Members Report

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

7 November 2005

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Issue Manager

Contents

Executive Summary

1. General Aspects

The purpose of the Members Report is to assist the Members in their vote on the Council Recommendations to resolve the Issues as identified by the Council. The issues are further elaborated on in the previously published Issue, Initial and Final Reports.

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 is not possible at this stage to give an indication if and to what extent the original goal for initiating this ccPDP will be realised. The Council Recommendations are therefore submitted to the membership to be considered 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 and other stakeholders.

As stated in the Final Report, it is not clear if the ICANN Board is likely to adopt the Council Recommendation after being approved by the Membership of the ccNSO. However, there is a strong indication that Council Recommendation 3, the proposal to resolve the Issue C—Amendment of Article IX, is not feasible.

2. Members Report

The Members Report contains the following:

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

b.   a statement of the Council's recommendation (Chapter 2);

c.   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;

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

e.   a copy of the minutes of the Council's deliberation on the policy issue, including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions (Annex C); and

f.   an explanatory note on the possible reasons for the non-feasibility of Council Recommendation 3 (Annex D).

3. Members vote

The ccNSO members shall be given an opportunity to vote on the Council Recommendations 1- 8. The vote of members shall be electronic and members' votes should be lodged over at least a period of 21 days tentatively from 7 November until 28 November.

There are 8 individual Council Recommendations which have to be adopted individually. A Council Recommendation is adopted if 50% or more of the ccNSO members have lodged a vote in the voting period from 7 November until 28 November and more than 66 % of the members vote in favor of a Recommendation.

In the event that fewer than 50% of the ccNSO members lodge a vote, a second round of voting is required. This second round of voting may only be conducted after a notice period of at least 30 days.

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MEMBERS 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 11th 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.

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 which was presented to the Chair of the ccNSO at 28th of May.

Based on the Issues report and in accordance with the ICANN bylaws the ccNSO Council resolved by email voting on 6th 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 (.ca, North American Region), Patricio Poblete (Latin American Region), Ali Drissa Badiel (African Region), Jordan Carter (Asian Pacific Region) and Giovanni Seppia (European Region).

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.

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 (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.

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:

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, with the exception of Comment Period 2 relating to 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 the comment period 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 A, Council resolutions relating to the ccPDP).

1.2 Further Process

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 opinion or advice on the proposals.

The council resolutions adopting the Council Recommendations are included in this Report (Annex A). All resolutions are based on, and similar to, proposals made in the Final Report. The Council resolutions were adopted by 17 Council members voting in favor and 1 abstaining (considerations for abstaining are attached to this Report in Annex B). The minutes of the meeting on 18 October in which the proposals were discussed are attached to the Report (Annex C). Voting on the recommendations was conducted via email between 28 and 31 October 2005.

Members Vote (tentatively 7 November – 28 November 2005)

In the event the Council adopts the Members Report, the Issue Manager shall, on 7 November, submit the Members Report to the ccNSO members.

Following the submission of the Members Report the ccNSO members shall be given an opportunity to vote on Council Recommendations 1- 8. The vote of members shall be electronic and members' votes should be lodged over at least a period of 21 days tentatively from 7 November until 28 November.

In this particular case there are 8 Council Recommendations to be adopted individually. A Council Recommendation is adopted if 50% or more of the ccNSO members have lodged a vote in the voting period and more than 66 % of the members vote in favor of a Recommendation.

In the event fewer than 50% of the ccNSO members at the time of voting have lodged a vote, a second round of voting needs to be held. This second round of voting may only be conducted after a notice period of at least 30 days.

The ccNSO Recommendation will be incorporated into a Board Report by the Issue Manager, which has to be approved by the Council. According to Annex B section 14 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.

ICANN Board Vote

In accordance with Annex B section 13, the Issue Manager shall within seven days incorporate the ccNSO Recommendation into a report to be approved by the Council and then submitted to the Board (the "Board Report"). Tentatively the Board Report will be 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.

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.

1.3 Members Report

According to the ICANN bylaws Annex B section 13, the Issue Manager is required to produce a Members Report to be submitted to the Members of the ccNSO, after approval of the Report by the Council. The Members 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

   c.   a copy of the minutes of the Council's deliberation on the policy issue, including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions (see Annex B to this Report).

The purpose of the Members Report is to assist the Members in their vote on the Council Recommendations to resolve the Issues as identified by the Council and further elaborated on in previously published Issue, Initial and Final Reports.

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

1.4 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 may be encouraged to join. 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 consider the Council Recommendations to be improvements, while other members who participated did not object to proposed changes. Therefore the Council Recommendations are submitted to the membership to be considered 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 and other stakeholders.

