

**Committee on ICANN Evolution and Reform**  
**Proposed Transition Article of New Bylaws**  
**8 December 2002**

On 24 November 2002, the Evolution and Reform Committee (ERC) posted and invited comments on a proposed Transition Article (Article XX) to specify the steps in the transition from the present structures and processes of ICANN to the structures and processes described by the New Bylaws adopted by the ICANN Board on 31 October 2002 in Shanghai. Several very helpful comments were received, prompting the ERC to make various changes to the language it proposed for the Transition Article.

The revised proposal appears below. An explanation of the reasons for the ERC's recommendations is included in the ERC's Fourth Supplemental Implementation Report. Words added to the 24 November 2002 proposal are underlined and in magenta and ~~deleted words are stricken out and in red.~~

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## **ARTICLE XX: TRANSITION ARTICLE**

### **Section 1. PURPOSE**

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws").

### **Section 2. BOARD OF DIRECTORS**

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in paragraph 5 of this Section 2, the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that the At-Large members of the Board under the Old Bylaws shall also serve as members of the Transition Board. Notwithstanding the provisions of Article VI, Section 12 of the New Bylaws, vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by Article VI, Section 9 of the New Bylaws. The Board Committees existing on the date of adoption of this Transition Article shall continue in ~~effect~~ existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.
2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.
3. The "New Board" is that Board described in Article VI, Section 2(1) of the New Bylaws.

4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in Article VII, Section 2 of the New Bylaws, with terms to end at the conclusion of the ICANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in Article VI, Section 8(1)(a)-(c) of the New Bylaws, and shall give the ICANN Secretary written notice of that selection.

5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN in 2003 that begins not less than seven calendar days after the ICANN Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN Board of Directors. Subject to Section 4 of this Article, the Directors (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN Secretary's receipt of notice of their selection.

6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.

7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.

### **Section 3. ADDRESS SUPPORTING ORGANIZATION**

The Address Supporting Organization shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 between ICANN and a group of regional Internet registries (RIRs), and amended in October 2000, until ~~and if~~ a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws; and

2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization, as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization may select those Directors from among the persons it previously selected as ICANN Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization does not provide the ICANN Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization shall be deemed to have selected for Seat 9 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2002.

#### **Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION**

Until such time as a Country-Code Names Supporting Organization is established, Seats 11 and 12 on the New Board shall remain vacant, and the delegate to the Nominating Committee established by the New Bylaws designated to be selected by such an organization shall be appointed by the Transition or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD community. Upon the organization and recognition by the ICANN Board of a Country-Code Names Supporting Organization, that Supporting Organization shall promptly select persons to fill Seats 11 and 12 on the New Board, and give written notice of those selections to the ICANN Secretary. Any delegate to the Nominating Committee appointed by the Transition or New Board according to this Section 4 then serving shall remain in office, but subsequent appointments of the Nominating Committee delegate described in Article VII, Section 2(8)(c) shall be made by the Council of the Country Code Names Supporting Organization.

#### **Section 5. GENERIC NAMES SUPPORTING ORGANIZATION**

1. The Domain Name Supporting Organization shall cease operations upon the adoption of this Transition Article, except that the Names Council of the Domain Name Supporting Organization may act for the limited purpose of authorizing the transfer of any funds it has collected to the benefit of the Generic Names Supporting Organization.
2. The Generic Names Supporting Organization ("GNSO") shall commence operations upon the adoption of this Transition Article, and the following six DNSO constituencies shall automatically become constituencies of the GNSO, initially under their existing charter:
  - a. The commercial and business entities constituency of the DNSO shall become the Commercial and Business Users constituency of the GNSO.
  - b. The gTLD registries constituency of the DNSO shall become the gTLD Registries constituency of the GNSO.

- c. The ISP and connectivity providers constituency of the DNSO shall become the Internet Service and Connectivity Providers constituency of the GNSO.
- d. The non-commercial domain name holders constituency of the DNSO shall become the Non-Commercial Users constituency of the GNSO.
- e. The registrars constituency of the DNSO shall become the Registrars constituency of the GNSO.
- f. The trademark, other intellectual property and anti-counterfeiting interests constituency of the DNSO shall become the Intellectual Property Interests constituency of the GNSO.

3. Notwithstanding the adoption or effectiveness of the New Bylaws, each GNSO constituency described in paragraph 2 of this Section 5 shall continue operating as before and no constituency official, task force, or other activity shall be changed until further action of the constituency, provided that each GNSO constituency shall submit to the ICANN Secretary a new charter and statement of operating procedures, adopted according to the constituency's processes and consistent with the New Bylaws, no later than 15 July 2003.

