-style-type: none"> • For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and • That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems. <p>The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN’s Mission.</p> <p>(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.</p> <p>(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the</p>	<p>A key facet of the CCWG Proposal was the “grandfathering” of registry and registrar contracts, and the commenter recommends the removal of those provisions. The edits suggested are either not necessary for making sure the Bylaws are aligned with the proposal, or are in contravention of the proposal. The “regulatory” language that is recommended to be removed was also carefully crafted language necessary to implement the proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Internet Engineering Task Force (“IETF”) and the Regional Internet Registries (“RIRs”) and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.</p> <p>(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN’s scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.</p> <p>(b) ICANN shall not act outside its Mission.</p> <p>(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations.</p> <p>(d) For the avoidance of doubt and notwithstanding the foregoing:</p> <p>(i) the foregoing prohibitions are not intended to limit ICANN’s authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;</p> <p>(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (F) below, and ICANN’s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article</p> <p>4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”):</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(A) (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on, or undergoing negotiation as of, [1 October 2016]¹, including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement; (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above that is based on substantially the same underlying form of registry agreement or registrar accreditation agreement that existed on [1 October 2016];</p> <p>(B) any agreement, letter of intent, memorandum of understanding, agreement in principle, or other similar agreement between ICANN and the Address Supporting Organization (“ASO”), the Number Resource Organization (“NRO”), the IETF, or one or more RIRs in force on [1 October 2016];</p> <p>(C) any agreement, letter of intent, memorandum of understanding, agreement in principle, or other similar agreement between ICANN and a third party identified by ICANN relating to the root zone maintainer function (the “Root Zone Maintainer”), in force on [1 October 2016];</p> <p>(D) the IANA Naming Function Contract between ICANN and PTI effective [1 October 2016];</p> <p>(E) ICANN’s Five-Year Strategic Plan and Five-Year Operating Plan existing on [1 October 2016]; and</p> <p>(F) any renewals of agreements described in subsections (A)–(D) pursuant to their terms and conditions for renewal.</p> <p>(iii) Section 1.1(d)(ii) does not limit the ability of a party to any Agreement described therein to challenge any provision of such Agreement on any other basis, including the other party’s interpretation of the provision, in any proceeding or process involving ICANN.</p> <p>(iv) ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
1.1	DotMusic	<p>(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”) and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains (“gTLDs”). In this role, ICANN’s scope is to coordinate the development and implementation of policies: • For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2;... ..</p> <p>(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations. ...</p> <p>4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”):</p> <p>(A) (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on, or undergoing negotiation as of, [1 October 2016]1, including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement; (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above that is based on substantially the same underlying form of registry agreement or registrar accreditation agreement that existed on [1 October 2016];... ..</p> <p>(F) any renewals of agreements described in subsections (A)-(D) pursuant to their terms and conditions for renewal.</p>	<p>A key facet of the CCWG Proposal was the “grandfathering” of registry and registrar contracts, and the commenter recommends the removal of those provisions. The edits suggested within this section are either not necessary for making sure the Bylaws are aligned with the proposal, or are in contravention of the proposal. The “regulatory” language that is recommended to be removed was also carefully crafted language necessary to implement the proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
1.1	IPC	<p>IPC notes the revisions to the Bylaws which implement Recommendation 5 of the Final Proposal of the CCWG-Accountability on Work Stream 1 Recommendations. The Final Proposal suggested a number of changes which were described as “clarifications” to ICANN’s Mission Statement. However, while the incisions might be small, the subject of the contemplated surgery is the literal and figurative heart of ICANN – its ability to perform a set of essential functions which are defined by its mandate. In that regard, we commend the drafters of the Bylaws in performing the very delicate task of transposing the CCWG recommendations into the Bylaws through a set of recommendations. We do not agree with or embrace every part of these changes (as described below), but on the whole, the drafters have faithfully implemented the CCWG-Accountability proposals, and in that sense the IPC can support them as a whole – while noting the specific points and concerns below.</p> <ul style="list-style-type: none"> · The IPC can support the changes that have been proposed in Section 1.1(c), which now reads: “ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations.” · Importantly, the drafters have defined the verb “regulate” as “impose rules and restrictions on.” The second sentence in Section 1.1(c) offers further clarification on the meaning of “regulate” by confirming that nothing in this section implies that ICANN has any governmentally authorized regulatory authority. The Bylaws therefore correctly and carefully clarify that ICANN does not have governmentally authorized regulatory authority to impose rules and restrictions in a unilateral, top-down manner. Furthermore, the IPC notes that the broader framework of Section 1.1 makes it clear that the activities referred to in Section 1.1(c) are not intended to have 	<p>The regulatory language will be modified in the final Bylaws language.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>an impact on ICANN’s ability to negotiate, enter into and enforce its agreements with Contracted Parties, such as those agreements are currently configured. While the drafting includes these useful concepts, the IPC wishes to note that the current phrasing of that second sentence is confusing, by referencing the “imposing of such regulations,” where it is unclear what the word “such” is referring to. The IPC therefore suggests amending the second sentence to read: “For the avoidance of doubt ICANN does not hold any governmentally authorized regulatory authority.”</p> <ul style="list-style-type: none"> · The IPC supports amendments to affirm ICANN’s ability to enter into and enforce agreements (including public interest commitments) with any party in service of its mission (Section 1.1(d)(iv)). ICANN’s ability and responsibility to enforce its agreements is fundamental to the effective execution of the multi-stakeholder model, which is built upon a framework of private contracts as a preferable alternative to government regulation. · Section 1.1(c) also references Section 1.1(a), which in turn incorporates in the description of ICANN’s Mission the policies set forth in Specification’s 1 and 4 of the respective existing versions of ICANN’s Registry Agreements (RA) and Registrar Accreditation Agreements (RAA). In doing so, the drafters have added a further means of explicitly affirming that the scope of ICANN’s Mission encompasses not only the terms and conditions of the RA and RAA, but also the issues, policies, procedures and principles such as the resolution of disputes regarding registration of domain names. 	
1.1	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	<p>To begin with, the CCWG Report called for limiting ICANN’s mission and enumerating its powers, but instead the new ICANN Draft Bylaws in section 1.1.1:</p> <ul style="list-style-type: none"> - Does not contain the limitation language CCWG called for; - Leaves out the policy making requirement which is the means by which ICANN ensures “the stable and secure operation of the Internet’s unique identifier systems” rather than 	<p>The comments suggest that all of the “grandfathering” provisions included in the Bylaws, including the registry and registrar contract terms that are specifically identified in the CCWG Proposal for inclusion in the Bylaws, are inappropriate and represent a wholesale</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>ICANN ensuring this outcome by itself; this is an important distinction as following the CCWG Report would result in an ICANN with Mission boundaries committed to using a consensus-driven, community policy development process; whereas, as written, ICANN has no practical limits on its powers and has empowered itself, rather than the community process;</p> <p>- Purports to make it impossible for anyone to ever challenge ICANN for exceeding its mission and scope of authority, whether through a Request for Reconsideration, an Independent Review Process or the U.S. court system (See Section 1.1(d)(ii)).</p> <p>5. The CCWG posted public comments disputing this language, pointing out that this section was not called for by them, and that it wrongfully references documents not even in existence. Instead, ICANN’s bylaws state in Article I, Section 1.1(b) that “ICANN shall not act outside its mission” but also says that ICANN cannot be challenged by anyone in any proceeding against ICANN for acting outside its mission. See Article I, Section 1.1(d)(ii):</p> <p>“(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through(F) below, and ICANN’s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”):</p> <p>(A) (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on, or undergoing negotiation as of, [1 October 2016], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar</p>	<p>insulation of ICANN from any challenge to its scope of authority. The comment also suggests that ICANN is insulated from the authority of U.S. Courts, and deprives its contracted parties from the benefit of any accountability measures.</p> <p>These are not accurate characterizations of the Bylaws provisions or their impact.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>accreditation agreement; (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above that is based on substantially the same underlying form of registry agreement or registrar accreditation agreement that existed on [1 October 2016].” This language seems to make the Draft Bylaws (and the Accountability measures developed by the community) of no value to anyone who already has an agreement or enters into one similar to a current one in the future, and feels that ICANN is exceeding their authority. It purports to insulate ICANN from the jurisdiction of U.S. courts to the detriment of the businesses and the multistakeholder community.</p>	
1.1	Institute of Internet Governance Research (IGR)	<p>Comments on "Root Zone Management" It seems that the draft New Bylaws failed to make clear definition of the relationship between ICANN, PTI and the root zone maintainer (Verisign) with regard to Root Zone Management. Based on communities' consensus, it is significant to ensure the separation of IANA policy making and functional operations maximally. But so far, the draft New Bylaws only explained the relationship between ICANN and PTI, while lack of the tripartite relationship among ICANN, PTI and root zone maintainer (Verisign), hence the division of Root zone function has not clarified accordingly. In order to ensure the stable and secure operation of root zone (Section 1.1), the Bylaws need to be more explicit with its management transparency, authorities and responsibilities, so as to decrease potential risks in root server system.</p>	<p>The need for transparency in the relationship between ICANN and the Root Zone Maintainer is an important consideration. As the relationship will be formed by contract, the contract (which will be posted for public review and made publicly available) is the means for this transparency. Inclusion of the root zone maintainer contracting role, which is part of how ICANN will meet its defined mission, was not determined to be a necessary part of the Bylaws.</p>
1.1(a)	International Trademark Association	<p>The following language does not appear in the CCWG Report: “...coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains (“gTLDs”).” It is not appropriate to alter the Bylaws by including language</p>	<p>The CCWG-Accountability confirmed that its proposed language was not intended to be final, and that the drafters could and should modify the language to properly reflect the scope of ICANN’s activities. Annex 5, Paragraph 1, states that “The language proposed in this</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>which has not been subject to the prior CCWG-Accountability process. This new language could be read to allow ICANN to interfere with a registry’s right to set its own registration rules.</p> <p>This could have profound effects on .Brand TLDs which need to withhold registrations from third parties in order to maintain safety for consumers and also for .Geos who need to maintain boundaries in order for the TLDs to have meaning. We suggest the following alternative language: “...coordinates the development and implementation of policies concerning the registration of, but not the qualifications for, second-level domain names in generic top-level domains (“gTLDs”). For the avoidance of a doubt, registries retain the right to set their own registration qualifications.”</p>	<p>recommendation for ICANN Bylaws revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.”</p> <p>The legal teams worked closely with the Bylaws Coordination Team and the impacted operational communities to make sure that the technical mission was appropriately drafted.</p> <p>The description provided of ICANN’s policy work for gTLDs was carefully created to be descriptive of ICANN’s role, without an attempt to describe all of the other ways that registry operators could operate pursuant to their contracts. ICANN’s mission should focus on ICANN, and not on a description of what third parties may or may not do.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
1.1(b)	International Trademark Association	<p>The CCWG Final Report recommended that ICANN’s Mission Statement be amended to clarify that ICANN’s powers are enumerated. Section 1.1(b) of the Draft Bylaws states that “ICANN shall not act outside of its Mission.” However, there is no language stating that ICANN’s powers are limited to those enumerated in Section 1.1(a). We recommend amending Section 1.1(a) to make this clearer.</p>	<p>The Mission has been specifically enumerated in Section 1.1(a) and Section 1.1(b) to clearly state that “ICANN shall not act outside its Mission.”</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
1.1(c)	CCWG-	<p>Issue: The last clause of the last sentence: “ <i>...and nothing in the</i></p>	<p>Revisions have been made to address this</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Accountability	<p><i>preceding sentence should be construed to suggest that it does have authority to impose such regulations.</i>" appears to create some ambiguity.</p> <p>Recommendation: Remove this clause and end the sentence with "authority." The text would now read: "ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority."</p>	comment.
1.1(c)	CENTR	<p>It is important that the distinction between ccTLDs and gTLDs is properly captured in the final version of the Bylaws. ICANN policies should only apply to gTLDs and the same applies to registry agreements.</p> <p>Furthermore, we would highlight the importance of section 1.1. "(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations." As this clause is crucial in respecting the distinction mentioned above, we suggest to remove "to impose such regulations" to avoid the risk of misinterpretation.</p>	Revisions to this section are incorporated into the Bylaws.
1.1(c)	International Trademark Association	<p>ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations.</p> <p>This specific language should foreclose any potential argument that</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>the RPMs and contractual provisions mentioned above somehow count as “regulation” of content, for at least three reasons:</p> <p>The Draft Bylaws define “regulate” as “impose rules and restrictions on.” “Impose” implies an element of coercion or compulsion: to “impose” is to cause something to affect someone or something by using authority; to establish or create something unwanted in a forceful or harmful way; to force someone to accept something.¹ It is difficult to see how RPMs developed through an open, transparent, bottom-up multi-stakeholder process, or contractual provisions negotiated in an arms-length transaction, could somehow be construed as “imposing” anything.</p> <p>The Draft Bylaws added the second sentence reaffirming that ICANN does not hold any “governmentally authorized regulatory authority.” This addition – as with the choice of the word “impose” – requires an element of compulsion that would not implicate the RPMs or contractual provisions discussed above.</p> <p>The Draft Bylaws cross-referenced Section 1.1(a), which in turn cross-referenced Annexes G-1 and G-2 to note that certain issues, policies, procedures, and principles “shall be deemed to be within ICANN’s Mission.” Those include but are not limited to resolution of disputes regarding the registration of domain names (which would cover the URS and UDRP) and principles for allocation of registered names in a TLD (which would cover the TMCH).</p> <p>Section 1.1 of the Draft Bylaws therefore confirms that existing trademark-related provisions from the RAA and RA fall within the scope of ICANN’s Mission and, on this basis, INTA supports it. However, we note that items (B) to (E) in Section 1.1(d), additional documents which are grandfathered, do not appear in Recommendation 5 of the CCWG Final Report. It also appears that item (F) of Section 1.1(d), which grandfathers renewals of agreements in listed in items (A) to (E), may be overly broad in</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		that, as drafted, it would grandfather any new and different terms added to the documents listed in (A) to (E) at renewal. We recommend that this aspect of the Draft Bylaw Section 1.1(d) be reviewed for alignment with the CCWG Final Report.	
1.1(d)	CENTR	The 1.1. D grandfathering clause that should guide the inclusion of a set of agreements gives rise to some fundamental concerns. This clause was not required nor suggested by the ICG report and could lead to significant deviation from the intended scope. For instance, since the details of the agreement with the Root Zone Maintainer are not publicly available, we are not in a position to comment on a potential impact on ccTLDs at the moment. In other cases, this would include agreements that are not yet agreed upon. Therefore, we suggest to restrict the scope of this clause to RAA and RA agreements.	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)	International Trademark Association	<p>INTA’s interest in how ICANN defines its Mission is informed by INTA’s own mission as an association “dedicated to supporting trademarks in order to protect consumers and to promote fair and effective commerce.” At their core, trademarks are market mechanisms that create accountability. They do that by identifying and distinguishing the goods (or services, if a service</p>	<p>No edits are needed to address this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>mark) of their owner from those of others, which in turn creates an incentive for their owner to maintain a predictable, consistent quality of goods. That consistency protects consumers by assigning responsibility: without trademarks, low-quality, faulty, or unsafe products would be untraceable, leaving consumers without any recourse. And it promotes efficient markets by enabling consumers to make quick, confident, and safe purchasing decisions.</p> <p>Since its founding, ICANN has striven to achieve those same two objectives – protecting consumers and promoting efficient markets – in its operation of the Internet’s unique identifier systems. As noted in the “Green Paper”:</p> <p>The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the technical management of the Internet because they will promote innovation, preserve diversity, and enhance user choice and satisfaction.²</p> <p>Because trademarks are just that – “market mechanisms” that “support competition and consumer choice” – it is not surprising that many different provisions from the current RAA and RA protect them. Examples from the current (2013) RAA³ include, but are not limited to:</p> <p>¶3.18.1 provides that “Registrar shall maintain an abuse contact to receive reports of abuse involving Registered Names sponsored by Registrar, including reports of Illegal Activity.”; ¶1.13 in turn defines “Illegal Activity” as “conduct involving use of a Registered Name sponsored by Registrar that is prohibited by applicable law and/or exploitation of Registrar’s domain name resolution or registration services in furtherance of conduct involving the use of a Registered Name sponsored by Registrar that is prohibited by applicable law.”</p> <p>¶3.18.1 also provides that “Registrar shall take reasonable and</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>prompt steps to investigate and respond appropriately to any reports of abuse.”</p> <p>¶3.7.7 provides that “Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar.”</p> <p>¶3.7.7.9 in turn provides that “The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.”</p> <p>¶3.8 requires Registrars to comply with the UDRP and URS (or their replacements).</p> <p>Examples from the current new gTLD RA include, but are not limited to:</p> <p>¶2.8 provides that “Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration- related and ongoing protection of the legal rights of third parties as set forth Specification 7”; Spec. 7 in turn provides that “Registry Operator shall implement and adhere to the rights protection mechanisms (‘RPMs’) specified in this Specification.” Those RPMs include the TMCH, URS, and PDDRP. Specification 11 requires Registry Operators to only use ICANN accredited registrars that are party to the 2013 RAA.</p> <p>¶3(a) of Spec. 11 also requires Registry Operators to include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from committing, among other things, piracy, trademark infringement, fraudulent or deceptive practices, and counterfeiting, or otherwise engaging in activity contrary to applicable law.</p> <p>¶3(a) of Spec. 11 also requires Registry Operators to include a provision in their Registry-Registrar Agreements providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Given this background, and given its mission, INTA is committed to ensuring that these specific provisions from the RAA and RA – and the more fundamental solicitude and respect for the importance of trademarks that informed them – remain firmly within ICANN’s Mission. INTA was therefore pleased to see that Recommendation #5 from the CCWG Final Report recognized that “ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (‘PICs’), with contracted parties in service of its Mission.” INTA was also pleased to see Recommendation #5 follow that general statement with this specific instruction to the drafters of ICANN’s new Bylaws:</p> <p>[T]he language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN’s Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN’s approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires.</p> <p>Despite these drafting instructions, there remained a concern that the new ICANN Bylaws – if not precisely worded – might introduce ambiguity as to whether the trademark-related provisions from the RAA and RA mentioned above would remain within ICANN’s Mission. More specifically, INTA’s concern was that the language in the new Bylaws reflecting the general principle that ICANN should not regulate Internet content (a general principle with which INTA agrees) if drafted too broadly might suggest that RPMs such as the TMCH, URS, UDRP, PDDRP, and RRDRP, or</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>contractual provisions such as RAA ¶¶3.7.7 and 3.18.1 and RA ¶2.8 and Specs. 7 and 11 somehow counted as “regulation” of content.1</p> <p>Having now reviewed Section 1.1 of the Draft Bylaws on ICANN’s Mission, INTA is pleased to see that it has been drafted to confirm that the trademark-related provisions from the RAA and RA fall within the scope of ICANN’s Mission. Specifically:</p> <p>Section 1.1(d)(iv) of the Draft Bylaws notes that “ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.”</p> <p>Section 1.1(d)(ii)(A)(1) notes that all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on, or undergoing negotiation as of October 1, 2016, may not be challenged by any party in any proceeding against, or process involving, ICANN on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers.</p> <p>Section 1.1(d)(ii)(A)(2) then extends the “grandfathering” of 1.1(d)(ii)(A)(1) not just to the current RAA and RA, but also to any future RAA or RA “that is based on substantially the same underlying form” as the current RAA and RA.</p> <p>Moreover, INTA was also pleased to see that the prohibition against ICANN regulation of content was drafted in a specific, narrow manner that should remove any doubt as to whether existing trademark protections fall within the scope of ICANN’s Mission.</p>	
1.1(d)	U.S. Council for International Business	<p>USCIB believes that some aspects of the so-called “grandfathering clauses” in Article 1 (Mission, Commitments and Core Values) and other elements in Section 1.2(b)(viii), Section 4.3(a)(i), and Section 4.6 need to be addressed before USCIB can offer its full support for the draft bylaws. We believe that these issues can be addressed in a relatively straightforward manner.</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>“Grandfathering Clauses” -- Section 1.1(d) of the draft Bylaws contains "grandfathering" clauses designed to prevent any party from raising a challenge to ICANN on the basis that the terms and conditions of agreements between ICANN and other parties violate the ICANN Mission statement. Section 1.1(d)(ii)(A) applies to registry and registrar agreements and was the subject of substantial discussion within the CCWG. It appears to be a direct implementation of paragraph 147 of the CCWG-Accountability proposal, which USCIB supports.</p> <p>References to Agreements with Other Entities – However, we note that Sections 1.1(d)(ii)(B)-(E) do not appear to correlate to any provision of either the ICG or CCWG proposals. These sections apply to agreements with other entities — the ASO, NRO, IETF, Root Zone Maintainer, and PTI — as well as ICANN’s five-year plans. In USCIB’s view, the inclusion of sections 1.1(d)(ii)(B)-(E) would pose problems.</p> <p>The effect of prohibiting challenges to these agreements is that the terms of the agreements come to define ICANN's Mission, since no party who identifies a violation can get it fixed. This is problematic since several parts of the agreements these sections reference do not yet exist. In the case of the ICANN-PTI agreement, one of the parties (PTI) currently does not exist. And even where agreements do exist in draft, most of them have not been agreed to by the affected parties yet.</p> <p>As a result, these references to presently non-final agreements and documents make it difficult for USCIB at this time to provide full support. In view of the waning time remaining before the transition deadline, it is unlikely that the community will have ample time to ensure that all of the documents being grandfathered can only be interpreted as being strictly within ICANN’s Mission. Referencing external agreements in the Bylaws also puts ICANN in an awkward position in the event that these agreements get terminated in the future, because at that point its Mission will be partially defined by agreements that no longer exist. This seems inappropriate especially since the key focus of the transition work was to develop an ability</p>	<p>over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>for the operational communities to change IANA functions operators. Given that these sections have no anchor in the community proposals, USCIB urges that the Sections 1.1(d)(ii)(B)-(E) be removed from the Bylaws.</p>	<p>Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	<p>ASO</p>	<p>The ASO has reviewed the Draft New ICANN Bylaws developed, to reflect the recommendations contained in the proposals by the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), from the Internet numbers community perspective. The ICANN accountability for the Internet numbers community is based on the contracts between ICANN and the RIRs; the ASO MoU and SLA on the IANA Numbering Services. The Draft New ICANN Bylaws reflects key points in the ICANN accountability from the ASO perspective in this regard, and we support the draft document as proposed. We have confirmed that, based on the CCWG-Accountability proposal, the Draft New ICANN Bylaws clearly states number resources related matters are out of scope of IRP and reconsideration, which is essential for us in the ICANN accountability for the Internet numbers community. The ASO is aware of discussion on section 1.1(d)(ii) regarding grandfathering of existing agreements, and have no objection to</p>	<p>Thank you for your comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
1.1(d)(ii)	CCWG-Accountability	<p>removal of that section if the community wishes to do so.</p> <p>Issue: The CCWG notes that the CCWG Proposal mentioned grandfathering provisions for the RA and RAA only. Previous discussions within the CCWG while preparing the Draft Bylaws led to the conclusion that inclusion of renewals were acceptable for these types of agreements, as long as these renewals did not include any new terms. Any new terms would need to be within the scope and mission of ICANN.</p> <p>Recommendation: The CCWG notes that provisions B, C, D and E of Section 1.1 (d)(ii) were not requested by the CCWG Proposal. In addition, some of the referenced documents, including the ICANN-PTI contract, do not yet exist. While we understand the desire to minimize the possibility of disputes regarding the legitimacy of important agreements relevant to ICANN’s Mission, the implementation phase is not a time to incorporate new provisions that were not in the CCWG Proposal. As a consequence, our group’s recommendation is to remove provisions B, C, D and E of Section 1.1 (d)(ii).</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	<p>CCWG-Accountability</p>	<p>Issue: As discussed above under Comment 2, the documents listed in subsections B (ASO-NRO-IETF-RIRs), C (RZM), D (PTI contract) and E of Section 1.1(d)(ii) are not part of the CCWG Proposal. In addition, the text of the Bylaws provision that grandfather’s existing Registry Agreements and Registrar Accreditation Agreements as well as new agreements on the existing forms appears to require clarification to ensure that it embodies the intent of the CCWG Proposal. Specifically, the CCWG agreed (1) to grandfather existing Registry Agreements</p>	<p>No additional changes are needed to ensure consistency with the CCWG Proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(RAs) and Registrar Accreditation Agreements (RAAs), (2) that existing RAs and RAAs can be renewed, (3) that applicants of the current gTLD round can sign the RA in the currently used form and (4) that the terms and conditions of new form gTLD RAs and RAAs are not grandfathered. We understand that existing RAs and RAAs are “evergreen” and must be renewable in accordance with their terms.</p> <p>Recommendation: Review the language to ensure it is consistent with the CCWG Proposal and captures the scope of the grandfathering contemplated in the CCWG Proposal as further developed in CCWG discussions after the CCWG Proposal was issued.</p>	
1.1(d)(ii)	Centre for Internet and Society	<p>Grandfathering Agreements Clause</p> <p>A fair amount of discussion has taken place both in the CCWG mailing list about Section 1.1 (d)(ii), which concerns the inclusion of certain agreements into the scope of protection granted to ICANN from its Mission and Objective statement goals. CIS largely agrees with the positions taken by the IAB and CCWG in their comments of demanding the removal of parts B, C, D E and F of Section 1.1(d)(ii) as all of these are agreements that were not included in the scope of the CCWG Proposal and a fair few of these agreements (such as the PTI agreement) have not even been created yet. This leads to practical and legal issues for the ICANN as well as the community as it restricts possible accountability and transparency measures that may be taken in the future.</p> <p>CIS as its suggestion therefore agrees with the IAB and CCWG in this regard and supports the request by them that demand by these grandfathering provisions be removed.</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			not included in the grandfathering provision.
1.1(d)(ii)	Google	<p>At the same time, Google recommends certain modifications to Section 1.1(d) to ensure that the Bylaws reflect even more completely the community’s proposal. This section contains language on “grandfathering” agreements so that they are not challenged on the basis of exceeding ICANN’s mission, which is more explicitly limited by the draft new Bylaws. Section 1.1(d)(ii)(A), which applies to registry and registrar agreements, is a faithful reflection of the CCWG Accountability proposal. However, Sections 1.1(d)(ii)(B) through (E) contain forward references to documents that have either not been finalized or were not included in the ICG Stewardship and CCWG Accountability proposals. To avoid possible uncertainty and instability in the administration of the new Bylaws, we believe that it would be advisable for Sections 1.1(d)(ii)(B)(E) to be removed from the Bylaws at this time. Seeing as how these agreements have not yet been finalized and the community has not yet had an opportunity to participate in the bottomup process to draft and approve these particular documents, the time is not yet ripe to reference them in the Bylaws that we expect will be adopted in short order.</p> <p>Subject to this modification, Google welcomes the draft ICANN Bylaws as a key step in strengthening and preserving the multistakeholder processes and institutions that have enabled the open Internet to flourish and drive economic and social growth around the world.</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	IAB	<p>The Internet Architecture Board (IAB) appreciates the opportunity to comment on the draft new ICANN Bylaws. We commend all those involved in drafting the new Bylaws for their tremendous efforts over a very short period. The IAB understands that the purpose of amending the Bylaws at this time is to implement the recommendations contained in the IANA Stewardship Transition</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>package, comprised of the ICG and CCWG-Accountability proposals. The call for public comment specifically solicits inputs on how those proposals were brought into the Bylaws and whether there are areas seen as inconsistent with the IANA Stewardship Transition package. The IAB has concerns about sections 1.1(d)(ii)(B)-(E). Section 1.1(d) of the draft Bylaws contains so-called "grandfathering" provisions. These provisions are designed to prevent any party from raising a challenge on the basis that the terms and conditions of various agreements between ICANN and other parties violate the newly edited ICANN Mission statement. Paragraph 147 of the CCWG-Accountability proposal specifically provides for grandfathering of registry and registrar accreditation agreements, thereby laying the foundation for referencing them in section 1.1(d)(ii)(A). By contrast, there is no foundation in either the CCWG-Accountability proposal or the ICG proposal for sections 1.1(d)(ii)(B)-(D), which apply to agreements between ICANN and the ASO, NRO, IETF, Root Zone Maintainer, and PTI; neither is there foundation for 1.1(d)(ii)(E), which applies to ICANN's five-year plans. The IAB believes that the provisions of sections 1.1(d)(ii)(B)-(E) -- which are substantive provisions that materially affect large parts of the Internet community -- are outside the scope of both the ICG proposal and the CCWG-Accountability proposal. The IAB cannot identify any provision of either proposal that indicates a need for the inclusion of sections 1.1(d)(ii)(B)-(E) in the Bylaws. The purpose of amending the Bylaws was only to fulfill the requirements as stated in the proposals, so we believe the inclusion of these additional provisions is not justified. As a result, the IAB recommends that sections 1.1(d)(ii)(B)-(E) be deleted from the final Bylaws, and that section 1.1(d)(ii)(F) be amended such that it applies only to renewals of agreements described in section 1.1(d)(ii)(A). From the beginning of the transition proposal development process, the IAB has repeatedly emphasized the importance of having the transition plans reflect the consensus of the Internet community and the autonomy of the operational communities in defining their own transition plans. As the</p>	<p>over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan, which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>proposals get implemented, it is even more critical that the desires of the communities precisely as documented in the proposals be faithfully carried forward, without new requirements or provisions being inserted when the opportunity has passed for the kind of community discussion and consensus-building that occurred over the months and years of transition proposal development. The fact that even minimal discussion and coordination about section 1.1(d) between the Bylaws drafters, the CCWG, and the operational communities failed to occur before the draft Bylaws were posted for public comment -- despite concerns being raised about this section within days of the initial draft Bylaws publication -- demonstrates exactly how introducing additional provisions at this stage undermines the legitimacy of the transition process overall. Sections 1.1(d)(ii)(B)-(E) directly impact all of the operational communities and the Root Zone Maintainer as well as the entire ICANN community and this sort of overreach could have been caught and prevented had this discussion not been left to the late stages of the process. We have read the grandfathering explanation provided by the CCWG legal team, which provided the reasoning for these sections. We understand the reasoning, but it is not grounded in the community's expression of what the community desired. Instead, the grandfathering explanation argues that the external agreements and the five-year plans ought to be covered under the Mission anyway, so it is acceptable to protect the agreements and plans from challenge. That reasoning is circular. The point of a challenge on the grounds that an agreement is not within the Mission is exactly to discover whether it is within the Mission. One cannot therefore exclude the challenge on the basis that the agreements are (or will be) within the Mission. Although sections 1.1(d)(ii)(B)-(E) deserve to be struck from the Bylaws on procedural grounds alone, it is not difficult to imagine substantive objections to these provisions that may have emerged had the community debated them as part of the proposal development process. Consider the portion of 1.1(d)(ii)(B) that applies to the IETF as an example: - The effect of prohibiting any challenge of</p>	<p>the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>any agreement or agreement renewal on grounds of Mission violation is that the terms of the agreements come to define ICANN's Mission, since no party who identifies a violation can seek to rectify it. One could argue that it is backwards to have agreements with external parties define the ICANN Mission, in particular when the community put an immense amount of work into narrowly and appropriately defining ICANN's Mission. That work is reflected in paragraphs 140-144 of the CCWG-Accountability proposal. The language from those paragraphs that pertains to the protocol parameters is copied nearly word-for-word into the draft Bylaws section 1.1(a). The IAB had substantial input into this proposal language and welcomed its finalization with pleasure. From this, one could conclude that no further additions to it are necessary.</p> <ul style="list-style-type: none"> - Should ICANN or the IETF exercise the termination clause of the existing IETF-ICANN Memorandum of Understanding (MoU), ICANN's Mission statement will contain a reference to an agreement that no longer exists. One could argue that an independent organization's foundational documentation is not the appropriate place to create such an external dependency. - With the CCWG-Accountability proposal having achieved community consensus in the design of new ICANN accountability mechanisms, including the Independent Review Panel process, one could argue that immediately foreclosing the ability for any party to make use of those mechanisms for the purposes specified in section 1.1(d) is inappropriate, or that the risks to the legitimacy of the mechanisms that accrue by foreclosing their use outweigh the risks of any potential challenge on the grounds that the IETF-ICANN MoU violates the ICANN Mission. We have listed these potential arguments merely to illustrate why the creation of sections 1.1(d)(ii)(B)-(E) by the Bylaws drafting team without any basis in the community proposals is problematic. A variety of other substantive debates concerning other parts of (B) as well as (C), (D), and (E) are imaginable, in particular given that some of the agreements they reference have yet to be written or publicly reviewed, and most have yet to be approved. It is the IAB's firm 	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>belief that given the time remaining to successfully conclude the transition process in 2016, the only option is for the implementation process to remain faithful to the ICG and CCWG-Accountability proposals. We reiterate our recommendation that sections 1.1(d)(ii)(B)-(E) be deleted from the final Bylaws, and that section 1.1(d)(ii)(F) be amended such that it applies only to renewals of agreements described in section 1.1(d)(ii)(A).</p>	
1.1(d)(ii)	<p>ICANN Business Constituency</p>	<p>..... on ‘grandfathering’ current Registry and Registrar agreements, so that they would not be challenged on the basis of exceeding ICANN’s more explicitly limited mission in the new Bylaws. Text from new Bylaws: Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (F) below, and ICANN’s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”): (A) (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on, or undergoing negotiation as of, [1 October 2016] , including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement; (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above that is based on substantially the same underlying form of registry agreement or registrar accreditation agreement that existed on [1 October 2016]; (B) any agreement, letter of intent, memorandum of understanding, agreement in principle, or other similar agreement between ICANN and the Address Supporting Organization (“ASO”), the Number Resource Organization (“NRO”), the IETF, or one or more RIRs in force on</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out []</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>[1 October 2016]; (C) any agreement, letter of intent, memorandum of understanding, agreement in principle, or other similar agreement between ICANN and a third party identified by ICANN relating to the root zone maintainer function (the “Root Zone Maintainer”), in force on [1 October 2016]; (D) the IANA Naming Function Contract between ICANN and PTI effective [1 October 2016]; (E) ICANN’s Five-Year Strategic Plan and Five-Year Operating Plan existing on [1 October 2016]; and (F) any renewals of agreements described in subsections (A)-(D) pursuant to their terms and conditions for renewal.</p> <p>BC comment: the agreements listed in B through D (above) were not part of the CCWG final report, so they should not be included in this Bylaws section.</p>	<p>are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	ICG Comments	The ICG appreciates the opportunity to comment on the draft ICANN Bylaws. The ICG previously communicated concerns about Section 1.1(d)(ii) to the Bylaws drafting group. However,	The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>these concerns were not addressed in the draft Bylaws that were posted for public comment. Section 1.1(d) "grandfathers" a number of agreements into the Bylaws in order to prevent parties from challenging those agreements on the basis that they violate the ICANN Mission statement. Under Section 1.1(d)(ii), (A) applies to RA/RAA agreements; (B)-(D) apply to agreements between ICANN and the NRO, ASO, IETF, RZM, and PTI; and (E) applies to ICANN's Five-Year Strategic Plan and Five-Year Operating Plan. (F) applies the grandfathering to renewals of the agreements appearing in (B)-(E). The ICG process was fashioned to ensure that the transition plans reflected the consensus of the Internet community and allowed the operational communities to define their own transition plans. The ICG and the CCWG proposals define those wishes, and any changes to the Bylaws were to be to implement those wishes, nothing more. Yet Sections 1.1(d)(ii)(B)-(E) are outside the scope of both the ICG and the CCWG proposals. Unlike Section 1.1(d)(ii)(A), the substance of which was debated in the CCWG and is documented in paragraph 147 of the CCWG proposal, the substance of (B)-(E) have not enjoyed appropriate community involvement or review. These sections affect much of the Internet community since they apply to agreements with a variety of external parties, including all of the operational communities. Because several of the referenced agreements have not yet been written and most have not yet been agreed to by the relevant parties, the draft Bylaws essentially allow these external agreements to define ICANN's Mission. This seems like a bad idea for many reasons, not the least of which is that it creates the possibility for the agreements to contradict or circumvent the desires of the community who worked hard to clarify and correctly state ICANN's Mission throughout the IANA stewardship transition process (see paragraphs 140-147 of the CCWG proposal). The ICG believes that in order for the Bylaws to be considered consistent with the transition plans, Sections 1.1(d)(ii)(B)-(E) need to be removed, and Section 1.1(d)(ii)(F) needs to be edited to apply only to Section 1.1(d)(ii)(A). This assumes that (F) is indeed called</p>	<p>provision of the IANA functions from being challenged as outside of ICANN's mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the "accountability improvements set out [] are not designed to change ICANN's multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN's day-to-day operations." (Summary, Paragraph 2.) An important part of continuing ICANN's day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>for by paragraph 147 of the CCWG proposal, which we leave for the CCWG to judge.</p>	<p>based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	<p>International Trademark Association</p>	<p>Section 1.1(d)(ii). The following language does not comport with the CCWG Report: “Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (F) below, and ICANN’s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”)” As written, this language could be misused to exclude Registries</p>	<p>The existing Bylaws language already preserves the right of registries and registrars to maintain all contractual rights they have under the contracts with ICANN.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>and Registrars from the benefits of Accountability reforms.</p> <p>Essentially, Registries and Registrars are asked to participate in ICANN after the Transition under the accountability scheme currently in place. Now, the USG serves as backstop but without the USG as a backstop after Transition the conditions for Registries and Registrars must transition as well. Importantly, subsection (F) makes it clear that this second class status will follow Registries and Registrars forever and will never sunset.</p> <p>Further, it is unclear what affect this new Bylaws provision will have on the explicit references to ICANN’s Mission found in the Registry Agreement (see sections 3.1 and 7.6) and the Registrar Accreditation Agreement (see Section 6.5.1). We proposed the following alternative language:</p> <p>“Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (F) below, and ICANN’s performance of its obligations or duties thereunder, may not be challenged by any third party who is not a party to the relevant agreement(s) in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”)</p> <p>This change makes it clear that contracted parties are not banned from claiming that ICANN has violated its Mission in its “performance of its obligations or duties” under their agreements with ICANN.</p> <p>This is also consistent with the unilateral right of registrars and registries to self-terminate their agreements should they come to the conclusion that the agreements themselves are outside the scope of</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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1.1(d)(ii)	IPC	<p>ICANN’s Mission. .</p> <ul style="list-style-type: none"> · With regard to the “grandfathering” of existing agreements (section 1.1(d)), IPC commends the drafters for clearly covering all agreements signed by Registrars and Registries regardless of when they are signed, and all renewals and extensions of these agreements – including future agreements which are “based on substantially the same underlying form as” the current Registry Agreements and Registrar Accreditation Agreements. This is consistent with the Final Proposal’s position that the language of existing Registry Agreements and Registrar Accreditation Agreements are within the Mission, and that it would be necessary “for the avoidance of uncertainty only” to affirm that in the Bylaws. In doing so, the drafters have ensured that no party may bring a case alleging that any provisions of such agreements are on their face, ultra vires. · The IPC does note however, that the drafters appear to have exceeded the instructions in the Final Proposal by including in the list of grandfathered agreements (in Section 1.1(d)(ii)(B)-(E)) a range of other contracts and documents which have not yet been concluded. It would be inadvisable and improper to grandfather those agreements and documents, which do not exist in their final form, and which were not the subject of discussion within the CCWG-Accountability. The grandfathering clause was meant to address possibly uncertainty with specific reference to the RA and RAA, and should be limited to doing so. 	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

