

**Subject:** Business Constituency (BC) comment on draft restated Articles of Incorporation

**Date:** Wednesday, July 6, 2016 at 10:27:41 AM Eastern Daylight Time

**From:** Steve DelBianco

**To:** comments-draft-restated-articles-incorporation-27may16@icann.org

The Business Constituency (BC) appreciates the opportunity to provide comments regarding draft restated Articles of Incorporation for ICANN. (see <https://www.icann.org/public-comments/draft-restated-articles-incorporation-2016-05-27-en> )

The BC believes that the restated Articles faithfully reflect changes required to implement the approved CCWG and CWG proposals, and we support the restated Articles with one qualification:

In previous BC comments on transition documents, we stated our assumption that ICANN would remain a California non-profit corporation, since that form of legal organization supports the legally enforceable powers of the Empowered Community as sole Designator.

The original and restated Articles of Incorporation include this in Section 2:

2. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes.

BC support for these Articles of Incorporation relies upon ICANN Legal Department's written statement that "organized under" has the same meaning as "incorporated under". On 26-Jun-2016, ICANN Legal Counsel issued this statement:

There is no legal difference between the term "organized" or "incorporated" in this instance. They both would demonstrate that ICANN is created pursuant to California law, and using either term, ICANN is bound to file its Articles of Incorporation in California and maintain an address and an agent for service of process in California. Though they mean the same thing, ICANN has – since 1998 – used the term "organized" within its Articles. The term "organized" is the more appropriate term to use for organizations of ICANN's type, and is even the recommended term provided by the California Secretary of State in model forms for Nonprofit Public Benefit organizations like ICANN (See form ARTS-PB-501(c)(3): "It is organized under the Nonprofit Public Benefit Corporation Law". Available at [Bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-pb.pdf](http://Bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-pb.pdf) ). For those unfamiliar, the California Secretary of State is responsible for the filings and maintaining business records for California organizations. Adherence to the model usage of the language is recommended, and there does not seem to be a compelling justification to change from the historical and accepted usage.

The BC requests that ICANN add a footnote to the new Articles of Incorporation to summarize the above explanation. The BC suggests this text for the footnote to section 2:

The term "organized" has the same meaning as "incorporated" in this context. Both terms demonstrate that ICANN is created pursuant to California law, and that ICANN is bound to file its Articles of Incorporation in California and maintain an address and an agent for service of process in California.

This comment was drafted by Steve DelBianco and was approved in accord with the BC Charter.

Steve DelBianco  
Vice chair for policy coordination  
ICANN Business Constituency