

Comments on Proposed Bylaws Changes Regarding Consideration of GAC Advice

The Internet Service Provider and Connectivity Provider Constituency (ISPCP) respectfully submits the following comments on the Proposed Bylaws Changes Regarding Consideration of GAC Advice.

The ISPCP consensus is that we oppose the proposed Bylaw Change. We consider that requiring GAC Advice to be followed unless opposed by a 2/3 majority of the Board would be disruptive to and seriously impair the spirit of the bottom-up multistakeholder model on which ICANN was founded and has achieved success.

We understand and sympathise with the desire of the GAC for reform of the way their advice is handled by the Board. Many members of the ICANN community feel similarly about their own positions. On May 6, 2014, ICANN initiated a consultation with the community concerning ICANN accountability. This consultation is an opportunity to consider how to address these concerns for all groups together. We believe that it is inappropriate to deal with the GAC first, and that doing so is likely to unbalance the question regarding the needs of others.

We continue to believe that it is essential for public confidence in ICANN that it is seen to be responsive to the needs of all stakeholders, including governments. This Bylaws change would certainly create a perception, and would also risk ensuring in reality, that the ICANN Board simply followed government advice without according due weight to the remainder of the community.

By way of illustration of the type of issues that would be unfairly pre-empted by approval of this Bylaws change prior to conclusion of the Enhancing Accountability process, we attach a suggestion for an alternative By-laws change that would address GAC expectations together with those of other groups. We believe this is the kind of suggestion that ought to be considered by the community as a whole, including governments, during that process.

We therefore respectfully request that the Board do not make the proposed Bylaws change.

At the end of Article VI section 17 add:

A final decision by the ICANN Board shall only be taken if supported by a vote of least 2/3 of all members of the Board eligible to vote on the matter if the Board has received advice against that decision (including advice not to take the decision at this time) from and on behalf of any of the following:

- i) The Governmental Advisory Committee, GAC
 - ii) The Security and Stability Advisory Committee, SSAC
 - iii) The Root Server System Advisory Committee, RSSAC
 - iv) The Internet Engineering Task Force, IETF
 - v) At least two Regional At-Large Organisations, RALO
 - vi) At least two Regional Internet Registries
 - vii) At least three members of the Council of the Country-Code Names Supporting Organisation, ccNSO, representing ccNSO members from at least three different Geographic Regions
 - viii) At least [four] of the following groups represented within GSNO
 - a. The Registries Stakeholder Group
 - b. The Registrars Stakeholder Group
 - c. The Commercial Business Users Constituency
 - d. The Intellectual Property Constituency
 - e. The Internet Service Providers Constituency
 - f. The Non-Commercial Users Constituency
 - g. The Non-for-Profit Operational Concerns Constituency
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Commentary

1. The effect of this proposal is that
 - a. Advisory Committees, who do not get a vote on the ICANN Board, may through contrary advice require the Board to reach a supermajority.
 - b. Substantial minorities within NSOs may through contrary advice require the Board to reach a supermajority, even though their own Board representation is in favour.
2. This proposal would make the ICANN Board more responsive not only to GAC advice, but to advice from all elements of the community.
3. The effect of this proposal is not simply to raise the voting threshold to a supermajority generally, or to give certain Board seats greater voting weight.
 - a. Firstly, it only applies in the negative; granting greater voting weight to certain stakeholders would help them push new changes through, which this does not do.
 - b. Secondly, the power conferred by this proposal would be exercisable by coalitions within GNSO that would not be effective within the existing "House" structure.
4. By contrast, the proposal that the Board should follow GAC advice unless there is a supermajority against it applies equally to positive requests from the GAC for change. As such, it is tantamount to creating an additional nine voting seats for the GAC.