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			<p>day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	ISPCP Constituency	<p>Specifically, the ISPCP constituency is of the opinion that the section 1.1(d) (ii) B to E regarding grandfathering of existing agreements need to be removed and section F needs to be edited to apply only to section 1.1 (d) (ii) (A)."</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN’s mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p> <p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the Strategic Plan (and Operating Plan) are not included in the grandfathering provision.</p>
1.1(d)(ii)	Noncommercial Stakeholders Group	<p>NCSG supports the comments of the IANA Stewardship Transition Coordination Group (ICG) and the comments of the CCWG-Accountability. We believe that the final bylaws should remove provisions B, C, D and E of Section 1.1 (d)(ii). These were not part of the accepted proposal, and by referencing as-yet-unwritten documents and exempting them from challenges they create unacceptable risks. Regarding Section 1.1 (d) (ii) A, which grandfathers the Registry Agreement (RA) and Registrar Accreditation Agreement (RAA), NCSG believes that grandfathering of RA and RAA renewals is acceptable only if these renewals do not include any new terms. Any new terms would need to be within the scope and mission of ICANN, and should be clearly and unambiguously subject to challenge if members of the affected community believe they are outside of ICANN's mission.</p>	<p>The provisions at issue were agreed among the Bylaws drafters to be an important mechanism to insulate the core provision of the IANA functions from being challenged as outside of ICANN's mission. The community concern raised over these items necessitates that they be removed from the grandfathering provision. These were suggested to provide stability to the relationships between ICANN and the operational communities for the continued performance of the IANA functions in line with the full transition proposals.</p> <p>Much of the community concern raised is about the agreements and the unfinalized nature of the agreements. As a result, the items that were included in the draft Bylaws at 1.1(d)(ii)(B)-(D) are removed.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>This is a separate issue from the existing ICANN Five-Year Strategic Plan (and Operating Plan), which was approved in 2014 and is in force. The CCWG-Accountability confirmed that the “accountability improvements set out [] are not designed to change ICANN’s multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN’s day-to-day operations.” (Summary, Paragraph 2.) An important part of continuing ICANN’s day-to-day operations is to make sure that the foundation for those operations – the existing Strategic Plan (and Operating Plan) – should continue on course, without risk of an immediate mission-based challenge. The ICANN community was deeply involved in the process for developing the Strategic Plan (and Operating Plan), and will be even more so in future iterations. Because of the importance of ensuring operational stability for ICANN at the time of transition, the five-year Strategic Plan (and Operating Plan) remains within the grandfathering provision. However, to alleviate any concern that there is an attempt to use this provision to bring in new activities, the Bylaw reference will be modified to the plan approved as of 10 March 2016, the date the proposals were approved and transmitted to the NTIA. Renewals or future iterations of the</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			Strategic Plan (and Operating Plan) are not included in the grandfathering provision.
1.2	Dot Registry LLC	<p>(a) The mission of the Internet Corporation for Assigned Names and Numbers (“ICANN”) is to ensure the stable and secure operation of the Internet’s unique identifier systems as described in this Section 1.1(a) (the “Mission”). Specifically, ICANN:</p> <p>(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”) and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains (“gTLDs”). In this role, ICANN’s scope is to coordinate the development and implementation of policies:</p> <ul style="list-style-type: none"> • For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and • That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems. <p>The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN’s Mission.</p> <p>(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.</p> <p>(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force (“IETF”) and the Regional Internet Registries (“RIRs”) and (B) facilitates the development of global number registry policies by the affected community and other</p>	<p>The edits suggested to the Core Values section are in contradiction to the recommendations in the CCWG Proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>related tasks as agreed with the RIRs.</p> <p>(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN’s scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.</p> <p>(b) ICANN shall not act outside its Mission.</p> <p>(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations.</p> <p>(d) For the avoidance of doubt and notwithstanding the foregoing:</p> <p>(i) the foregoing prohibitions are not intended to limit ICANN’s authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;</p> <p>(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (F) below, and ICANN’s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers pursuant to these Bylaws (“Bylaws”) or ICANN’s Articles of Incorporation (“Articles of Incorporation”):</p> <p>(A) (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on, or undergoing negotiation as of,</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>[1 October 2016]1, including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;</p> <p>(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above that is based on substantially the same underlying form of registry agreement or registrar accreditation agreement that existed on [1 October 2016];</p> <p>(B)any agreement, letter of intent, memorandum of understanding, agreement in principle, or other similar agreement between ICANN and the Address Supporting Organization (“ASO”), the Number Resource Organization (“NRO”), the IETF, or one or more RIRs in force on [1 October 2016];</p> <p>(C)any agreement, letter of intent, memorandum of understanding, agreement in principle, or other similar agreement between ICANN and a third party identified by ICANN relating to the root zone maintainer function (the “Root Zone Maintainer”), in force on [1 October 2016];</p> <p>(D)the IANA Naming Function Contract between ICANN and PTI effective [1 October 2016];</p> <p>(E)ICANN’s Five-Year Strategic Plan and Five-Year Operating Plan existing on [1 October 2016]; and</p> <p>(F)any renewals of agreements described in subsections (A)–(D) pursuant to their terms and conditions for renewal.</p> <p>(iii) Section 1.1(d)(ii) does not limit the ability of a party to any Agreement described therein to challenge any provision of such Agreement on any other basis, including the other party’s interpretation of the provision, in any proceeding or process involving ICANN.</p> <p>(iv)ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
1.2	DotMusic	<p>(a) (iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination;</p> <p>(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on independent expert advice, and (C) ensure that those entities most affected can assist in the policy development process;</p> <p>(v) Make decisions by applying documented policies consistently, transparently, non-discriminatorily, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and</p> <p>(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws and Articles of Incorporation that to enhance ICANN’s effectiveness (b) CORE VALUES ... (v) To the maximum extent possible, operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN’s other obligations under these Bylaws and Articles of Incorporation, at a speed that is responsive to the needs of the global Internet community; ...</p> <p>(viii) Subject to the limitations set forth in Section 27.3, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create and shall not be interpreted to create any additional obligations for ICANN and shall not obligate ICANN to respond to or consider any complaint, request or demand seeking the enforcement of human rights by ICANN, except as</p>	<p>The edits suggested to the Core Values section are in contradiction to the recommendations in the CCWG Proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
1.2	Klaus Stoll	<p>provided herein.</p> <p>Section 1.2.COMMITMENTS AND CORE VALUES, (iv) + (iv) /Employ open, transparent and bottom up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities.</p> <p>I note that the “academia” is mentioned in both sections is the only stakeholder group mentioned that does not have its own stakeholder group for representation. Do the Bylaws indicate a need for specific representation by academia?.</p> <p>I note that the by-laws do not mention or address awareness and capacity building and does not address the danger of a captured community through under and miss-representation by specific interest in stakeholder groups as the vast majority of Internet ecosystem citizens are not present as engaged stakeholders.</p> <p>For ICANN, the organization operating the DNS, the multistakeholder model of governance is central to the stability and security of the global Internet. For ICANN’s governance to be robust and defensible, it needs broad and deep stakeholder engagement within its “/open, transparent and bottom up, multistakeholder policy development processes/” of Internet governance.</p> <p>Given the financial Interests of ICANN contracted parties stakeholders and non-contracted business interests, it comes as no surprise that they are heavily and deeply represented as stakeholders in ICANN’s policy making and governance processes. It also comes as no surprise that the vast majority of Internet ecosystem citizens, the Internet users, are not present as engaged</p>	<p>The issues raised are important for the continued viability of the multistakeholder model. However, they were not the subject of the transition proposals beyond the WS2 efforts on SO/AC Accountability. We encourage you to continue to remain involved in WS2 efforts to raise your concerns and design recommendations to address those concerns, as well as to support ICANN’s outreach efforts.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>stakeholders within the ICANN community. Most individual citizens and groups are focused on how they may use the Internet as a tool, but they do not focus on the Internet and its governance per se unless Internet policy impacts them directly. ICANN is in a situation where it professes participation by citizens in a multistakeholder model of engagement, but where 99% (literally all) of those “citizens” don’t even know that this governance process exists. This creates the danger of capturing of stakeholder groups through under- and miss- representation and ultimately can undermine the spirit and intend of the Bylaws.</p> <p>If ICANN cannot find practical ways to enable wider and deeper participation in ICANN, this will threaten the very legitimacy of ICANN’s multistakeholder governance model. The main dangers are under and miss-representation. Under-representation, where stakeholder groups interests are not factored into governance and policy making at all levels and a disproportionate weight is exercised by those with a voice and who have direct pecuniary interests. Gross under representation of stakeholders leaves ICANN’s governance and policy processes open to criticism that it is an inadequate multistakeholder process.</p> <p>Miss-representation, where a thin representation of the large majority give disproportionate weight to the voice and positions of the few such stakeholders who claim to represent the vast number of unaware and unengaged citizens of the Internet ecosystem.</p> <p>The by-laws should put a more strict emphasis on “/transparent and bottom up, multistakeholder policy development processes” also /within the ICANN stakeholder groups. Awareness and capacity building of all Internet end users, not just their mere representation through self-elected representatives, are the only way to ensure “/transparent and bottom up, multistakeholder policy development processes” /and avoids the danger of capture.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		I am aware that this and other important topics like the role of ICANN staff, are envisaged to be addressed in Workstream 2, but it would have been helpful if the Bylaws would have laid a more solid foundation for the forthcoming discussions in Workstream 2, by putting more emphasis on the need for Awareness and Capacity building, and “/transparent and bottom up, multistakeholder policy development processes” /within the stakeholder groups.	
1.2	Liu Yue	COMMITMENTS AND CORE VALUES (a) COMMITMENTS (iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. It is not appropriate to use 'private sector' to include too many communities. It could be corrected.	The language regarding the private sector was carefully debated in the CCWG-Accountability and was included at Annex 5, Paragraph 20 of the report. ICANN does not recommend modifying this language further. No revisions to the ICANN Bylaws are recommended in response to this comment.
1.2(a)(i).	International Trademark Association	The following language is not found in the CCWG Report: “...the administration of the DNS...” This language could be read to indicate that part of ICANN’s Commitment and Core Values is to preserve and enhance its own administration of the DNS. In other words, this language allows ICANN to commit, and holds as a core value, ICANN’s own position of power. This language should be deleted or clarified. If clarified, an additional public comment period will be necessary to ensure that the drafting team has adequately addressed the issue. Section 1.2(a)(ii). This language is not in the CCWG Report: “Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet.”	The CCWG Proposal was clear, at Annex 5, Paragraph 1, that “The language proposed in this recommendation for ICANN Bylaws revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.” The legal teams worked closely with the Bylaws Coordination Team and the impacted operational communities to make sure that the technical mission was appropriately drafted.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		In fact, it is not even clear what this language means. What is “the overall level”? This language should be deleted or clarified. If clarified, an additional public comment period will be necessary to ensure that the drafting team has adequately addressed the issue.	
1.2(b).	International Trademark Association	There is no specific prohibition against capture as anticipated by the CCWG report. The bylaws should include an explicit anti-capture provision	In order to reflect the Proposal fully, the Core Values will be revised to include an obligation to avoid capture.
1.2(b)(ii)	Government of ITALY Ministry of Economic Development	Draft Bylaws Article 1 – Section 1.2 (b) (ii) Text from the Bylaws: Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet. During the negotiations, maybe by mistake, the gender diversity was forgotten. In line with the principles expressed in the Agenda 2030 for Sustainable Development that all the UN Member States agreed on, we would suggest to make up the mistake and modify the bylaws as follows: “Seeking and supporting broad, informed participation reflecting the functional, geographic, cultural and gender diversity of the Internet.”	Gender diversity was not included as part of the CCWG Proposal and this edit cannot be taken on. However, the issue of diversity will be considered in WS2 and this recommendation could be raised for consideration in that process. No revisions to the ICANN Bylaws are recommended in response to this comment.
1.2(b)(vii) and 4.3(i)(iv)	Institute of Internet Governance Research (IGR)	Comments on "Geographic Diversity" In general, the draft New Bylaws stressed the significance of geographic diversity and regional balance in its administrative structure and the selection process of key positions. However, as mentioned in Section 1.2(b)(vii), the core value contains "Striving to achieve a reasonable balance between the interests of different stakeholders " and in Section 4.3 (i)(iv) that "Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region." The word "reasonable" used here may cause certain divergence for comprehension, and potentially create negative effects in balancing regional activities. Hence, we call for more contribution from ICANN in supporting geographic diversity. For selection process, ICANN shall give adequate consideration to the regional balance, ensure the real participation of diverse regions through selection mechanism, especially regarding the developing countries. Asia deserves close attention from ICANN since it has the world most	The issue of diversity is important within ICANN, and all factors of diversity raise important considerations. The CCWG-Accountability’s WS2 efforts include considerations of diversity, and we encourage your participation in that work. No revisions to the ICANN Bylaws are recommended in response to this comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
1.2(b)(viii)	CCWG-Accountability	<p>netizens and registries and shall exert more efforts and impact on ICANN's decision making and daily operation.</p> <p>Issue: The current wording creates ambiguity with regards to the potential enforcement duties of ICANN. The CCWG Proposal Annex 6, Paragraph 10 mentions that “any type of external enforcement or regulatory activity would be wholly out of scope.”</p> <p>Recommendation: Replace current language with the following: <i>“(viii) Subject to the limitations set forth in Section 27.3, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against such other parties.”</i></p>	This provision will be modified as recommended in the Bylaws.
1.2(b)(viii)	ICANN Business Constituency Steve DelBianco	<p>... regarding enforcement of a Framework of Interpretation for Human Rights, a Work Stream 2 project described in Section 27.3 (a). Text from new Bylaws: (viii) Subject to the limitations set forth in Section 27.3, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create and shall not be interpreted to create any additional obligations for ICANN and shall not obligate ICANN to respond to or consider any complaint, request or demand seeking the enforcement of human rights by ICANN, except as provided herein.</p> <p>BC comment: The CCWG Final Report called for a Work Stream 2 project that defines how ICANN will “respect” human rights. However, the phrase “except as provided herein” at the end of the above text creates the possibility that the Framework might give rise to IRP enforcement actions against ICANN based on selected human rights. To avoid ambiguity about enforceable rights, we recommend replacing the text with the following: “(viii) Subject to</p>	This provision will be modified in the Bylaws.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>the limitations set forth in Section 27.3, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against such other parties.”</p>	
1.2(b)(viii)	<p>U.S. Council for International Business</p>	<p>Human Rights Commitment – USCIB supports the protection of internationally recognized human rights. We greatly value the primarily <i>technical mission</i> of ICANN in coordinating the global internet’s system of unique identifiers and ensuring openness, interoperability, resilience, and stability of the DNS. Throughout the CCWG-Accountability’s work, we urged careful consideration of how to include a human rights-related commitment in ICANN’s Bylaws so that it does not have the effect of extending ICANN’s core mission. We would support Bylaws language that anchors a human rights commitment in ICANN’s primarily technical mission but does not open the door to mission creep.</p> <p>In this regard, we concur with the ICANN Business Constituency (BC) that language at the end of Section 1.2(b)(viii) – “except as provided herein” – is a bit ambiguous. It could be read as creating the possibility that the Framework of Interpretation of Human Rights (FOI-HR), a Work Stream 2 project described in Section 27.3(a), might give rise to IRP enforcement actions against ICANN based on selected human rights. We join the BC in urging that the text be revised as follows to avoid ambiguity about enforceable rights (see italicized text):</p> <p>(viii) Subject to the limitations set forth in Section 27.3, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create and shall not be interpreted to create any additional obligations for ICANN and shall not obligate ICANN <i>to enforce human rights, but rather, as provided in Section</i></p>	<p>This provision will be modified as recommended in the Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<i>27.3, to respect human rights.</i>	
2.1	Dot Registry LLC	Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of Section 3.6, the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to “of all Directors	No change needed.
2.2	Dot Registry LLC	ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section 2.2 is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.	No change needed.
2.3	Dot Registry LLC	ICANN, including its Board, staff, agents, and contracted third parties, will shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.	The Bylaws are already drafted such that ICANN is responsible for making sure that actions taken in its name are aligned with the ICANN Bylaws, which includes this core value of equal treatment. No revisions to the ICANN Bylaws are recommended in response to this comment.
2.3	DotMusic	ICANN, including its Board, staff, agents, and contracted third parties, will shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such	The Bylaws already are drafted such that ICANN is responsible for making sure that actions taken in its name are aligned with the ICANN Bylaws, which includes

