Board Report

Country Code Policy Development Process (1)
on matters pertaining to Article IX, Annex B and Annex C of the ICANN Bylaws.

Vancouver, 2 December 2005

Bart Boswinkel
Issue Manager

Contents

Executive Summary

0.1. General Aspects

The purpose of the Board Report is to assist the Board of ICANN in their deliberations on the ccNSO Recommendations to resolve the Issues as identified by the ccNSO Council and for which the Council has initiated a country code Policy Development Process (ccPDP). The issues as identified are elaborated on in the previously published Issue, Initial and Final Reports.

This particular ccPDP was originally initiated to encourage ccTLD managers to become members of the ccNSO. Given the various reasons why managers have not become members of the ccNSO it is not possible at this stage to give an indication if and to what extent the original goal will be realised. The ccNSO Recommendations are therefore submitted to the Board to be considered on their own merits i.e. the ccNSO recommends them to the Board to be considered as an improvement and clarification of the ICANN bylaws on the ccNSO and the ccPDP in the interest of the Members, the Council and other stakeholders.

As stated in the Members Report and proposed in the Final Report, ISSUE G—Applicable law exemption is not concluded. As this matter concerns conflicts between a policy developed by the ccNSO and national law, advice is sought from the GAC. The GAC and the ccNSO have set up a working group for further discussion. At a later date a ccNSO Recommendation, if any, to resolve this matter will be submitted to the Board as an addendum to this Board Report.

0.2 Members Vote

The Council of the ccNSO has adopted 8 proposals in the Final Report as individual Council Recommendations. Each of these has been submitted individually to the Members of the ccNSO for adoption. In order for a Council Recommendation to become a ccNSO Recommendation:

- 50 % or more of the members of the ccNSO should lodge a vote; and

- more than 66 % of the members who have lodged a vote should vote in favour of the Council Recommendation.

The Members voting period ran from 7 November until 28 November. In this period 29 members of the ccNSO have lodged a vote (64 % of the total membership).

0.3 Board Report

The Board Report contains the following:

a.   an introduction which includes, among others things, background information and a description of the process to date (Chapter 1);

b.   a full description of the ccNSO Recommendations (Chapter 2);

c.   the Members Report submitted to the Members of the Council. The Members Report is publicly available at www.ccnso.icann.org and as such is included in this Report as a full and integrated part (Annex A);

d. the ccNSO Resolutions as adopted by the ccNSO Council on 31 October (Annex B) by a vote of 17 members of the Council in favour and 1 member abstaining;

e. the Final Report submitted to the ccNSO Council. The Final Report is publicly available at www.ccnso.icann.org and as such is included in this Report as a full and integrated part (Annex C); and

f. Ballot Form for voting sent to the Members to vote on the Council Recommendations (Annex D).

0.4 ccNSO Council approval of the Board Report

At its meeting on 2 December 2005 and in accordance with Annex B section 14 of the ICANN bylaws the Board Report was approved unanimously by all members present (16 out of 18) of the ccNSO Council. The ccNSO Recommendations are submitted to the Board to be considered for adoption.

0.5 ccNSO Recommendations

ccNSO Recommendation 1
Issue A—NO BINDING POLICY FOR NON-MEMBERS OF THE CCNSO

ccNSO Recommendation
Change Article IX Section 4.2 in accordance with Proposal A to resolve Issue A as defined in the Issues report.

Adopted by 93 % of the members voting

ccNSO Recommendation 2
Issue B—IANA SERVICES

ccNSO Recommendation
Change Article IX Section 4.3 in accordance with Proposal B as stated in the Final Report to resolve Issue B as defined in the Issues report.

Adopted by 96 % of the members voting

ccNSO Recommendation 3
Issue C —AMENDMENT OF ARTICLE IX

ccNSO Recommendation
Change Article IX Section 6 in accordance with Proposal C as stated in the Final Report to resolve Issue C as defined in the Issues report.

Adopted by 96 % of the members voting

ccNSO Recommendation 4
Issue D—SETTING BINDING POLICIES

ccNSO Recommendation

Change Article IX Section 4.10 and Annex B sections 2, 3 and 15 in accordance with Proposal D as stated in the Final Report to resolve Issue D as defined in the Issues report.

Adopted by 96 % of the members voting

ccNSO Recommendation 5
Issue E—BINDING POLICIES OUTSIDE CCPDP

ccNSO Recommendation
Change Article IX Section 1 in accordance with Proposal E as stated in the Final Report to resolve Issue E as defined in the Issues report.

Adopted by 93 % of the members voting

ccNSO Recommendation 6
Issue F—CHANGES TO CCPDP AND SCOPE

ccNSO Recommendation
Change Article IX Section 6 in accordance with Proposal F as stated in the Final Report to resolve Issue F as defined in the Issues report.

Adopted by 96 % of the members voting

ccNSO Recommendation 7
Issue I—MEMBERSHIP QUORUM VOTING ON PDP RECOMMENDATIONS

ccNSO Recommendation
Change Annex B Section 13 of the ICANN bylaws in accordance with Proposal I as stated in the Final Report to resolve Issue I as defined in the Issues report.

