

WP1-2A: Proposals for incorporating additional elements of the AoC into the ICANN bylaws

Version 1.3
20 March 2015

Listed by AoC article with comments, questions and/or proposed actions:

NOTES:

The proposed red text changes below incorporate feedback from our discussion when the initial proposals were presented and include comments and text edits, etc., from WP1 calls and from Steve DelBianco (SDB) and Robin Gross (RG).

The following are intended to be additions to the bylaws. The purpose of this exercise was not to rewrite the bylaws themselves but rather to find a home for certain important elements of the AoC.

Further discussions also indicated that caution needs to be exercised in determining where these AoC elements are inserted, either in intent (new wording) or in the existing language. It was also noted that the core values in the bylaws may not be ideal place to insert these commitments, and that the proposed Community Compact may be the place to incorporate these ideas.

3. This document affirms key commitments by DOC and ICANN, including commitments to:

(a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent;

Interestingly ICANN core values only refer to public interest in the context of promoting competition in domain name registration (core value 6) and not ICANN's broader actions.

Suggestion: Insert the above (a) (or similar language) as a new core value in the bylaws.

Possible new core value (or other) in bylaws, incorporating edit by RG (in italics) NOTING that the wording may need to be reviewed to ensure that the GPI does not trump accountable, transparent and bottom-up processes:

ensure that decisions made related to the global technical coordination of the DNS are made in the global public interest and are accountable, transparent *and bottom-up in their formulation*

(b) preserve the security, stability and resiliency of the DNS;

Already accounted for in core value (1)

(c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and

The notion of competition is only addressed in core values (5) and (6) but do not address the important notions of consumer trust and choice in the broader DNS marketplace.

Suggestion: the following wording could be added to at the end of core value (5): competitive environment *that enhances consumer trust and choice*.

Proposed edit (in bold) to existing core value 5:

Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment **that enhances consumer trust and choice**

(d) facilitate international participation in DNS technical coordination.

Not specifically reflected in the core values or elsewhere in the bylaws but may already be addressed in spirit or intent. **Note: RG proposed rephrasing (d) as “Participate in international DNS coordination” although there was no discussion as to whether or not this part of the AoC should be incorporated into the bylaws.**

4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users.

The above are DOC commitments.

ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

The above addresses a key global accountability issue that of performing “impact assessments” of its decision-making – are these requirements reflected in the bylaws anywhere? If not they should be.

Proposed new section in Article III Transparency:

New Section 1.3 (Section 1 Purpose to be renumbered to 1.1, see below for new 1.2) including edit from RG:

ICANN will perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial *or non-commercial* impact on the public,

and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

AoC articles 5 and 6 are not relevant to WP1 as they are related to DOC commitments.

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans.

If the above is not already accounted for in the bylaws it could be incorporated into section 1 of the bylaw Article on Transparency.

In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

Similarly, the above, if not already addressed/accounted for, could be brought into section 1 of the bylaw article on Accountability.

Proposed insertion of new para 1.2 in Article III Transparency (this is AoC para 7 in its entirety including text suggestion by RG):

ICANN commits to adhere to transparent and accountable budgeting processes, providing adequate advance notice to facilitate stakeholder engagement in policy decision-making, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

8. ICANN affirms its commitments to:

(a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet;

(A note on this – much of the phrasing in the AoC and the bylaws assumes that ICANN is the coordinator of the DNS (through the IANA contract). However were the contract for the IANA functions to be undertaken by another entity ICANN would, arguably, no longer have that role.)

Note: SDB suggested that this language or its intent be incorporated into the bylaws although it is unclear where it should be inserted. It might be inserted in or added to mission or core values, for example.

(b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and

Interestingly the bylaws do not specify that ICANN shall remain a not for profit corporation – does this or some language variant thereof need to be made explicit in the mission or core values of the bylaws?

ICANN should remain headquartered in the United States. The issue of jurisdiction remains controversial – WP1 or the broader CCWG should probably discuss.

Note: SDB has suggested that this be brought into the bylaws - noting the commitment by CEO Chehadé at the recent Senate Hearing - and although we did not conclude on this item in the call. It was suggested that this was a discussions item for the CCWG as a whole.

(c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.

Suggestion: This phrasing and in particular the operating as a MS organization for the benefit of the public is not explicit in the core values or mission and should be integrated into one or the other sections of the bylaws.

Proposed inserting (c) in full as a new core value in the bylaws (including edit from RG):

Operating as a multi-stakeholder, *bottom-up* private sector led organization with input from the public, for whose benefit ICANN shall in all events act

ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

AoC 9 and **10** have already been addressed already by the group.