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		as the promotion of effective competition.	<p>this core value of equal treatment.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
3.1	Dot Registry LLC	<p>ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including, but not limited to, implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also transcribe each Board meeting and make available on it's website such transcriptions, and implement procedures for the documentation and public disclosure of rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above</p>	<p>This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.</p>
3.1	DotMusic	<p>ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including, but not limited to, implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also transcribe each Board meeting and make available on it's website such transcriptions, and implement procedures for the documentation and public disclosure of rationale for decisions made by the Board and ICANN's constituent bodies (including the</p>	<p>This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
3.2	Dot Registry LLC	<p>detailed explanations discussed above</p> <p>ICANN shall maintain a publicly-accessible Internet World Wide Web site (the “Website”), which may will include, among other things, (a) a calendar of scheduled meetings of the Board, the EC, Supporting Organizations, and Advisory Committees; (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices, meeting transcriptions, and agendas as described below; (d) information on the ICANN Budget, annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including cooperative engagement, reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN activities of interest to significant segments of the ICANN community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN’s physical meetings and public forums; and (i) registry and registrar contracts; and (j) other information of interest to the ICANN community.</p>	<p>This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
3.2	DotMusic	<p>ICANN shall maintain a publicly-accessible Internet World Wide Web site (the “Website”), which may will include, among other things, (a) a calendar of scheduled meetings of the Board, the EC, Supporting Organizations, and Advisory Committees; (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices, meeting transcriptions, and agendas as described below; (d) information on the ICANN Budget, annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including the cooperative engagement process, reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN activities of interest</p>	<p>This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		to significant segments of the ICANN community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN’s physical meetings and public forums; and (i) registry and registrar contracts; and (j) other information of interest to the ICANN community.	
3.3	Dot Registry LLC	There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN, including the Website and various other means of communicating with and receiving input from the general community of Internet users.	No change needed.
3.4	Dot Registry LLC	At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.	No change needed
3.5	Dot Registry LLC	(a) All minutes of meetings of the Board, the Advisory Committees and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary (“Secretary”) for posting on the Website. All proceedings of the EC Administration and the EC shall be provided to the Secretary for posting on the Website. (b) No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN’s principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters which qualify privileged, as defined by law, or subject to confidentiality restrictions contained in contract (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN) ; matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting,	The CCWG did not make any recommendations regarding the scope of published minutes or resolutions. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings. No revisions to the ICANN Bylaws are recommended in response to this comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (as set forth in Article 9 through Article 11) and Advisory Committees (as set forth in Article 12) informing them that the resolutions have been posted.</p> <p>(c) No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN’s principal office), the complete trascription of the Board meeting (absent 3.5(b) exemptions above) and any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.</p> <p>(d) No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN’s principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters which qualify for attorney-client privilege, as defined by law, (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>reason for such nondisclosure.</p> <p>(d) No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN’s principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters which qualify for attorney-client privilege, as defined by law, (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure</p>	
3.5	DotMusic	<p>... (b) No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN’s principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters, which qualify privileged, as defined by law, or subject to confidentiality restrictions contained in contract (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available.</p> <p>(c) No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the</p>	<p>The CCWG did not make any recommendations regarding the scope of published minutes or resolutions.</p> <p>WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>location of ICANN’s principal office), <u>the complete transcription of the Board meeting (absent 3.5(b) exemptions above) and</u> any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure. (d) No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN’s principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters, <u>which qualify for attorney-client privilege as defined by law</u>, (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.</p>	
3.6	Dot Registry LLC	<p>(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:</p> <p>(i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;</p> <p>(ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned</p>	No change needed; it is unclear what is being recommended for modification.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>with ICANN’s public comment practices), prior to any action by the Board; and (iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee (“GAC” or “Government Advisory Committee”) and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board’s request.</p> <p>(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.</p> <p>(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS, financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.</p> <p>(d) Where a Board resolution is consistent with GAC Consensus Advice (as defined in Section 12.2(a)(x)), the Board shall make a determination whether the GAC Consensus Advice was a material factor in the Board’s adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a “GAC Consensus Board Resolution”) and shall cite the applicable GAC Consensus Advice. To the extent practical, the Board shall ensure that GAC Consensus Board Resolutions only relate to the matters that were the subject of the applicable GAC Consensus Advice and not matters unrelated to the applicable GAC Consensus Advice. For the avoidance of doubt: (i) a GAC Consensus Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are specifically identified as such by the</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Board; and (ii) a Board resolution approving an action consistent with GAC Consensus Advice received during a standard engagement process in which input from all Supporting Organizations and Advisory Committees has been requested shall not be considered a GAC Consensus Board Resolution based solely on that input, unless the GAC Consensus Advice was a material factor in the Board’s adoption of such resolution.</p> <p>(e) GAC Carve-out</p> <p>(i) Where a Board resolution is consistent with GAC Consensus Advice (as defined in Section 12.2(a)(x)) and the Board has determined that the GAC Consensus Advice was a material factor in the Board’s adoption of such resolution as described in the relevant GAC Consensus Board Resolution, the Governmental Advisory Committee shall not participate as a decision-maker in the EC’s exercise of its right to challenge the Board’s implementation of such GAC Consensus Advice. In such cases, the Governmental Advisory Committee may participate in the EC in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC (“GAC Carve-out”). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC Carve-out shall only apply if an IRP Panel has found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.</p> <p>(ii) When the GAC Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC Consensus Board Resolution and the line item or provision that implements such specific GAC Consensus Board Resolution (“GAC Consensus Statement”), (B) the Governmental Advisory Committee shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>1.1 of Annex D), and (C) any EC Decision that requires the support of four or more Decisional Participants pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.</p> <p>(iii) For the avoidance of doubt, the GAC Carve-out shall not apply to the exercise of the EC’s rights where a material factor in the Board’s decision was advice of the Governmental Advisory Committee that was not GAC Consensus Advice</p>	
3.6(d)	Government of ITALY Ministry of Economic Development	<p>Draft Bylaws Article 3 – Section 3.6 (d) Regarding the “GAC consensus Board Resolution” we believe that the definition of “material factor” is a pretty vague definition and could have many nuances. For that reason, we think the Board should be required to motivate the material aspects. The Board should not only “indicate” if it was material or not, but should motivate how it was material. For that reason we suggest the following amendment: “the Board shall make a determination whether the GAC Consensus Advice was a material factor in the Board’s adoption of such resolution, in which case the Board shall so indicate and clearly motivate in such resolution”</p>	<p>Given the requirement for a rationale to accompany the Board’s decision, and for the Board to affirmative identify if GAC advice was a material factor in that decision, it is likely not needed for the Board to also have a requirement to identify the clear motivation of how the GAC advice influenced the decision. This information should already be incorporated into the rationale. Further, the “material factor” language was heavily debated within the CCWG-Accountability.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
3.7	Dot Registry LLC	<p>As appropriate and to the extent provided in the ICANN Budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.</p>	<p>No change requested.</p>
3.7	DotMusic	<p>As appropriate and to the extent provided in the ICANN Budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.</p>	<p>The change requested is unnecessary to meet the intent of the CCWG Proposals.</p>
4.0	Institute of Internet Governance	<p>Comments on "Selection Mechanism" Although some entities (such as EC, PTI, etc.) have been proposed in the draft New Bylaws which shows the progress in the ICANN's</p>	<p>The IRP Implementation Oversight Team will be working to address issues of conflict of interest for IRP Panelists.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Research (IGR)	<p>globalization reform, the matching Selection Mechanism and Nomination Procedure still need to be improved. Meanwhile, the Independent Review Process (IRP) and its Standing Panel have become essential for Reconsideration Request Process, but the Selection Mechanism of which is subjected to the "Conflicts of Interest" that contains rare reasonable clarification. IGR hereby concerns about the incompatibility of the Panel Members' independency, professionalism and consistency of the review works, which might influence the interests and involvements of the community, since sometimes for avoiding the Conflicts of Interest the panel experts may be selected from the "outsiders" which perhaps finally lead the biased decisions. In consideration of the community proposals relating to the IANA Stewardship Transition and the many new established entities thereinto, we strongly recommended ICANN to put high value on improving the matching Selection Mechanism mentioned above, including formalization and transparency of selection, term limits, geographic diversity, active involvement of developing countries, etc. In addition, it is necessary to add more detailed classification and illustration on the principle of "Conflicts of Interests" and fully preserve the professionalism and consistency of the IRP on a premise of ensuring the Panel Members' independency and the avoidance of conflicts of interest.</p>	<p>While the issue raised is important, no modification to the Bylaws is needed to address this topic.</p>
4.1	Dot Registry LLC	<p>In carrying out its Mission, to the maximum extent possible, ICANN shall be transparent and accountable to the community (define "community") for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for Covered ICANN Actions and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.</p>	<p>The changes requested are unnecessary to meet the intent of the CCWG Proposals. The obligations set out in the Mission, Commitments and Core Values do not need to be restated in the IRP section. The IRP section is only for covered actions.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
4.1	DotMusic	<p>In carrying out its Mission to the maximum extent possible, ICANN shall be transparent and accountable to the community (ICANN must define the “community” in an organized and delineated manner as mentioned earlier) for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for Covered ICANN Actions and procedures for periodic review of ICANN’s structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.</p>	<p>The changes requested are unnecessary to meet the intent of the CCWG Proposals. The obligations set out in the Mission, Commitments and Core Values do not need to be restated in the IRP section. The IRP section is only for covered actions.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.2	Dot Registry LLC	<p>(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request (“Requestor”) the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, “Staff” includes employees and third party individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.</p> <p>(b) The EC may file a Reconsideration Request (as defined below in Section 4.2(c) if approved pursuant to Section 4.3 of Annex D (“Community Reconsideration Request”) and if the matter relates to the exercise of the powers and rights of the EC (as defined in Article 6) of these Bylaws. The EC Administration (as defined in Section 6.3) shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.</p> <p>(c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction (“Reconsideration Request”) to the extent that the Requestor has been adversely affected by:</p> <p>(i) One or more Board or Staff actions or inactions that contradict ICANN’s Bylaws or Articles of Incorporation Mission;</p>	<p>DotRegistry’s proposed edits to this section were carefully considered and many would result in modification to the CCWG Proposal or are not supported by the Proposal. The modifications to (i) and (q) that clarify that page limits do not apply to supporting edits, provide useful clarification to this section, and are incorporated into the revised Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Commitments, Core Values and/or established ICANN policy(ies);</p> <p>(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board’s or Staff’s consideration at the time of action or refusal to act; or</p> <p>(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board’s or staff’s reliance on false or inaccurate relevant information.</p> <p>(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:</p> <p>(i) Disputes relating to country code top-level domain (“ccTLD”) delegations and re-delegations;</p> <p>(ii) Disputes relating to Internet numbering resources; and</p> <p>(iii) Disputes relating to protocol parameters.</p> <p>(e) The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:</p> <p>(i) Evaluate Reconsideration Requests;</p> <p>(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;</p> <p>(iii) Evaluate Reconsideration Requests for urgent consideration;</p> <p>(iv) Conduct whatever factual investigations is deemed appropriate;</p> <p>(v) Request additional written submissions from the affected party, or from other parties; and</p> <p>(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.</p> <p>(f) ICANN shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.</p> <p>(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Governance Committee:</p> <p>(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted within 30 days after:</p> <p>(A) for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;</p> <p>(B) for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or</p> <p>(C) for requests challenging either Board or Staff inaction, the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would <u>was</u> not be taken in a timely manner.</p> <p>(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.</p> <p>(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at https://www.icann.org/resources/pages/accountability/reconsideration-en. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing, consistent with the Bylaws.</p> <p>(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.</p> <p>(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.</p> <p>(k) The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if:</p> <p>(i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Governance Committee’s summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.</p> <p>(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.</p> <p>(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.</p> <p>(ii) The Ombudsman shall submit to the Board Governance Committee his or her substantive evaluation of the Reconsideration</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Request within 15 days of the Ombudsman’s receipt of the Reconsideration Request. The Board Governance Committee shall thereafter promptly proceed to review and consideration.</p> <p>(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman’s conduct in some way, the Ombudsman shall recuse himself and the Board Governance Committee shall review the Reconsideration Request without involvement by the Ombudsman.</p> <p>(m) The Board Governance Committee may ask ICANN Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.</p> <p>(n) The Board Governance Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard <u>in person or via video or teleconference</u>. The Board Governance Committee’s decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.</p> <p>(o) The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected by ICANN from third parties shall be provided to the Requestor.</p> <p>(p) The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN Staff, and by any third party.</p> <p>(q) The Board Governance Committee shall make a final</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman’s evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Governance Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the request. The final recommendation of the Board Governance Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Governance Committee’s recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Governance Committee’s final recommendation; and (ii) not offer evidence to support an argument made in the Requestor’s original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.</p> <p>(r) The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board and its independent rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 45 days of receipt of the Board Governance Committee’s</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board’s final decision shall be made within 135 days of receipt of the Reconsideration Request was initially received by the Board Governance Committee. The Board’s decision on the recommendation shall be posted on the Website in accordance with the Board’s posting obligations as set forth in Article 3 of these Bylaws. If the party seeking reconsideration so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considers the Board Governance Committee’s recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by qualifies as attorney-client privilege, work product doctrine or other recognized legal privilege, as defined by law (iii) is subject to a legal obligation that ICANN maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN’s redaction.</p> <p>(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.</p> <p>(t) The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.</p> <p>(u) The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:</p> <p>(i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;</p> <p>(ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;</p> <p>(iii) an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and</p> <p>(iv) whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
4.2	DotMusic	<p>while limiting frivolous claims.</p> <p>(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request (“Requestor”) the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, “Staff” includes employees and third party individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly... (c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction (“Reconsideration Request”) to the extent that the Requestor has been adversely affected by:</p> <p>(i) One or more Board or Staff actions or inactions that contradict ICANN’s Bylaws or Articles of Incorporation Mission, Commitments, Core Values and/or established ICANN policy(ies);</p> <p>(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board’s or Staff’s consideration at the time of action or refusal to act; or</p> <p>(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board’s or staff’s reliance on false or inaccurate relevant information.</p> <p>... (e) The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:</p> <p>(i) Evaluate Reconsideration Requests;</p> <p>(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;</p> <p>(iii) Evaluate Reconsideration Requests for urgent consideration;</p> <p>(iv) Conduct whatever factual investigations is deemed appropriate;</p> <p>... (g) (i) (C) for requests challenging either Board or Staff inaction, the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would was not be</p>	<p>The requested changes go beyond the scope of modifications that the CCWG Proposal recommended for the Reconsideration Process and are not appropriate for inclusion at this time.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>taken in a timely manner.</p> <p>(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at https://www.icann.org/resources/pages/accountability/reconsideration-en.</p> <p>Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing, consistent with the Bylaws.</p> <p>(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits.</p> <p>...(k) The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if:</p> <p>(i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.</p> <p>(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.</p> <p>(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.</p> <p>(ii) The Ombudsman shall submit to the Board Governance Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Governance Committee shall thereafter promptly proceed to review and consideration.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman’s conduct in some way, the Ombudsman shall recuse himself and the Board Governance Committee shall review the Reconsideration Request without involvement by the Ombudsman.</p> <p>... (n) The Board Governance Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard <u>in person, via video or teleconference.</u></p> <p>... (q) The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman’s evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. <u>The Board Governance Committee shall take action in any request that is petitioned by multiple organizations that relate to a community that is associated to specific string.</u></p> <p>The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Governance Committee’s recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Governance Committee’s final recommendation; and (ii) not offer evidence to support an argument made in the Requestor’s original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.</p> <p>(r) The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board and its independent rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken.</p> <p>(i) relates to confidential personnel matters, (ii) is covered by qualifies as attorney-client privilege, work product doctrine or other recognized legal privilege, as defined by law (iii) is subject to a legal obligation that ICANN maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN’s redaction.</p> <p>(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request. ...</p> <p>(iv) whether or not, in the Board Governance Committee’s view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.	
4.2	IPC	4.2(a) Define “long-term paid contractor,” especially as to “long-term.” Also, Requestors must continue to be able to challenge decisions of ICANN “constituent bodies,” as has been held in the DCA Trust IRP decision (Final Declaration, ¶¶98-115) with respect to challenge of GAC decisions. 4.2(e)(ii) Define “insufficient or frivolous.” 4.2(e)(iii) Define circumstances warranting “urgent consideration.” 4.2(f) Define circumstances warranting a finding of “extraordinary costs.”	<p>“Long-term paid contractor” is a difficult term to further define as requested as it is intended to reflect those people that are considered among staff, but for various reasons have a contractor relationship as opposed to an employment relationship with ICANN.</p> <p>Extending the Reconsideration Process to constituent bodies is a substantial, material change that was not included in the CCWG report. The WS2 effort on SO/AC accountability also includes the topic of how decisions of those groups can be challenged, including IRPs. This recommendation is better suited for consideration as part of that WS2 effort.</p> <p>For “insufficient or frivolous”, “urgent consideration” or a finding of “extraordinary costs”, the issues raised are better suited for consideration at a point of review of the Reconsideration Process, as opposed to creating definitions that are too limiting or too broad in an attempt to make the Bylaws as specific as possible on these points. These are areas where experience in testing these issues will result in better ideas for definition in the future, and it is not recommended to try to reach consenses on these procedural items</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>prior to testing of the revisions for fairness and expediency. Each of the terms the comment proposes to define have been interpreted in substantial commercial case law, and the accountability measures being implemented will allow challenges if needed to any inappropriate interpretations of the terms in question.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.2	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	<p>D. Section 4.2(r) allows ICANN board to redact “such briefing materials and the recording and transcript” for a host of potential reasons as ICANN prefers and would enshrine ICANN’s right to obscure transparency at will.</p>	<p>The inclusion of availability of transcripts and recordings in Reconsideration proceedings is an recommendation from the CCWG Proposal. WS2 will include consideration of further transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings that will provide a further framework to guide appropriate redactions.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.2(l)	Chris LaHatte	<p>(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to 15 perform this task to the extent it is within the budget allocated to this task. (ii) The Ombudsman shall submit to the Board Governance</p>	<p>The requested modifications to pronouns are reflected in the Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		Committee their substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Governance Committee shall thereafter promptly proceed to review and consideration. (iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing their role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse themselves and the Board Governance Committee shall review the Reconsideration Request without involvement by the Ombudsman.	
4.2(q)	International Trademark Association	“...and (ii) not offer <u>new</u> evidence to support an argument made in the Requestor’s original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.”	The requested change is made, as it enhances clarity on this topic.
4.2 and 4.3	IPC	IPC notes that much of the accountability improvements to the ICANN Bylaws have been left to the implementation “Work Stream 2” phase of the intended transition. IPC expects there will be further changes to the Bylaws arising from WS2, and looks forward to actively participating in that work. This work will include, at least, development of CEP Rules, and the referenced, critical work of the IRP Implementation Oversight Team. The currently proposed amendments in Article IV, to the Reconsideration and Independent Review processes, appear fairly comprehensive but still short of the stated CCWG Accountability overarching goals to improve these processes and ICANN’s transparency with respect to them. IPC provides the following suggestions for improvement.	Thank you for your comment.
4.2, 4.3	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	NTIA’s requirement that the Transition Plan “must maintain the security, stability and resilience of the domain name system” depends upon a domain name system that necessarily relies on the rights of intellectual property holders to maintain their trademarked rights. However, it is challenging for businesses to obtain the independent	The CCWG Proposal maintained the Reconsideration Process (the Board reconsidering its decisions or those of staff). The commenter’s dissatisfaction with the design of the Reconsideration Process is noted, but edits to the Bylaws