Adopted by 96 % of the members voting

ccNSO Recommendation 8
Issue J—REJECTION OF PDP RECOMMENDATIONS BY THE ICANN BOARD

ccNSO Recommendation
Change Annex B Section 15(2c) of the ICANN Bylaws in accordance with Proposal J as stated in the Final Report to resolve Issue J as defined in the Issue Report.

Adopted by 96 % of the members voting.

BOARD REPORT

1. INTRODUCTION

1.1   Background

At the ICANN meeting in Mar del Plata, ICANN's Vice President Policy Development Support (Mr. Paul Verhoef) relayed a letter from CENTR, on behalf of its ccTLDs community, to the ccNSO Council and requested the Council to consider CENTR's letter. The letter identified a number of issues in relation to the ccNSO bylaws that are said to stand in the way of a number of CENTR members joining the ccNSO.

Having considered the letter, the ccNSO Council resolved to investigate whether a ccPDP (ccNSO Policy Development Process), as described in Annex B of the ICANN bylaws, is a viable route to address the expressed concerns. In accordance with Resolution of the Council at that meeting the Chair of the ccNSO Council sent out a call on 11 April 2005 to the members and non-members of the ccNSO to determine if:

a) there was consensus in the ccTLD community for the Council to request an Issues Report as the first step in initiating a ccPDP; and

b) there are other issues, besides those raised in the CENTR paper, that ought to be considered in this context.

The Council received positive feedback from the community to conduct a ccPDP. There was no feedback against the initiation of a ccPDP nor any suggesting limitation to or broadening of Issues.

The Council considered the matter at its next meeting on 28 April 2005, and resolved to call for an Issue Report on whether a Policy Development Process should be launched to consider recommending to the Board of ICANN changes to:

1. Article IX of the ICANN By Laws
   (http://www.icann.org/general/bylaws.htm#IX);

2. The ccNSO Policy Development Process
   (http://www.icann.org/general/bylaws.htm#AnnexB); and

3. The Scope of the ccNSO (http://www.icann.org/general/bylaws.htm#AnnexC).

At the same meeting Bart Boswinkel was appointed as interim Issue Manager.

1.2 Initiation of the ccPDP

To seek further input the community was invited by the Chair of the ccNSO and the Issue Manager to submit comments. The comments and input received resulted in the Issue Report that was presented to the Chair of the ccNSO on 28 May 2005.

Based on the Issues Report and in accordance with the ICANN bylaws the ccNSO Council resolved by email voting on 6 June 2005 that:

"*6.01 a ccNSO Policy Development Process (PDP) be initiated to consider changes to ICANN Bylaws Article IX (Country-Code Names Supporting Organization), Annex B*

(ccNSO Policy-Development Process) and Annex C (the Scope of the ccNSO) to address the matters outlined in paragraphs A to M of Section 3.2 of the Issues Report prepared by Bart Boswinkel.

6.02 the PDP referred to in resolution 6.01 be run without a task force.

6.03 the timetable for the said PDP set out in the Issues Report be endorsed.

6.04 Bart Boswinkel continue as interim Issue Manager and that the current Council sub-committee (Members: Eva Frölich (Europe), Hiro Hotta (Asia Pacific), Paulos Nyirenda (Africa) and Patricio Poblete (Latin America) Kim von Arx (.ca and North America) and Chris Disspain (Chair) continue to assist the interim Issue Manager."

In accordance with ICANN Bylaws Annex B section (8) the Chair of the ccNSO requested the Chair of the Governmental Advisory Committee (GAC) formally to offer an opinion or advice on the matters raised in the Issues Report. This opinion or advice, if any, should be submitted before the Council takes a vote on the Recommendations in October 2005.

The ccNSO Chair requested the designated Regional Organizations to appoint a Regional Representative. Where a Regional Representative for a Region was not designated the elected Council members for that Geographical Region was requested to seek a representative. The (acting) Representatives are: Kim von Arx (North American Region), Patricio Poblete (Latin American Region), Ali Drissa Badiel (African Region), Jordan Carter (Asian Pacific Region) and Giovanni Seppia (European Region).

1.3   Comment Period 1

In accordance with Annex B of the bylaws the Regional Representatives have been requested to submit a Regional statement in Comment Period 1 on the matters outlined in paragraphs A to L of Section 3.2 of the Issues Report.

In conjunction with the publication of the Issues Report on 7 June 2005 comments and input were sought on the matters as defined in the Issues Report, in particular:

a.   whether the matters raised in the Issues Report are of concern to ccNSO members, and the ccTLD community and its stakeholders generally;

b.   if they are, methods of resolving the issues;

c.   support for the alternative solutions throughout the relevant constituencies; and

d.   the feasibility, effectiveness and proportionality of the solutions proposed.

Each of the Regional Representatives solicited the views of the ccTLD managers in their Geographical Region which is documented in their respective Regional Statements. A public hearing was conducted by the ccNSO on 12 July 2005, in conjunction with the ICANN meeting in Luxemburg. The minutes of this meeting have been submitted as input and comments received on the Issues Report and were used extensively in preparing the Initial Report.

