

## Proposed Changes to ccNSO Bylaws

*The ICANN Bylaws have been modified to accommodate the creation of the Country Code Names Supporting Organization (ccNSO). The current revision, on which comments are due for April 9<sup>th</sup> 2004 addresses some issues with which the ccTLD community, and specifically CENTR took issue. However, a number of significant issues raised both by the Governmental Advisory Committee and the ccTLD community remain and need to be addressed.*

*I am of the opinion that it would be harder to join the ccNSO and fix these issues having made a commitment to follow a flawed structure. More preferable is to actually refine the ccNSO structure (as has happened on this occasion) and actually make the ccNSO a forum and an opportunity for each ccTLD Registry as originally intended rather than a place for potential capture and abuse. Many ccTLDs are not willing to be subservient to the laws of California which may have an impact on the operation of ICANN and indirectly their operations at a national level thus by keeping ICANN as light-weight as possible and a genuine forum for information exchange, and the risk of policy abuse must be avoided.*

*This document is taking into account the issues raised by the CENTR L&R Group and GAC on the changes made to the ICANN Bylaws with regard to ccNSO. The plan of the document follows CENTR L&R questions. Comments from the Governmental Advisory Committee on the ccNSO have been taken into account<sup>1</sup> as well and show shared opinions in many cases, as is reflected in the footnotes.*

In an attempt to be constructive and by personal comments only (e.g. I am not speaking as Chairman of CENTR – as the time line set by ICANN for comments has been too short for CENTR members to meet and discuss – the next CENTR meetings are L&R in May and GA in June) I have suggested some specific language that clarifies the intent of what I believe many Registry Managers from around the world agreed at the Montreal meeting. We need and want ICANN to be a success. However, the current approach towards the ccNSO and the related modifications to the Bylaws appears flawed: we need to fix it if ICANN is to have a long-term future.

### Executive Summary:

- It is crucial that the rules that govern the ccNSO are as precise as possible, especially in the areas of the Policies developed through ccNSO (Relevance to Scope, Exemptions, Implementation, Additional Policies, Nominees).
- This document tries to clarify and address some concerns by substituting a different language to the relevant part of the Bylaws.
- The Scope is another strong issue as it defines the ccNSO. What potential members of the ccNSO are after? Which role can the ccNSO play, considering most ccTLDs – and CENTR members in particular – are responsible first and foremost before their respective local Internet Communities which do not want essential functions to be performed by another remote entity. The Annex C. of the Bylaws is therefore another area of change, that will need to be discussed among ccTLDs.

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<sup>1</sup> Updated version of [http://www.gacsecretariat.org/web/docs/cctld/erc\\_final.doc](http://www.gacsecretariat.org/web/docs/cctld/erc_final.doc)

## I. Binding Policies developed through the ccNSO

### 1/ Scope

This seems to be the main area of criticism for the By-Laws as they currently stand: the scope of the policies that can be developed through the SO has to be referred to as early as possible in the text<sup>2</sup>.

Paragraph 10(a) of the Section 4 currently reads:

*“ICANN Policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (a) have been developed through the ccPDP as described in [Section 6 of this Article](#)”*

To make a clear reference to the Scope, S4§10(a) should be changed to:

“ICANN Policies shall apply to ccNSO members, and only to ccNSO members, by virtue of their membership to the extent, and only to the extent, that the policies (a) have been developed through the ccPDP as described in Section 6 of this Article and are within the ccNSO Scope as defined in Annex C to the ICANN Bylaws (b) have been recommended as such by the ccNSO to the Board, and (c) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.”

Additionally, paragraph 5. of Section 16 of Annex B needs to be modified. As it stands, point (ii) *a contrario* allows ICANN board to disregard a ccNSO recommendation and to set a policy on the issue, providing it is out of the ccNSO scope<sup>3</sup>:

#### *5. In circumstances where*

*(i) the Board determines not to accept a ccNSO Supplemental Recommendation, and*

*(ii) the opinion of the General Counsel pursuant to Item 2.e. was that the issue was within the scope of the ccNSO pursuant to the ccNSO’s Scope,*

*then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.*

Removal of the condition set out by point (ii) of §5 S16 of Annex B would lead to automatic status quo and the paragraph, would read:

In circumstances where the Board determines not to accept a ccNSO Supplemental Recommendation then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