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>review of ICANN promised because its basic structure remains flawed. The Accountability proposal put forward by the CCWG-Accountability does not fix the systemic conflict of interest problem which exhibits itself in the Request for Reconsideration process. So long as the same people who made the decision originally also pass judgment on the validity of that decision, the Request for Reconsideration process does not provide a meaningful accountability mechanism. The CCWG solution to have the whole ICANN board provide reconsideration, still makes the ICANN Board remain the determiner of whether ICANN is following its rules and bylaws. Likewise, while the Draft Bylaws contemplate Independent Review Panels now providing binding decisions, it remains an open question as to how these can be enforced, and whether they can be used against businesses for claim preclusion. If the IRP Panel fails to issue a decision within six months, the Draft Bylaws indicate that this cannot give rise to a claim, even if irreparable harm will occur. In the recent U.S. District Court Central District of California case, DotConnectAfrica Trust v. ICANN & ZA Central Registry, 16-CV-00862 RGK (JCx), April 12, 2016, the IRP Panel and the other party involved believed the IRP Panel decision was binding, but ICANN determined it was advisory and ignored the Panel’s decision, attempting to give a gTLD to another party until the court intervened and issued a preliminary injunction preventing ICANN from doing so. IRP decisions must be equally binding on ICANN as well as parties, and the entity (whether a party or ICANN) with the IRP decision against it, must implement that decision or bear the burden of seeking U.S. court relief from that IRP decision. Regardless of the eventual outcome of this case, whatever that may be, this case underscores the need for U.S. courts to maintain jurisdiction of ICANN so that harm can be evaluated in time to repair it. NTIA Transition criteria also requires that the Transition Plan “meet the needs and expectations of the global customers and partners of the IANA services.” ICANN’s language in its Applicant Guidebook purporting to release it “from any and all claims”, found</p>	<p>to address this concern are not appropriate at this time.</p> <p>Edits are also not needed to address the concerns raised about the further enforcement of IRP decisions. The Bylaws provide for a binding IRP mechanism. How IRP claimants wish to proceed to enforcement, if necessary, is a decision for each to pursue.</p> <p>The community proposals embodied in the Bylaws include significant enhancements to ICANN’s accountability mechanisms, including the development of a binding (not advisory) independent review process that will address some of the concerns and criticisms identified in this comment.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		unenforceable as against public policy by the U.S. District Court in the case mentioned above, likely had a chilling effect on aggrieved parties being willing to come forward regarding problems with ICANN. The whole CCWG-Accountability process was driven due to a perceived unaccountability of ICANN. The Draft Bylaws continuation of similar language in its mission paragraph referenced above further extends this problem. The Transition Plan and Draft Bylaws should allow for the opening of a claims period for those harmed prior to the Transition and to find out whether the needs and expectations of global customers and partners are being met.	
4.3	Dot Registry LLC	CEP Timeframe should be capped and not open ended to cause undue delay for other applicants. Currently, there is not timeframe for CEP.	Further consideration of the CEP will be part of ongoing implementation work.
4.3	Dot Registry LLC	<p>(a) In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii), below) alleged by a Claimant to be within the scope of the Independent Review Process (“IRP”). The IRP is intended to hear and resolve Disputes for the following purposes (“Purposes of the IRP”):</p> <p>(i) Ensure that ICANN does not exceed the scope of its limited technical Mission and otherwise complies with its Articles of Incorporation and Bylaws.</p> <p>(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable, accessible expert review of Covered Actions.</p> <p>(iii) Ensure that ICANN is accountable to the global Internet community and Claimants.</p> <p>(iv) Address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract.</p> <p>(v) Provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI service complaints that are not resolved through mediation.</p> <p>(vi) Reduce Disputes by creating precedent to guide and inform the</p>	<p>The proposed revisions to the IRP section have been carefully reviewed, and none of the items are appropriate for inclusion in the Bylaws. The language suggests standards and grounds for the IRP process, propose a monetary award to prevailing participants equal to the amounts ICANN incurred, extend the IRP to cover actions of third parties, remove the Standing Panel, remove the community role in developing the IRP Rules, remove emergency relief provisions, and other items that are either counter to or not supported within the CCWG Proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Board, Officers, Staff members, Supporting Organizations, Advisory Committees, third party contractors, and the global Internet community in connection with policy development and implementation.</p> <p>(vii) Secure the accessible, transparent, efficient, consistent, coherent, unbiased, nondiscriminatory, and just resolution of Disputes.</p> <p>(viii) Lead to binding, final resolutions consistent with international principles of arbitration and international principles of law norms that are enforceable in any court with proper jurisdiction.</p> <p>(ix) Provide a mechanism for the resolution of Disputes, as an first alternative to legal action in the civil courts of the United States or other jurisdictions. This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes.</p> <p>(b) The scope of the IRP is defined with reference to the following terms:</p> <p>(i) A “Claimant” is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.</p> <p>(A) The EC is deemed to be materially affected by all Covered Actions. ICANN shall not assert any defenses of standing or capacity against the EC in any forum.</p> <p>(B) ICANN shall not object to the standing of the EC, a Supporting Organization, or an Advisory Committee to participate in an IRP, to compel an IRP, or to enforce an IRP Decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant’s capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Claimant purports to act.</p> <p>(ii) “Covered Actions” are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, agents, contracted third parties or Staff members that give rise to a Dispute.</p> <p>(iii) “Disputes” are defined as:</p> <p>(A) Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:</p> <ol style="list-style-type: none"> (1) exceeded the scope of the Mission; (2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws; (3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws; (4) resulted from a response to a DIDP request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; (5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws. <p>(B) Claims that ICANN, its Board, individual Directors, Officers or Staff members, have not enforced ICANN’s contractual rights with respect to the IANA Naming Function Contract, and</p> <p>(C) Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.</p> <p>(c) Notwithstanding any other provision in this Section 4.3, the IRP’s scope shall exclude all of the following:</p> <ol style="list-style-type: none"> (i) EC challenges to the result(s) of a PDP, unless the Supporting Organization(s) that approved the PDP supports the EC bringing such a challenge; (ii) Claims relating to country code top-level domain (“ccTLD”) delegations and re-delegations; (iii) Claims relating to Internet numbering resources, and 	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(iv) Claims relating to protocol parameters.</p> <p>(d) An IRP shall commence with the Claimant’s filing of a written statement of a Dispute (a “Claim”) with the IRP Provider (described in Section 4.3(m) below). To commence a Community IRP, the EC shall first comply with the procedures set forth in Section 4.2 of Annex D.</p> <p>(e) Cooperative Engagement Process</p> <p>(i) Except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process (“CEP”) for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.</p> <p>(ii) The CEP is voluntary. However, except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant or ICANN does not participate in good faith in the CEP, in the timeframe allotted, and ICANN the participating party is the prevailing party in the IRP, the IRP Panel shall award to ICANN the participating party all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.</p> <p>(iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or</p> <p>(B) requests the inclusion of an independent dispute resolution facilitator (“IRP Mediator”) after at least one CEP meeting.</p> <p>(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.</p> <p>(f) ICANN hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code (“CCC”) against any Claimant, and shall not object to the standing of any such</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Claimant to participate in or to compel an IRP, or to enforce an IRP Decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.</p> <p>(g) Upon the filing of a Claim, an Independent Review Process Panel (“IRP Panel”, described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure. Following the selection of an IRP Panel, that Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN’s written response (“Response”) in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is filed by ICANN, the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.</p> <p>(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.</p> <p>(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.</p> <p>(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.</p> <p>(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of relevant principles of arbitration, relevant principles of international law, other the norms of applicable law and prior relevant IRP decisions.</p> <p>(iii) For Claims arising out of the Board’s exercise of its fiduciary duties, the IRP Panel shall not replace the Board’s reasonable judgment with its own so long as the Board’s action or inaction is within the realm of</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>reasonable business judgment.</p> <p>(iv) With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN’s obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.</p> <p>(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.</p> <p>(j) Standing Panel</p> <p>(i) There shall be an omnibus standing panel of at least seven members (the “Standing Panel”) each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN's Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN on the workings and management of the Internet's unique identifiers and be required to comply with ICANN's conflict of interest policies;</p> <p>(ii) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(A)ICANN, in consultation with the Supporting Organizations and Advisory Committees, shall initiate a tender process for an organization to provide administrative support for the IRP (“IRP Provider,” described in Section 4.3(m)), beginning by consulting the “IRP Implementation Oversight Team” (described in Section 4.3(n)(i)) on a draft tender document.</p> <p>(B)ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.</p> <p>(C)The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).</p> <p>(D)Final selection shall be subject to Board confirmation.</p> <p>(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.</p> <p>(iv)Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region.</p> <p>(k) IRP Panel</p> <p>(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.</p> <p>(ii) The Claimant and ICANN shall each select one panelist from</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>the Standing Panel, and the two panelists selected by the parties will select the third panelist, as Chair from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider’s rules shall apply to selection of the third panelist.</p> <p>(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members’ individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.</p> <p>(iv) Upon request of an IRP Panel, the Panel shall have access to independent skilled technical experts at the expense of ICANN, although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.</p> <p>(v) IRP Panel decisions shall be made by a simple majority of the Panel.</p> <p>(l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.</p> <p>(m) IRP Provider</p> <p>(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider (“IRP Provider”). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at the direction of the IRP</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Panel, and shall function independently from ICANN.</p> <p>(n) Rules of Procedure</p> <p>(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP (“Rules of Procedure”) that conform international arbitration, norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.</p> <p>(ii) The IRP Rules of Procedures shall be informed by relevant principles of international arbitration, and relevant principles of International law international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA naming functions and are not resolved through mediation. The Rules of Procedure shall take effect upon approval by the Board, such approval shall not to be unreasonably withheld.</p> <p>(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment.</p> <p>(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:</p> <p>(iv) Stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(A)The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;</p> <p>(B)Issues relating to joinder, intervention, and consolidation of Claims;</p> <p>(C)Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant’s Claim and in support of ICANN’s Response;</p> <p>(D)Availability and limitations on discovery methods;</p> <p>(E)Whether hearings shall be permitted, and if so what form and structure such hearings would take;</p> <p>(F)Procedures if ICANN elects not to respond to an IRP; and</p> <p>(G)The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.</p> <p>(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:</p> <p>(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;</p> <p>(ii) Request additional written submissions from the Claimant or from other parties;</p> <p>(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws;</p> <p>(iv) Recommend Require that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;</p> <p>(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;</p> <p>(vi) Determine the timing for each IRP proceeding, and</p> <p>(vii) Determine the shifting award of IRP costs and expenses consistent with Section 4.3(r).</p> <p>(p) A Claimant may request interim relief. Interim relief may</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the status quo. A single member of the Standing Panel (“Emergency Panelist”) shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider’s rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all at least one of the following factors:</p> <p>(i) A harm for which there will be no adequate remedy in the absence of such relief; or</p> <p>(ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and or</p> <p>(iii) A balance of hardships tipping decidedly toward the party seeking relief.</p> <p>(q) Conflicts of Interest</p> <p>(i) Standing-IRP Panel members must be independent of ICANN and its Supporting Organizations and Advisory Committees, and so must adhere to the following criteria:</p> <p>(A) Upon consideration for the Standing-IRP Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.</p> <p>(B) Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN positions.</p> <p>(ii) The IRP Provider shall disclose any material relationship with ICANN, and ICANN contracted third party relevant to the</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>proceeding, a Supporting Organization, an Advisory Committee, or any other participant relevant to the in an IRP proceeding.</p> <p>(r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party’s Claim or defense as frivolous or abusive.</p> <p>(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. For the avoidance of doubt, an IRP Panel’s failure to issue a written decision within six months after the filing of a Claim shall not be grounds for another Claim.</p> <p>(t) Each IRP Panel shall make its decision based solely on the evidence, which shall include documentation, supporting materials, witness statements, expert reports, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.</p> <p>(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings specifically under non-disclosure agreement that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.</p> <p>(v) Subject to this Section 4.3, all IRP decisions shall be written and</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue, and norms as well as relevant principles of International arbitration and relevant principles of International law.</p> <p>(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.</p> <p>(x) The IRP is intended as a final, binding arbitration process.</p> <p>(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.</p> <p>(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over ICANN without a de novo review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.</p> <p>(iii) ICANN intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.</p> <p>(A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.</p> <p>(B) If an IRP Panel decision in a Community IRP is in favor of the EC, the Board shall comply within 30 days of such IRP Panel decision. (C) If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Panel Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.</p> <p>(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP Decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN agrees; provided that such a non-binding IRP Decision is not intended to be and shall not be enforceable.</p> <p>(y) ICANN shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.</p>	
4.3	DotMusic	<p>(a) In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii), below) alleged by a Claimant to be within the scope of the Independent Review Process (“IRP”). The IRP is intended to hear and resolve Disputes for the following purposes (“Purposes of the IRP”):</p> <p>(i) Ensure that ICANN does not exceed the scope of its limited technical Mission and otherwise complies with its Articles of Incorporation and Bylaws.</p> <p>(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable, accessible expert review of Covered Actions.</p> <p>(iii) Ensure that ICANN is accountable to the global Internet community and Claimants.</p> <p>(iv) Address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract.</p>	<p>The proposed revisions to the IRP section have been carefully reviewed, and none of the items are appropriate for inclusion in the Bylaws. The language suggests standards and grounds for the IRP process, propose a monetary award to prevailing participants, extend the IRP to cover actions of third parties, remove the Standing Panel, require ICANN to take affirmative action, remove the community role in developing the IRP Rules, and other items that are either counter to or not supported within the CCWG Proposal.</p> <p>The issue of further addressing panelist conflict of interest procedures is a topic for consideration by the IRP</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(v) Provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI service complaints that are not resolved through mediation. (vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers, Staff members, Supporting Organizations, Advisory Committees, third party contractors, and the global Internet community in connection with policy development and implementation.</p> <p>(vii) Secure the accessible, transparent, efficient, consistent, coherent, unbiased, nondiscriminatory, and just resolution of Disputes.</p> <p>(viii) Lead to binding, final resolutions consistent with international principles of arbitration and international principles of law norms that are enforceable in any court with proper jurisdiction.</p> <p>(ix) Provide a mechanism for the resolution of Disputes, as an initial alternative to legal action in the civil courts of the United States or other jurisdictions. ...</p> <p>(B) (ii) “Covered Actions” are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, agents, contracted third parties or Staff members that give rise to a Dispute. ...</p> <p>(e) Cooperative Engagement Process (i) Except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process (“CEP”) for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time. (ii) The CEP is voluntary. However, except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant or ICANN does not participate in good faith in the CEP, in the timeframe allotted, and ICANN the participating party is the prevailing party in the IRP, the IRP Panel shall award to ICANN the participating party all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.</p>	<p>Implementation Oversight Team.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>... (g) Upon the filing of a Claim, an Independent Review Process Panel (“IRP Panel”, described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure. Following the selection of an IRP Panel, that Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN’s written response (“Response”) in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is filed by ICANN, the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.</p> <p>(h) (ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of relevant principles of arbitration, relevant principles of international law, other the norms of applicable law and prior relevant IRP decisions. (iii) For Claims arising out of the Board’s exercise of its fiduciary duties, the IRP Panel shall not replace the Board’s reasonable judgment with its own so long as the Board’s action or inaction is within the realm of reasonable business judgment.</p> <p>... (j) Standing Panel</p> <p>(i) There shall be an omnibus standing panel of at least seven members (the “Standing Panel”) each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN’s Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN on the workings and management of the Internet’s unique identifiers and be required to comply with ICANN’s conflict of interest policies; (ii) ICANN shall, in</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP. (A) ICANN, in consultation with the Supporting Organizations and Advisory Committees, shall initiate a tender process for an organization to provide administrative support for the IRP (“IRP Provider,” described in Section 4.3(m)), beginning by consulting the “IRP Implementation Oversight Team” (described in Section 4.3(n)(i)) on a draft tender document. (B) ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications. (C) The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B). (D) Final selection shall be subject to Board confirmation. (iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team. (iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region.</p> <p>(k) IRP Panel</p> <p>(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.</p> <p>(ii) The Claimant and ICANN shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist, as Chair from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider’s rules shall apply to selection of the third panelist.</p> <p>(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members’ individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise. ... (n) Rules of Procedure</p> <p>(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP (“Rules of Procedure”) that conform international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.</p> <p>(ii) The IRP Rules of Procedures shall be informed by relevant principles of international arbitration, and relevant principles of International law international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA naming functions and are not resolved through mediation. The Rules of Procedure shall take effect upon approval by the Board, such approval shall not to be unreasonably withheld.</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment.</p> <p>... (o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:</p> <p>(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;</p> <p>(ii) Request additional written submissions from the Claimant or from other parties;</p> <p>(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws;</p> <p>(iv) Recommend Require that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;</p> <p>(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;</p> <p>(vi) Determine the timing for each IRP proceeding, and</p> <p>(vii) Determine the shifting award of IRP costs and expenses consistent with Section 4.3(r).</p> <p>(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the status quo. A single member of the Standing Panel (“Emergency Panelist”) shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider’s rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all at least one</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>of the following factors: (i) A harm for which there will be no adequate remedy in the absence of such relief; or (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and or (iii) A balance of hardships tipping decidedly toward the party seeking relief. (q) Conflicts of Interest (i) Standing IRP Panel members must be independent of ICANN and its Supporting Organizations and Advisory Committees, and so must adhere to the following criteria: (A) Upon consideration for the Standing IRP Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding. (B) Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN positions. (ii) The IRP Provider shall disclose any material relationship with ICANN, and ICANN contracted third party relevant to the proceeding, a Supporting Organization, an Advisory Committee, or any other participant relevant to the in an IRP proceeding. (r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party’s Claim or defense as frivolous or abusive. ...(t) Each IRP Panel shall make its decision based solely on the</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p><u>evidence, which shall</u> include documentation, supporting materials, <u>witness statements, expert reports</u>, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.</p> <p>(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings <u>specifically</u> under <u>non-disclosure agreement</u> that could materially and unduly harm participants if conducted publicly. ...</p> <p>(v) Subject to this Section 4.3, all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue, and norms as well as <u>relevant principles of International arbitration and relevant principles of International law.</u></p> <p>...(x) The IRP is intended as a final, binding arbitration process.</p> <p>(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.</p> <p>(ii) IRP Panel <u>decisions and decisions of an en banc Standing Panel upon an appeal</u> are intended to be enforceable in any court with jurisdiction over ICANN without a de novo review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law. (iii) ICANN intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.</p> <p>(A)Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law. (B)If an IRP Panel decision in a Community IRP is in favor of the EC, the Board shall comply within 30 days of such IRP Panel decision. (C)If the Board rejects an IRP Panel decision without undertaking an appeal to the en-banc Standing Panel or rejects an en-banc Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action. ...</p>	
4.3	International Trademark Association	<p>The following language is not found in the CCWG Report:</p> <p>“Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.”</p> <p>While this may be a good outcome, the language does not make it clear whether or not the drafting team means that the IRP is exclusive, i.e., that it is the alternative to court action or an alternative to court action. This is an important distinction as we do not wish to create a scenario in which ICANN can argue claim preclusion should an aggrieved party not take advantage of the IRP.</p> <p>We suggest that this language either be deleted or clarified to make it clear that the existence of an IRP option does not work to exclude court action. If clarified, an additional public comment period will be necessary to ensure that the drafting team has adequately addressed the issue.</p>	<p>The words “an alternative” were carefully selected to support the availability of the IRP as an option for claimants, who would otherwise only have recourse through courts. The Bylaws do not have the legal force of a contracted-for waiver or arbitration clause that could require exclusive use of the IRP, and no clarifications are needed to support the plain reading of the text.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	International Trademark Association	<p>Section 4.3(h) – <i>“After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel, and shall advise the IRP Panel of any such efforts, including CEP, via a joint submission. the IRP Panel of any such efforts, including CEP, via a joint submission.”</i></p>	<p>The CEP process will be further considered through WS2 and the IRP Implementation Oversight Team and additional changes to the Bylaws, if any, will be recommended at the appropriate time.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(i) – “ <i>Each IRP Panel shall conduct a de novo examination of the Dispute based on the record of the proceedings.</i> ”	This change is not necessary to maintain consistency with the CCWG Proposal. It is not clear what “proceedings” should be considered to include, and this modification could introduce confusion. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(i)(iv) – “ <i>With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN’s obligations under the IANA Naming Function Contract such that the alleged breach has resulted in material harm to the Claimant.</i> ”	This change is not necessary to maintain consistency with the CCWG Proposal. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(j)(i) – “ <i>There shall be an omnibus standing panel of at least seven members (the “Standing Panel”) each of whom shall possess significant relevant legal expertise in one two or more of the following areas: international law, commercial law, intellectual property law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, as a result of experience or study developed over time, regarding the DNS and ICANN’s Mission, work, policies, practices, and procedures. Members of the Standing Panel shall also receive at a minimum training from ICANN on the workings and management technical and administrative operation of the Internet’s unique identifiers.</i> ”	The requested modification is a variance from the skill levels identified at Annex 7, Paragraph 37 of the CCWG Report. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(k)(iv) – “ <i>Upon request of an IRP Panel, the Panel shall have access to ICANN shall at its own expense provide the Panel with access to independent skilled technical experts. All substantive interactions between the IRP Panel and such experts</i>	This change is not necessary to maintain consistency with the CCWG Proposal. The Bylaws already specify that ICANN would be responsible for the costs of

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<i>shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.”</i>	obtaining expertise. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(o)(i) – Suggest revising to read: <i>“Determine that a Dispute has been brought by a party that lacks standing, lacks bona fide substance or is otherwise frivolous or vexatious, or that the IRP Panel has no jurisdiction over the Dispute; and to summarily dismiss any such Dispute, provided such summary dismissal and the reasons therefore are promptly posted on the website;”</i>	While noting items worthwhile for consideration, the details within this recommended text go beyond the recommendations of the CCWG Proposal. The detailed listing of when summary dismissal may be appropriate seems well suited for consideration by the IRP Implementation Oversight Team and Provider when determining the rules applicable for the proceedings. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(o)(vi) – Suggest revising to read: “Determine the timing- <i>Manage scheduling matters for each IRP proceeding.”</i>	This clarifying text is not necessary for consistency with the proposal. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	International Trademark Association	Section 4.3(r) – <i>“ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may direct shift and provide for the losing party to pay administrative costs and/or fees of the prevailing</i>	This clarifying text is not necessary for consistency with the proposal. No revisions to the ICANN Bylaws are recommended in response to this comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<i>party in the event it identifies the losing party’s Claim or defense as frivolous, vexatious or abusive.”</i>	
4.3	International Trademark Association	Section 4.3(u) – Suggest revising to read: “ <i>All IRP Panel proceedings shall be conducted on the record, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. Similarly, documents filed in connection with IRP Panel proceedings shall be posted on the Website subject to the same considerations, except that to the extent any such materials are withheld from publication, only such information as is necessary to insure the protection of participants shall be withheld or redacted and the remainder shall be published. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party’s request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding and the foregoing restrictions on limiting publication are applied.</i> ”	This clarifying text is not necessary for consistency with the proposal. Considerations that could guide the Panel in making confidentiality determinations could be raised within the IRP Implementation Oversight Team. No revisions to the ICANN Bylaws are recommended in response to this comment.
4.3	IPC	The IPC also notes that in Sections 4.3(a)(i) and 4.6(c)(iii) the term “limited technical Mission” is used. As this term is not used other instances of “Mission” in the Bylaws, IPC requests that both uses of this qualifier be deleted as ICANN’s Mission is defined in Section 1 with explicit limitations constraining the scope of ICANN’s activities. The use of differing terminology here creates confusion, ambiguity and the chance for misinterpretation. While the IPC has reservations with certain aspects of the changes to ICANN’s Mission, the changes as a whole affirm ICANN’s ability to negotiate, enter into and enforce agreements in furtherance of its Mission, and clarify that the terms and conditions of existing agreements are within the scope of its Mission, including as a general matter the types of the issues, policies, procedures and principles set forth in Specifications 1 and 4 to the RA and RAA.	The term “limited technical” will be removed where it appears in the Bylaws.
4.3	IPC	4.3(b)(ii) Include “constituent bodies.” This is generally covered by	The CCWG Proposal does not support

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Greg Shatan	Sec. 4.3(b)(iii)(2) but should also be included here for clarity.	<p>that expansion in the draft Bylaws. The WS2 effort on SO/AC accountability will include the topic of how decisions of constituent bodies can be challenged, including IRPs. This recommendation will be considered as part of that WS2 effort.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(e)(ii) Define circumstances demonstrating “good faith” participation in the CEP. Add “reasonable” in last clause, so that IRP panel has discretion to disallow unreasonable ICANN legal fees.	<p>Case law provides significant guidance as to what constitutes “good faith.” The IRP Implementation Oversight work on the CEP may also determine to consider this as part of its efforts. It is not necessary to include this guidance in the Bylaws.</p> <p>The concept of “reasonable” is already included in the final sentence and need not be repeated in the cited clause.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(g). Amend “as understood in light of prior IRP Panel decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue” to “as understood in light of prior IRP Panel decisions decided under any analogous provision of the Articles of Incorporation and Bylaws at issue.” (See, e.g., new Sec. 4.3(i)(i) referring to “prior relevant decisions.”) ICANN must not be allowed to disregard the growing body of existing IRP precedent, merely by amending its Bylaws (even immaterially). Also, add “timely” before “filed” in last sentence. 4.3(i)(iii) Define	<p>Agree that amending 4.3(g) would help to clarify the point, but recommend edit as follows: “as understood in light of prior IRP Panel decisions decided under the same version of the provision (<u>or a equivalent prior provision</u>) of the Articles of Incorporation and Bylaws at issue.”</p> <p>Also agree with adding “timely” before</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		new key term “reasonable business judgment” with reference to applicable law.	<p>“filed” in the last sentence: “If no response is <u>timely</u> filed by ICANN...”</p> <p>The term” reasonable business judgment” is a well-understood legal concept and incorporating a definition into the Bylaws is not necessary.</p>
4.3	IPC	4.3(j)(i) In last sentence, amend “training provided by ICANN” to “training developed by the “IRP Implementation Oversight Team” (described in Section 4.3(n)(i)) and paid by ICANN.” ICANN cannot be allowed to unilaterally determine the training materials for IRP panelists without community input and development.	<p>Amend to read: “Members of the Standing Panel shall receive, at minimum, training provided by ICANN on the workings and management of the Internet’s unique identifiers <u>and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).</u>”</p> <p>Note that training will be an ongoing need, long after the IRP IOT has completed its work. The IRP IOT should include recommendations on training requirements as part of its implementation work.</p>
4.3	IPC	4.3(j)(ii)(B) Replace “ICANN” with “IRP Implementation Oversight Team.”	<p>This is not consistent with the proposal, and 4.3(j)(ii) already makes clear that the four-step process to establish the Standing Panel is done “in consultation with the Supporting Organizations and Advisory Committees,” and in (A) that the IRP Implementation Oversight Team has a role in consulting on the draft tender document, thereby ensuring appropriate community input. It is ICANN’s obligation to issue the call for expressions of interest, informed by these consultations. Note also that there may also be future instances</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>where new calls will need to be made, and the IOT is not envisioned as a standing body.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(j)(ii)(D) The Board should not have discretion to confirm the panelists that will decide challenges to Board actions, at least not without providing reasoning and subject to defined criteria for refusing to confirm any nominated panelist.	Annex 7, Paragraph 44, of the proposal describes the panel selection process, and specifically states that, while the community nominates a slate, “Final selection is subject to ICANN Board confirmation.” However, to ensure the Board’s discretion cannot be abused, we recommend adding “, which shall not be <u>unreasonably withheld</u> ” at the end of the clause.
4.3	IPC	4.3(k)(ii) Consider a “strike” process as used in current IRP proceedings, rather than requiring the party panelists to select the third arbitrator. The “strike” process allows parties to research and strike panelists who are perceived to have any potential bias, or are unduly expensive, etc., which the parties’ panelists may not consider important.	<p>Annex 7, Paragraph 52, of the proposal clearly contemplates that the two panelists selected by each party will select the third. This proposed method of selection was provided to balance established methods of selection of panelists with expediency of reaching selections. There is nothing in this section that would preclude considerations of perceived bias or conflict once a panelist is identified. The proposed change is not consistent with the proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(n)(i) Composition of the Oversight Team should be defined, particularly with respect to any participation by ICANN Staff	As the IRP IOT has already been formed, additional procedural requirements in the