At the conclusion of the public comment period the Issue Manager produced an Initial Report which, in accordance with ICANN bylaws, contained the following:

- a Comment Report (Article IX, Annex B section 6) which in this case is a review of the comments and input received on the Issue Report;

- all Regional Statements; and

- other (relevant) information.

1.4 Comment Period 2

The publication of the Initial Report on 16 August 2005 formally concluded Comment Period 1 and Comment Period 2 formally commenced. In conjunction with the publication, comments and input of ccNSO members and other stakeholders was sought, in particular on:

a.   whether the analysis of the comments and input is exhaustive;

b.   are there alternatives for resolving the matters raised which have been overlooked; and

c.   where a recommendation has been made, is it the most appropriate?

On 2 September 2005, the Issue Manager sent out a reminder to the ccTLD-discuss, ccNSO members and ccNSO Council email lists requesting comment and input on the Initial Report. This reminder was then forwarded to other relevant email lists.

On 7 September 2005, the Issue Manager publicly announced an extension to the second comment period by one week to GMT 12:00 Wednesday 14 September 2005.

At the end of comment period 2, the Issue Manager reviewed the comments received and added appropriate comments to the Initial Report, to prepare the "Final Report". The Issue Manager was not obligated to include all comments made, nor was he obligated to include all the comments submitted. The Final Report was submitted to the Chair of the ccNSO Council on 12 October 2005, which concluded Comment Period 2 on all issues except Issue G—the applicable law exemption. The Issue Manager has extended Comment Period 2 for Issue G until 18 October. The Council has since resolved to further extend comment period 2 until such time as a resolution has been proposed by a joint GAC and ccNSO working group which will be established for this purpose (see Annex B, Council resolutions relating to the ccPDP). The email exchange between the Chair of the ccNSO and the Chair of the GAC is attached to the Final Report (Final Report, Annex D)

1. 5 Council Recommendations (12 October – 7 November 2005)

Upon receipt of the Final Report the ccNSO Council's Chair has, in accordance with the bylaws,

1.   distributed the Final Report to all Council members;

2.   called for a Council meeting within the time designated in the PDP Time Line wherein the Council has worked towards achieving a recommendation to be presented to the Board; and

3.   send an invitation to the GAC Chair for the GAC to offer an opinion or advice on the proposals.

The council resolutions, adopting the Issue Managers proposals, are included in this

Report (Annex B). All resolutions are based on, and similar to, proposals made in the Final Report (Annex C). As a result of this vote there are no Council Recommendations on the Issues G, H, K and L as identified in the Issues Report. As to Issue G – the applicable law exemption - Comment Period 2 has been extended as proposed. As to the Issues H, K and L, the proposals were not to suggest an amendment of Article IX, Annex B or Annex C and therefore were not within the scope of this particular ccPDP anymore. 17 Council members voting in favour and 1 abstaining adopted the Council resolutions. Voting on the recommendations was conducted via email between 28 and 31 October 2005.

1.6 Members Vote (7 November – 28 November 2005)

On 7 November 2005, after approval of the Report by the Council, the Issue Manager has submitted the Members Report to the ccNSO members.

Following the submission of the Members Report the ccNSO members have had the opportunity to vote electronically on Council Recommendations 1- 8. At the end of the voting period 29 out of 45 of the members lodged a vote. This constitutes 64 % of the membership. The membership of the ccNSO could cast a vote from 7 November 2005 until 28 November 2005. For reasons of transparency the ballot form is attached to the Board Report (Annex D)

The eight Recommendations needed to be adopted individually to become a ccNSO Recommendation. A Recommendation is adopted if more than 66 % of the members vote in favour.

Accordingly, all Council Recommendations (1-8) were adopted by the membership and became ccNSO Recommendations. In chapter 2 of this Report the votes in favour, both in absolute and in percentage of the membership voted is recorded for each individual Recommendation.

1.7 ICANN Board Vote

In accordance with Annex B section 13, the Issue Manager has within seven days after closure of the Members vote incorporated the ccNSO Recommendation into a report to be approved by the Council and then submitted to the Board (the "Board Report"). The Board Report is submitted at the ICANN Vancouver meeting. The Board Report must contain at least the following:

   a.   a clear statement of the ccNSO recommendation;

   b.   the Final Report submitted to the Council; and

   c.   the Members' Report.

According to Annex B section 15, the Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account the procedures for Board consideration.

1.8 Board Report

According to the ICANN bylaws Annex B section 14, the Issue Manager is required to produce a Board Report to be submitted to the ICANN Board, after approval of the Report by the Council. The Board Report should contain at least the following:

a. a clear statement of the Council's recommendation;

b. the Final Report submitted to the Council. The Final Report is publicly available at www.ccnso.icann.org and as such is included in this Report as a full and integrated part and pro forma attached to it as Annex C; and

c. the Members' Report as submitted to the ccNSO membership. The Members Report is publicly available at www.ccnso.icann.org and as such is included in this Report as a full and integrated part and pro forma attached to it as Annex A.

