

Registries Stakeholder Group Statement



Proposed Bylaws Updates to Limit Access to Accountability Mechanisms

Date statement submitted: 15 April 2024

Reference url:

<https://www.icann.org/en/public-comment/proceeding/proposed-bylaws-updates-to-limit-access-to-accountability-mechanisms-27-02-2024>

Background¹

The proposed amendment to Section 4.1 of the ICANN Bylaws sets out the process through which the ICANN community can limit access to ICANN's Reconsideration Request and Independent Review Processes (collectively, "Accountability Mechanisms") in specific circumstances, and in a streamlined manner. The proposed amendment outlines thresholds for broad community consensus and procedural protections for use.

Documents for input

- [Proposed Updates to Article 4 for Community Agreement to Restrict Access to Accountability Mechanisms](#) (as per [Board Resolution 2024.01.21.09](#))

Registries Stakeholder Group Comment

The Registries Stakeholder Group (RySG) appreciates the opportunity to provide feedback on the [Proposed Bylaws Updates to Limit Access to Accountability Mechanisms](#).

The RySG does not support the broad change to the Bylaws being proposed. The proposed amendment goes beyond the Bylaws change contemplated by Recommendation 7 of the Final Report of the Cross-Community Working Group on new gTLD Auction Proceeds (the "CCWG") and creates an alternative path for amending the Bylaws that contradicts the existing amendment processes for Fundamental and Standard Bylaws. Furthermore, a broader Bylaws amendment is unnecessary, as this is the only situation where access to ICANN's Reconsideration Request and Independent Review Process (collectively, "Accountability Mechanisms") has been recommended by the Community.

The CCWG's Recommendation 7 specifically recommends "an amendment to the Fundamental Bylaws to eliminate the opportunity to use the Request for Reconsideration and Independent Review Panel **to challenge grant decisions.**" (emphasis added) Attempting a Bylaws amendment that limits access to the Accountability Mechanisms for more than just challenges to grant decisions goes beyond the CCWG's recommendation.

¹ Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.

The proposed Bylaws amendment gives undue power to Cross-Community Working Groups by allowing them to bypass the Bylaws amendment procedures and restrict access to Accountability Mechanisms. Cross-Community Working Groups lack clearly defined procedures in comparison to GNSO PDPs. While Cross-Community Working Groups should be empowered to make recommendations for Bylaws amendments, they should not be afforded the ability to circumvent the ordinary Bylaws amendment procedures.

The Accountability Mechanisms are foundational to ICANN's legitimacy. Access to Accountability Mechanisms should be prevented only in rare circumstances with the clear support of the Empowered Community. The RySG acknowledges the concerns of the Board regarding the efficiency of pursuing a change to the Fundamental Bylaws each time access to Accountability Mechanisms is recommended by the Community, but thinks these concerns are unwarranted at this time. As mentioned above, this is the first time the Community is considering limiting access to Accountability Mechanisms and there is no certainty that the Community will be considering such a limitation in the future. The RySG thinks it is at best premature to establish a process outside of the Bylaws amendment procedures for restricting access to Accountability Mechanisms.

The RySG does not believe the proposed Bylaws amendment is an appropriate method for implementing the CCWG's Recommendation 7, but would instead support a more narrowly scoped amendment, limited to restricting access to the Accountability Mechanisms for decisions made as part of ICANN's Grant Program.