

## PROPOSED FUNDAMENTAL BYLAWS AMENDMENTS

### ARTICLE 4 ACCOUNTABILITY AND REVIEW

#### Section 4.1. PURPOSE

In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

#### Section 4.2. RECONSIDERATION

(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.

(b) The EC may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC of these Bylaws. The EC Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

(i) Disputes relating to country code top-level domain ("ccTLD") delegations and re-delegations;

(ii) Disputes relating to Internet numbering resources; and

(iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board [Accountability Mechanisms](#) Committee to review and consider Reconsideration Requests. The Board [Accountability Mechanisms](#) Committee shall have the authority to:

Deleted: Governance

Deleted: Governance

(i) Evaluate Reconsideration Requests;

(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;

(iii) Evaluate Reconsideration Requests for urgent consideration;

(iv) Conduct whatever factual investigation is deemed appropriate;

(v) Request additional written submissions from the affected party, or from other parties; and

(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board [Accountability Mechanisms](#) Committee:

Deleted: Governance

(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:

(A) for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;

(B) for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or

(C) for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board [Accountability Mechanisms](#) Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board [Accountability Mechanisms](#) Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board [Accountability Mechanisms](#) Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

Deleted: Governance

Deleted: Governance

Deleted: Governance

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board [Accountability Mechanisms](#) Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board [Accountability Mechanisms](#) Committee shall thereafter promptly proceed to review and consideration.

Deleted: Governance

Deleted: Governance

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board [Accountability Mechanisms](#) Committee shall review the Reconsideration Request without involvement by the Ombudsman.

Deleted: Governance

(m) The Board [Accountability Mechanisms](#) Committee may ask ICANN Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

Deleted: Governance

(n) The Board [Accountability Mechanisms](#) Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board [Accountability](#)

Deleted: Governance

[Mechanisms](#) Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board [Accountability Mechanisms](#) Committee, it shall so state in its recommendation.

Deleted: Governance

Deleted: Governance

(o) The Board [Accountability Mechanisms](#) Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board [Accountability Mechanisms](#) Committee, it shall so state in its recommendation. Any information collected by ICANN from third parties shall be provided to the Requestor.

Deleted: Governance

Deleted: Governance

(p) The Board [Accountability Mechanisms](#) Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN Staff, and by any third party.

Deleted: Governance

(q) The Board [Accountability Mechanisms](#) Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board [Accountability Mechanisms](#) Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request. The final recommendation of the Board [Accountability Mechanisms](#) Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board [Accountability Mechanisms](#) Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board [Accountability Mechanisms](#) Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

Deleted: Governance

Deleted: Governance

Deleted: Governance

Deleted: Governance

Deleted: Governance

(r) The Board shall not be bound to follow the recommendations of the Board [Accountability Mechanisms](#) Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board [Accountability Mechanisms](#) Committee within 45 days of receipt of the Board [Accountability Mechanisms](#) Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must

Deleted: Governance

Deleted: Governance

Deleted: Governance

be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board [Accountability Mechanisms](#) Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board [Accountability Mechanisms](#) Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN's redaction.

Deleted: Governance

Deleted: Governance

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board [Accountability Mechanisms](#) Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN's principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

Deleted: Governance

(t) The Board [Accountability Mechanisms](#) Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board [Accountability Mechanisms](#) Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board [Accountability Mechanisms](#) Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board [Accountability Mechanisms](#) Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

Deleted: Governance

Deleted: Governance

Deleted: Governance

Deleted: Governance

(u) The Board [Accountability Mechanisms](#) Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

Deleted: Governance

- (i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;
- (ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;
- (iii) an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and
- (iv) whether or not, in the Board [Accountability Mechanisms](#) Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Deleted: Governance