The purpose of the Board Report is to report to Board on the ccPDP and to assist the Board when the ccNSO Recommendations are taken into consideration. The analysis of the issues and proposals to resolve them is contained in the Final Report. Further, and for the purpose of auditing the policy development process the Board Report also contains the ccNSO Council Resolutions on the Proposals A-K in the Final Report (Annex B) and the ballot form send to the membership to vote by email (Annex D).

In chapter 2 of this report the ccNSO Recommendations 1-8 as adopted by the ccNSO (Council and membership) are described in full.

1.9 Indication of impact of Council Recommendations

ccTLD managers have not joined the ccNSO for a variety of reasons. This particular ccPDP was initiated to encourage ccTLD managers to become members of the ccNSO. Given the various reasons why managers have not become members, it was clear from the start of this process that only a subset of the ccTLD managers might be encouraged to join. Even at this stage of the ccPDP it is not possible to give an indication if, and to what extent, the original goal for initiating this ccPDP will be realised if the ccNSO Recommendations are to be adopted by the ICANN Board.

In the course of the process it became clear that some of the current members of the ccNSO who participated in the discussions considered the proposals that came out of Comment Period 1 and Comment Period 2 to be improvements, while other members who participated in the ccPDP did not object to proposed changes. Therefore the ccNSO Recommendations are submitted to the Board to be considered primarily on there own merits i.e. as an improvement and clarification of the ICANN bylaws on the ccNSO and the ccPDP in the interest of the Members, the Council, the ICANN Board and other stakeholders.

1.10 Feasibility of ccNSO Recommendations

It should be noted that as part of the Issue Report and as part of the analysis in the Initial Report a statement should have been included on the feasibility of the proposals. Feasibility in this context means an indication as to whether the proposals for changes of Article IX, Annex B and Annex C of the bylaws are acceptable to the ICANN Board. Due to circumstances beyond the control of the Issue Manager and the ccNSO it was not possible to include this in the Initial Report. In the Members and Final Reports a brief

statement was included.

In the Final Report, and as reiterated in the Members Report, it is still not clear if the ICANN Board is likely to adopt all Recommendations if they were to be adopted by the ccNSO. However, there was a strong indication that Council Recommendation 3, the proposal to resolve Issue C—amendment of Article IX, would not be feasible.

2   ccNSO RECOMMENDATIONS

2.1 ccNSO Recommendation 1

ccNSO Recommendation
Change Article IX Section 4.2 in accordance with Proposal A to resolve Issue A as defined in the Issues report.

Proposal A to resolve Issue A is:

Issue A—NO BINDING POLICY FOR NON-MEMBERS OF THE CCNSO

Amendment to Article IX Section 4.2 by adding the words highlighted below.

Article IX section 4.2

> "Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under Section 7(3) of this Article. A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. **Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under Section 7(3) of this Article.** In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices."

The Council Recommendation was adopted by 27 votes in favour out of 29 votes lodged (93 % of the votes lodged in favour).

2.2 ccNSO Recommendation 2

ccNSO Recommendation
Change Article IX Section 4.3 in accordance with Proposal B to resolve Issue B as defined in the Issues report.

Proposal B to resolve Issue B is:

Issue B—IANA SERVICES

Amendment to Article IX section 4.3 by deleting the words struck through below and adding the words highlighted below.
Article IX Section 4.3

> "Neither membership in the ccNSO nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA database. ~~Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.~~ ==Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.=="

The Council Recommendation was adopted by 28 votes in favour out of 29 votes lodged (96 % of the votes lodged in favour).

2.3 ccNSO Recommendation 3

ccNSO Recommendation
Change Article IX Section 6 in accordance with Proposal C to resolve Issue C as defined in the Issues report.

Proposal C to resolve Issue C is:

C—AMENDMENT OF ARTICLE IX.

A change of Article IX Section 6 of the bylaw by adding an additional paragraph.

Proposed wording Article IX Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

3. Any change of this article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP as stated in Annex C to these bylaws, and shall be subject to approval by the Board.

Further, the last full sentence of Annex B Section 2(e) should be amended to read:

In all events, consideration of revisions **to Article IX of the bylaws,** to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

The Council Recommendation was adopted by 28 votes in favour out of 29 votes lodged (96 % of the votes lodged in favour)

2.4 ccNSO Recommendation 4

ccNSO Recommendation
Change Article IX Section 4.10 and Annex B sections 2, 3 and 15 in accordance with
Proposal D to resolve Issue D as defined in the Issues report.

Proposal D to resolve Issue D is:

Issue D—SETTING BINDING POLICIES

Amendment of Article IX Section 4.10 and Annex B section 2, 3 and 15.

Proposed wording Article IX section 4.10
> "Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue
> of their membership to the extent, and only to the extent, that the policies

> **(a)   Only address issues that are within scope of the ccNSO
> according to Article IX, Section 6 and Annex C;**

> (b)   Have been developed through the ccPDP as described in Section 6 of this
> Article, and

> (c)   Have been recommended as such by the ccNSO to the Board, and

> (d)   Are adopted by the Board as policies, provided that such policies do not
> conflict with the law applicable to the ccTLD manager which shall, at all times,
> remain paramount. In addition, such policies shall apply to ICANN in its
> activities concerning ccTLD's."