1.5 Feasibility of Council Recommendations

It should be noted that part of the analysis of the methods for resolving the matters identified in the Initial Report should have included a statement on the feasibility of the proposals. Feasibility in this context is an indication as to whether the proposals for changes of the bylaws are acceptable to the ICANN Board. Due to circumstances beyond the control of the Issue Manager it was not possible to include this in the Initial Report. A brief statement was therefore included in the Final Report.

As stated in the Final Report, it is still not clear if the ICANN Board is likely to adopt the Council Recommendation after being approved by the Membership of the ccNSO.

However, there is a strong indication that Council Recommendation 3, the proposal to resolve the Issue C- amendment of Article IX, is not feasible.

In order to ensure that the Members of the ccNSO can vote on the proposals for changes to the bylaws as suggested in the Final Report, the Council adopted all proposals including the particular proposal to resolve Issue C. With regard to Issue C, the Council decided to provide the Membership with an explanation of why the Council Recommendation 3 is not likely to be feasible. The explanatory note is attached to this Report as Annex D

2   COUNCIL RECOMMENDATIONS

Council Recommendation 1

Council 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."

Council Recommendation 2

Council 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.**"

Council Recommendation 3

Council 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.

Council Recommendation 4

Council 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 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 favor 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.

Council Recommendation 5

Council 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."

Council Recommendation 6

Council 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."

Council 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."

Council 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~~ <mark>that acceptance of such</mark>

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

Annex A

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 (# t.b.c.).

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 <u>Section 5 of this Article</u> 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 (# t.b.c.).

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 (# t.b.c.)).

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 favor 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 (# t.b.c.)).

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 (# t.b.c.)).

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 sed 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 (# t.b.d.)).

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 (# t.b.c.)).

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 (# t.b.c.)).

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 B

Statement of Olivier Guillard on abstention vote on all proposed resolutions.

Colleagues,

"I abstain for resolutions 8.01 to 8.16."

I believe that my vote requires an explanatory statement.

Background point:

I recall the negotiations in Montreal related to the ccNSO and the ICANN bylaws relating to the ccNSO that led to a consensus among those ccTLD's present (at least this was my understanding). I have seen that afterwards the situation jammed, because of new issues raised by some.

In my view the core issue was and still is not related to the ccNSO bylaws as such really (BTW I hope this is the case. The core matter is at the same time wider and simpler than the ICANN bylaws).

Core issue:

I remember the process that we have followed before deciding at the end that the only way to address the concerns expressed and to move forward was to implement a ccPDP: considering the situation, I think that we have taken the right decision. I have participated in the dialog, collecting comments from some ccTLD's, especially within CENTR. I have read the concerns raised by colleagues and listened to them. I also recall how those concerns were discussed one by one, especially over the ccNSO meeting in Luxembourg.

I see now how those issues are addressed and included in the Final Report. The Final Report is clearly in accordance with the input we have gathered. Therefore, I think that it addresses the concerns that have been expressed.

Other Considerations:

Focusing on the ICANN/ccNSO bylaws can produce side effects, for instance but not limited to, stressing non ending stories about legitimacy issues, raising responsibility matters for which perceptions vary and many other issues which today are outside our scope and capacity to address as a community or for which we are not qualified to deal with as individual ccTLD registries.

To illustrate this, I'm not an English native speaker, I'm not a lawyer, even less a Californian law specialist. Exchanges and

communications we had in my organization about the ICANN bylaws
couldn't result in an enlightened opinion (not to think
about the next step: reaching consensus on a position).

Finally, although I am sitting on the council in my personal
capacity, I am the only councillor elected by ccTLDs, without
being linked to a ccNSO member.

My vote and position should be understood as such.

Kind regards,

Olivier

Annex C

Minutes ccNSO Council Call 18 October 2005

Participants
Chris Disspain (Chair)
Bart Boswinkel (ccPDP Issue Manager)
Victor Ciza
Hirofumi Hotta
Ondrej Filip
Patricio Poblete
Eva Frölich
Dotty Sparks de Blanc
Bernard Turcotte
Charles Sha'ban
Oscar Robles-Garay
Donna Austin (ICANN ccNSO Liaison)

Apologies:
Bart Vastenburg
Young Eum Lee
Olivier Guillard
Eduardo Santoyo
Paulos Nyirenda
Mohammed El Bashir
Yassin Mshana
Giovanni Seppia
Fernando Espana
Ali Drissa Badiel

Chris Disspain (CD) welcomed members to the meeting and noted that there won't be enough participants on the call to pass any resolutions.