## Report of Public Comment

<b>Title:</b>	<b>Proposed Fundamental Bylaws Changes to Move the Board Governance Committee's Reconsideration Process Responsibilities to Another Board Committee</b>																		
<b>Publication Date:</b>	17 May 2017																		
<b>Prepared By:</b>	Elizabeth Le																		
<table border="1"> <tr> <th colspan="2">Public Comment Proceeding</th> </tr> <tr> <td>Open Date:</td> <td>31 March 2017</td> </tr> <tr> <td>Close Date:</td> <td>10 May 2017</td> </tr> <tr> <td>Staff Report Due Date:</td> <td>17 May 2017</td> </tr> </table>		Public Comment Proceeding		Open Date:	31 March 2017	Close Date:	10 May 2017	Staff Report Due Date:	17 May 2017	<table border="1"> <tr> <th colspan="2">Important Information Links</th> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">Announcement</a></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">Public Comment Proceeding</a></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">View Comments Submitted</a></td> </tr> </table>		Important Information Links		<a href="#">Announcement</a>		<a href="#">Public Comment Proceeding</a>		<a href="#">View Comments Submitted</a>	
Public Comment Proceeding																			
Open Date:	31 March 2017																		
Close Date:	10 May 2017																		
Staff Report Due Date:	17 May 2017																		
Important Information Links																			
<a href="#">Announcement</a>																			
<a href="#">Public Comment Proceeding</a>																			
<a href="#">View Comments Submitted</a>																			
<b>Staff Contact:</b>	Elizabeth Le	<b>Email:</b>	<a href="mailto:elizabeth.le@icann.org">elizabeth.le@icann.org</a>																
<b>Section I: General Overview and Next Steps</b>																			
<p><b>General Overview:</b></p> <p>One of ICANN's key accountability mechanisms is the Reconsideration process, where injured parties can ask the Board to reconsider ICANN staff or Board actions. Currently, the Board Governance Committee (BGC) is delegated, through Article 4, Section 4.2 of the ICANN Bylaws, the responsibility for reviewing and evaluating Reconsideration Requests. However, in the past several years, the BGC's work relating to Reconsideration Requests has increased significantly. As a result of the increased volume of Reconsideration Requests, the BGC was required to focus more of its time on Reconsideration Requests, taking away from the time the BGC had to focus on core governance duties. Under the new ICANN Bylaws (effective 1 October 2016), the Reconsideration process has been expanded and it is anticipated that the volume and complexity of accountability mechanisms filed, including Reconsideration Requests, might likely increase.</p> <p>As part of its responsibilities, the BGC is tasked with "periodically review[ing] the charters of the Board Committees, including its own charter and work with the members of the Board Committees to develop recommendations to the Board for any charter adjustments deemed advisable." (BGC Charter, I.A, at <a href="https://www.icann.org/resources/pages/charter-06-2012-02-25-en">https://www.icann.org/resources/pages/charter-06-2012-02-25-en</a>) In this role, the BGC recommends that to enhance its own performance and focus on core governance activities, the Reconsideration responsibilities be moved to a new committee dedicated to oversight of ICANN's accountability mechanisms as deemed appropriate by the Board.</p> <p>On 3 February 2017, the ICANN Board considered the BGC's recommendation and directed the initiation of the Fundamental Bylaws amendment process to allow for the ICANN community to consider these changes alongside the Board. Under the Bylaws, Article 4, Section 4.2 is part of the "Fundamental Bylaws," the group of Bylaws that can only be amended if the ICANN Board and ICANN's Empowered Community approve. Posting the proposed revisions for public</p>																			



comment is a key part of the Fundamental Bylaws approval process.

On 31 March 2017, ICANN published the [proposed amendments to Article 4, Section 4.2](#) of the ICANN Bylaws for public comment. The proposed amendments are limited: to move the responsibility for oversight of ICANN's Reconsideration Request process, as set out in Article 4, Section 4.2 of the Bylaws, from the BGC to a new Board committee purpose-built for oversight of ICANN's accountability mechanisms. The new Board Committee would be called the "Board Accountability Mechanisms Committee" (BAMC) and, like the BGC, would be formed solely of voting Board Directors and non-voting Liaisons. The proposed Bylaws amendments do not make any other changes to the Reconsideration Request process.

The public comment period closed on 10 May 2017.

## Section II: Contributors

*At the time this report was prepared, a total of five community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

### Organizations and Groups:

Name	Submitted by	Initials
At-Large Advisory Committee	ALAC Staff	ALAC
Afnic	Mathieu Weill	Afnic
DotMusic Limited	Constantine Roussos	DML
Business Constituency	Steve DelBianco	BC
Non-Commercial Stakeholder Groups	Rafik Dammak	NCSG

### Individuals:

There were no submissions from individual members of the community.