<sup>2</sup> Also expressed by GAC: “we believe that it is important to identify clearly the scope for the policy-development body’s role relating to country-code top-level domains” (*Description* §9)

<sup>3</sup> GAC shares the same view:” It is of some concern that the ccNSO Council could initiate a Policy Development Process (Annex A, paragraph 3.b) when the issue apparently is not within the scope of the ICANN mission statement or the ccNSO Scope” (*Policy Development Process* §26)

## 2/ Exemptions

A step was made in the current Bylaws modifications by allowing members to provide a declaration explaining why a given ccNSO policy would require the member to breach custom, religion, or public policy. In that case, the new Bylaws say that the ccNSO member “shall not be bound” [by the Policy]. However, the Bylaws are not clear on the legal consequences of such a declaration, which can still be disagreed upon by 14 other members, even if members from a different country may not be the best judges of a local custom or a public policy<sup>4</sup>.

Therefore, Article XI, S4, §11 of the Bylaws could be changed to:

“A ccNSO member shall be automatically exempted from applying Policies - as established by Section 4(10) of Article IX of the Bylaws - if it provides a declaration to the ccNSO Council stating that (a) implementation of such policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section), and (b) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements”.

## 3/ Implementation

Any Recommendation adopted by the ccNSO shall be implemented, according to S16 of Annex B but the current text doesn't include any limit or enforcement power of the ICANN staff:

*Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.*

S16 could be edited to precise matters by adding a specific wording at the end of S16 which would then read:

“Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy. ICANN staff shall take only strictly reasonable and necessary steps to implement the Policy”

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<sup>4</sup> GAC agrees: “If there is documentary evidence that a ccNSO policy will breach a local custom, religion or nationally agreed policy, there should be no need for a vote to determine whether an exemption should be granted: the exemption should be granted automatically without reference to a voting mechanism” (*Membership* §22)

#### 4/ Additional Policies

Article IX Section 1 of the Bylaws provides the possibility for ccNSO to “engage in other activities authorized by its members”:

*There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:*

- 1. developing and recommending to the Board global policies relating to country-code top-level domains;*
- 2. Nurturing consensus across the ccNSO’s community, including the name-related activities of ccTLDs; and*
- 3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.*

*In addition to the above core responsibilities, the ccNSO may also engage in other activities authorized by its members, including: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.*

One has to wonder if the ccNSO really needs to engage in any “Other Activities”, considering its members are already responsible at the local level<sup>5</sup> and that the ccNSO Scope - which should be referred to as soon as possible in the text - is already quite broad.

Therefore, the last paragraph of Section 1 should be removed, and the Section itself rewritten as follows:

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which, pursuant to Annex C. of these Bylaws, shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO’s community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

#### 5/ Policies and ccNSO Council Nominees

Article XI, S4, §8 of the Bylaws states:

*Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member’s Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to*

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<sup>5</sup> GAC also adds “the general assumption must be that policy-making responsibilities lie at the local level. The case needs to be made as to why a policy decision needs to be established in an international, rather than local (regional or national), context.” (*General Comments* §6)

*support the policies committed to by ccNSO members.*

The last sentence deprives the nominees of their prerogative to disagree with or amend the policies. To restore that possibility for nominees to express themselves and freely serve the best interests of the regional community they represent, that sentence should be removed entirely.

IX,S4,§8 should read:

“Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region”.

Additionally, Article IX, S3, §6 do not provide an appeal solution for a ccNSO Council member that has been removed for not attending 3 consecutive meetings of the council:

*ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behaviour, both as determined by at least a 66% vote of all of the members of the ccNSO Council.*

An appeal process is recommended<sup>6</sup>. IX,S3,§6 would then read:

“ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behaviour, both as determined by at least a 66% vote of all of the members of the ccNSO Council. Council members have a right to appeal of that decision before the whole ccNSO Council”

## II. ccPDP and ccNSO scope

### 1/ Tentativeness

As was said before, the ccNSO Scope has to be properly defined. The term “initially” in Article .IX Section 6 gives a level of uncertainty which is not desirable for members willing to join ccNSO needs to know what they commit to at any specific time:

*1. The scope of the ccNSO's policy-development role shall initially be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.*

*2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.*

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<sup>6</sup> GAC agrees: “If a Council member is removed for not attending three consecutive meetings, there should be a right of appeal. It is assumed that, with the support of the constituency, the Council Member may be re-elected.” (*ccNSO Council* §15)

Therefore, the new article .IX/S6 should read:

“1. The scope of the ccNSO's policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.  
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.”

