

Proposed Bylaws Updates to Limit Access to Accountability Mechanisms

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Comment of the ICANN Business Constituency (BC)

Background

The Fundamental Bylaws emerged from the IANA transition and include many specific requirements negotiated over several years to ensure the accountability of actions by ICANN, and protect the unique oversight role assigned to the Empowered Community. As a result, the BC believes that any changes to the Fundamental Bylaws must be few, pose a significant challenge to ICANN as supported by a strong factual record, and be narrowly tailored to address the specific concern. **Unfortunately, the proposed amendments do not live up to this high standard.**

The Proposed Amendments are Not Necessary

There is no evidence or facts to support the risk that the accountability mechanisms will be misused with frivolous filings in connection with the Grant Program. Indeed, CCWG-AP Recommendation 7 is the first instance in nearly 8 years where a concern has been raised about the applicability of these mechanisms. As such, it is premature to consider a streamlined process for addressing these issues.

With ICANN's current reserve, there's no risk that these accountability mechanisms will make ICANN financially insecure. Indeed, ICANN has historically over-rotated to avoid legal risk, as was seen with the legal war chest collected in connection with the 2012 Round in anticipation of litigation.

Furthermore, the chartering Supporting Organisations and Advisory Committees are decisional participants within the Empowered Community involved in the CCWG process, and could recommend suspension of section(s) the Fundamental By-laws of ICANN would go against the spirit of the Empowered Community which has proven to work when tested.

Removing these accountability mechanisms sets a dangerous precedent.

The BC believes that the accountability mechanisms in the Fundamental Bylaws create a type of due process that are necessary to maintain. While these mechanisms may be complex, they were adopted to protect all and the multi-stakeholder approach against inappropriate, illegal, and arbitrary actions by ICANN or other interests.

As a result, we should pause before going down the slippery slope of setting aside accountability mechanisms that create important safeguards for the Empowered Community. The BC does not support the proposed change as presented and look forward to participating in a process leading to formal by-law amendments that are community driven in line with accountability mechanisms.

This comment was drafted by Margie Milam and Lawrence Olawale-Roberts.