

Why did ICANN's First Amendment come into being?

ICANN's accountability reforms!

“CCWG wants to draw a bright line between the area where ICANN is supposed to develop policy (and enforce that policy through contracts) and the area where we believe ICANN should not have a policy. And we want this line to be enforceable by the IRP.”

- Malcolm Hutter. Dec 16, 2015

The Transition and Re-defining ICANN's mission

ICANN's "First Amendment"

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). ...

(b) ICANN shall not act outside its Mission.

(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a).

Nullification of ICANN's "First Amendment"

(d) For the avoidance of doubt and notwithstanding the foregoing:

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of ICANN's authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN's Articles of Incorporation ("**Articles of Incorporation**"):

Why was ICANN's First Amendment nullified?

- Because GAC wanted ICANN to enforce PICs, which would give it policy making power
- Because ICANN's board wanted more latitude (power)
- CCWG proposed to grandfather existing PICs, but grandfathering was somewhat surreptitiously changed to add the broad immunity (d)ii

Where that leaves us today

- The mission is self-contradictory. **PICs/RVCs** often stipulate that content and services will be regulated in a specific way.
- If PICs/RVCs are voluntary commitments by Registry/Registrar operators to do things that do regulate content/services, fine! But **ICANN should not enforce them.**
- If PICs/RVCs are enforceable via ICANN contracts and compliance, they need to **come from the bottom up multistakeholder process (BUMP)**. They cannot be unilaterally declared by contracted parties and they cannot be private deals between GAC/ICANN and registry operators