

Recommendation 2

1. The PDP team should have access to legal advice (independent or ICANN legal) during its deliberations regarding any conflicts between the Bylaws and potential recommendations. This might be in the form of an ICANN staff Legal liaison.
2. The Initial and Final Report recommendation should have concurrence of an ICANN or independent legal advisor that they do not violate the Bylaws.
3. The Board comment to the Initial Report should indicate the recommendations that, if not amended, the Board will reject (or “pend”). The comment should include the rationale for the rejection and a suggested path for developing an acceptable version (e.g., a Board-PDP collaboration of some type, a reference to certain documentation, the opinion of an appropriate expert). Put another way, move Board consideration from the Final Report to the Initial Report.
4. Most PDPs do not require ODPs. Whatever financial / operational information that is needed to weigh the efficacy of policy recommendations should be available to the PDP teams as well as to the ICANN staff and Board. When needed, the PDP team should have financial corroboration that recommendations are not fiscally irresponsible and are in concert with the Board’s fiduciary duty by having access:
 - a. to relevant elements to today’s Operational Design Phase, and
 - b. to an ICANN staff financial liaison that can obtain cost analyses and historical cost data, and provide insight into the Board’s fiduciary duties.
5. The GNSO (Council or PDP team) and Board representatives should communicate on areas of potential concern during (rather than after) the PDP.
 - a. Areas of concern might be identified by staff support or liaisons, or Board liaisons that report the sense of the Board.
 - b. After the Initial Report, the PDP and Board might form a collaboration (e.g., small team) to work on issues raised by the Board in the Initial Report public comment.

A. During the PDP and up to the completion of the Initial Report:

1. The PDP team should have access to legal advice (independent or ICANN legal) during its deliberations to identify potential conflicts between the Bylaws and potential recommendations. This might be in the form of an ICANN staff Legal liaison.
2. The Initial (and, as an aside, Final) Report recommendations should have concurrence of an ICANN or independent legal advisor that they do not violate the Bylaws.
3. Most PDPs do not require ODPs. Whatever financial / operational information that is needed to weigh the efficacy of policy recommendations should be available to the PDP teams as well as to the ICANN staff and Board. When needed, the PDP team should have financial corroboration that recommendations are not fiscally irresponsible and are in concert with the Board’s fiduciary duty by having access to:
 - a. relevant elements to today’s Operational Design Phase, and
 - b. an ICANN staff financial liaison that can obtain cost analyses and historical cost data, and provide insight into the Board’s fiduciary duties.
4. The GNSO (Council or PDP team) and Board representatives should communicate on areas of potential concern during (rather than after) the PDP. Areas of concern might be identified by staff support or liaisons, or Board liaisons that report the sense of the Board.

B. After issuing the Initial Report and during deliberations leading to the Final Report:

1. The same activities described just above should continue to address new developments and information, and reaction to public comment.
2. The Board comment or response to the Initial Report should indicate the recommendations that, if not amended, the Board will reject (or “pend”). The comment should include the rationale for the rejection and a suggested path for developing an acceptable version (e.g., a Board-PDP collaboration of some type, a reference to certain documentation, the opinion of an appropriate expert). Put another way, move Board consideration from the Final Report to the Initial Report on any matters possible (particularly with regard to Bylaw compliance and the Board’s fiduciary duty).
3. The PDP and Board might form a collaboration (e.g., small team) to work on issues raised by the Board in the Initial Report public comment.

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