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		and/or counsel. Moreover, there are existing IRP Rules (including ICDR Rules) that generally have met the criteria of this section, and at minimum should be carefully considered by the Oversight Team with any amendments understood to improve the existing Rules to make ICANN more accountable, rather than replace them wholesale.	<p>Bylaws for this initial implementation work are unnecessary. The IOT may consider any sources of rules that it deems appropriate when doing its work.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(n)(ii) The Board’s right to “approval” of the IRP Rules should be circumscribed; they should not be able to pick and choose among the community-proposed Rules nor to amend them without approval of the Oversight Team.	<p>Agreed. That is the intent of including “such approval not to be reasonably withheld” within this section.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(n)(iv)(D) The Bylaws or IRP Rules should not restrict panel discretion to fashion appropriate discovery in any given case.	<p>The Bylaws do not restrict what discovery methods will be available, but do direct the IOT, in consultation with the provider, to develop IRP Rules – including rules relating to discovery in IRP proceedings – that are appropriate and in line with the purpose of the IRP.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(n)(iv)(E) Hearings are permitted at discretion of the panel, per the DCA Trust decision. The Bylaws should not restrict panel discretion in this regard.	<p>The Bylaws do not restrict hearings, but direct the IOT, in consultation with the provider, to develop IRP Rules – including rules relating to hearings – that are appropriate and in line with the purpose of the IRP.</p> <p>No revisions to the ICANN Bylaws are</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			recommended in response to this comment.
4.3	IPC	4.3(n)(iv)(G) Any appeal mechanism would conflict with the core IRP Principles that IRP proceedings be efficient and cost-effective, and that IRP decisions be final – and would materially change the current Bylaws which do not provide any appeal mechanism. The Oversight Team should retain discretion regarding whether to develop any appeal mechanism; it should not be mandated in this version of the Bylaws.	<p>The proposal includes reference to appeals of IRP determinations at Annex 7, Paragraph 12. Therefore, failure to address appeals would be inconsistent with the proposal. Providing for appeals does not contradict the finality of IRP decisions since the appeal is part of the IRP proceeding. The IOT, in consultation with the provider, has discretion to develop the IRP Rules relating to appeals.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(o)(iv) Amend to read “Require that the ICANN Board take any specified action to remedy its violation of the Articles and/or Bylaws.” IRP panels must be able to fashion affirmative relief, rather than merely “recommend” that ICANN address its own failures. The DCA Trust panel set out two lengthy, persuasive discussions of this issue (Final Declaration, ¶¶ 118-133, and Final Declaration on IRP Procedure, ¶¶ 96-128), including the fact that ICANN still has not complied with its own Bylaws as to formation of a standing IRP panel, years after adopting the Bylaws and nearly two years after an IRP declaration finding such failure to be a violation of its Bylaws. ICANN has demonstrated that it cannot be trusted to follow either its own Bylaws or the decisions of IRP panels, and so the new Bylaws must make ICANN more accountable to IRP panel decisions.	<p>The proposal, at Annex 7, Paragraph 16, makes clear that the outcome of an IRP is a declaration that an action/failure to act complied or did not comply with ICANN’s Articles of Incorporation and/or Bylaws. Therefore, failure to address this would be inconsistent with the Proposal. Further, allowing IRP panels to craft affirmative relief and to direct ICANN how to remedy that failure could be incompatible with the ICANN Board’s fiduciary duties in certain circumstances.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(v) Replace “the same version of” with “any analogous provision of.” (See, e.g., new Sec. 4.3(i)(i) referring to “prior	Modification is being made to address the “analogous” issue.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>relevant decisions.”) ICANN must not be allowed to disregard the growing body of existing IRP precedent, merely by amending its Bylaws (even immaterially).</p> <p>Also, the Bylaws should require that all parties’ briefs and all panel orders and decisions be maintained by ICANN in a searchable format on the Website – many current IRP documents and decisions are not maintained by ICANN in a searchable format.</p>	<p>A searchability requirement was not provided in the proposal. The IOT, in developing IRP Rules in consultation with the provider, may consider what form briefs and other party submissions should be required to take, including whether they should be in searchable format, and may also determine whether to require that panel orders and decisions be created and whether they must be maintained in searchable format.</p>
4.3	IPC	<p>4.3(w) The Standing Panel may consist of any number greater than 7 panelists, so it may not be practical to have the entire panel hear an appeal en banc. It also may not be advisable to have an appeal mechanism, as previously noted. (See also Sec. 4.3 (x) “The IRP is intended as a final, binding arbitration process.”) Typically, arbitration processes are not subject to appeal except in very limited circumstances such as conflict of interest.</p>	<p>Agree that the issue raised regarding the potential growth in size of the en banc panel is worth further consideration, but this is not necessary to address in the Bylaws. The IOT may consider whether to provide for a subset of all Standing Panel members to serve as the en banc appeals panel if it determines that having the entire Standing Panel serve could become unwieldy. This may require a future Bylaws amendment.</p> <p>The proposal includes reference to appeals of IRP determinations at Annex 7, Paragraph 12. Therefore, failure to address appeals would be inconsistent with the proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
4.3	IPC	4.3(x)(iii)(A) ICANN cannot be allowed to “reject compliance with the decision.” This is inconsistent with the entire notion of the IRP, as previously noted and exhaustively discussed in the DCA Trust panel declarations.	<p>If the ICANN Board refuses to comply with an IRP decision, the EC has the power to enforce it following the applicable escalation process, including going to court or recalling the Board if necessary. See Annex 2, Paragraph 44, and Annex 7, Paragraph 58 of the proposal; and Sections 4.3(x)(iii)(B), 6.2(b), and 7.11(a)(iii), and Annex D, Section 3.3, of the draft Bylaws. The cited Bylaws provision only requires the ICANN Board to affirmatively state its position with respect to an IRP decision; if it rejects a decision, it must face the consequences that follow. The following sentence of the draft Bylaws makes that clear: “The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.”</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(x)(iv) It is not fair that the Claimant is bound by an IRP decision, but ICANN is not.	<p>Both the Claimant and ICANN are bound by IRP decisions, and face consequences if they fail to comply with such decisions.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	IPC	4.3(x)(v) Replace “ICANN” with “IRP Implementation Oversight Team.” Again, ICANN cannot have complete discretion to develop rules and policies by which its decisions are to be challenged.	<p>This suggested edit is not supported by the proposal. The Bylaws do not give ICANN “complete discretion to develop rules and</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>policies by which its decisions are to be challenged.”</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	<p>E. Section 4.3(a)(ix) adds new language creating an ambiguity that could allow ICANN to argue claim preclusion should an aggrieved party take advantage of the Independent Review Process and prevent them from seeking relief in a U.S. court.</p> <p>F. Section 4.3(i)—CCWG Report states, “The panel MAY undertake a de novo review of the case...” but ICANN bylaws state, “Each IRP Panel SHALL conduct an objective, de novo examination of the Dispute” which is a material change and could result in unintended consequences such as more expensive IRP proceedings, could have a chilling effect on filing due to ICANN’s right to shift costs if it prevails, could result in delays in decisions resulting in ongoing commercial harm to aggrieved parties, etc.</p> <p>G. Section 4.3(n) This section contains limitations on the rules of procedures for IRPs which were supposed to be within the purview of the CCWG, but also lurch squarely into substance; see e.g., 4.3(n)(iv)(c) which indicates the rules of procedure will set forth the elements of claims (“Rules governing written submissions, including the required elements of a Claim) [ICANN also included] Other new sections: 4.3(j), 12.2(a)(x), etc.</p>	<p>The ICANN Bylaws do not contain language that would preclude a claimant in an Independent Review Process from seeking relief in a U.S. Court. The language cited at 4.3(a)(ix) only states a goal that IRP is available as an alternative to court proceedings.</p> <p>The comments on additional sections of 4.3 do not require modification to address. It is important that there is a well-defined standard of review. Further, and characterizing the cost-shifting provision as “ICANN’s” right, is not correct, as it is a matter within the discretion of the IRP Panel.</p> <p>The IRP Implementation Oversight Team will work with the IRP Provider to develop the appropriate rules for the improved IRP. The items identified in the Bylaws are those that should be covered by the Rules.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	Liu Yue	4.How to describe conflict of interest for IRP panelists and include	The IRP Implementation Oversight Team

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		this principle into the Bylaw?	<p>will be working to address issues of conflict of interest for IRP Panelists. While the issue raised is important, no modification to the Bylaws is needed to address this topic.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.3	Liu Yue	(j) Standing Panel (iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region. What is the 'Reasonable efforts'? The 'Diversity' should be fully supported.	The IRP Implementation Oversight Team will be working to address issues of panel composition. While the issue raised is important, no modification to the Bylaws is needed to address this topic.
4.3(a)(i) and 4.6(c)(iii)	ICANN Business Constituency	<p>..... regarding the phrase “limited technical” appearing before “Mission” in only 2 instances in the entire Bylaws. 4.3(a)(i) (Ensure that ICANN does not exceed the scope of its limited technical Mission and otherwise complies with its Articles of Incorporation and Bylaws. and 4.6 (c) (iii) The SSR Review Team shall also assess the extent to which ICANN has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS, and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS, consistent with ICANN’s limited technical Mission.</p> <p>BC Comment: Both of the above paragraphs match CCWG Final report text in using the phrase “limited technical” before the term “Mission”. However, these are the only 2 instances in the draft Bylaws where that qualifier is used. Thirty other instances of the term “Mission” have no such modifier. No modifier is needed because In Section 1 of the draft Bylaws, ICANN’s Mission is described with explicit limitations to constrain the scope of ICANN activities. It is therefore inconsistent and unnecessary to add</p>	The phrase “limited technical” is being removed.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>“limited technical” before “Mission” in Sections 4.3(a)(i) and 4.6 (c) (iii), so we request that “limited technical” be deleted.</p>	
4.3(a)(i)	U.S. Council for International Business	<p>Independent Review of Covered ICANN Actions – Concerning Section 4.3 (a)(i), we propose striking “limited technical” on grounds that ICANN’s mission is clearly defined in Section 1 of the draft Bylaws with explicit limitations to constrain the scope of ICANN activities. We therefore proposed that the text be revised as follows: (i) Ensure that ICANN does not exceed the scope of its limited technical Mission and otherwise complies with its Articles of Incorporation and Bylaws.</p>	<p>The references to “limited technical” have been removed.</p>
4.3(s)	CCWG-Accountability	<p>Issue: Some members of the CCWG are concerned that the language “<i>For the avoidance of doubt, an IRP Panel’s failure to issue a written decision within six months after the filing of a Claim shall not be grounds for another Claim</i>” may be inconsistent with CCWG Proposal, Annex 7, which contemplates that, absent unusual circumstances, an IRP will be completed within six months of the filing of the Claim. However, nowhere does the CCWG Proposal contemplate an IRP against an IRP Panel for failure to issue a timely decision, nor does the CCWG Proposal contemplate an IRP against ICANN to hold an independent IRP Panel, over which ICANN has no control, accountable for failure by the IRP Panel to issue a timely decision.</p> <p>Recommendation: The CCWG Proposal was silent as to the means for ensuring that an independent IRP Panel would complete the IRP within six months and this should be addressed in the Rules of Procedure. Consideration should also be given to whether the sentence that begins “For the avoidance of doubt” is necessary to assure that an IRP Panel failure to meet the six-month deadline is not grounds for a new IRP against ICANN.</p>	<p>Upon review, no additional changes are warranted. This Bylaws provision remains consistent with the CCWG Proposal.</p>
4.4	Dot Registry LLC	<p>(a) The Board shall cause a periodic annual review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other</p>	<p>The CCWG Proposal did not make any recommendations to vary the length of the organizational reviews. Further, annual</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine</p> <p>(i) whether that organization, council or committee has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.</p> <p>These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.</p> <p>The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC under the Articles of Incorporation and these Bylaws.</p> <p>(b) The Governmental Advisory Committee shall provide its own review mechanisms.</p>	<p>reviews would be unsustainable from a volunteer and resource perspective. The five-year cycle for organizational reviews has been in place for years.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.4	DotMusic	<p>(a) The Board shall cause a periodic annual review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a</p>	<p>The CCWG Proposal did not make any recommendations to vary the length of the organizational reviews. Further, annual reviews would be unsustainable from a volunteer and resource perspective. The five-year cycle for organizational reviews has been in place for years.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders. These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group....</p>	<p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.5	Dot Registry LLC	<p>ICANN will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required by Section 4.6 and the status of ICANN’s implementation of the Consensus supported recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review (“Annual Review Implementation Report”). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.</p>	<p>No change is recommended or necessary.</p>
4.6	Holly Raiche	<p>This comment is more about the implementation of a specific Bylaw than the actual Bylaw. Bylaw 4.6 (e) Specific Reviews - Registration Directory Service Review requires (under (iv) and (v) that an RDS Review (iv) assess the extent to which prior RDS review recommendations have been implemented and (v) that an RDS review be conducted at least every five years from the date of the last review. The last RDS Review - The Whois Review Final Report - was released in May 2012. Arguably, that would mean that the next RDS review be held within the next year. However, a GNSO WG on the many issues surrounding RDS has been established within the past year, and given its broad charter, is not likely to complete its charter tasks within the next year - or two (let</p>	<p>The CCWG-Accountability did not make a recommendation regarding the delay of any reviews in favor of policy work. Similarly, from the inception of the AoC, there has not been discussion of delaying a review of how policy was being implemented in favor of the development of new policy. While there will be overlap between the two areas, maintaining a commitment to perform the review in a timely fashion is important, and that the review and the policy work</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>alone have Board acceptance of the Review and its implementation. While there is limited scope for a review of the implementation of recommendations from the last Whois Review, there is no point to establishing a broader RDS review while ever the current RDS WG is working through its Charter tasks. Therefore, compliance with the By-laws on an RDS review - if it is conducted at all - should be a very limited one, recognising that those in the community (members of GNSO, ALAC and other communities) that are concerned about RDS issues are already committed to addressing RDS issues as part of the current GNSO RDS WG - with little if any time or resources to participate in another RDS review. The consequence for the wording of these provisions of the Bylaw on RDS reviews should, therefore, be worded so as to maintain a commitment to the ongoing review of RDS - but not take effect until the current RDS WG Charter tasks are complete and the Board has accepted the final report</p>	<p>can proceed at the same time.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.6	Dot Registry LLC	<p>(a) Review Teams and Reports (i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the “Operating Standards”). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN. The Operating Standards must be aligned with the following guidelines: (A) Each Supporting Organization and Advisory Committee</p>	<p>The proposed revisions to this section are not in line with the CCWG Report. The CCWG Report specifies that a Confidential Disclosure Framework will be developed and posted, so the recommended edits to the disclosure portion should be raised during the development of that document. The proposed revisions to the frequency of reviews are in direct contradiction to the five-year cycle recommended for each of the AoC reviews. Similarly, the suggested edits to the time frames that the review teams have to complete their reports and for the Board to act on those reports vary from the requirements in the CCWG Report. None of the proposed edits are appropriate for incorporation into</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>participating in the applicable review may nominate up to seven prospective members for the review team;</p> <p>(B) Any Supporting Organization or Advisory Committee nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and</p> <p>(C) If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member seats shall be filled and, if so, how the seats should be allocated from among those nominated.</p> <p>(ii) Members and liaisons of review teams shall disclose to ICANN and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and operating standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.</p> <p>(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.</p> <p>(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.</p> <p>(v) Each review team may recommend termination or amendment</p>	<p>the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>of its respective review for subsequent reviews in its final report to the Board.</p> <p>(vi) Confidential Disclosure to Review Teams: (A) To facilitate transparency and openness regarding ICANN’s deliberations and operations, the Review Teams, or a subset thereof, shall have access to ICANN internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards. The Confidential Disclosure Framework must be aligned with the following guidelines: (1) ICANN must provide awritten justification for any refusal to reveal requested information. ICANN’s refusal can be appealed to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request. (2) ICANN may designate certain documents and information as “for review team members only” or for a subset of the review team members based on established conflict of interest policy. ICANN’s designation of documents may also be appealed to the Ombudsman and/or the ICANN Board. (3) ICANN may require review team members to sign a non-disclosure agreement before accessing documents only if such documents qualify as privileged, as defined by law, or are subject to confidentiality restrictions.</p> <p>(vii) Reports (A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a-minority its dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization. (B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.</p> <p>(C) Each final report of a review team shall be published for public comment in advance of the Board’s consideration. Within sixthree months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board’s decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.</p> <p>(b) Accountability and Transparency Review</p> <p>(i) The Board shall cause an annual periodic review of ICANN’s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community (“Accountability and Transparency Review”).</p> <p>(ii) The issues that the review team for the Accountability and Transparency Review (the “Accountability and Transparency Review Team”) may assess are the following:</p> <p>(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition’s and allocation structure meets ICANN’s present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;</p> <p>(B) assessing the role and effectiveness of the GAC’s interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;</p> <p>(C) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);</p> <p>(D) assessing the extent to which ICANN’s decisions are supported and accepted by the Internet community;</p> <p>(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and</p> <p>(F) assessing and improving the Independent Review Process.</p> <p>(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.</p> <p>(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.</p> <p>(v) This Accountability and Transparency Review Team should issue its final report within one year six months of convening its first meeting.</p> <p>(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.</p> <p>(c) Security, Stability, and Resiliency Review</p> <p>(i) The Board shall cause an annual periodic review of ICANN’s execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet’s system of unique identifiers that ICANN coordinates (“SSR Review”).</p> <p>(ii) The issues that the review team for the SSR Review (“SSR</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Review Team”) may assess are the following: (A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet’s system of unique identifiers;</p> <p>(B) conformance with appropriate security contingency planning framework for the Internet’s system of unique identifiers; and</p> <p>(C) maintaining clear and globally interoperable security processes for those portions of the Internet’s system of unique identifiers that it coordinates.</p> <p>(iii) The SSR Review Team shall also assess the extent to which ICANN has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS, and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS, consistent with ICANN’s limited technical Mission.</p> <p>(iv)The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.</p> <p>(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.</p> <p>(d) Competition, Consumer Trust and Consumer Choice Review</p> <p>(i) ICANN will ensure that it will adequately properly and timely address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS pursuant to an application process initiated on or after the date of these Bylaws (“New gTLD Round”).</p> <p>(ii) After a New gTLD Round has been in operation for one year, the Board shall initiate a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) (“CCT Review”).</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>(iii) The review team for the CCT Review (“CCT Review Team”) will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD Round’s application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD Round.</p> <p>(iv) For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.</p> <p>(v) The CCT Review Team shall also assess the extent to which prior CCT Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.</p> <p>(e) Registration Directory Service Review</p> <p>(i) Subject to applicable laws, ICANN will shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.</p> <p>(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data (“Directory Service Review”).</p> <p>(iii) The review team for the Directory Service Review (“Directory Service Review Team”) will consider the Organization for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and amended in 2013 and may be amended from time to time.</p> <p>(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>implemented and the extent to which implementation of such recommendations has resulted in the intended effect.</p> <p>(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened</p>	
4.6	IPC	<p>IPC remains concerned that the Bylaws should ensure that appropriate participants are selected for review teams, and in particular should guarantee that constituencies or stakeholder groups most directly impacted by the subject matter of particular reviews receive adequate direct representation on those review teams (e.g., representation of the diversity of GNSO interests on the review of gTLD registration directory services [4.6.e] and of gTLD expansions [4.6.d]). This concern could be encompassed within the requirement that teams be “balanced for diversity and skill,” though it would be preferable to make this “most directly impacted” criterion an explicit factor in selection.</p> <p>Section 4.6(a) directs the development of Operating Standards to guide the selection process. These Standards could provide a path for enshrining this “most directly impacted” criterion in the selection process for review teams. We are disappointed, however, that the selection process laid out in the section 4.6(a) could, under some circumstances, lead to a review team in which there are as few as 3 participants from the GNSO. Such a scenario would make it very difficult to meet the “most directly impacted” criterion with respect to IPC in the two reviews mentioned above.</p> <p>Section 4.6(a) also vests the selection decision in “the Chairs of the Supporting Organizations and Advisory Committees participating in the applicable review.” Under the current Bylaws, the chair of the GNSO is selected by the GNSO Council and is primarily responsible for GNSO Council activities, which are confined to managing the policy development processes of the GNSO. Giving the GNSO Chair the important new responsibility (in cooperation with a handful of others) to select members of these review teams would be a dramatic expansion of that role, and necessarily requires</p>	<p>The CCWG Proposal did not include a “most directly impacted” standard for the selection guidelines to be incorporated into the Bylaws. The Operating Standards development will rely on community participation, and ICANN encourages this concern to be raised there. Note, the Operating Standards cannot be developed in a manner that would contradict the Bylaws.</p> <p>Annex 9, Paragraph 55 of the CCWG Report specifies this selection role as the responsibility of the SO/AC Chairs.</p> <p>The concerns raised regarding the expansion of the GNSO Chair’s role does not require a Bylaws amendment. The need for Decisional Participants to undertake the necessary work of organizing participation in the EC is a valid concern, and ICANN encourages all Decisional Participants to begin consideration of what each requires to allow for full and meaningful participation.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>a complete review of the duties of the GNSO chair and how he or she is chosen and held accountable. Optimally, such a review would be completed before the revised Bylaws enter into force. It would also be preferable for the Bylaws to allow each SO and AC to decide who should participate in the selection process, rather than dictating that the chair of each group do so. This could be accomplished by revising the sentence above to read “the Chairs (or other designees) of the Supporting Organizations and Advisory Committees....” In general, IPC supports the provisions of this section regarding the timing and frequency of these reviews. We note that under section 4.6.a.v, each review team may recommend amendments to the terms of subsequent reviews on the same topic, which could include timing changes. But we would not at this point support delaying any of these reviews beyond the time frames set forth in the Bylaws.</p> <p>Specifically, regarding Section 4.6(e)(v) on the timing of the Directory Service Review (currently required under the AoC), IPC does not share the concerns of some regarding the timing reflected in this new bylaw. IPC believes ICANN should begin the Directory Service review as soon as possible. IPC does understand concerns have been expressed that this review may impact policy development currently underway on a next generation registration directory service however we assert that the Directory Service review should occur in parallel with existing PDP work. This not only ensures ICANN meets its requirements to enforce existing consensus policy and contractual obligations, but also gives the newly adopted Bylaws the respect they deserve.</p>	comment.
4.6	Registries Stakeholder Group (RySG) <i>supported by the Registrars Stakeholder</i>	Request: With respect to the timing/frequency of reviews we believe that the bylaw language should be amended by the lawyers in such a manner as to take into account the schedule/occurrence of reviews in the years immediately preceding the IANA transition as well as the existing demands on the pool of volunteers within the ICANN community engaged in ongoing policy development work.	The WHOIS/RDS Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in October 2016 and ICANN remains committed to that timing.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	<i>Group (RrSG)</i>	b. Rationale: The language should provide “reasonably necessary” room to adjust so that the new bylaw language does not (through an unintended consequence) cause a series of “restarted” scheduled reviews in a manner that loses track of the existing schedule or that fails to recognize that many of the experts needed for reviews work are already laboring under a heavy volunteer schedule.	A short modification to the language is being made to require the prompt initiation of the review while confirming that ICANN is not in violation of the Bylaws.
4.6	U.S. Council for International Business	<p>Annual Reviews – USCIB comments have consistently called for enshrining the Affirmation of Commitments reviews into the Bylaws. These reviews include the Accountability and Transparency Review (ATRT), the Security, Stability, and Resiliency Review (SSR), the Competition, Consumer Trust, and Consumer Choice Review (CCT), and the Registration Directory Service Review (Whois/Directory Service Review). These reviews are a central aspect of the accountability and transparency framework, and in some areas address matters that would otherwise not be addressed in the Bylaws.</p> <p>In general, we support the inclusion of this element of the CCWG-Accountability proposal as Section 4.6, requiring ICANN to produce an annual report on the status of all review processes and the status of ICANN’s implementation of the consensus-supported recommendations set forth in the final reports issued by the review teams.</p> <p>However, we share the BC’s concerns about <i>the timing</i> of these reviews as follows:</p> <ul style="list-style-type: none"> • Draft Bylaws Section 4.6(b)(vi), regarding the timing of the ATRT, calls for a review no less frequently than every five years measured from the date of the previous ATRT. We note that the previous ATRT was convened in February 2013, which means that ATRT-3 could begin as late as February 2018. USCIB urges ICANN to take advantage of the extra year (2017) to address accountability items called for in Work Stream 2 from the CCWG’s final proposal before beginning ATRT-3. • Draft Bylaws Section 4.6(c)(v), regarding the timing of the SSR, calls for a review no less frequently than every five years, 	<p>The timing of the initiation of the ATRT3 review is an implementation item that does not require any modifications to the Bylaws.</p> <p>The SSR Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in June 2016 and ICANN remains committed to that timing.</p> <p>The WHOIS/RDS Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in October 2016 and ICANN remains committed to that timing.</p> <p>A short modification to the language is being made to require the prompt initiation of the review while confirming that ICANN is not in violation of the Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>measured from the date of the previous SSR. Since the previous SSR was convened in 2010, the next required review would have been October 2015. We are concerned that ICANN already is failing to meeting this obligation. We join the BC in urging ICANN to follow through on the Board-approved 2016 start date for the SSR-2 review. We further urge that the SSR-2 evaluates the extent to which ICANN is prepared to meet future challenges and threats to the security, stability, and resiliency of the Internet DNS, consistent with ICANN’s mission.</p> <ul style="list-style-type: none"> • Draft Bylaws Section 4.6(e)(v), regarding the timing of the Whois/Directory Service Review, calls for a review no less frequently than every five years measured from the date of the previous Whois/Directory Service review. The previous Whois review was in October 2010, which would have required the next review to be in October 2015. Similar to our concerns about the lateness of the SSR review, USCIB is worried that the Whois/Directory Service review already is one year past-due, which would make ICANN non-compliant with the new Bylaws upon their adoption. We join the BC in urging ICANN to follow through on the Board-approved resolution to begin the Whois-2 review in 2016. 	
4.6(b)(ii)	CCWG-Accountability	<p>Issue: The use of “may assess” does not properly implement CCWG Proposal Annex 9, Paragraph 84 which states: "Issues that may merit attention in this review include:" The Draft Bylaws formulation may unintentionally restrict the list of issues that are within the scope of the review team.</p> <p>Recommendation: Review the language to ensure it is consistent with the CCWG Proposal.</p>	A revision was incorporated as recommended to address this comment.
4.6(b)(ii)(A)	Registries Stakeholder Group (RySG) <i>supported by the Registrars</i>	<p>Requested change: Insert “(including, without limitation, the Ombudsman’s role and performance)” following the words “appeal mechanisms” and prior to the words “for Board decisions”.</p> <p>b. Rationale: To ensure that the Ombudsman function, which is sometimes overlooked, is reviewed along with the other appeal</p>	Based on current draft Bylaws language in Section 4.6(b)(i), the subject matter of the ATRT reviews could be considered to include Reconsideration and possibly the Office of the Ombudsman. Additional

