

Brussels, Belgium
20 May 2016

CENTR position Input on the Draft New ICANN Bylaws

The CENTR community welcomes the opportunity to present its opinion on the draft ICANN Bylaws developed to reflect the recommendations contained in the proposals by the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability).

As CENTR has been actively contributing to the refinement of the ICANN Bylaws over the last decade – in particular those related to the ccNSO – it is with the greatest interest we have followed the development of the current draft Bylaws.

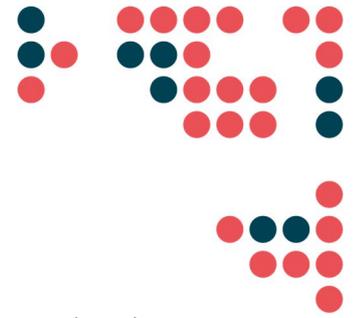
We would like to acknowledge the complexity of the work and compliment the dedication of the working group membership and ICANN staff for having managed to review the Bylaws.

We note that the proposal has received confirmation from both the independent counsel to the community groups and ICANN's General Counsel that the Draft New ICANN Bylaws are consistent with the community proposals relating to the IANA Stewardship Transition.

We would like to make the following observations:

1. It is important that the distinction between ccTLDs and gTLDs is properly captured in the final version of the Bylaws. ICANN policies should only apply to gTLDs and the same applies to registry agreements. Furthermore, we would highlight the importance of section 1.1. *"(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority, and nothing in the preceding sentence should be construed to suggest that it does have authority to impose such regulations."* As this clause is crucial in respecting the distinction mentioned above, we suggest to remove "to impose such regulations" to avoid the risk of misinterpretation.
2. When it comes to the IANA operations, there should not be any form of discrimination in the treatment of ccTLDs that are members of the ccNSO and those that are not. While this issue has not been dealt with in the draft Bylaws, we underline our strongest support for the CWG conclusions¹ in this respect.

¹ <https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf> par. 1136



3. The 1.1. D grandfathering clause that should guide the inclusion of a set of agreements gives rise to some fundamental concerns. This clause was not required nor suggested by the ICG report and could lead to significant deviation from the intended scope. For instance, since the details of the agreement with the Root Zone Maintainer are not publicly available, we are not in a position to comment on a potential impact on ccTLDs at the moment. In other cases, this would include agreements that are not yet agreed upon. Therefore, we suggest to restrict the scope of this clause to RAA and RA agreements.

We recommend the ICANN Board makes sure both the CCWG-Accountability and the ICG are kept fully involved in the process of finalising the Bylaws. Not only because this process needs to be as transparent as possible, but it is also of paramount importance that the expertise of the aforementioned groups is adequately taken on board.

About CENTR

CENTR is the association of European country code top-level domain (ccTLD) registries, such as .de for Germany or .si for Slovenia. CENTR currently counts 53 full and 9 associate members – together, they are responsible for over 80% of all registered country code domain names worldwide. The objectives of CENTR are to promote and participate in the development of high standards and best practices among ccTLD registries.