## Section III: Summary of Comments

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

In general, three of the five commenters were supportive of the proposed Fundamental Bylaws changes. One commenter did not express any opinion for or against the proposed Bylaws changes, and one commenter was not in support of making the Fundamental Bylaws change at this time.

Both ALAC and Afnic noted the Board's responsibility to organize its work to suit the needs of the Board. Afnic praised the effort to better organize the workload within the Board. Afnic also

noted that it does not believe that the manner in which the Board organizes its workload to address various accountability mechanisms should be a “Fundamental’ Bylaw”:

As a consequence, for greater flexibility in the future, instead of the proposed changes in the Bylaws (consisting in replacing the name of a committee by another committee name), Afnic suggests that the reformulation enables the Board to form or designate a committee to handle these requests. Instead of “The Board has designated the Board Accountability Mechanisms Committee to review and consider Reconsideration Requests.”, a formulation could be : “The Board designates a Committee to review and consider Reconsiderer Requests. For the purpose of this section, this designated Committee is referred to as “The Board Accountability Mechanism Committee”.

BC and NCSG noted general support for the Fundamental Bylaws changes as proposed.

ALAC, while not questioning the Fundamental Bylaws changes as proposed, requested a “deeper knowledge” on the scope of the BAMC.

DML expressed concerns regarding the impact of the proposed changes on the DML’s currently pending Reconsideration Request. DML stated the “shifting of accountability from the BGC to a new Accountability Committee is impractical, harmful, and will likely lead to further delays” to pending Reconsideration Requests. Moreover, DML expressed concerns that moving the BGC’s Reconsideration responsibilities to another Board committee “comprised of new members” would compromise the evidence that the commenter submitted to the BGC, particularly the oral presentation that the commenter made to the BGC regarding its Reconsideration Request. DML stated its opinion that the Fundamental Bylaws changes should not be considered until the Reconsideration Requests that are currently pending have been resolved by the BGC.

Three of the commenters provided inputs on the scope of the draft BGC and BAMC charters that were provided for informational purposes to illustrate how the Fundamental Bylaws changes could be implemented. The charters as posted represented the minimum changes required to implement the Fundamental Bylaws amendments if approved, and are not in final form. Afnic indicated that the responsibility of considering the Ombudsman’s proposals for “own motion” investigations should be transferred to the BAMC “because the Ombudsman is one of the Accountability mechanisms in place at ICANN.” ALAC requested a more complete draft of the BAMC charter “in order to better understand how this would impact ICANN’s overall activity and the impact it could have on end users.” BC suggested that the scope of any additional Committee work should be minimized for the BAMC so that it can focus on Reconsideration Requests. BC also provided suggestions on the composition of the BAMC.

ALAC and NCSG also noted their support for the respect of the new processes to achieve Fundamental Bylaws revisions. NCSG noted that having a non-controversial item about the Board’s organization of its work is a good “test case” for the accountability reforms and the new Empowered Community process.

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.*

ICANN appreciates all the comments and suggestions added to the public comment forum for the proposed Fundamental Bylaws changes to move the BGC's Reconsideration process responsibilities to another Board committee.

With respect to the concerns expressed about the potential delay on pending Reconsideration Requests because of the proposed Fundamental Bylaws changes, imposing a bar that the Fundamental Bylaws changes should not be considered if Reconsideration Requests are pending in front of the BGC could be hard to manage. Some of DML's concerns actually highlight the reasons that the change was proposed so that a group formed for the purpose of overseeing accountability mechanisms could have a more singular focus on those mechanisms.

With respect to DML's concern regarding the evidence that the commenter has already submitted to the BGC in support of its Reconsideration, the written evidence submitted relating to the commenter's Reconsideration Request has been publicly posted on the Reconsideration Request page, including the commenter's PowerPoint presentation to the BGC, and will be available to the BAMC if this change is approved. (See <https://www.icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>.) DML's concern, however, does raise the need for close coordination between the BGC and the BAMC over any still pending Reconsideration Requests at the time of transfer, including whether there is anything that can be built into the implementation of the BAMC that would mitigate any potential delay and prejudice to requestors solely because of the transfer.

