

Staff Report of Public Comment Proceeding

Fundamental Bylaws Amendment Proposal – IANA Naming Function Review (IFR)			
Publication Date:	09-August-2019		
Prepared By:	Amy Creamer		
Public Comment Proceeding		Important Information Links	
Open Date:	10 June 2019		
Close Date:	26 July 2019		
Staff Report Due Date:	09 August 2019		
Announcement	Announcement		
Public Comment Proceeding	Public Comment Proceeding		
View Comments Submitted	View Comments Submitted		
Staff Contact:	Amy Creamer	Email:	amy.creamer@gmail.com
Section I: General Overview and Next Steps			
<p>The purpose of this Public Comment proceeding is to obtain community input on a proposed change to Bylaws Section 18.7(b), regarding the IANA Naming Function Review Team's (IFR) composition. The proposed amendment was raised by the ccNSO, which has identified a current and ongoing issue with populating the IANA Naming Function Review in accordance with the Bylaws' requirements. The ICANN Board, taking on the ccNSO's request, agreed to initiate the Fundament Bylaws amendment process (specified Section 25.2 of the Bylaws) to seek community input on the ccNSO's proposed modifications to the composition requirements. The amendment would remove the requirement for the ccNSO to identify a non-ccNSO member ccTLD representative and instead allow the ccNSO to appoint three representatives to the team, regardless of ccNSO member status.</p> <p>ICANN org will submit this report of Public Comments to the ICANN Board of Directors as part of its consideration of the proposed Bylaws amendment.</p> <p>ICANN org will additionally provide the RySG with next steps should the RySG decide to pursue an amendment to the Bylaws regarding the geographic diversity required between its two elected IFR members.</p>			
Section II: Contributors			

At the time this report was prepared, a total of [number] (n) 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
ccNSO Council	Katrina Sataki	ccNSO
ICANN Business Constituency	Steve DelBianco	BC
gTLD Registries Stakeholder Group (RySG)	Samantha Demetriou	RySG
NCSG	Rafik Dammak	NCSG
ALAC	ICANN Policy Staff in support of the At-Large-Community, prior to ratification	ALAC1
ALAC	ICANN Policy Staff in support of the At-Large-Community, ratification confirmed	ALAC2

Individuals:

Name	Affiliation (if provided)	Initials
Nick Wenban-Smith	Nominet, General Counsel and Head of Stakeholder Relations	NWS

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).

There were seven (7) comments submitted regarding the proposed change to Bylaws Section 18.7(b), regarding the IANA Naming Function Review Team's Composition. Please note, the ALAC submitted a comment prior to its member ratification, and then after it had been ratified; since the comment was remained one of support for this Bylaws change, it will be noted as a single supporting comment.

Five (5) comments supported the Bylaws change; (1) comment recommended alternative wording; and two (2) comments brought up issues with written IFR team composition requirements.

1. Support

The ccNSO, BC, RySG, ALAC and NWS supported the Bylaw change as originally proposed by the ccNSO.

The ccNSO commented, *"The ccNSO Council respectfully urges the amendment of the ICANN Bylaws as proposed. Experience has shown again and again that the pool of experienced and skilled candidates for IANA Naming Function review is very limited. With the declining number of non-ccNSO members and the limited interest of non-ccNSO member ccTLDs in ICANN (related) affairs, it has proved difficult to find a non-ccNSO member representative to the IFR team."*

The ccNSO, BC, RySG and ALAC noted their approval, with the ALAC commenting, “The ALAC agrees that the proposed change preserves the intent of the original Fundamental Bylaw and supports the change. Subject to any new information being brought to the ALAC’s attention, the current intention is that the ALAC will support this Fundamental Bylaw change when it is presented to the Empowered Community.”

2. Recommendation for Alternative Change to Bylaws

The NCSG commented that “while the proposed change does not appear unreasonable, we would look favourably at maintaining the obligation for the ccNSO to reach out to a non-ccNSO affiliated ccTLD manager. Such an obligation could be qualified by a term such as ‘best efforts.’ This would impose a lighter burden on the composition of the IFRT, while ensuring that non-ccNSO affiliated ccTLD managers keep a reserved seat as was provided for in the original bylaws.”

3. Issues Raised

Two (2) comments highlighted potential issues in relation to Bylaws requirements.

The RySG noted, “We would like to take the opportunity during this comment period to reflect on other challenges encountered in establishing the IANA Naming Function Review Team as a result of the requirements identified in the bylaws, specifically as they relate to geographic diversity.... The membership of the RySG is currently 84 members: 36 from Europe; 32 from North America; 12 from Asia Pacific; 2 from Latin America and 1 from Africa. Our original call for volunteers, which was over 12 months ago, identified two well-qualified volunteers from North America; however, because of the geographic requirement highlighted above we had to conduct a second call in order to satisfy the requirement. While we were able to address the problem on this occasion, it is foreseeable that this may not always be the case and as such consideration should be given to building some flexibility into the bylaws to overcome this situation. Otherwise, we run the risk that a future process may also be subject to significant delays while attempts are made by the RySG to satisfy the geographic requirement. The RySG understands and acknowledges the importance of geographic diversity; however, we believe it is important for others to recognise the limitations we sometimes face in meeting prescribed ICANN Bylaw requirements because of the composition of our membership.”

NWS wrote, “Personally I would not be too prescriptive about the process the Council needs to follow in appointing the individuals to the review team in the by laws themselves. I wouldn't want to get into legal arguments about whether the process was 'inclusive' for example, as those sorts of words are inherently fairly subjective and mean different things to different people. I trust that the Council in making the appointments would follow due process and appoint appropriately without any formal requirement to do so.”

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.

None of the comments submitted directly opposes the ccNSO’s proposed Bylaw amendment to remove the requirement for the ccNSO to identify a non-ccNSO member ccTLD representative and instead allow the ccNSO to appoint three representatives to the team, regardless of ccNSO member status.

Two comments raised issues with the restrictions on IFR team composition, with the RySG raising *“challenges encountered in establishing the IANA Naming Function Review Team as a result of the requirements identified in the bylaws, specifically as they relate to geographic diversity.”*

Though not an issue, the NCSG would *“look favourably at maintaining the obligation for the ccNSO to reach out to a non-ccNSO affiliated ccTLD manager. Such an obligation could be qualified by a term such as ‘best efforts.’”* ICANN org notes that “best efforts” is a term requiring further definition and qualification. However, if the ccNSO Council, who presented the text, determines to update the original proposal to align with the NCSG suggestion, the ccNSO Council can flag this for consideration.