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	<i>Stakeholder Group (RrSG)</i>	mechanisms.	changes to address the CCWG’s concerns of unduly limiting the ATRT review also make it clear that the ATRT issues list is not exclusive. A review team could arguably consider it in its purview to review Reconsideration and possibly the Office of the Ombudsman, even without those subjects being explicitly added to the this part of the Bylaws.
4.6(b)(vi)	ICANN Business Constituency	<p>.... regarding timing of the Accountability and Transparency Review (ATRT) required under the Affirmation of Commitments, which is now to be brought into ICANN Bylaws. (vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.</p> <p>BC comment: The previous ATRT was convened in Feb-2013, so ATRT-3 could begin as late as Feb-2018. The BC believes that we should take advantage of the extra year (2017) to address the Work Stream 2 (WS2) accountability and transparency items from CCWG’s final proposal, before starting ATRT-3. The new Bylaws for Board adoption of WS2 recommendations give the community more leverage than the Bylaws process for adoption of ATRT recommendations. So it may be prudent to address difficult accountability and transparency enhancements in WS2 instead of in ATRT-3.</p>	<p>The timing of the initiation of the ATRT3 review is an implementation item that does not require any modifications to the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
4.6(c)(v)	CCWG-Accountability	<p>Issue: Although this is consistent with the CCWG Proposal, approving the new Bylaws in October 2016 would make the Security Stability and Resiliency (SSR) Review immediately 1 year late, given the last review began in 2010.</p> <p>Recommendation: The review is already late per the Affirmation of Commitments, and would also be late according to the new Bylaws. However, an appropriate correction to avoid this default situation</p>	The SSR Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in June 2016 and ICANN remains committed to that timing.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
4.6(c)(v)	ICANN Business Constituency	<p>could be implemented.</p> <p>..... regarding timing of the Security, Stability, and Resiliency (SSR) review required under the Affirmation of Commitments, which is now to be brought into ICANN Bylaws. Text from new Bylaws: The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.</p> <p>BC Comment: The previous SSR review was convened in 2010, so a five-year interval would require the next review to begin by Oct-2015. Some CCWG members are concerned that the above text creates a new problem since the SSR review would be at least one year late at the time the Bylaws are approved. Those concerned are suggesting revisions to the draft Bylaws to avoid a situation where ICANN is immediately failing to honor its new Bylaws. The SSR review is already late, relative to the requirements in the Affirmation of Commitments. Consequently, we are not troubled by a new Bylaw that also requires ICANN to begin the next SSR review as soon as possible. We request that ICANN follow through on the Board-approved 2016 start date for SSR-2 review. 1 We expect SSR-2 to assess ICANN’s implementation of SSR-1, including the extent to which ICANN is prepared to meet future challenges and threats to the security, stability, and resiliency of the Internet DNS, consistent with ICANN's limited technical mission.</p>	<p>The SSR Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in June 2016 and ICANN remains committed to that timing.</p>
4.6(e)(v)	Alan Greenberg	<p>Background:</p> <p>The Affirmation of Commitment (AoC) Reviews are being integrated into the Bylaws. The AoC called for the reviews to be held every three years, but was unclear as to how the three years was to be measured. The three years has been interpreted flexibly to allow more time between some reviews and the Board has deferred some reviews due to community overload (with the agreement of the NTIA, the AoC co-signer). The CCWG Proposal required the new reviews to be carried out no less frequently than every five years, measured from the start of one review until the start of the next one. It was recently realized that the last WHOIS review</p>	<p>The CCWG-Accountability did not make a recommendation regarding the delay of any reviews in favor of policy work. Similarly, from the inception of the AoC, there has not been discussion of delaying a review of how policy was being implemented in favor of the development of new policy. While there will be overlap between the two areas, maintaining a commitment to perform the review in a timely fashion is important,</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>started in October 2010, so when the new Bylaws are adopted, we will already be several months past the October 2015 date for the next one to start and will need to initiate the next one immediately.</p> <p>Since the required review is on Registration Directory Services Review, renamed from WHOIS Review, we would technically NOT be in default, since there never has been an "RDS Review". But it is assumed that this distinction will not affect ICANN's actions.</p> <p>During the CCWG discussions on the interval between the reviews, the issue of ICANN immediately being in default on the WHOIS/RDS review was never raised. Moreover, since those discussions were held, the GNSO new RDS PDP WG has been convened and is well underway. It is reasonably clear that the people in the volunteer community who would likely participate in an RDS review significantly overlap with those who are heavily involved in the RDS PDP. To schedule an RDS Review soon after the Bylaws are enacted would be serious error and will only serve to slow the work of the PDP - a PDP that even now may go on for quite some time.</p> <p>It is clear that there is work that needs to be done that would fall under the auspices of a full-blown AoC-like Review. We need a good picture of how the various current WHOIS/RDS efforts mesh together. We need to assess how the recommendations of the first WHOIS Review are being implemented and their impact, as well as other WHOIS/RDS related activities unrelated to that last AoC review.</p> <p>But these efforts, as important as they are, do not need to be done by a full-blown AoC-like review. Most of the work can be done by staff. To the extent that "staff cannot be trusted", I and others in the community will gladly act as a sounding board and review their work. [For the record, I was the person on the ATRT2 who did the full analysis of the WHOIS RT Recommendation</p>	<p>and that the review and the policy work can proceed at the same time.</p> <p>ICANN does not make a differentiation between the formal title of the WHOIS Review as opposed to the RDS Review, and acknowledges that the first WHOIS Review will be, under the Bylaws, determinative of the next RDS Review.</p> <p>The WHOIS/RDS Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in October 2016 and ICANN remains committed to that timing.</p> <p>A short modification to the language is being made to require the prompt initiation of the review while confirming that ICANN is not in violation of the Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>implementation, so I have some idea of what I am talking about.]</p> <p>The current Bylaws for the organizational reviews all have explicit time limits in them, but also have the words "if feasible". That was true even when the organization review interval was (foolishly) three years instead of the five years it was quickly changed to. "If feasible" allowed the Board to save an immense amount of wasted community expense and ICANN dollars. We need some wriggle room in the current case as well.</p> <p>I strongly suggest that the draft Bylaws be revised to allow additional flexibility to defer the RDS review until there is a real RDS or RDS plan to review, and would even suggest that once implemented, the new Bylaws soon after be amended to add the missing "if feasible".</p>	
4.6(e)(v)	CCWG-Accountability	<p>Issue: Although this is consistent with the CCWG Proposal, approving the new Bylaws in October 2016 would make the Directory Services (WHOIS) Review immediately 1 year late given the last review began in October 2010.</p> <p>Recommendation: The review is already late per the Affirmation of Commitments, and would also be late according to the new Bylaws. However, an appropriate correction to avoid this default situation could be implemented.</p>	<p>The WHOIS/RDS Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in October 2016 and ICANN remains committed to that timing.</p> <p>A short modification to the language is being made to require the prompt initiation of the review while confirming that ICANN is not in violation of the Bylaws.</p>
4.6(e)(v)	ICANN Business Constituency	<p>..... regarding timing of the Whois/Directory Service review required under the Affirmation of Commitments, which is now to be brought into ICANN Bylaws. Text from new Bylaws: The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened.</p> <p>BC Comment: The previous Whois review was convened in Oct-2010, so a five-year interval would require the next review to begin</p>	<p>The WHOIS/RDS Review is scheduled, pursuant to an ICANN Board resolution and communication with NTIA, to begin in October 2016 and ICANN remains committed to that timing.</p> <p>A short modification to the language is being made to require the prompt</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>by Oct-2015. Some CCWG members are concerned that the above text creates a new problem since the Whois/Directory Service review would be at least one year late at the time the Bylaws are approved. Those concerned are suggesting revisions to the draft Bylaws to avoid a situation where ICANN is immediately failing to honor its new Bylaws. The Whois review is already late, relative to the requirements in the Affirmation of Commitments.</p> <p>Consequently, we are not troubled by a new Bylaw that also requires ICANN to begin the next Whois/Directory Service review as soon as possible. We request that ICANN follow through on the Board-approved 2016 start date for Whois-2 review. 2 We expect Whois-2 to assess ICANN’s implementation of Whois-1 and current Whois policy. We recognize that there are policy efforts underway to develop a next generation registration directory service. ICANN’s Board has repeatedly reinforced the notion that the effort to replace Whois complements, and runs in parallel with, ICANN’s obligation to fully enforce existing consensus policy and contractual conditions relating to Whois.</p>	<p>initiation of the review while confirming that ICANN is not in violation of the Bylaws.</p>
4.7	<p>Dot Registry LLC</p>	<p>(a) If the Board refuses or fails to comply with a duly authorized and valid EC Decision (as defined in Section 4.1(a) of Annex D) under these Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC Decision if the Board has not complied with the EC Decision within 30 days of being notified of the relevant EC Decision.</p> <p>(b) If the EC Administration delivers a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC Administration shall designate individuals to represent the EC in the mediation (“Mediation Administration”) and the Board shall designate</p>	<p>The clarification requested is not necessary for consistency with the CCWG Proposal. Consideration of licensure statuses such as “good standing” that might not translate to different jurisdictions could create confusion.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>representatives for the mediation (“Board Mediation Representatives”). Members of the EC Administration and the Board can designate themselves as representatives. ICANN shall promptly post the Mediation Initiation Notice on the Website.</p> <p>(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new slate until a mutually-agreed mediator is selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.</p> <p>(d) The mediator shall be a licensed attorney, in good standing, with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC. The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC.</p> <p>(e) The mediator shall conduct the mediation in accordance with these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually agreed between the Mediation Administration and Board Mediation Representatives.</p> <p>(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator’s assistance, to reach an amicable resolution of the dispute.</p> <p>(g) ICANN shall bear all costs of the mediator.</p> <p>(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.</p> <p>(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations (“Mediation Resolution” and the date of such resolution, the “Mediation Resolution Date”). ICANN shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC Administration shall promptly notify the Decisional Participants of the Mediation Resolution.</p> <p>(j) The EC shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC Community IRP Initiation Notice pursuant to and in compliance with Section 4.2 of Annex D within sixty (60) days following the Mediation Resolution Notice Date</p>	
5.0	DotMusic	(a) ICANN shall maintain an Office of Ombudsman (“Office of Ombudsman”), to be managed by an ombudsman (“Ombudsman”) and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as	The recommended revisions were not included in the CCWG Proposal. The Ombudsman role will be reviewed as part of WS2, and revisions to the Ombudsman section of the Bylaws should be

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>determined by the Board.</p> <p>(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board after 30 day posting for public comments to ensure that the renewal of the Ombudsman's contract is consistent with stakeholder community and Board expectations.</p> <p>(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.</p> <p>(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board. Nothing in this Section 5.1 shall prevent the President or the stakeholder community from offering separate views on the substance, size, or other features of the Ombudsman’s proposed budget to the Board.</p>	<p>considered as part of the outcome of that WS2 effort.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
5.1	Dot Registry LLC	<p>(a) ICANN shall maintain an Office of Ombudsman (“Office of Ombudsman”), to be managed by an ombudsman (“Ombudsman”) and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.</p> <p>(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board after 30 day posting for public comments to ensure that the renewal of the Ombudsman's contract is consistent with stakeholder community and Board expectations.</p> <p>(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.</p> <p>(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in</p>	<p>The Office of the Ombudsman will be reviewed as part of WS2. Substantive changes to the Ombudsman selection process or role should be raised and considered within that WS2 process. The edits are not ripe for consideration at this time.</p> <p>The CCWG Report requires the Ombudsman to be a part of the Reconsideration process, therefore reference to this part of the Ombudsman role is essential and cannot be removed.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board. Nothing in this Section 5.1 shall prevent the President or the stakeholder community from offering separate views on the substance, size, or other features of the Ombudsman’s proposed budget to the Board	
5.2	Dot Registry LLC	The charter of the Ombudsman shall be to act as an independent third party neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board, ICANN contracted third parties, or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an independent third party objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, ICANN contracted third parties, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and “shuttle diplomacy” to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2, the Ombudsman shall serve the function expressly provided for in Section 4.2.	
5.2	DotMusic	The charter of the Ombudsman shall be to act as an independent third party neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board, ICANN contracted third parties, or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an independent third party objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate	The Office of the Ombudsman will be reviewed as part of WS2. Substantive changes to the Ombudsman selection process or role should be raised and considered within that WS2 process. The edits are not ripe for consideration at this time. The CCWG Report requires the Ombudsman to be a part of the Reconsideration process, therefore

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>treatment by ICANN staff, the Board, ICANN contracted third parties, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and “shuttle diplomacy” to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2, the Ombudsman shall serve the function expressly provided for in Section 4.2.</p>	<p>reference to this part of the Ombudsman role is essential and cannot be removed.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
5.3	<p>Dot Registry LLC</p>	<p>The Office of Ombudsman shall:</p> <p>(a) facilitate the fair, neutral, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board, or ICANN staff, or ICANN contracted third parties which have not otherwise become the subject of either a Reconsideration Request or Independent Review Policies;</p> <p>(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;</p> <p>(c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN’s interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;</p> <p>(d) have the right to have access to (but not to publish if otherwise such material qualifies as privileged, as defined by law, or is subject to confidentiality restrictions apply) all necessary information and records from ICANN Board, staff, ICANN contracted thrid parties, and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally</p>	<p>The Office of the Ombudsman will be reviewed as part of WS2. Substantive changes to the Ombudsman selection process or role should be raised and considered within that WS2 process. The edits are not ripe for consideration at this time.</p> <p>The CCWG Report requires the Ombudsman to be a part of the Reconsideration process, therefore reference to this part of the Ombudsman role is essential and cannot be removed.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>applicable confidentiality policies adopted by ICANN); (e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability; (f) maintain neutrality, objectivity, and independence, and have no bias or personal stake in an outcome; and (g) comply with all ICANN conflicts-of-interest and confidentiality policies</p>	
5.3	DotMusic	<p>The Office of Ombudsman shall: (a) facilitate the fair, neutral, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board, or ICANN staff, <u>or ICANN contracted third parties</u> which have not otherwise become the subject of either a Reconsideration Request or Independent Review Policies; (b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests; (c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations; (d) have the right to have access to (but not to publish if otherwise such material qualifies as privileged, as defined by law, or is subject to confidentiality restrictions apply) all necessary information and records from ICANN Board, staff, ICANN contracted third parties, and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by</p>	<p>The Office of the Ombudsman will be reviewed as part of WS2. Substantive changes to the Ombudsman selection process or role should be raised and considered within that WS2 process. The edits are not ripe for consideration at this time.</p> <p>The CCWG Report requires the Ombudsman to be a part of the Reconsideration process, therefore reference to this part of the Ombudsman role is essential and cannot be removed.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>the complainant or any generally applicable confidentiality policies adopted by ICANN); (e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability; (f) maintain neutrality, objectivity, and independence, and have no bias or personal stake in an outcome; and (g) comply with all ICANN conflicts-of-interest and confidentiality policies.</p>	
5.4	Dot Registry LLC	<p>(a) No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman’s contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.</p> <p>(b) ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office, <u>provided the Ombudsman provides written justification for not producing such information.</u></p> <p>(c) Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.</p> <p>(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate required with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, Such reports shall be posted on the ICANN Website.</p> <p>(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies</p>	<p>The Office of the Ombudsman will be reviewed as part of WS2. Substantive changes to the Ombudsman selection process or role should be raised and considered within that WS2 process. The edits are not ripe for consideration at this time.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
5.4	DotMusic	<p>... (b) ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office, provided the Ombudsman provides written justification for not producing such information. ... (d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate required with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, Such reports shall be posted on the ICANN Website. (e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.</p>	<p>The Office of the Ombudsman will be reviewed as part of WS2. Substantive changes to the Ombudsman selection process or role should be raised and considered within that WS2 process. The edits are not ripe for consideration at this time.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
5.5	Dot Registry LLC	<p>The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year’s complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the ICANN's Website.</p>	<p>“Website” is a defined term that does not require the proposed modification.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
6.0	Lincoln Liu	<p>I consider the establishment of the Empowered Community is the greatest achievement of this Draft Bylaw, while for anything yet to be improved, the issue of jurisdiction still stands in the first line.</p> <p>1. The establishment of the Empowered Community May be many people, even the Board Members believe that the establishment of EC serves the only purpose of weakening Board’s authority. However, in my opinion, the establishment of the EC is more like a measure of power balance than a plot of undermining. As to a regular corporation, just for argument’s sake, the highest authority is not the Board, but the Shareholders Meeting, and the Board is naturally responsible for implementing the will of the</p>	<p>Thank you for your comment. No Bylaws changes are suggested or needed to address this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Shareholders Meeting. Indeed, it sounds a little strange if we compare the EC to the Shareholders Meeting of ICANN, but we could do that in a proper way for better understanding. When we look back, there has never been a legitimate entity that could bear the will of the whole Community, and this is an obviously existing blank of the ICANN governance system. I believe the EC Administration could exactly be the mouthpiece and ensure that the Board will cater to the needs of the whole Community. Honestly speaking, the newborn EC is not “The Sword of Damocles”, and of course, no Board Member was, is, and will be the Tyrant Dionysius. I firmly believe that the EC will not be a potential risk that could make the Board feel like treading as if on thin ice, but a great milestone and a historical certainty in the way of the ICANN development.</p>	
6.0	Institute of Internet Governance Research (IGR)	<p>Comments on "Power Distribution" The "Empowered Community" (EC) as a nonprofit association entitled with certain powers and rights is designed to ensure the transparency and accountability of ICANN. Refer to the draft New Bylaws, the EC Administration consists of 5 persons designated by the 3 Supporting Organization and 2 Advisory Community, and has an influential veto power over many important issues. We applaud this new mechanism, while still concern about the lack of necessary constraints of the EC's veto power, which might lead to potential power abuse, especially when it comes to the decision on removing of board members. We suggest that it is necessary to build a constraint mechanism for the EC, which could ensure the power balancing among the EC Administration, the PTI Board and the ICANN Board. In addition, relevant review teams should be established for regularly reviewing the decisions and actions made by the EC Administration and improving the supervision and consensus decision-making of the community forum.</p>	<p>The design of the EC is that it does not have independent authority, but rather derives its authority from the acts of its decisional participants. As a result, some of the concerns raised may be addressed in the WS2 efforts on accountability of the SOs and ACs. While the CCWG report does not include reference to a review process for the EC itself, the ongoing reviews within ICANN and required by the Bylaws will likely provide a mechanism for this. Unless the Bylaws Coordination Group is of a different opinion, it is not clear that a revision to the Bylaws is necessary at this stage to address this comment.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
6.0 and Annex D	IPC	<p>The extensive changes to the Bylaws reflected in Article 6 and Annex D focus attention on the critical role of the “Decisional Participants” in carrying out the functions of the Empowered Community. While some of these roles are quite limited and formalistic, others are extremely substantive and consequential. In this regard, the provision that may at this stage be the most problematic for IPC (as part of the GNSO) is section 6.1(g), which delegates to the “Decisional Participant” entities a wide range of discretion in carrying out these functions, beginning with one job not even listed in section 6.1(g): selecting a person to act on behalf of the entity in the “EC Administration” (see section 6.3.a). Even a cursory review of Article 11 of the Bylaws, dealing with the GNSO, demonstrates that the current charter and structure of the GNSO is completely unsuited to the new responsibilities that will be thrust upon it under the revised Bylaws. To give just one example, the chair of the GNSO is selected by the GNSO Council and is primarily responsible for GNSO Council activities, which are confined to managing the policy development processes of the GNSO (see Section 11.2.D). Many of the new responsibilities the GNSO will undertake as a Decisional Participant in the Empowered Community have nothing whatever to do with generic names policy development. It is quite unclear that the GNSO Council, as currently authorized by the Bylaws, is the appropriate venue for choosing the GNSO delegate to the EC Administration, or for making any of the other decisions listed in section 6.1(g); in fact, it is highly questionable whether the GNSO Council currently has the constitutional competence to do so. Similarly, it would be irresponsible (even if constitutional) for the GNSO Council simply to bestow upon its chair the authority inherent in the role of its delegate to the EC Administration, when that chair has been selected by a policy development management body solely to carry out policy development management functions. In short, GNSO participation in the Empowered Community is entirely dependent on the completion of a process for deciding how (and through whom) that participation will be carried out, and the documentation</p>	<p>Thank you for this comment. This does not require Bylaws amendment. The need for Decisional Participants to undertake the necessary work of organizing participation in the EC is a valid concern, and ICANN encourages all Decisional Participants to begin consideration of what each requires to allow for full and meaningful participation.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>of that decision through an appropriate amendment to Article 11 and other Bylaws provisions. Optimally, the proposed revisions now before the community would not be brought into force until that process is completed. The same fundamental mismatch between the structure and charter of the GNSO as set forth in the current Bylaws, and the role it is expected to play in the Empowered Community under the revised Bylaws, may also apply to other SO's and AC's. If so, that is a further reason why a realistic timetable for bringing these revisions into force should be adopted.</p>	
6.1	International Trademark Association	<p>Section 6.1(a) refers to the Empowered Community (“EC”) as a “nonprofit association” whereas the CCWG Final Report calls it an “unincorporated association.” We suggest that the Draft Bylaws use whichever is the appropriate term under the California Commercial Code (CCC).</p>	<p>No change is needed. Nonprofit associations are addressed in the portion of the California Corporations Code (rather than the Commercial Code) devoted to “unincorporated associations;” nonprofit associations are a subset of unincorporated associations. The term “nonprofit association” is defined in Section 18020. The terms used in the Proposal and the Bylaws both accurately describe the EC, but the term used in the Bylaws is appropriate for use in governing documents.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
7.12	International Trademark Association	<ol style="list-style-type: none"> 1. Section 7.12 (Recalling Board), incorrectly refers to Section 7.11(a)(ii), as the paragraph permitting Board recalls. This should be changed to sub-paragraph 7.11(a)(iii). 2. Section 7.12(b) creates a delay of 5 days between the date the Board is recalled and the date the EC appoints Interim Directors to fill the vacancies. Since it is a legal requirement for ICANN to have a Board and necessary operationally, we suggest that the EC be required to name the Interim Directors on the same day 	<p>This provision has been updated accordingly to remove the 5-day delay.</p> <p>The obligations for the Interim Board to consult prior to taking decisions is included in Section 7.24.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>the Board is recalled.</p> <p>3. Paragraph 98, Annex 4 of the CCWG Final Report states that <i>“The ICANN Bylaws will state that, except in circumstances of where urgent decision are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leadership before making decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN’s strategy, policies or management, including replacement of the serving President and CEO.”</i></p> <p>These obligations on the Interim Board do not appear in Sections 7.11 or 7.12 of the Draft Bylaws. Unless they are covered elsewhere, we recommend that they be added.</p>	
7.12 (b)	CCWG-Accountability	<p>Issue: Allowing 5 days to replace Board vacancies due to the EC recalling the Board seems inconsistent with the CCWG Proposal Annex 4, Paragraph 82: <i>“If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.”</i> [Note that the cross-reference 7.11(a)(ii) is in error and should be to Section 7.11(a)(iii).]</p> <p>Recommendation: Correct the cross-reference in Section 7.12(b) and replace the current language with: <i>“(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a)(iii). Concurrently with delivery of any EC Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC Administration shall provide written notice of the EC’s designation of individuals to fill such vacancies (each such individual, and “Interim Director”) to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website.”</i></p>	This provision has been updated accordingly to remove the 5-day delay.
7.13	Dot Registry LLC	Annual meetings of ICANN shall be held for the purpose of electing Officers and for the transaction of such other business as	No change is requested or needed.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>may come before the meeting. Each annual meeting for ICANN shall be held at the principal office of ICANN, or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.</p>	
7.14	Dot Registry LLC	<p>Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal or a regional location of ICANN.</p>	<p>This change is not necessary, as ICANN has the ability to designate where a meeting will be held. Otherwise, a single default location is more appropriate for the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
7.15	Dot Registry LLC	<p>Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN unless otherwise specified in the notice of the meeting.</p>	<p>No change is requested or needed.</p>
7.16	Dot Registry LLC	<p>Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting.</p>	<p>No change requested or needed.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.	
7.17	Dot Registry LLC	At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.	No change requested or needed.
7.18	Dot Registry LLC	Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in	This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings. No revisions to the ICANN Bylaws are recommended in response to this comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone and it shall be recorded and published on ICANN's website.</p>	
7.18	DotMusic	<p>... ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone and it will be recorded and published on ICANN's website.</p>	<p>This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
7.19	Dot Registry LLC	<p>Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.</p>	<p>No change recommended or needed.</p>
7.2	ISPCP Constituency	<p>The ISPCP has one additional comment: * the process of "appointing board members" is characterized by using different types of words: "select, nominate, fill". According to article 7.2 the title is called "Directors and their selection". The EC designates all directors, the SO/ACs nominate them. Under article 11.3 (f) i+ii the CPH/NCPH select, the GNSO nominates.</p> <p>The design of the process of "designation" by the EC over time could cause confusion or lead to questions of the related EC</p>	<p>Section 7.2(e) requires that the EC must designate the director that was appointed through the SO/AC or NomCom processes. No additional modifications are needed.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>"power". It should clearly be indicated that it is not in the remit of the EC to reject the SO/AC nominations of board directors.</p>	
7.4(d)	<p>Alan Greenberg</p>	<p>Background: The CCWG Proposal requires the Empowered Community (EC) to take a variety of actions but was not specific on exactly how this would happen or what people would take responsibility for ensuring that the actions are carried out. As a result this had to be addressed during Bylaw drafting. The concept of the EC Administration was created, embodied by the Chairs (or other delegates) of the AC/SOs participating in the EC.</p> <p>Along with the creation (or perhaps naming, since there was always a need for such a body/group) of the EC Administration, a section was added to the draft Bylaws placing restrictions on the people involved in the EC Administration.</p> <p>"No person who serves on the EC Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC Administration and as a Director or Liaison to the Board."</p> <p>Lawyers Comments (in reply to my early raising of this issue): On March 31, 2016, counsel posed the following question to the Bylaws Coordination Group and received confirmation that the disqualification in Section 7.4(d) be included in the Bylaws: "Confirm that chairs of the Decisional Participants and persons designated by the Decisional Participants to serve on the EC Chairs Council cannot be nominated or serve on the ICANN Board. Such a provision would be consistent with other provisions in the current Bylaws, which provide that (a) "no person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board (Article VI, Section 4.2)" and (b) persons serving on the Nominating Committee must be "neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out</p>	<p>This change is not recommended for inclusion. First, it incorporates the notion of Liaison appointment mechanisms, which was not considered in the Bylaws Coordination Group consideration of this item. To the extent that this would bar a Chair or other leader of an AC or SO from being considered for nomination to the Board, Section 6.3(a) allows for the designation of a different person to serve on the EC Administration, thereby allowing the Chair to be available for consideration.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>their Nominating Committee responsibilities" (Article VII, Section 4.4)."]</p> <p>I note that the term "nominated" as used in the new Bylaws is used in the sense of the current Nominating Committee. Once a person is "nominated" by the NomCom or an AC/SO, they will become a Director once the EC takes the appropriate action (and the EC has no option to NOT take such action). However, this is confusing terminology, because an AC/SO may well have a nomination process used to select candidates who will then vie for the actual AC/SO selection.</p> <p>I believe that the Bylaws Coordination Group may have erred in its reply and moreover, the Bylaw drafters went farther than was required in implementing that response. There are several reasons.</p> <ol style="list-style-type: none"> 1. The CCWG has been very careful to only implement exactly what is specified or implied in the CCWG Proposal. The EC Administration is not explicitly named, but is implied in Proposal Paragraph 178, bullet 8 and elsewhere. There is no mention of restrictions such as those in this proposed Bylaw, and as described below, I can see no compelling reason to vary from the CCWG Proposal. 2. I cannot understand what the relationship is between the EC Administration and the rules that apply to the NomCom. The NomCom makes decisions. The AC/SO Chairs or other delegates who participate in the EC Administration have no discretion whatsoever. They MUST follow the directions of the entity nominating or removing a director. 3. Given that lack of ability to influence outcomes, I find it unreasonable to restrict such a person from submitting an SoI to the NomCom or to their own AC/SO as a potential director (ie to be "considered"). 	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>4. I would find it quite reasonable that they would have to surrender (or be deemed to have surrendered) their EC Administration seat if they are actually nominated (nominated in the sense of the Bylaws - will actually serve on the Board once the EC Designates them). This is in line with the reference to serving "simultaneously"</p> <p>5. I note that the wording in the proposed Bylaws is different from what was asked. The March 31st question was "Confirm that chairs of the Decisional Participants and persons designated by the Decisional Participants to serve on the EC Chairs Council cannot be nominated or serve on the ICANN Board.". The draft Bylaws extend that to "considered for nomination" which is a much wider group.</p> <p>6. The path of AC/SO Chair to Director is not unreasonable - both require high degree of confidence in the person expressed by the AC/SO. And to be blunt, arguably two of our best currently seated AC/SO Directors have followed exactly that path, as did the current Board Chair (although in that case, since the SSAC has chosen not to be part of the EC, the rule would not be applicable).</p> <p>I strongly suggest that Section 7.4(d) be replaced by: "No person may serve simultaneously on the EC Administration and as a Director or Liaison to the Board. If a member of of the EC Administration is appointed as a Liaison to the Board, that person must be replaced by their AC/SO on the EC Administration prior to the Liaison appointment becoming effective. If a person is nominated by the Nominating Committee or an AC/SO to become a Director, that person must be replaced by their AC/SO on the EC Administration prior to the EC Administration designating that person as a Director and prior to that person taking part in any Board activities as an observer."</p>	