## **2/ Lack of clarity on scope**

The ccNSO scope is defined in Annex C. of the ICANN bylaws:

*The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.*

### Policy areas

*The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:*

- 1. Data is registered/maintained to generate a zone file,*
- 2. A zone file is in turn used in TLD name servers.*

*Within a TLD two functions have to be performed (these are addressed in greater detail below):*

- 1. Entering data into a database (Data Entry Function) and*
- 2. Maintaining and ensuring upkeep of name-servers for the TLD (Name Server Function).*

*These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:*

*There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).*

### The Core Functions

## *1. Data Entry Function (DEF):*

*Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:*

*(a) under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.*

*(b) for making certain data generally and publicly available (be it, for example, through Whois or name servers).*

## *2. The Name-Server Function (NSF)*

*The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to name servers at the ccTLD level, but also to the root servers (and root-server system) and name servers at lower levels.*

*On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.*

*With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.*

### *Respective Roles with Regard to Policy, Responsibilities, and Accountabilities*

*It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.*

*Three roles can be distinguished as to which responsibility must be assigned on any given issue:*

- Policy role: i.e. the ability and power to define a policy;*
- Executive role: i.e. the ability and power to act upon and implement the policy; and*
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.*

*Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.*

*The information below offers an aid to:*

- 1. delineate and identify specific policy areas;*
- 2. define and determine roles with regard to these specific policy areas.*

*This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.*

#### **Name Server Function (as to ccTLDs)**

##### *Level 1: Root Name Servers*

*Policy role: IETF, RSSAC (ICANN)*

*Executive role: Root Server System Operators*

*Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)*

##### *Level 2: ccTLD Registry Name Servers in respect to interoperability*

*Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized*

*Executive role: ccTLD Manager*

*Accountability role: part ICANN (IANA), part Local Internet Community, including local government*

##### *Level 3: User's Name Servers*

*Policy role: ccTLD Manager, IETF (RFC)*

*Executive role: Registrant*

*Accountability role: ccTLD Manager*

#### **Data Entry Function (as to ccTLDs)**

##### *Level 1: Root Level Registry*

*Policy role: ccNSO Policy Development Process (ICANN)*

*Executive role: ICANN (IANA)*

*Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)*

*Level 2: ccTLD Registry*

*Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure*

*Executive role: ccTLD Manager*

*Accountability role: Local Internet Community, including national authorities in some cases*

*Level 3: Second and Lower Levels*

*Policy role: Registrant*

*Executive role: Registrant*

This approach appears rather confusing: leaving room for interpretation when the desire is to bring clarity. The emphasis has to be on the fact that the ccTLD manager<sup>7</sup> is only accountable to its Local Internet Community and the legal framework of the jurisdiction in which the registry is located. Thus, although we recognize the role of IANA in maintaining the Root servers database for the Internet stability and the value of ccNSO as an exchange forum between ccTLDs managers for the benefit of each of their respective Communities, thus clarity is necessary to ensure that neither the ccNSO nor ICANN cannot impose policy directly on the ccTLD manager and consequently Annex C. of the Bylaws should be modified to read:

ccNSO should serve as a forum to gather input and knowledge from ccTLDs managers. Policies developed through the ccPDP should never be contradictory to the way the Registry serves its local Internet communities and only relevant to matters impacting the global stability of the Internet according as recognized by at least 66% of the ccNSO members. ccNSO members acknowledge the role of the IANA function as the operator of the ccTLD database and recognize it must be available to ccTLDs which are not part of the ccNSO.

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<sup>7</sup> GAC adds : “ICANN’s role in the framework of the ccTLDs should be limited to issues relating to the stability of the Internet that need to be coordinated at the global level, in line with its new By-laws, specifically those related to the IANA operational function” (*General Comments*, §5)

### **3/ Regional Organisations**

According to Annex B to the ICANN bylaws, the regional ccTLD organizations (like CENTR) are the main channel for ccTLDs to give input to a ccPDP, which is a good thing. However, this is somewhat undermined by Article IX S5 of the Bylaws which states:

*The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.*

The fact that the Regional Organizations have to be designated is a weakness. Organizations like CENTR exist thanks to the will of their members and should be able to speak on their behalf without any further process. Therefore, we suggest to remove the designation process from the Bylaws and that .IXS5 now reads:

“The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region”.