Proposed wording Annex B Section 3. Initiation of PDP

> "The Council shall decide whether to initiate the PDP as follows:

> a. Within 21 days after receipt of an Issue Report from the Issue Manager, the
> Council shall vote on whether to initiate the PDP. Such vote should be taken at a
> meeting held in any manner deemed appropriate by the Council, including in
> person or by conference call, but if a meeting is not feasible the vote may occur by
> e-mail.

> b. A vote of ten or more Council members in favour of initiating the PDP shall be
> required to initiate the PDP provided that the Issue Report states that the issue is
> properly within the scope of the ICANN mission statement and ccNSO Scope. ~~In
> the event that the Issue Report states it is not properly within the scope of the
> ICANN mission statement or the ccNSO Scope, then a vote of twelve or more
> Council members in favor of initiating the PDP shall be required to initiate the
> PDP.~~"

Proposed wording Annex B section 2 Creation of the Issue Report and Initiation
Threshold

> "Within seven days after an affirmative vote as outlined in Item 1(a) above or the
> receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall
> appoint an Issue Manager. The Issue Manager may be a staff member of ICANN
> (in which case the costs of the Issue Manager shall be borne by ICANN) or such

other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue; and

d. Support for the issue to initiate the PDP;

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:

1) The issue is within the scope of ICANN's mission statement;

2) Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the

ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager[1] accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should[2] move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favour of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP."

Proposed wording Annex B section 15.5.

"5.   In the event ~~circumstances where~~

~~(i)~~   ~~T~~ the Board determines not to accept a ccNSO Supplemental Recommendation, ~~and~~

~~(ii)~~   ~~The opinion of the General Counsel pursuant to Item 2.e. was that the issue was within the scope of the ccNSO pursuant to the ccNSO's Scope,~~

then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

The Council Recommendation was adopted by 28 votes in favour out of 29 votes lodged (96 % of the votes lodged in favour).

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[1] Unfortunately both the Members and Final Report contained the following typo: Manger instead of Manager.

[2] Unfortunately both the Members and Final Report contained the following inappropriate use of language: The Issue Manager shall then proceed with a recommendation **whether or not to the Council shall move to i**nitiate the PDP including both the opinion and analysis of General Counsel and the Council in the Issues Report.

2.5 ccNSO Recommendation 5

ccNSO Recommendation
Change Article IX Section 1 in accordance with Proposal E to resolve Issue E as defined in the Issues report.

Proposal E to resolve Issue E is

Issue E—BINDING POLICIES OUTSIDE CCPDP

Amendment of Article IX section 1 by adding the words highlighted below.

Article IX section 1
> "There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:
>
> 1. developing and recommending to the Board global policies relating to country-code top-level domains;
>
> 2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
>
> 3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.
>
> **Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorised by its members. Adherence to the results of these activities will be voluntary and such activities may include:** seeking to develop best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers."

The Council Recommendation was adopted by 27 votes in favour out of 29 votes lodged (93 % of the votes lodged in favour).

2.6 ccNSO Recommendation 6

ccNSO Recommendation
Change Article IX Section 6 in accordance with Proposal F to resolve Issue F as defined in the Issues report.

Proposal F to resolve Issue F is

Issue F—CHANGES TO CCPDP AND SCOPE

Amendment of Article IX section 6 by deleting the words struck out below.

Article IX Section 6
> "1. The scope of the ccNSO's policy-development role shall ~~initially~~ be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
>
> 2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall ~~initially~~ be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board."

The Council Recommendation was adopted by 28 votes in favour out of 29 votes lodged (96 % of the votes lodged in favour).

2.7 **ccNSO Recommendation 7**

Council Recommendation
Change Annex B Section 13 of the ICANN bylaws in accordance with Proposal I to resolve Issue I as defined in the Issues report.

Proposal I to resolve Issue I is:

Issue I—MEMBERSHIP QUORUM VOTING ON PDP RECOMMENDATIONS

Proposal

Amendment of Annex B Section 13 Members Vote by deleting the words struck through below and adding the words highlighted below.

Annex B Section 13

> "Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).
>
> In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a **final,** second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed ~~irrespective of whether~~ **if at least** 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favour of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation."

The Council Recommendation was adopted by 28 votes in favour out of 29 votes lodged (96 % of the votes lodged in favour).

2.8 ccNSO Recommendation 8

Council Recommendation
Change Annex B Section 15(2c) of the ICANN Bylaws in accordance with Proposal J to resolve Issue J as defined in the Issue Report.
Proposal A to resolve Issue A is:

Proposal J to resolve Issue J is:

Issue J—REJECTION OF PDP RECOMMENDATIONS BY THE ICANN BOARD

Amendment of Annex B Section 15(2c) by deleting the words struck through below and adding the words highlighted below.

Annex B section 15
"   a.   The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.

b.   The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1.   In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

2.   The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3.   At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favour of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that ~~such policy is not in the best interest of the ICANN community or of ICANN~~ **that acceptance of such**

policy would constitute a breach of the fiduciary duties of the Board to the Company."