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
7.6	Dot Registry LLC	The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an “interested director” within the meaning of Section 5233 of the CCC. In addition, each Director shall disclose to ICANN any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an “interested person” within the meaning of Section 5227 of the CCC. The Board shall adopt policies specifically addressing Director, Officer, EC and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.	No change requested or needed.
7.20	Dot Registry LLC	If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.	No changes requested or needed.
7.21	Dot Registry LLC	a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN. (b) ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information only when such information qualifies as privileged, as defined by law, or is subject to confidentiality restrictions imposed by contract.	Board member confidentiality procedures are more appropriately the subject of processes and procedures, and the Bylaws are not an appropriate place to define this procedure. No revisions to the ICANN Bylaws are recommended in response to this comment.
7.21	DotMusic	...(b) ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information only when such information qualifies as privileged, as defined by law, or is subject to confidentiality restrictions imposed by contract.	Board member confidentiality procedures are more appropriately the subject of processes and procedures, and the Bylaws are not an appropriate place to define this procedure.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			No revisions to the ICANN Bylaws are recommended in response to this comment.
7.23	Dot Registry LLC	A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.	No change requested or needed.
11.3(i)(xix)	Registries Stakeholder Group (RySG) <i>supported by the Registrars Stakeholder Group (RrSG)</i>	a. Requested change: Insert the words “of the Council members” in two places in subsection (B): first, following the words “three-fourths (3/4)” and before the word “of”, and, second, following the words “a majority” and before the word “of”. b. Rationale: This clarifies the definition for the rest of the bylaws – a change here would avoid amendments throughout the document where “GNSO Supermajority” appears (e.g. Articles 18 or 19).	This modification is being inserted into the Bylaws.
11.5	ISPCP Constituency	The ISPCP has one comment on 11.5 Stakeholder Groups: ISPCP is referred as = Internet Services Providers Constituency In our opinion the name of the constituency should be referred as "Internet Services Providers and Connectivity Providers".	This modification is being inserted into the Bylaws.
12.2	Karsten Manufacturing Corporation and Ping Registry Provider, Inc	If it is believed that the proposed new language provisions referenced above are needed, the Transition Plan should be withdrawn and the community should have the opportunity to fully vet the proposed language. The Draft Bylaws also enhance the power of governments to the detriment of the multistakeholder community, and causes the Transition Plan to violate NTIA’s stated criteria that the Transition Plan “must support and enhance the multistakeholder model of Internet governance.” The CCWG Report specifically notes that GAC advice does not trigger a	The CCWG-Accountability final proposal identified two changes to that process: (1) for GAC advice to receive special consideration, it must be reached by a pre-defined consensus of the GAC; and (2) in order for the Board to act inconsistently with that advice, it must reach a 60% threshold to approve such a decision. The CCWG proposal did not suggest that it

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>mandatory ICANN board vote, stating, “This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must ‘try to find a mutually acceptable solution,’ as required in ICANN’s current Bylaws. This recommendation shall not create any new obligations for the ICANN Board to consider, vote upon, or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC advice.” But ICANN’s Draft Bylaws contrarily state that GAC advice “may only be rejected by a vote of 60% of the board.” Moreover, the final report contained several last minute ICANN board-driven changes, including a major change enhancing the role of governments within ICANN, namely a change that insulates the Board from being collectively replaced when it acts on unpopular GAC Advice, even if that advice does not technically violate another bylaw or if the advice results in changes which are so egregious that the community does not have the months or years necessary to wait for an IRP process to finalize.</p> <p>Further, the CCWG called for a provision prohibiting capture of ICANN by governmental powers, and neither this nor the recent security breaches experienced by ICANN have been addressed in the Draft Bylaws. Meanwhile, other countries are already openly calling for and attempting to introduce restrictions on Internet free speech. One of the NTIA’s core missions is to protect and preserve the free-flowing Internet, ensuring that it remains a robust platform for economic growth, innovation and free speech. The absence of these necessary provisions in the Draft Bylaws causes the Transition Plan to fall short of NTIA’s stated criteria that the Transition Plan “must maintain the openness of the Internet.”</p>	<p>was otherwise modifying the process for the Board to determine that it would act inconsistently with GAC advice, including a requirement for a consultation to attempt to find a mutually acceptable solution to acting inconsistently with that advice. The Bylaws as written directly implement the CCWG proposal.</p> <p>The commenters’ suggestion that the GAC carve-out discussion somehow insulates the Board from removal is not an accurate characterization of the proposals or the Bylaws, as the Bylaws allow for Board removal in all situations, even if certain pre-conditions must be met.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
12.2	Liu Yue	5.GAC didn't get consensus on recommendation 11. Dose the Bylaw need to be ask for consensus recommendation?	Though the GAC did not reach consensus on Recommendation 11 within the CCWG-Accountability final proposal,

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			<p>Recommendation 11 was still sufficiently supported for inclusion in the proposal as submitted to the ICANN Board. As Recommendation 11 requires a consensus of the GAC in order for advice to be subject to special consideration by the Board, it is appropriate and consistent with the proposal to include that requirement in the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
12.2	U.S. Council for International Business	<p>Role of the Governmental Advisory Committee (GAC) – As USCIB has stated in earlier comments, we believe the GAC should continue to perform its advisory role on public policy issues to the ICANN Board. We have urged equally strongly, however, that the GAC should provide such advice based on consensus, defined as adopting decisions by general agreement in the absence of any formal objection. Providing advice in any standard less than full consensus would have the effect of rendering GAC advice to the Board of little value. For this reason, USCIB supports the manner in which Section 12.2 (a) (x) ensures that this specific definition of consensus – adopting decisions by general agreement in the absence of any formal objection -- as well as the 60 percent threshold for Board rejection of GAC consensus advice are enshrined in the Bylaws. We feel this reflects both the letter and spirit of discussions for this element of the CCWG-Accountability proposal.</p> <p>In addition, we support the Bylaws’ incorporation of the so-called GAC Carve-out, Section 3.6 (e), which would prevent the GAC from participating in the EC’s exercise of its right to challenge the Board’s implementation of GAC consensus advice. The text appropriately incorporates another important and extensively negotiated element of the CCWT-Accountability proposal. Thus,</p>	<p>Thank you for your comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>USCIB believes that, taken together, the clarification of what constitutes GAC consensus advice, the Board threshold to reject such consensus advice, and the carve-out provisions will ensure that the GAC may duly perform its advisory role while providing the community with significant, tangible safeguards to prevent the ability of any government or group of governments to “capture” ICANN and upend the bottom-up, multistakeholder decision-making process that has enabled the Internet’s incredible growth.</p>	
12.2 (x)	<p>Government of ITALY Ministry of Economic Development</p>	<p>Draft Bylaws Article 12 – Section 12.2 (x) Text from the Bylaws: Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection (“GAC Consensus Advice”), may only be rejected by a vote of 60% of the Board, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice. Italy many times expressed concerns about the role of the GAC in the new framework. In particular, we reaffirm our position that that the GAC should retain its current influence. We believe that the commitment of the Board and the GAC to find a mutually acceptable solution should apply not only to the full GAC Consensus Advice (as defined in Section 12.2(a)(x)), but to every GAC advice, no matter which GAC decision making process is at its basis. The Board must continue to duly take into account and ensure that due deference is made to any GAC advice. We believe that it should be up to the GAC to determine what constitutes consensus-based advice.</p> <p>Since this was a very controversial issue, we would prefer to delete the explicit definition of a full GAC Consensus Advice in the ICANN Bylaws and leave it to the GAC operating principles. Proposed amendment: Any Governmental Advisory Committee advice approved by a Governmental Advisory Committee</p>	<p>The CCWG-Accountability Report was clear that the incorporation into the Bylaws of a specific definition of consensus was important for this Bylaws provision. However, in all other matters, the GAC’s ability to define its internal procedures and thresholds within its Operating Rules remains unchanged.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>consensus, may only be rejected by a vote of 60% of the Board, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.</p>	
12.2(a)(x)	International Trademark Association	<p>INTA continues to have grave concerns with the amendment relating to GAC Consensus Advice, now embodied in Section 12.2(a)(x) of the Draft Bylaws. The CCWG Final Report, Annex 11, par. 7, contained the following note to drafters of the Bylaws:</p> <p>"This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must "try to find a mutually acceptable solution", as required by ICANN's bylaws. This recommendation shall not create any new obligations for the ICANN Board to consider, vote upon or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC Advice."</p> <p>Draft bylaw Section 12.2(a)(x) implicitly requires a vote of 60% of the Board to reject GAC Consensus Advice. It also implies that if less than 60% of the Board supports rejecting GAC Consensus Advice, the advice must be implemented. In our view, there remains a disconnect between the proposed Bylaw and the drafting note in Recommendation 11 of the CCWG Final Report.</p> <p>To accurately reflect the CCWG Final Report's assertion that the 60% threshold limits the condition under which the ICANN Board and the GAC must try to find a mutually acceptable solution, the following revision is recommended:</p> <p>The advice of the Governmental Advisory Committee on public</p>	<p>INTA's suggestion would result in a material change in how the GAC and the Board interact on GAC advice. The CCWG proposal identified two changes to that process: (1) for GAC advice to receive special consideration, it must be reached by a pre-defined consensus of the GAC; and (2) in order for the Board to act inconsistently with that advice, it must reach a 60% threshold to approve such a decision. The CCWG proposal did not suggest that it was otherwise modifying the process for the Board determining that it would act inconsistently with GAC advice, including a requirement for a consultation to attempt to find a mutually acceptable solution to acting inconsistently with that advice. INTA's proposed language significantly modifies the existing process beyond the new consensus requirement and threshold. These changes are not supported in the CCWG proposal and would likely result in a need to re-open the proposal itself in order to take on. As a result, this comment is not recommended for inclusion in the Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. In the event that the Governmental Advisory Committee advice is approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, and the ICANN Board determines to take an action that is not consistent with such Governmental Advisory Committee consensus advice, and where such action passes by a vote of less than 60% of the Board, then the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. If the framework of Section 12.2(a)(x) is to remain, we would recommend the following changes for clarification:</p> <p>12.2(a)(x) ... “may only be rejected by a vote of no less than 60% of the Board.” 12.2(a)(xi) "If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and If no such mutually acceptable solution can be found, the Board will state in its final decision..."</p>	<p>The alternative text provides valuable clarifying edits and are being incorporated into the document.</p>
17.2.	<p>Registries Stakeholder Group (RySG) <i>supported by the Registrars Stakeholder Group (RrSG)</i></p>	<p>a. Requested change: In the language regarding CSC member qualifications as follows: “provided that such individuals must have direct experience ...” change the word “must” to “should”.</p> <p>b. Rationale: This would make the bylaw language consistent with the CSC Charter which was part of the IANA Transition Proposal and approved by the multistakeholder community. Hard-wiring “direct experience” as a bylaw requirement versus a desired qualification may eliminate from consideration candidates who are well qualified to serve on the CSC.</p>	<p>The IANA Transition Proposal at Paragraph 1237 does not indicate that direct experience is the only desired qualification. The Proposal supports a requirement of direct experience.</p>
17.2(f) and (h)	<p>Registries Stakeholder Group (RySG)</p>	<p>a. Requested change: Change the term “organization” where it appears to “organization(s)”.</p> <p>b. Rationale: It is possible that a CSC member being removed (or</p>	<p>This modification is being inserted into the Bylaws.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	<i>supported by the Registrars Stakeholder Group (RrSG)</i>	vacancy being filled) might have been appointed by the ccNSO and GNSO jointly under Section 17.2.(b) so these related rights could be a joint effort as well.	
20.1	Dot Registry LLC	<p>ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person’s acts were done in good faith and in a manner that the indemnified person reasonably believed to be did not rise to the level of negligence, was in ICANN’s best interests and not criminal. For purposes of this Article</p> <p>20, an “agent” of ICANN includes any person who is or was a Director, Officer, employee, contracted third party acting on behalf of ICANN, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, contracted third party or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.</p>	<p>The indemnification provision is drafted to comply with the law. The availability of indemnification to contractors is a matter of contractual negotiation, and should not be made automatic through the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
20.1	DotMusic	ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in	The indemnification provision is drafted to comply with the law. The availability of indemnification to contractors is a

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person’s acts were done in good faith and in a manner that the indemnified person reasonably believed to be did not rise to the level of negligence, was in ICANN’s best interests and not criminal. For purposes of this Article 20, an “agent” of ICANN includes any person who is or was a Director, Officer, employee, contracted third party acting on behalf of ICANN, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, contracted third party or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.</p>	<p>matter of contractual negotiation, and should not be made automatic through the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
20.2	Dot Registry LLC	<p>If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC Administration is a party or is threatened to be made a party (as a party or witness) (a “Director Removal Proceeding”), ICANN shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that</p>	<p>The indemnification provision was carefully negotiated to comply with relevant legal concepts, and the change requested is not appropriate.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>all such actions were taken by such person in good faith and in a manner that such person did not rise to the level of negligence, reasonably believed to be in ICANN’s best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN. ICANN shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN’s sole indemnification obligation with respect to the subject matter set forth in this Section 20.2</p>	
20.2	DotMusic	<p>If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC Administration is a party or is threatened to be made a party (as a party or witness) (a “Director Removal Proceeding”), ICANN shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person did not rise to the level of negligence,</p>	<p>The indemnification provision was carefully negotiated to comply with relevant legal concepts, and the change requested is not appropriate.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		reasonably believed to be in ICANN’s best interests and not criminal.	
21.1	Dot Registry LLC	The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.	No change is requested or needed.
21.2	Dot Registry LLC	All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.	No change is requested or needed.
21.3	Dot Registry LLC	All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.	No change is requested or needed.
21.4	Dot Registry LLC	No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.	No change is requested or needed.
21.5	Liu Yue	ICANN address It should not show the detail address and be replaced by [ICANN Address]. otherwise ICANN would revise the Bylaw when its change the place of Office.	It is important for ICANN to provide clear notice guidelines in its Bylaws, while recognizing the additional burden that will be in place if ICANN ever changes its headquarter office. No revisions to the ICANN Bylaws are recommended in response to this

