

NonCommercial Stakeholder Group Comments on the Draft ICANN Bylaws

NCSG believes that on the whole the legal team made a good faith effort to accurately translate the work of the CCWG on Enhanced Accountability and the work of the CWG on IANA Stewardship into new bylaws for ICANN. In a few areas some corrections are needed.

Regarding the “grandfathering” clauses in Section 1.1 (d) (ii), 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.

Regarding Section 27.3 (a) 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 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.

Section 27.3. HUMAN RIGHTS

(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.

(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.