Bart Boswinkel (BB), advised to follow the agenda CD sent out for the call. He will try to highlight some of the elements in the final report, go to question and answer/discussions and then through the process for making decisions over the next couple of days.

The original purpose of the PDP was to encourage cc managers who are not members of the ccNSO to become members. The Luxembourg meeting was an eye opener for many of the cc managers on the background of the current bylaw language. There is no indication to what extent the original goal of the PDP will be achieved if the recommendations are adopted by the Board. In going through the process and having the discussions about the issues, it is fair to say that the proposals in the final report have merits on their own.

There is a need to understand what stage we are at in the process for the ccPDP.
We are now at the beginning of the voting stages. Firstly, council has to vote on the recommendations—it is not a vote on the report. Council will make their own recommendations on what should be put to the Board. Council members should vote on these and they will then become members' recommendations. Fourteen or more members of the ccNSO Council have to vote in favour of the recommendations—there is no quorum at this meeting to conduct a vote. As of tomorrow we will try to come to decisions via email.

After this stage the members vote period starts. This will be straight forward unless 50% of the membership does not vote. Council should encourage members to vote to ensure the quorum is met. After the members vote, the recommendations are put to a Board vote. In this case, because we are dealing with bylaw changes—the Board has to follow its own set of procedures. There might be a public consultation period involved or other mechanisms. As a consequence we will not be able to conclude this process in Vancouver. Not sure how long the board vote stage will take. This will depend entirely on the process the Board chooses.

Dotty Sparks de Blanc (DS) stated she did not understand why it was not possible to complete this process by or in Vancouver.

BB advised that we hope to have concluded the members vote by 18 November, then we will submit the Board report to the Board. The Board has to go through a set of procedures defined in the bylaws about changing bylaws—this can take from one to a couple of months to complete. The Board will not be able to take a vote on this in Vancouver. The Final vote on the recommendations will be after Vancouver.

CD added that the bylaws call for the Board to go to public comment.

DS asked if it is possible for this to happen in this calendar year?

CD felt that the most likely scenario is that it will go out for public comment and will be looked at by the Board at a meeting in January.

BB considered this to be an optimistic scenario, as according to the bylaws there must be 21 days for the members to vote.

CD advised that we are anticipating commencing the members vote on 25 October which would close on 15 November.

DS asked how many Europeans does the PDP satisfy?

BB responded that he has no idea.

CD advised that he will ask the members to vote on the principal that this is a good idea, it cannot be done on the basis that the European members will join the ccNSO.

BB then lead the group through the proposals in the Final Report, noting the distinctions between four types of proposals.

One—there is a procedural proposal for Issue G to extend the comment period 2
Two—there is the do nothing so the ccPDP stops for this issue
Third—there are suggestions to make changes to the bylaws and decide whether to put these into Council recommendations
Fourth—there is a change to the bylaws proposed which is put into the recommendations but it is feasible that it will not be accepted.

With regard to the fourth kind of proposal, this is specifically about the proposal regarding Issue C—changes of bylaws by the Board. If you read through the final report it is possibly not feasible that this proposal will be accepted. We had a discussion with John Jeffrey, ICANN's General Counsel and if the proposal remains as it currently is and

as it has evolved in the course of this process, it is possible that he will have to advise the ICANN Board not to adopt it.

Is this clear?

CD asked if there were any specific questions about anything in the report {no}

BB advised that regarding Issue G—applicable law, the ccNSO Council can resolve to move forward as recommended without going to a members vote. It is a procedural decision.

CD advised that we can resolve to set up a dialogue with the GAC and we don't make any recommendations about this at this stage. We resolve to set up a joint group with the GAC to resolve this issue.

Bernie Turcotte (BT) asked if this is Chris and Bart's recommendation on the way to go forward?

CD responded yes, noting that a copy of the letter to Sharil (GAC Chair) and his response is in the report. This creates a dynamic between the GAC and the ccNSO. A formal resolution about this will be sent out tomorrow.

CD asked what should we do about the suggested change in the Final Report that has been identified as most likely not to be acceptable by the Board? The Issue is that under the current bylaws the ccPDP and the Scope of ccNSO can only be changed by using a PDP. The proposal is that not only those two things can be changed, but also Article IX of the bylaws which is the Article dealing with the ccNSO. Currently the Board could change the bylaws without going through a formal consultation process including the approval of a change by the ccNSO. It is a fundamental principle of governance of non-membership corporations that the prerogative and responsibility to change bylaws is with the Board. We have the choice to put forward a recommendation that is unlikely to be accepted, make no comment on the recommendation and just put it forward and see what happens or we can stop it in the process now.