The Council Recommendation was adopted by 28 votes in favour out of 29 votes lodged (96 % of the votes lodged in favour).

Annex A Pro Forma Members Report on matters pertaining to Article IX, Annex B and Annex C of the ICANN Bylaws, published on the ICANN website at 7 November 2005 (see: www.ccnso.icann.org).

Annex B   Council resolutions 28 October 2005

Whereas the ccNSO Council has initiated a country code Policy Development Process to consider changes to:

> ICANN Bylaws Article IX (Country-Code Names Supporting Organization);

> Annex B (ccNSO Policy-Development Process); and

> Annex C (the Scope of the ccNSO)

to address the matters outlined in paragraphs A to L of Section 3.2 of the Issues Report (published on the ICANN website at 08 June 2005) prepared by Issue Manager.

Whereas the Final Report was submitted to Council and the Final Report contains Proposals A-L to be considered by the Council;

Whereas under Proposals A, B, C, D, E, F, I and J in the Final Report to resolve the Issues A-F, I and J, the Issue Manager proposed to change Article IX or Annex B of the ICANN bylaws to improve and clarify the current bylaw on the ccNSO and the ccPDP in the interest of the members, Council and other stakeholders in the ccNSO;

Whereas the Issue Manger stated the Final Report that there are strong indications that Proposal C to resolve Issue C will not be feasible;

Whereas in order to resolve Issue G as defined in the Issue report the Issue manager suggests to extend Comment Period 2 of the ccPDP until a later date to be determined by the ccNSO Council to enable a joint working group of the ccNSO and the GAC to consider mechanisms, if any, to resolve Issue G and to be recommended as such in this ;

Whereas the Proposals H, K and L do not suggest to make changes to Article IX, Annex B or Annex C to resolve the Issues H, K and L as defined in the Issues Report but are resolved in other ways;

Whereas Proposal A to resolve Issue A is:

Issue A—NO BINDING POLICY FOR NON-MEMBERS OF THE CCNSO

Proposal
Amendment to Article IX Section 4.2 by adding the words highlighted below.

Article IX section 4.2

"Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under Section 7(3) of this Article. A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. **Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under Section 7(3) of this Article.** In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices."

The ccNSO Council:

8.01   RESOLVED that the Council adopts Proposal A as stated in the Final Report and recommends to change Article IX Section 4.2 in accordance with Proposal A to resolve Issue A as defined in the Issues report (Council Recommendation 1).

Whereas Proposal B to resolve Issue B is:

Issue B—IANA SERVICES

Proposal
Amendment to Article IX section 4.3 by deleting the words struck through below and adding the words highlighted below.

Article IX Section 4.3

"Neither membership in the ccNSO nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA database. ~~Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.~~ Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO."

The ccNSO Council:
8.02   RESOLVED that the Council adopts Proposal B as stated in the Final Report and recommends to change Article IX Section 4.3 in accordance with Proposal B to resolve Issue B as defined in the Issues report. (Council Recommendation 2).

Whereas Proposal C to resolve Issue C is

C—AMENDMENT OF ARTICLE IX.

A change of Article IX Section 6 of the bylaw by adding an additional paragraph.

Proposed wording Article IX Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

3. Any change of this article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP as stated in Annex C to these bylaws, and shall be subject to approval by the Board.

Further, the last full sentence of Annex B Section 2(e) should be amended to read:

In all events, consideration of revisions **to Article IX of the bylaws,** to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

The ccNSO Council:

8.03   RESOLVED that the Council adopts Proposal C as stated in the Final Report and recommends to change Article IX Section 6 in accordance with Proposal C to resolve Issue C as defined in the Issues report (Council Recommendation 3).

Whereas Proposal D to resolve Issue D is

Issue D—SETTING BINDING POLICIES

Amendment of Article IX Section 4.10 and Annex B section 2, 3 and 15.

Proposed wording Article IX section 4.10
"Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies

(a)   Only address issues that are within scope of the ccNSO according to Article IX, Section 6 and Annex C;

(b)   Have been developed through the ccPDP as described in Section 6 of this Article, and

(c)   Have been recommended as such by the ccNSO to the Board, and

(d)   Are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLD's."

Proposed wording Annex B Section 3. Initiation of PDP

"The Council shall decide whether to initiate the PDP as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favour of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and ccNSO Scope. ~~In the event that the Issue Report states it is not properly within the scope of the ICANN mission statement or the ccNSO Scope, then a vote of twelve or more Council members in favor of initiating the PDP shall be required to initiate the PDP.~~"

Proposed wording Annex B section 2 Creation of the Issue Report and Initiation Threshold

"Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate),

the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue; and

d. Support for the issue to initiate the PDP;

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:

1) The issue is within the scope of ICANN's mission statement;

2) Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside scope then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manger accordingly. The Issue Manager shall then proceed with a recommendation whether or not to the Council shall

move to initiate the PDP including both the opinion and analysis of General Counsel and the Council in the Issues Report.

f. In the event that the Manager Recommendation is in favour of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP."

