
Public Comment Summary Report

Proposed Fundamental Bylaws Amendments Related to Grant Program

Open for Submissions Date:

Wednesday, 07 August 2024

Closed for Submissions Date:

Monday, 16 September 2024

Summary Report Due Date:

Friday, 18 October 2024 (extended from Monday, 23 September 2024)

Category: Governance

Requester: ICANN Board

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Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/proposed-fundamental-bylaws-amendments-related-to-grant-program-07-08-2024>

Outcome:

The commenters were all receptive to the proposal as published regarding amendments to ICANN's Reconsideration and Independent Review Processes, and no changes to the proposal are requested or needed. After this required Public Comment proceeding, the ICANN Board will be in a position consider further actions in the Fundamental Bylaws Amendment Process as provided for at Article 25, Section 25.2 of the ICANN Bylaws.

Section 1: What We Received Input On

The Internet Corporation for Assigned Names and Numbers sought input on a proposed amendment to Article 4, Sections 4.2 and 4.3 of the ICANN Bylaws. The proposed Bylaws amendment is designed to specifically exclude the use of the ICANN's Reconsideration and Independent Review Processes (collectively, "Accountability Mechanisms") to challenge decisions on individual applications in the ICANN Grant Program. This proposal replaces the earlier proposed amendments to Article 4, Section 4.1 to set out a general process for how the ICANN community can limit access to ICANN's Accountability Mechanisms.

The updated proposal incorporates specific language into both the Reconsideration (Article 4, Section 4.2) and Independent Review Process (Article 4, Section 4.3) sections of the ICANN Bylaws, but does not otherwise add to or modify the Bylaws governing either Accountability Mechanism. The language added within each section sets out an exclusion that the relevant Accountability Mechanism shall not be used for claims or disputes "relating to decisions to approve or not approve an application to the ICANN Grant Program."

This Bylaws amendment is offered as a way to fully implement part of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) Final Report, which recommended that ICANN's Accountability Mechanisms should not be used to challenge decisions on grant applications. That recommendation, often referred to as "Recommendation 7," can only be fully implemented if the Bylaws that define each Accountability Mechanism are amended.

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Governmental Advisory Committee	Rob Hoggarth on behalf of GAC	GAC
Registries Stakeholder Group		RySG
Registrars Stakeholder Group	Sarah Wyld	RrSG
ICANN Business Constituency		BC
At-Large Advisory Committee	ALAC Policy Staff on behalf of ALAC	ALAC
NIC Comercial	Jean Henrique	NIC Comercial

Individuals:

Name	Affiliation (if provided)	Initials
Nikesh B Simmandree		NBS
Felix Oppilli		FO

Section 2a: Late Submissions

At its discretion, ICANN org accepted late submissions, which have been appended to this summary report.

Organizations and Groups:

Name	Submitted by	Initials
Intellectual Property Constituency	Lori Schulman	IPC

Section 3: Summary of Submissions

The GAC provided a discussion about its understanding of the impact of the proposal, including that the updated proposal is narrowly scoped to limiting use of the ICANN Accountability Mechanisms in relation to the ICANN Grant Program. The GAC noted that it had previously raised concerns that the prior proposal was too general.

Each of the other commenters expressed either support for or identified no area of concern with the Bylaws amendment as posted for comment. In addition to supportive comments, some of the other items discussed within the comments include:

FO highlighted that not allowing the use of ICANN Accountability Mechanisms to channel decisions on individual applications within the ICANN Grant Program will result in more efficient and quicker distribution of grants. FO urged that the effectiveness of the amendments be reviewed in a year's time. NBS also highlighted that the amendments will improve efficiency for ICANN. NIC Commercial noted that that amendments provide better clarity for the ICANN Community.

The RySG noted that this more narrowly scoped amendment is “an appropriate method for for implementing Recommendation 7.” The RySG also thanked the Board for the confirmation that the prior Bylaws amendment would not be further pursued.

The ALAC voiced its “strong support” for the Bylaws amendment and noted that, as a Chartering Organization to the CCWG-AP, the proposal reflects the intent of what Recommendation 7 was designed to achieve within the ICANN Grant Program, and that it is sufficiently limited in scope to only the ICANN Grant Program.

The IPC, in addition to its statement of support, urged the Board to consider specifically repealing its 23 October 2023 Board decision regarding the ICANN Grant Program.

Section 4: Analysis of Submissions

The comments are generally supportive of the Bylaws amendment as posted. No commenter suggested the need for any modification to the language.

Section 5: Next Steps

The ICANN Board will consider the community's inputs as part of a further decision on the Fundamental Bylaws Amendment. If the Board approves the amendment, the Empowered Community will have an opportunity to consider whether it will approve the amendments.

16 September 2024

**IPC COMMENTS ON THE PROPOSED FUNDAMENTAL BYLAWS AMENDMENT
RELATED TO THE GRANT PROGRAM**

The Intellectual Property Constituency (IPC) appreciates the opportunity to comment on the Proposed Fundamental Bylaws Amendment, the intention of which is to specifically exclude the use of ICANN's Reconsideration and Independent Review processes (collectively "Accountability Mechanisms") to challenge decisions on individual applications in the ICANN Grant Program.

In its submission of 15 April 2024, opposing the previously-proposed Fundamental Bylaws amendment which was open for public comment 27 February – 15 April 2024 (the "April Proposed Bylaws Amendment"), the IPC indicated that it would support a narrow amendment targeted specifically at giving effect to CCWG-Auction Proceeds Recommendation 7 ("Recommendation 7"). The IPC considers that the current proposal does indeed address Recommendation 7 (in the proposed amended form) in a targeted manner, and consequently **the IPC supports the proposed Fundamental Bylaws Amendment as drafted.**

Further, **the IPC recommends that specific language be added to the Amendment that repeals the October 23, 2024, Board Resolution on the same issue.** This language is necessary for the avoidance of doubt as to the Board ability to amend fundamental by-laws. This was the subject of the IPC RFR filed in November 2023. While the outcome of the RFR is currently undergoing a CEP, we note and applaud the Board for its willingness to accept the principle under which the IPC raised our concerns including the Board's ongoing efforts to address it.

The IPC appreciates the Board's confirmation, in its 29 July 2024 decision, that the Board is no longer pursuing the April Proposed Bylaws Amendment, and thanks the Board for responding so promptly to the feedback from the community.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lothar Schumacher", is written over a light blue horizontal line.

**President
Intellectual Property Constituency**