BB advised that if you do not accept proposal it will not be put forward as a Council Recommendation. This is the same as Chris's third option.

DS asked is there some halfway measure?

CD replied no not really

DS considered that if we think it's ridiculous we should not put this forward.

CD noted that his concern is that we will fail in the explanation.

Patricio Poblete (PP) asked if it is true that this could be interpreted as a process for this kind of change?

CD replied that it is a function of the distribution of power. At the end of the day as a lawyer you cannot advise to pass control of the constitution of the organization outside yourself. The last thing we want is moving forward for something knowing in advance that it is not to be accepted by the Board.

BB advised that from a risk perspective the issue as raised is not as cumbersome as some of the ccTLD managers want you to believe it is. Under the current bylaws the Board has to go through established procedures as we witness in this particular ccPDP. These procedures will take up to two or three months at least. Therefore you cannot be taken by surprise, which is the fear expressed.

CD considered that the power of the phrase 'and you can always leave' is important because you can always walk away and have the time to do so. He suggested that the proposal is to produce some sort of explanatory memorandum in layman's terms and leave it to members to vote.

DS asked if it is worth going through the exercise if those who have raised the issue are unlikely to join anyway?

CD noted that the alternative is that we could make a recommendation to not vote for it.

BT advised that he liked Chris' recommendation. He considered that the Council should not position itself to vote against it. Further it would be nice to have, but no-one will die in a ditch over it.

CD felt that this is an issue that should be voted upon by the Members. If the members are opposed to it, it won't go anywhere. Anyway we will not know who is in favour or who has significant doubt about this.

BB reminded the group that the member's vote is only on council recommendations. Therefore, if you want the members to vote on this particular proposal it needs to be a Council Recommendation.
CD advised to avoid that the members of the Council vote against it, nor did he think that the Council should recommend to the members that they don't vote for something or advise them to vote against it. The Council should provide an explanation and let the Members vote on it.

DS asked what explanation CD is going to give?

CD said that he will try to get a simple two or three paragraphs on what it means. The choices are, we, the Council, vote in favour, or against the proposal, which is not wise given the role of the members in the ccNSO. It is up to the Members to make up their mind. It is not an option to not give members a vote on this. However the members should be aware of the concerns underlying the non-feasibility of this proposal.

This brings us to the last lump of resolutions A, B, D, E, F, I & J. CD proposal is that we make a recommendation to the members that we vote in favour of the proposals. The Council will get a ballot paper via email to give you the opportunity to vote on each particular one, that record will get published and then there will be a members vote on each one.

Any questions/problems

Next meeting: 1 November, timing to be determined as daylight saving commences in some countries. The Goal is that there will be a report on the AF WG at this meeting.

Meeting closed UTC 12.03

Annex D

Note on the Feasibility of proposal Issue C

1. ICANN is a non-profit Public Benefit Corporation incorporated under the laws of the state of California, USA. For various reasons one of the basic structuring principles underlying the bylaws of ICANN is that it is a non-membership organization although the term "members" is used in the bylaws. This is reflected in Article XVII of the ICANN bylaws: "ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff."

2. According to the Final Report it is proposed to add the following, new paragraph to Article IX section 6 of the ICANN Bylaws: "==**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.**==" Adding this paragraph would mean that any subsequent change to Article IX could only be achieved by going through all stages of a policy development process.

3. It is a prerogative and the responsibility of the Board of a non-membership corporation that it can amend the bylaws of that corporation. If the proposed language were to be adopted it would limit the principal powers of the Board to initiate and adopt changes of the Bylaws in general and relating to the ccNSO in particular. So, for example, in the event a change of the Bylaws is needed to accord with a change of the CNPBCL, the initiative and decision to amend the bylaws accordingly, is currently with the Board. However, if the proposed paragraph were added such an amendment of Article IX, would have to go through a ccPDP. The Board's ability to amend the article would then depend on a) the ccNSO Council initiating a ccPDP and b) on a vote of 66 % of the ccTLD managers who are part of the ccNSO in favour of the proposed amendment. As the example signifies it is not reasonable from a perspective of corporate governance to expect a Board of an organization to be dependent on decisions of entities who are not accountable for these decisions.

4. Further the requirement for their to be a vote of ccNSO members on any amendment of article IX could be construed in such way to imply that ICANN has members and therefore is in effect a membership organization. Consequently, the proposal not only has an impact on the balance of powers within ICANN, but also could impact the nature of ICANN itself. It could turn ICANN from a non-membership into a membership organization.