

Memorandum

From: CCWG Legal Sub-team

To: Sidley Austin

Ref: CCWG/SA/001

The CCWG Legal Sub-team requests your legal advice on the following questions:

1. Which available legal mechanisms would provide the means for achieving the CCWG's above-stated goals and concerns and how would we do it? Examples to evaluate: different corporate legal structures, amendments to bylaws or articles of incorporation, creation of internal or external decisional review mechanisms, legal contracts, community "veto" process, designators, etc. What additional legal (or legally viable) mechanisms are available to achieve the above-stated goals and concerns?
2. What are the available legal mechanisms for constraining ICANN's activities and preventing the organization from expanding the scope of its mission in the future? How could a contract, "golden bylaw" / "durable bylaw", or some other enforceable agreement achieve this goal? Which available mechanisms provide the most advantage to the community and the most effective means of enforcement?
3. Which legal jurisdictions provide for the ideal balance between community control, technical stability, and responsible corporate governance given the CCWG's above-stated goals and concerns? Should ICANN consider relocating its headquarters to another legal jurisdiction (outside of California), and if so, where and why? Should ICANN consider being subject to international legislation (which includes, e.g. in the case of an ordinary international organization, abiding by its Constitutive Treaty and other international norms) in order to reduce the influence of the legislation of a single country on ICANN? How would a relocation of ICANN's legal jurisdiction influence the aforementioned proposed accountability mechanisms under consideration by the CCWG?
4. What antitrust legal issues could arise in the context of the CCWG's work and possible recommendations, and how can those issues be most effectively addressed given the CCWG's stated goals and concerns? Particularly in light of the fact that a portion of the ICANN community are contracted parties, what protections can be built in to make sure that the recommendations do not run afoul of antitrust laws and subject ICANN or its participants to antitrust liability? Do any particular models or mechanisms under discussion give rise to more antitrust related concerns than others?

5. How to best incorporate certain aspects of ICANN's Affirmation of Commitments into the organization's corporate governance structure (possibly its bylaws) and also to provide for the effective enforcement of those commitments?