Proposed wording Annex B section 15.5.

"5.   In the event ~~circumstances where~~

~~(i)~~   ~~T~~ the Board determines not to accept a ccNSO Supplemental Recommendation, ~~and~~

~~(ii)   The opinion of the General Counsel pursuant to Item 2.c. was that the issue was within the scope of the ccNSO pursuant to the ccNSO's Scope,~~

then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

The ccNSO Council:

8.04   RESOLVED that the Council adopts Proposal D as stated in the Final Report and recommends to change Article IX Section 4.10 and Annex B sections 2, 3 and 15 in accordance with Proposal D to resolve Issue D as defined in the Issues report (Council Recommendation 4).

Whereas Proposal E to resolve Issue E is

Issue E—BINDING POLICIES OUTSIDE CCPDP

Amendment of Article IX section 1 by adding the words highlighted below.

Article IX section 1
"There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

4. developing and recommending to the Board global policies relating to country-code top-level domains;

5. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and

6. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorised by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers."

The ccNSO Council:

8.05   RESOLVED that the Council adopts Proposal E as stated in the Final Report and recommends to change Article IX Section 1 in accordance with Proposal E to resolve Issue E as defined in the Issues report (Council Recommendation 5).

Whereas Proposal F to resolve Issue F is

Issue F—CHANGES TO CCPDP AND SCOPE

Amendment of Article IX section 6 by deleting the words struck out below.

Article IX Section 6
> "1. The scope of the ccNSO's policy-development role shall ~~initially~~ be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
>
> 2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall ~~initially~~ be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board."

The ccNSO Council:
8.06   RESOLVED that the Council adopts Proposal F as stated in the Final Report and recommends to change Article IX Section 6 in accordance with Proposal F to resolve Issue F as defined in the Issues report (Council Recommendation 6).

Whereas Proposal I to resolve Issue I is

Issue I—MEMBERSHIP QUORUM VOTING ON PDP RECOMMENDATIONS

Proposal

Amendment of Annex B Section 13 Members Vote by deleting the words struck through below and adding the words highlighted below.

Annex B Section 13

> "Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).
>
> In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a **final,** second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed ~~irrespective of whether~~ **if at least** 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favour of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation."

The ccNSO Council:
8.07   RESOLVED that the Council adopts Proposal I as stated in the Final Report and recommends to change Annex B Section 13 of the ICANN bylaws in accordance with Proposal I to resolve Issue I as defined in the Issues report (Council Recommendation 7).

Whereas Proposal F to resolve Issue F is

Issue J—REJECTION OF PDP RECOMMENDATIONS BY THE ICANN BOARD

Amendment of Annex B Section 15(2c) by deleting the words struck through below and adding the words highlighted below.

Annex B section 15
"   a.   The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.

b.   The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1.   In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

2.   The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3.   At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favour of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that ~~such policy is not in the best interest of the ICANN community or of ICANN~~ **that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company**."

The ccNSO Council:
8.08   RESOLVED that the Council adopts Proposal J as stated in the Final Report and recommends to change Annex B Section 15(2c) of the ICANN Bylaws in accordance with Proposal J to resolve Issue J as defined in the Issue Report (Council Recommendation 8).

Whereas Proposal G to resolve Issue G is

G—APPLICABLE LAW EXEMPTION

Proposal
There is no amendment of the relevant section of the bylaw proposed at this stage.

It is suggested that the ccNSO defer a recommendation on this particular issue to take into account the outcome of dialogue between the ccNSO and the GAC on this matter. The ccNSO Council is advised to extend Comment Period 2 on this particular issue until a mutually acceptable conclusion is reached. This will then be included as an addendum to the Final Report as the recommendation to resolve this particular issue.

The ccNSO Council:
8.09   RESOLVED that the Council adopts Proposal G and extends Comment Period 2 until such a time a proposal can be included in the Final Report as an addendum.
8.10   RESOLVED to defer conveyance of a Council Recommendation on Issue G, if any, until such a time a proposal is included as an addendum to the Final Report.

Whereas Proposal H to resolve Issue H is

Issue H—INITIATING a ccPDP

Proposal
This matter is resolved as part of the resolution of Issue D part 3

Whereas the Council has adopted Proposal D as sated in the Final Report

The ccNSO Council:
8.11   RESOLVED that the Council adopts Proposal H to resolve this issue as defined in the Issue Report and will not undertake any further action.
8.12   RESOLVED that no Council Recommendation on this Issue is to be conveyed to the Members as a Council

Whereas under Proposal K to resolve Issue K is

Issue K—ABILITY OF BOARD TO SET BINDING POLICIES ON ISSUES NOT WITHIN SCOPE.

Proposal
Assuming the proposal for issue D part 4 is accepted, no further change of bylaws is suggested.

Whereas the Council has adopted Proposal D as sated in the Final Report

8.13   RESOLVED that the Council adopts Proposal K to resolve this issue as defined in the Issue Report and will not undertake any further action.
8.14   RESOLVED that no Council Recommendation on this Issue is to be conveyed to the Members as a Council

Whereas Proposal L to resolve Issue L is

Issue L—SHOULD THE SCOPE OF THE ccNSO BE REDEFINED?