### **4/ Board Vote and Quorum**

This is probably the most problematic issue because it relates to the fundamental rules of ICANN as a company. But insofar as they affect ccNSO and its members, one has to be very careful. For example, the fact that Article XII S1&2 provides for board committees:

#### *ARTICLE XII: BOARD AND TEMPORARY COMMITTEES*

##### *Section 1. BOARD COMMITTEES*

*The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.*

##### *Section 2. POWERS OF BOARD COMMITTEES*

*1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:*

*a. The filling of vacancies on the Board or on any committee;*

- b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;*
- c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;*
- d. The appointment of committees of the Board or the members thereof;*
- e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;*
- f. The approval of the annual budget required by [Article XVI](#); or*
- g. The compensation of any officer described in [Article XIII](#).*

*2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of [Article VI](#) applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.*

Because ccNSO members may not be part of such committees, there is a risk that decision made by the committees impact ccNSO without adequate implication by ccNSO members.

Therefore, we suggest to add a new exception at the bottom of S2 which would read:

“SECTION 2. POWERS OF BOARD COMMITTEES

1.The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

...

h. ccNSO Policies, ccPDP or ccNSO Members”.

According to Annex B §13 to the ICANN bylaws:

*Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members’ votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).*

*In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed irrespective of whether 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.*

Therefore, the members vote on a policy recommendation requires that 50 per cent of the

ccNSO members cast their votes. However, if this quorum is not being reached the voting process starts anew and is valid without any minimal number of votes cast. This is a problem because this means 2 members only could pass a decision<sup>8</sup>. The sentence should be modified to reflect a lesser number but a number nevertheless and therefore changed to:

“In the event that at least 50% of the ccNSO members lodge votes within the voting period, and that more than 66% of the votes received at the end of the voting period shall be in favour of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation. Additionally, if 34% of the votes oppose the Recommendation, the vote shall be broken down by Geographic Region. If a majority of 66% of the ccNSO members in one or more specific Geographic Regions opposed the Recommendation, ccNSO members from such Region(s) shall not be bound by the ccNSO Recommendation or any resulting ccNSO Policy.

### III. ICANN Board ability to amend Bylaws

Thanks to the modifications made to the Bylaws, ccNSO members no longer have to “adhere to ICANN Bylaws as they apply to ccTLD”. However, in Article XIX, the Bylaws provide that:

*“Except as otherwise provided in the Articles of Incorporation or these Bylaws the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board”.*

In summary this means that ICANN Board members can decide to modify the Bylaws, even as they are relevant to ccNSO, without the input from the ccNSO representatives seating at the Board<sup>9</sup>.

It could be corrected by modifying article XIX as follows:

“Except as otherwise provided in the Articles of Incorporation or these Bylaws as well as for matters relevant to ccNSO, the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board. Amendments relevant to ccNSO shall, additionally, require a two-thirds (2/3) vote of all members of the ccNSO.

### IV. ccNSO Membership and individual relations with ICANN

Paragraph 2 of Section 4 of Article IX currently states:

*Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include*

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<sup>8</sup> GAC adds “the Members Vote (Annex A, paragraph 13) should also reflect the consensus objective in the policy-making process. In particular, in case a sizeable minority opposes adoption, the voting rules should better emphasise geographical diversity and reflect the opinion in each region. In this case, an appropriate quorum provision should be established for the validity of the poll in each region.” (*Membership*, §30)

<sup>9</sup> GAC agrees : “GAC supports the principle that, if there is no agreement between ccTLDs and the ICANN Board, there should be status quo.” (*Policy Development Process*, §31)

*the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to adhere to ICANN bylaws as they apply to ccTLDs, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.*

If a ccNSO member resigns its membership it is possible that the de facto contract that exists between ICANN and the member, albeit then terminated, still has a remaining impact. In particular, with becoming a ccNSO member, the concerned ccTLD has once recognised ICANN's overall function and it is doubtful that this recognition can ever be taken back.

A modification to the end of §2,S4 of Article .IX could be desirable:

“Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to Article IX of these Bylaws and (b) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices. Upon receipt of the resignation notice, all commitments and obligations between the former member and the ccNSO, or ICANN as related to the ccNSO, shall be deemed terminated and cease to produce effect.”