4. Until the conclusion of the ICANN annual meeting in 2003, the GNSO Council ~~of the GNSO~~ shall consist of three representatives of each constituency of the GNSO plus, upon their selection by the Nominating Committee, three persons selected by that committee. It may also have liaisons appointed by the Governmental Advisory Committee and (Interim) At-Large Advisory Committee, as provided in Article X, Section 3(1) of the New Bylaws. Thereafter, the composition of the GNSO Council shall be as provided in the New Bylaws, as they may be amended from time to time, without regard to this Transition Article. All committees, task forces, working groups, drafting committees, and similar groups established by the DNSO Names Council and in existence immediately before the adoption of this Transition Article shall continue in existence as groups of the GNSO Council with the same charters, membership, and activities, subject to any change by action of the GNSO Council.

5. Upon the adoption of this Transition Article, the three representatives on the Domain Name Supporting Organization ("DNSO") Names Council from each of six DNSO constituencies shall be seated as representatives of constituencies on the GNSO Council, as follows:

- a. The three representatives of the commercial and business entities constituency of the DNSO shall be seated as representatives of the Commercial and Business Users constituency of the GNSO.
- b. The three representatives of the gTLD registries constituency of the DNSO shall be seated as representatives of the gTLD

Registries constituency of the GNSO.

c. The three representatives of the ISP and connectivity providers constituency of the DNSO shall be seated as representatives of the Internet Service and Connectivity Providers constituency of the GNSO.

d. The three representatives of the non-commercial domain name holders constituency of the DNSO shall be seated as representatives of the Non-Commercial Users constituency of the GNSO.

e. The three representatives of the registrars constituency of the DNSO shall be seated as representatives of the Registrars constituency of the GNSO.

f. The three representatives of the trademark, other intellectual property and anti-counterfeiting interests constituency of the DNSO shall be seated as representatives of the Intellectual Property Interests constituency of the GNSO.

6. The terms of the GNSO Council members described in paragraph 5 of this Section 5 shall last for the remainder of their terms under the Old Bylaws, except that all terms of GNSO Council members shall conclude at the conclusion of the ICANN annual meeting in 2003. Any vacancy occurring in a position on the GNSO Council before that time shall be filled by the constituency which the vacant position represents for the remainder of the term lasting until the conclusion of the ICANN annual meeting in 2003.

7. Promptly after the adoption of this Transition Article, the Generic Names Supporting Organization shall, through the GNSO Council, make selections of Directors to fill Seats 13 and 14 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws, and shall give the ICANN Secretary written notice of its selections.

8. In the absence of further action on the topic by the New Board, each of the GNSO constituencies shall select two representatives to the GNSO Council no later than 1 October 2003, and shall provide the ICANN Secretary written notice of its selections. Each constituency shall designate one of those representatives to serve a one-year term, and one to serve a two year-term. Each successor to those representatives shall serve a two-year term.

9. Upon the adoption of this Transition Article, and until further action by the ICANN Board, the GNSO Council shall assume responsibility for the DNSO General Assembly e-mail announcement and discussion lists.

10. Each of the constituencies identified in paragraph 5 of this Section 5 that are designated to select a delegate to the Nominating Committee under Article VII, Section 2 of the New Bylaws shall promptly, upon adoption of this

Transition Article, notify the ICANN Secretary of the person(s) selected to serve as delegates.

## **Section 6. PROTOCOL SUPPORTING ORGANIZATION**

The Protocol Supporting Organization referred to in the Old Bylaws is discontinued.

## **Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP**

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other ICANN bodies as contemplated by the New Bylaws by providing written notice to the ICANN Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2 of the New Bylaws.

2. The organizations designated as members of the Technical Liaison Group under Article XI-A, Section 2(2) of the New Bylaws shall each designate the two individual technical experts described in Article XI-A, Section 2(6) of the New Bylaws, by providing written notice to the ICANN Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to Article XI-A, Section 2(7) of the New Bylaws.

3. Upon the adoption of the New Bylaws, the Security and Stability Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security and Stability Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(4) of the New Bylaws.

4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(3) of the New Bylaws.

### 5. At-Large Advisory Committee

a. Until such time as ICANN recognizes, through the entry of a Memorandum of Understanding, the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws, there shall exist an Interim At-Large Advisory Committee composed of ten individuals (two from each ICANN



region) selected by the ICANN Board following nominations by the At-Large ~~Organizing Advisory Committee Assistance Group~~. The Nominating Committee shall select five more individuals, one from each region, as soon as feasible, to serve terms on the (Interim) At-Large Advisory Committee as specified by Article XI, Section (2)(4)(c)(3) of the New Bylaws in accordance with the principles established in Article VII, Section 5 of the New Bylaws.

b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee members previously selected by the Board from the RALO's region.

c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in Article VII, Section 2(6) of the New Bylaws.

## **Section 8. OFFICERS**

ICANN officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing Board of ICANN at the annual meeting in 2002 to serve until the annual meeting in 2003.

## **Section 9. GROUPS APPOINTED BY THE PRESIDENT**

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until changes are made by the President.

## **Section 10. CONTRACTS WITH ICANN**

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.