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
22.7	Centre for Internet and Society	<p>Section 22.7 severely limits the transparency of ICANN’s functioning, and we believe it should be amended.</p> <p>(a) It limits Inspection Requests to Decisional Participants and does not allow for any other interested party to make a request for inspection. While the argument has been made that Californian law requires inspection rights for decisional participants, neither the law nor CCWG’s recommendations require restricting the inspection rights to decisional participants. CIS’s suggestion is to allow for any person in the public to make a request for examination, but to have to declare the nature of the public interest behind requests for non decisional participants, so that an undue number of requests are not made for the purpose of impairing the operations of the organisation.</p> <p>(b) The unclear but extremely limited definition of ‘permitted scope’, which does not allow one to question any ‘small or isolated aspect’ of ICANN’s functioning, where there is no explicit definition of what constitutes the scope of matters relevant to operation of ICANN as a whole, leaving a loophole for potential exploitation. CIS suggests the removal of this statement and to allow only for limitations listed in Section 22.7 (b) for Inspection Requests.</p> <p>(3) There is no hard deadline provided for the information to be made available to the querying body, thus allowing for inordinate delays on the part of the ICANN, which is open to abuse. CIS suggests the removal of the clause ‘or as soon as reasonably practicable thereafter’ in this section.</p> <p>(4) The need for insisting that the material be used only for restricted purposes. CIS suggests that as a step towards ICANN’s transparency, it is essential that they allow the use of the</p>	<p>comment.</p> <p>Annex 1, Paragraph 35 of the CCWG-Accountability proposal specifies that the heightened inspection right (access to books and records) be initiated by a Decisional Participant. This right is separate from the general right of any person or entity to bring a request under the Documentary Information Disclosure Policy (DIDP), which is not changed through this recommendation. (Annex 1, Paragraph 31.) The new inspection right created mirrors a limited right that members of a membership organization would have under law, including limitations on scope, relevance and usage. To the extent the commenter wishes for enhancements to the DIDP process, that is a topic identified for WS2. With regards to the timing issue raised by the commenter, the phrase “within 30 days fo the date the Inspection Request is received by the Secretary or as reasonably practicable thereafter” effectively means that the request is expected to be fulfilled within 30 days. Any additional response time would still have to be justified by ICANN and does not allow for “inordinate” delay without recourse. In addition, if the requesting party believes that ICANN has not delivered the requested information within the prescribed period, the requesting Decisional Participant can seek the</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>information for any reason deemed necessary by the person demanding inspection. There is no clear reason to require restriction to EC proceedings for non-confidential material. This requirement should be removed.</p>	<p>remedies outlined in 22.7(e). No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
22.8	CCWG-Accountability	<p>Issue: Requiring that the Decisional Participants determine by “consensus” is inconsistent with the CCWG Proposal (CCWG Proposal Annex 1, Paragraphs 37-38) and is also inconsistent with the Empowered Community practice of allowing Decisional Participants to determine their own procedures.</p> <p>Recommendation: The phrase “by consensus,” should be struck, and should be replaced with a clarification that such decisions are made according to individual Decisional Participant’s decision making processes.</p>	<p>This modification is reflected in the Bylaws.</p>
22.8	CCWG-Accountability	<p>Issue: The Board power to redact should not be so broad and was not specified in the CCWG Proposal (CCWG Proposal, Annex 1, Paragraphs 37-38). The CCWG accepts that there is a need to provide the Board with the ability to redact some information but believes that the current language would allow the Board to solely determine what it can redact without limitations. The CCWG believes only a specified list of grounds, as set out in the draft Bylaws, should be an acceptable basis for redaction.</p> <p>Recommendation: Suggest replacing “including” with “in order to” to limit what can be redacted by the Board to a set list of elements.</p>	<p>This modification is reflected in the Bylaws.</p>
22.8	International Trademark Association	<p>This Draft Bylaw gives the Board two important powers: (i) to select the independent firm to investigate the alleged fraudulent activity or gross mismanagement of ICANN; and (ii) to redact the independent firm’s report without limitation. INTA suggests that the Decisional Participants be required to agree to the choice of independent firm, which could be achieved by amending the Bylaw to read “...<i>ICANN shall retain a third-party, independent firm, to</i></p>	<p>This is a modification from the proposal. Further, the more people or entities that have a stake in the selection of the firm, the more difficult it is to measure independence, as the interests of all who are making or agreeing to the selection must be evaluated.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p><i>which the Decisional Participants mutually agree</i>, to investigate such alleged fraudulent activity or gross mismanagement”. Second, we recommend that the redaction of the firm’s report be required to “be reasonably necessary to” achieve the goals listed in the bylaw, namely “<i>to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential.</i>” Further, we strongly recommend that this section be more fully considered by the community and NTIA before the final by-laws are adopted as this issue is crucial to ICANN operating in an open and transparent manner. Any right to redact should be very narrow in scope. We would not want redaction used to cloud transparency of a process, that, by its nature, requires candor and openness.</p>	<p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
25	IPC	<p>IPC supports the decision to treat the Articles of Incorporation as equivalent to a Fundamental Bylaw for the purposes of amendment (see section 25.2.b). Such a basic document should not be subject to amendment solely by the Board, but should require affirmative support from the Empowered Community. We are troubled by the second sentence of section 25.4, which prohibits the EC, Supporting Organizations, Advisory Committees or anyone else from “directly propos[ing] amendments to these Bylaws.” This seems to contradict the preceding section, which contemplates that an amendment may be “the result of a policy development process of a Supporting Organization”; in other words, that it may be “proposed” by an SO. There could also be a variety of other ways in which a proposed amendment would be put forward on which the Board would act. If section 25.4 is intended to mean that the Board acts as a gatekeeper for all proposed amendments, and that no amendment can be adopted without the approval of the Board as specified in Article 25, then it should so state; but the suggestion that only the Board can even propose a Bylaws amendment is objectionable.</p>	<p>The CCWG Report contemplates that Bylaws amendments will only be proposed by the Board. Annex 5, Paragraph 20, explicitly states that “CCWG-Accountability does not propose that the community gain the power to directly propose changes to the Bylaws.” This is not an ICANN requirement. As ICANN understands it, even when ICANN approves PDP Recommendations and a Bylaws amendment is required, ICANN’s approval makes the proposed Bylaws change an ICANN Board proposal. There are no other processes identified for the community to propose a Bylaws amendment. ICANN would be open to considering any community developed proposal on this issue at the appropriate time.</p> <p>No revisions to the ICANN Bylaws are</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			recommended in response to this comment.
27	International Trademark Association	<p>INTA notes that, for the most part, the Draft Bylaws reflect and embody the concepts in the CCWG Final Report relating to Work Stream 2 Recommendation. There are a few drafting and substantive issues we wish to raise:</p> <p>Section 27.1 - In the introduction to the Transitional Article in Section 27.1, we suggest giving further consideration to the definitions of the "Old Bylaws" and the "New Bylaws", in part to ensure these definitions are consistent with others used in the Draft Bylaws.</p> <p>The Work Stream 2 Recommendations are not a transitional matter in the strict sense, like the other two topics dealt with under Transitional Article Section 27 (human rights and membership of task forces). This makes the introduction to the Work Stream 2 language, in Section 27.1, somewhat awkward. If the introductory language in Section 27.1 must remain, we suggest revising it to better reflect the nature of the bylaws specific to the Work Stream 2 Recommendations, which are found in Section 27.2.</p>	The language has been modified to eliminate the potential confusion identified in this comment.
27	International Trademark Association	Section 27.2(b)(iii) - The CCWG Final Report does not expressly state that the improved processes for accountability, transparency and participation [of the SOs and ACs] "must be helpful to prevent capture". Unless this language has its source in Recommendation 12, we recommend that it not be used.	<p>“[T]hat are helpful to prevent capture” was included because in Annex 15 to the Proposal (p21 of the Annex), it was stated that “Each AC/SO/AG may need improved processes for accountability, transparency, and participation that are helpful to prevent capture from those outside that community. These improvements may be explored in WS2.”</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
27	International Trademark Association	Section 27.2(b)(iv) - In the first line, "enactments" should be "enhancements."	The language has been modified.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
27	Association International Trademark Association	Section 27.2(b)(vi) – We suggest amending the topic "Addressing jurisdiction related questions", to the more specific "Jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability."	The language has been modified.
27	International Trademark Association	Section 27.2(b)(viii) and (ix) - The two issues mentioned here, namely guidelines for standards of conduct for exercising removal of individual ICANN Board Directors and Reviewing the CEP - are not expressly listed as Work Stream 2 matters in Recommendation 12 of the CCWG Final Report. Recommendation 12 states that the list of issues therein is a closed list and that further accountability issues can be dealt with through the accountability review process or through specific, ad hoc, cross community working group initiatives. Therefore, it seems inappropriate to include these matters in this section of the Bylaws.	<p>These two issues were included because each was specifically identified in the Proposal (albeit outside of Annex 12) as WS2 matters; because 27.2(b) is an exclusive list, these must be included here if they are to be considered at all in WS2. Section 27.2(b)(viii) is identified in Annex 4, p10 (“Indemnification associated with the removal of individual ICANN Board Directors: Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2”), and Section 27.2(b)(viii) is identified in Annex 7, p10, ¶50 (“In particular, the CCWG-Accountability will review the CEP as part of Work Stream 2.”).</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
27	International Trademark Association	Section 27.2(b)(c) - The reference of the Board's “2014.10.16.16” resolution should be amended to read "2014.10.16." Also in this paragraph, with respect to the statement that the "Board shall consider consensus-based recommendations from the CCWG-	The identified resolution number is correct. As part of other edits, the reference to the CCWG Charter has been clarified. Given that there is consensus

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Accountability on Work Stream 2 Matters....," we suggest specifying the meaning of "consensus based" in the same way it is described in the CCWG Final Report. That Report elaborates on the concept of consensus, stating that "CCWG-Accountability Work Stream 2 Recommendations, when supported by full consensus or consensus as described in the CCWG-Accountability Charter, and endorsed by the Chartering Organizations, be considered in a similar status to Work Stream 1 Recommendations."</p>	<p>definition within the referenced charter, it does not seem necessary to incorporate that definition into the Bylaws.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
27.2	Centre for Internet and Society	<p>Work Stream 2 Topics</p> <p>Section 27.2, which covers necessary topics for WS2, currently does not include key aspects such as PTI documents, jurisdictional issues, etc. In this light, we suggest that they be included and a clause be inserted to indicate that this list of topics is indicative and the CCWG can expand the scope of items to be worked on in WS2 as well as make changes to work completed in WS1 (such as these by-laws) to meet WS2 needs as well.</p>	<p>Annex 12, Paragraph 5 of the CCWG-Proposal specifies that the Bylaw provision that will support WS2 efforts should be a limited list of issues, and that other items beyond that limited list would likely be appropriate for other review mechanism within ICANN. The commenter’s recommendation to make the WS2 list indicative, as opposed to limiting, is not consistent with the proposal.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
27.2	Government of Peru	<p>Eventually, ambiguous references cannot be expected to be overcome by a “framework for interpretation” limited to certain circumstances. Moreover, the framework for interpretation, even if agreed as binding, could never have the same legal standing of the bylaws.</p> <p>This is the case, every time the word ”applicable” is placed before the word “law”. Who decides what is applicable or not? We don’t believe a future “framework for interpretation” can guarantee or reflect the progressive nature of international law. For the same reason, it would be very impractical to believe we could list all the</p>	<p>The framework of interpretation that will be developed under CCWG-Accountability Workstream 2 will help examine and explain how ICANN’s mission interacts with human rights obligations and how ICANN will respect human rights. It is premature to determine if there is any need to further modify the Bylaws with regards to human rights related issues until this work has been completed.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>tools international law has to offer only until today.</p> <p>The new bylaws fundamentally refer to principles of international law, conventions, local law and general international arbitration norms. In this scenario, for example, Free Trade Agreements that include chapters dealing with these issues should be disregarded? Those agreements and others of its kind are not considered. We believe a broader disposition would offer the Community greater confidence in the system. The bylaws should incorporate the evolving nature of international law and not leave this clarification to a limited framework for interpretation.</p>	<p>The use of the term “applicable” before law is consistent within ICANN, and common in governing documents and other legal instruments generally, and determining what law applies to specific actions in specific contexts is a common legal requirement that is far easier than attempting to define it for all actions and contexts within the Bylaws. The future applicability of norms of international law should not be hardcoded into the Bylaws; the development of a framework of interpretation will provide a document that can be updated to meet the evolving needs of the ICANN community as appropriate within ICANN’s mission.</p>
27.2(c)	International Trademark Association	<p>We suggest that in Section 27.3(b), the text describing the process for accepting the FOI-HR be simplified by referencing the process for adopting Work Stream 2 recommendations, as set out in Section 27.2(c). The paragraph would then read:</p> <p>The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights (“FOI-HR”) is approved by the CCWG Accountability and the Board in accordance with the process for adoption of Work Stream 2 recommendations set out in Section 27.2(c).</p> <p>We also suggest that the last few words in Section 27.3(b) be changed from “for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR”, to “for claims related to human rights stemming from the actions or inactions of ICANN or the Board that occurred prior to the date the FOI-HR takes effect.”</p>	<p>The referenced text has been modified in line with other comments.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>This change is important as the language, as currently written, could be misused exculpate ICANN from its obligations outside of the human rights sphere.</p>	
27.3	Centre for Internet and Society	<p>FOI-HR Section 27.3 (a) requires the FOI-HR to be approved by "(ii) each of the CCWG-Accountability’s chartering organizations.." which is inconsistent with the CCWG proposal that forms the basis for these by-laws. The requirement of formal approval from every Chartering Organisation in the current draft is inconsistent with Annex 6 of the CCWG proposal, that has no such requirement.</p> <p>CIS strongly advocates for a change in the bylaw text to align with the intent of the CCWG Accountability report, and to reflect that the process of developing the FOI-HR shall follow the same procedure as Work Stream 1.</p>	<p>This language has been modified to more accurately track the CCWG Report.</p>
27.3(a)	CCWG-Accountability	<p>Issue: The language stating that the FOI-HR must be approved by “(ii) each of the CCWG-Accountability’s chartering organizations...” is inconsistent with the CCWG Proposal, Annex 6 and may lead to some interpretations that formal approval is required from every Chartering Organization.</p> <p>Recommendation: The CCWG would ask that this language be reviewed to ensure that the decision process for the FOI-HR is aligned with the approval process from the CCWG Charter, which does not require the approval of all Chartering Organizations.</p>	<p>This language has been modified to more accurately track the CCWG Report.</p>
27.3(a)	Noncommercial Stakeholders Group	<p>We endorse the comments of the CCWG-Accountability. The language is inconsistent with the CCWG May 13, 2016 7 Proposal, Annex 6 and may lead to some interpretations that formal approval is required from every Chartering Organization. As it has been discussed on the CCWG Accountability mailing list and during the last CCWG calls, the formal approval of all chartering organisation has not been the intent of the Annex 6 of the report. Therefore, the decision process for the Framework of Interpretation-HR should be</p>	<p>This language has been modified to more accurately track the CCWG Report.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>aligned with the approval process from the CCWG Charter, which does not require the approval of all Chartering Organizations. Furthermore, the language stating that the FOI-HR shall have no force of effect unless and until a FOI is approved is inconsistent with the CCWG Proposal. The Proposal reads: the Core Value is not in force "until" the FOI is developed. So 'unless and' should be removed. A solution would be to draft the bylaw in the following manner, largely in line with the language of the Annex 6 of the CCWG Accountability report. In this regard, we support the language proposed by CCWG accountability lawyers on the mailing list which was forwarded by Mathieu Weill on May 1 [1], as can be found underneath, except for the removal of 'unless and' to ensure consistency with the CCWG proposal and for the purpose of greater clarity.</p> <p>(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect until a framework of interpretation for human rights ("FOI-HR") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2 and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.</p> <p>(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.3(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.</p>	
27.3(a)	<p>Registries Stakeholder Group (RySG) supported by the Registrars Stakeholder Group (RrSG)</p>	<p>a. Requested action: Do nothing that would diminish the approval rights of the CCWG Chartering Organizations with respect to the framework of interpretation for human rights.</p> <p>b. Rationale: The RySG is aware of an ongoing debate within the CCWG over its own prospective bylaw comment as to whether and, if so, how to clarify or amend language contained in draft bylaw section 27.3.(a)(ii). The RySG has no position on how a</p>	<p>This language has been modified to more accurately track the CCWG Report.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		clarification or amendment might be made so long as the chartering organizations’ decisional rights as to recommendations (and thus consequent bylaws) in the IANA transition are left fully intact as per the CCWG Charter.	
27.5	Centre for Internet and Society	<p>Contracts with ICANN</p> <p>Section 27.5 currently states that “Notwithstanding the adoption or effectiveness of the New by-laws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.”</p> <p>As the section currently stands, there is a possibility that prior to the creation of by-laws, agreements that may be in contravention of the by-laws may be brought forth intentionally before the commencement of the operation of ICANN’s Mission statement in the said by-laws. The clause may be updated as follows to avoid this —</p> <p>“Notwithstanding the adoption or effectiveness of the New by-laws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms, provided that they are in accordance with ICANN’s Mission Statement.”</p>	<p>If certain agreements are not included within the “grandfathering” provisions of the mission, they can be challenged as outside of ICANN’s mission, as appropriate. This clause was included to allow for ICANN to maintain its contracts and not be put in a place of needing to re-state all of its contracts by virtue of the large modifications to its governing documents.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
28.0	Dot Registry LLC	ICANN shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term “member” in these Bylaws, in any ICANN document, or in any action of the Board or staff. For the avoidance of doubt, the EC is not a member of ICANN.	No change recommended or needed.
Annex D	CCWG-Accountability	Issue: The CCWG Proposal did not address whether a higher threshold relating to PDP-related Fundamental Bylaw amendments or Articles amendments would apply. It only addressed the higher threshold relating to PDP-related Standard Bylaws amendments (see Annex 2, Paragraph 54). In response to a question from the legal teams, the Bylaws Coordination Group confirmed that that the PDP threshold requirement should also apply to Fundamental	This change is being incorporated into the Bylaws through modification of the threshold language.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>Bylaws amendments but did not address whether the PDP threshold requirement should apply to Articles amendments. It would be consistent with the spirit of the CCWG Proposal that the higher threshold apply not only to Fundamental Bylaws, but also to the Articles of Incorporation^{12.3}.</p> <p>Recommendation: Apply higher threshold to the change of Articles of Incorporation.</p>	
Annex E	Liu Yue	<p>(1). Principles f. by the EC that that triggered the need for the Caretaker ICANN Budget. should be : f. by the EC that triggered the need for the Caretaker ICANN Budget.</p>	This revision is included in the Bylaws.
Annex G-1	Liu Yue	<p>Annex G-1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS; should be : issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS registrar services and registry services;</p>	<p>The language from the Annex is developed directly from a specification within ICANN’s Registry Agreement; therefore modification to the language could create inconsistencies and are not appropriate for inclusion.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
Annex G-2	Liu Yue	<p>Annex G-2 The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registries are: issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS; should be : issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS registrar services and registry services; restrictions on cross-ownership of registry operators and registrars or resellers should be : restrictions on cross-ownership of registry operators and registrars or registrar resellers</p>	<p>The language from the Annex is developed directly from a specification within ICANN’s Registrar Accreditation Agreement, therefore modification to the language could create inconsistencies and are not appropriate for inclusion.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
Article 1	International	The CCWG Accountability recommended several additions and	Thank you for your comment.

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Trademark Association	revisions to ICANN’s Commitments and Core Values. These changes appear to be adequately addressed in the Draft Bylaws. INTA would have liked to have seen some of the Core Values amended to add the words “while adequately addressing issues of consumer protection, consumer trust, consumer choice and rights protection in the DNS market.” However, unfortunately, this language was not adopted in the CCWG Final Report.	
Conflict of Interest	Liu Yue	6.Board member, EC member, NomCom member, AC/SO council member are all from the community. How to apply the conflict of interest.	<p>Appropriately addressing and managing conflict of interest issues is very important. Within ICANN, there are a number of areas where conflict of interest considerations arise. The ICANN Board has a rigorous conflict of interest policy that it must follow. The SOs and ACs each have statement of interest practices. While there are not modifications to the Bylaws that are necessary to address this point at this time, ICANN encourages the SO/AC accountability issue scheduled for WS2 conversation to consider these conflict issues.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
IDN	Liu Yue	3.How to safeguard ‘IDN first’ principle ?	<p>The priority afforded to applicants for IDNs in the New gTLD Program, or elsewhere within ICANN, is not included as part of the ICG or the CCWG-Accountability proposals. As such, there is no basis for inclusion of the requested principle in the Bylaws.</p> <p>No revisions to the ICANN Bylaws are</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
			recommended in response to this comment.
Jurisdiction	Centre for Internet and Society	<p>Jurisdiction of ICANN’s Principal Office Maintaining by-law Article XVIII, which states that ICANN has its principal office in Los Angeles, California, USA, these Draft by-laws make an assumption that ICANN’s jurisdiction will not change post transition, even though the jurisdiction of ICANN and its subsidiary bodies is one of the key aspects of post transition discussion to be carried out in Work Stream 2 (WS2). Despite repeated calls to establish ICANN as an international community based organisation (such as the International Red Cross or International Monetary Fund), the question of ICANN's future jurisdiction was deferred to WS2 of the CCWG-Accountability process. All of the new proposed by-laws have been drafted with the assumption that ICANN will indefinitely remain a California public benefit corporation. Examples of this include the various references to the California Civil Code in the by-laws and repeated references to entities and structures (such as public benefit corporations) in the fundamental by-laws of the ICANN that are predicated on Californian incorporation.</p> <p>This would make redundant any discussion in WS2 regarding jurisdiction, since many aspects of jurisdiction are dependent on primary place of incorporation, and any changes to those cannot be implemented without upending the decisions relating to accountability structures made in WS1, and embedded in the by-laws.</p> <p>CIS suggests an provision expressly be inserted in the by-laws to allow changes to the by-laws in WS2 insofar as matters relating to jurisdiction are concerned, to make it clear that there is a shared understanding that WS2 decisions on issues of jurisdiction should not be made redundant.</p>	<p>The references to ICANN’s status as a California public benefit corporation are factual, and the references to applicable legal codes are included when necessary. The draft Bylaws already include discussion of how the ICANN Articles of Incorporation and Bylaws can be amended. All parts of the Articles and Bylaws are capable of further amendment through the proper processes.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p>
Jurisdiction	Government of	We also feel it’s important to raise the issue of jurisdiction. We	No Bylaws changes are suggested or

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
	Peru	believe the CCWG should focus on this issue in the Workstream 2.	needed to address this comment. Jurisdictional questions are already contemplated in the Bylaws to be addressed as part of the WS2 effort.
Jurisdiction	Lincoln Liu	<p>One of the most obvious amendments is the extension of the scope of ICANN applicable law, which makes ICANN subject to the CCC, other than the CNPBCL, a single part of the CCC. It is understandable as the ICANN governance system has changed, and original clauses of law could not meet the requirements of defining, describing, and explaining new things. Here is one thing needs to be clear, the top priority at present is to realize the IANA transition, not to dispute over the issue of jurisdiction. It is a temporary expedient to adopt the old rules as the issue of jurisdiction is a time-consuming and complicated one. Any action that could delay or fail the IANA Transition shall be deemed as a miserable setback. Nevertheless, the US Presidential Candidate Ted Cruz had been putting pressure on ICANN since early this year and questioning China’s role in IANA transition. I have to say the Cruz’s expression is a perfect incarnation of the McCarthy’s “Reds Under the Beds” and a groundless slander on a country like China that has been dedicating itself to global Internet development. As an old Chinese saying goes: One falling leaf is indicative of the coming of autumn. So, it is fairly to believe that some US politicians perceive the IANA function as a bargaining chip in the Presidential Election. This would not only make the IANA transition a treacherous path just like their own ascension, but also reveal a truth that the adoption of old rules is only a temporary expedient, not a long-term one. Last but not the least, the CCWG should focus on the issue of jurisdiction and treat it as a core work in the Workstream 2, and seek a measure to release the ICANN and PTI from the totally legal control of the CCC and US Federal Law. After all, refer back to a metaphor that I mentioned above, the absolutely unilateral jurisdiction is the actual Sword that hangs over everyone’s head.</p>	<p>Thank you for your comment. No Bylaws changes are suggested or needed to address this comment. ICANN is established under the California Nonprofit Public Benefit Corporation Law, which is a part of the California Corporations Code; this will not be changed by the Draft Bylaws. (The Empowered Community described in Article 6 of the Draft Bylaws is established under a different portion of the California Corporations Code, for Unincorporated Associations, and within that title under the part for Nonprofit Associations, but this does not affect ICANN’s status as a California nonprofit public benefit corporation, governed by the California Nonprofit Public Benefit Corporation Law.)</p> <p>Jurisdictional questions are already contemplated in the Bylaws to be addressed as part of the WS2 effort.</p>
Jurisdiction	Centre for	Jurisdiction of the Post-Transition IANA Authority (PTI)	The recommendation for PTI to be formed

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
(PTI)	Internet and Society	<p>The structure of the by-laws and the nature of the PTI in Article 16 make its Californian jurisdiction integral to the very organisation as a whole and control all its operations, rights and obligations. This is so despite this issue not having been included in the CWG report (except for footnote 59 in the CWG report, and as a requirement proposed by ICANN’s lawyers, to be negotiated with PTI’s lawyers, in Annex S of the CWG report). The U.S. government’s requirement that the IANA Functions Operator be a U.S.-based body is a requirement that has historically been a cause for concern amongst civil society and governments. Keeping this requirement in the form of a fundamental by-law is antithetical to the very idea of internationalizing ICANN, and is not something that can be addressed in Work Stream 2.</p> <p>CIS expressed its disagreement with the inclusion of the U.S-jurisdiction requirement in Annex S in its comments to the ICG. Nothing in the main text of the CWG or ICG recommendations actually necessitate Californian jurisdiction for the PTI. Thus, clearly the draft by-laws include this as a fundamental by-law despite it not having achieved any form of documented consensus in any prior process. This being a fundamental by-law would make shifting the PTI’s registered and principal office almost impossible once the by-laws are passed.</p> <p>No reasoning or discussion has been provided to justify the structure, location and legal nature of the PTI. The fact that the revenue structure, by-laws and other details have not even been hinted at in the current document, indicate that the true rights and obligations of PTI have been left at the sole discretion of the ICANN while simultaneously granting it fundamental by-law protection. This is not only deeply problematic on front of delegation of excessive responsibility for a key ICANN function without due oversight but also leads to situation where the community is agreeing to be bound to a body whose fundamental details have not even been created yet, and yet is a</p>	<p>as a California-based corporation is included in the ICG Proposal (Paragraph 1105, fn 59), and is noted as a recommendation of the independent lawyers that were hired to advise the CWG-Stewardship in the development of its proposal. The requirement for PTI governance issues to be treated as Fundamental Bylaws is identified in the CCWG-Accountability proposal, at Annex 13 (“Governance provisions related to PTI are to be incorporated into the ICANN Bylaws as Fundamental Bylaws.”) ICANN notes the commenter’s disagreement with the inclusion of these requirements in the ICG and CCWG-Accountability proposals, however the Bylaws are consistent with these community-drafted proposals. As a result, the requested modifications cannot be taken on.</p> <p>No revisions to the ICANN Bylaws are recommended in response to this comment.</p> <p>On a separate note, the PTI governance documents (Articles and Bylaws) are going through a community review process and will be posted for public comment prior to adoption.</p>

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>fundamental by-law.</p> <p>CIS would therefore suggest that the PTI related clauses in the by-laws be solely those on which existing global Internet community consensus can be shown, and the PTI’s jurisdiction is not something on which such consensus can be shown to exist. Therefore the by-laws should be rewritten to make them agnostic to PTI’s jurisdiction.</p> <p>Further, CIS suggests that the law firm appointed for PTI be non-American, since U.S.-based law firms capable law firms in Brazil, France, and India.</p> <p>We would also like to note that we have previously proposed that PTI’s registered office and ICANN’s registered office be in different jurisdictions to increase jurisdictional resilience against governmental and court-based actions.</p>	
Transparency	Dot Registry LLC	Board Meetings should be transcribed and published for accountability and transparency.	This recommendation was not included in the CCWG Proposal. WS2 will include consideration of transparency improvements, and this recommendation is better suited for discussion there. In addition, on 15 May 2016, the Board resolved to develop a plan to allow for publication of transcripts and/or recording of its deliberative meetings.
WHOIS specifications	Giuseppe Deluca	Dear ICANN, Hi from a former Californian. I notice that the Street names for your whois data section are simply text like fields which allows whois data to enter in the system with streets spelled differently than the actual known Streets of the United States. The US Postal Service maintains an official Street name database for each US city or zip code, etc. As a real estate database designer myself, I know that the input fields can easily check the Street name entered during whois data collection to insure the information	Specific WHOIS requirements are policy-based and are obligated via contractual agreements. There were no recommendations in the transition proposals regarding this specific policy and contract based issue, and it is not appropriate to incorporate the requested provision into the ICANN Bylaws at this

25 May 2016 – ICANN Analysis of Public Comments on Draft New Bylaws

Bylaws Section	Submitted by	Comment	Response/Analysis
		<p>exactly matches an actual Street name for the United States. A sub look up table will display a known Street. If the data entry attempts an unknown Street name, the program can request a live operator to intervene to discuss this unknown street. Also a flag can show that the possibly indicates address uncertainty pending verification or pending update to the US Postal Service Street database, also other countries etc. This will protect the United States from so much error potential. Other countries could also do a similar integrity function. If your programmers are not sure how to do this, I will volunteer to assist as a way to protect the United States data structure. Adding a clause to the bylaws would go something like this: If the whois US street names do not match the United States postal street name database for the stated city or zip code, further investigation will be necessary before including the data in a whois record. Other countries may elect to participate in the street name integrity function. Currently countries a,b,c, etc. participate in street name integrity via a country database of known streets for each city or region.</p>	<p>time.</p>