

Comments on the Draft New ICANN Bylaws from Institute of Internet Governance Research (IGR)

20 May 2016

On behalf of Institute of Internet Governance Research (IGR), which is a think tank sponsored by China Internet Network Information Center (CNNIC) with its mission of doing research on the cutting-edge IG issues. Hereby we would like to take this opportunity to provide our comments on the Draft New ICANN Bylaws. Our comments focus mainly on the Empowered Community, Selection Mechanism, Root Zone Management and Geographic Diversity by which to enhance the transparency and accountability of ICANN as a nonprofit public-benefit corporation.

1. Overall Comments

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.

2. Specific Comments

(1) 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.

(2) 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 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.

(3) 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.

(4) 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 netizens and registries and shall exert more efforts and impact on ICANN’s decision making and daily operation.

About IGR

The Institution of Internet Governance Research (IGR) is an independent and nonprofit research organization - a think tank - that mobilizes a professional network of policy makers and specialists, dedicating to carry out researches and practice on cutting-edge Internet Governance related issues. Sponsored by CNNIC, the operator and administrator of China’s fundamental network resources, IGR’s network contains ranges of strategic partnership from multistakeholders’ support within the country as well as international collaborative partner organizations. By closely following the updated demand from global Internet communities, IGR aims to provide clear, independent and incisive expert analysis on vital Internet governance issues.