Proposal
As part of this ccPDP there is no proposal to change Annex C of the bylaws. The ccNSO Council is however advised to address concerns with the current scope of the ccNSO at a later stage and in a separate process.

8.15   RESOLVED that the Council adopts Proposal L to resolve Issue L as defined in the Issue Report and will undertake further action at a later time to be determined by the ccNSO Council.

8.16   RESOLVED that no Council Recommendation on Issue L is to be conveyed to the Members as a Council

Annex C Pro Forma Final Report on matters pertaining to Article IX, Annex B and Annex C of the ICANN Bylaws, published on the ICANN website at 8 October 2005 (see: www.ccnso.icann.org).

Annex D: Ballot Form used for the vote by the Members of the ccNSO via email and aggregate of votes.

Tally Server

ICANN

ELECTION: ccNSO Election, 07 November 2005
SERIAL NUMBER: 2ec1c98b21e
BALLOT NUMBER:
PASSWORD:

BALLOT PAPER

http://ccnso.icann.org/announcements/ccpdp-members-report-07nov05.pdf

Members Vote 1

Issue A -- NO BINDING POLICY FOR NON-MEMBERS OF THE CCNSO

Council Recommendation 1

Change Article IX Section 4.2 in accordance with Proposal A to resolve Issue
A as defined in the Issues report.

☐ In favour of Council Recommendation 1
☐ Against Council Recommendation 1
☐ Abstain from voting on Issue A

Members Vote 2

Issue B -- IANA SERVICES

Council Recommendation 2

Change Article IX Section 4.3 in accordance with Proposal B to resolve Issue
B as defined in the Issues report.

☐ In favour of Council Recommendation 2
☐ Against Council Recommendation 2
☐ Abstain from voting on Issue B

Members Vote 3

Issue C -- AMENDMENT OF ARTICLE IX.

Council Recommendation 3

Change Article IX Section 6 in accordance with Proposal C to resolve Issue C
as defined in the Issues report.

☐ In favour of Council Recommendation 3
☐ Against Council Recommendation 3
☐ Abstain from voting on Issue C

Members Vote 4

Issue D -- SETTING BINDING POLICIES

Council Recommendation 4

Change Article IX Section 4.10 and Annex B sections 2, 3 and 15 in accordance
with Proposal D to resolve Issue D as defined in the Issues report.

☐ In favour of Council Recommendation 4
☐ Against Council Recommendation 4
☐ Abstain from voting on Issue D

Members Vote 5

Issue E -- BINDING POLICIES OUTSIDE CCPDP

Council Recommendation 5

Change Article IX Section 1 in accordance with Proposal E to resolve Issue E
as defined in the Issues report (Council Recommendation 5 (# t.b.c.)).

☐ In favour of Council Recommendation 5
☐ Against Council Recommendation 5
☐ Abstain from voting on Issue E

Members Vote 6

Issue F -- CHANGES TO CCPDP AND SCOPE

Council Recommendation 6

Change Article IX Section 6 in accordance with Proposal F to

resolve Issue F
as defined in the Issues report.

☐ In favour of Council Recommendation 6
☐ Against Council Recommendation 6
☐ Abstain from voting on Issue F

Members Vote 7

Issue I -- MEMBERSHIP QUORUM VOTING ON PDP RECOMMENDATIONS

Council Recommendation 7

Change Annex B Section 13 of the ICANN bylaws in accordance
with Proposal I
to resolve Issue I as defined in the Issues report.

☐ In favour of Council Recommendation 7
☐ Against Council Recommendation 7
☐ Abstain from voting on Issue I

Members Vote 8

Issue J -- REJECTION OF PDP RECOMMENDATIONS BY THE ICANN
BOARD

Council Recommendation 8

Change Annex B Section 15(2c) of the ICANN Bylaws in
accordance with Proposal
J to resolve Issue J as defined in the Issue Report.

☐ In favour of Council Recommendation 8
☐ Against Council Recommendation 8
☐ Abstain from voting on Issue J

(Submit Ballot) (Clear Entries)

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Aggregate vote ccPDP

Totals:

2       Abstain from voting on Issue A
1       Abstain from voting on Issue B
1       Abstain from voting on Issue C
1       Abstain from voting on Issue D
2       Abstain from voting on Issue E
1       Abstain from voting on Issue F
1       Abstain from voting on Issue I
1       Abstain from voting on Issue J
0       Against Council Recommendation 1
0       Against Council Recommendation 2
0       Against Council Recommendation 3
0       Against Council Recommendation 4
0       Against Council Recommendation 5
0       Against Council Recommendation 6
0       Against Council Recommendation 7
0       Against Council Recommendation 8
27      In favour of Council Recommendation 1
28      In favour of Council Recommendation 2
28      In favour of Council Recommendation 3
28      In favour of Council Recommendation 4
27      In favour of Council Recommendation 5
28      In favour of Council Recommendation 6
28      In favour of Council Recommendation 7
28      In favour of Council Recommendation 8
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