The Bylaws in place at the time that the DML's Reconsideration Request imposes time requirements by which Reconsideration Requests must be considered by the BGC and/or Board unless impracticable. Where the BGC and/or Board is unable to consider the Reconsideration Request within the prescribed time frame, the circumstances of that delay the BGC and/or Board must be identified and posted on ICANN's website. (See Article IV, Section 2, ICANN Bylaws (effective 11 Feb. 2016), <https://www.icann.org/resources/pages/bylaws-2016-02-16-en#IV>.) The new Bylaws also impose time limits under which Reconsideration Requests must be evaluated by the BGC and Board. Under the new Bylaws, the Board must consider all Reconsideration Requests within 135 days from the initial receipt of the requests. DML's general concerns about delay in the Reconsideration process have therefore been addressed by the interim changes in the Bylaws.

With respect to the concerns expressed regarding the scope of the BAMC and the BGC once the proposed Fundamental Bylaws changes have been implemented, [Article 14](#) of the Bylaws specifies that the ICANN Board has the power to organize and establish Board Committees and to delegate to the Committees all legal authority of the Board except as set forth in Article 4, Section 14.2 of the Bylaws. In its resolution authorizing the initiation of the process to amend Article 4, Section 4.2 of the Bylaws to redesignate the BGC's Reconsideration responsibilities to another Board committee, the Board stated that "if the proposed amendment to the Fundamental Bylaws is approved in accordance with Article 25.2 of the Bylaws, the Board will

constitute the Board Accountability Mechanisms Committee (BAMC).” (See [Resolutions 2017.02.03.18-2017.02.03.19.](#)) Accordingly, once the proposed amendments are approved, the Board will constitute the BAMC with oversight of ICANN’s Accountability Mechanisms as the Board deems appropriate, approve the charter, and establish the BAMC and the BGC membership. The Board will also approve a revision of the BGC charter to delete the Reconsideration process responsibilities from the BGC, and move other responsibilities as appropriate from the BGC to the BAMC. In addition, the BAMC may be vested with new responsibilities related to more general oversight of ICANN’s accountability mechanisms outside of the Reconsideration process.

The BGC will be provided with all of the inputs provided by the commenters on the informational draft charters and composition of the BAMC that were provided alongside the proposed Fundamental Bylaws amendments. For example, Afnic’s suggestion of moving BGC responsibilities that relate to the Ombudsman to the BAMC might be appropriate given the BAMC’s expected scope of general accountability mechanism oversight. The BGC will have to present the ICANN Board with revised charters for the BGC and BAMC and once approved, the charters will be publicly posted and regularly reviewed as part of the Board’s regular processes. ALAC’s call for transparency on the scope of the BAMC’s responsibilities seems well taken.

With respect to the comments regarding the proposed draft revised BGC charter and draft BAMC charter, ICANN notes that the draft charters were provided for informational purposes to illustrate the impact of the proposed Fundamental Bylaws changes on the respective committees’ charters. As discussed above, the Board has the power to establish Board Committees and to approve the charters of those Committees as it deems appropriate.

**Next Steps:** ICANN will submit the comments and the Report of Public Comments to the Board for consideration along with a recommendation that the Board initiates the next step of the Fundamental Bylaws approval process.

## REFERENCE MATERIALS – BOARD PAPER NO. 2017.05.18.1c

**TITLE:** **Proposed Fundamental Bylaws Change to Move Board Governance Committee's Reconsideration Responsibilities to Another Board Committee**

### **Document/Background Links**

The following attachments are relevant to the Board's consideration of proposed Fundamental Bylaws change to move the Board Governance's Committee Reconsideration responsibilities to another Board Committee and the establishment of the Board Accountability Mechanisms Committee.

Attachment A is a proposed Fundamental Bylaws amendments to Article 4, Section 4.2 of the ICANN Bylaws.

Attachment B is a draft of the Report of Public Comments.

The link to the public comment proceeding for the Proposed Fundamental Bylaws change is available at <https://www.icann.org/public-comments/bylaws-bgc-2017-03-31-en>.

Submitted By: John O. Jeffrey, General Counsel and Secretary  
Date Noted: 11 May 2017  
Email: john.jeffrey@icann.org