

EXEC Document

Title: BITNET bylaws
Author(s): BITNET
Date: 1989/8/23
Committee: Executive
Document: EXEC123 89 EARN-MIN LISTSERV@UKACRL
Revision: 0
Supersedes:
Status: Information
Maintainer: BITNET
Access: Unrestricted

The following is the version of the BITNET Bylaws approved for BITNET Membership vote by the BITNET Board at its meeting of August 8, 1989. Changes from the July 21 version are in the following sections:

- 4.1.3 -- Final sentence added to accomodate electronic notification of Members re Annual Meeting of Members, after approval of procedure by Board and Membersip.
- 4.1.7 -- Same, for electronic voting by Membership.
- 5.3 -- (Second paragraph) Change "although" to "even if".
- 5.5.2 and 5.5.3 -- Order and numbering reversed to handle electronic notice for all Board meetings. Typo ("mail postage prepaid") corrected (to "mailed postage prepaid").
- 5.7 -- Second sentence reworded as directed during the Board meeting, to allow Board definition of allowable Board reimbursement, as part of Policy Manual.

Proposed Bylaws of the Corporation for Research and Educational Networking, 08/08/89

Amended and Restated
BYLAWS
OF
Corporation For Research and Educational Networking
A NEW JERSEY CORPORATION NOT FOR PROFIT

ARTICLE 1
Purpose

This Corporation is a not for profit corporation organized and

operated not for pecuniary profit, but exclusively for charitable purposes, to be achieved through the distribution of its funds for such purposes and particularly for the purpose of facilitating the non-commercial exchange of information consistent with the academic, educational and research purposes of its members. To the foregoing ends the Corporation shall take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, any property, real, personal, tangible or intangible or any undivided interest therein without limitation as to value and shall sell, convey or otherwise dispose of such property and invest, reinvest or deal with the principal and income thereof in such manner as, in the judgement of the trustees, will best promote the purpose of the Corporation without limitation, except such limitations if any, as may be contained in the instrument under which such property is received, the Certificate of Incorporation, the Bylaws of the Corporation or any laws applicable thereto. The Corporation may do any other act or thing incidental to or connected with the foregoing purpose or in advancement thereof, but not for the pecuniary profit or financial gain of its trustees or officers except as permitted under the New Jersey Corporations and Associations Not for Profit Law.

ARTICLE 2

Corporate Offices

2.1 Principal Office

The principal office of the Corporation in the State of New Jersey shall be at 9 Tamarack Circle, US Highway 206 North, Skillman, NJ 08558, mailing address P.O. Box 1273, Princeton, NJ 08542. The Corporation may have other offices, either within or without the State of New Jersey, as the Board of Trustees may determine.

2.2 Registered Offices and Agents

The Corporation shall maintain such registered offices and agents as may be required by the New Jersey Corporations and Associations Not for Profit Law.

ARTICLE 3

Members and Affiliates

3.1 Members

Membership in the Corporation shall be limited to organizations which have as one of their purposes to conduct or foster education, research, or development, which shall subscribe to the Corporation's rules of usage defined in the Corporation's Policy Manual as adopted by the Corporation's Board of Trustees and in effect from time to time, and whose membership will not result in loss of exemption from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code for the Corporation. The Members of the Corporation are those organizations which qualify under this Article, which have been elected by the Board of Trustees in accordance with the Corporation's Purpose articulated in Article 1 above, and which pay when due the membership fees as determined from time to time by the Board of Trustees.

3.2 Affiliates

The Corporation's Board of Trustees may, at its discretion, create forms of affiliation with the Corporation other than membership, which forms do not carry voting rights. Such Affiliates must subscribe to the Corporation's rules of usage and pay affiliation fees as determined by the Board of Trustees.

3.3 Termination of Membership and Affiliation

The membership of a Member or the association of an Affiliate of the Corporation shall automatically terminate for failure to pay when due any fees in accordance with the Policy Manual, or any amounts owed to the Corporation for any reason which are in default unless such termination is overridden by a vote of the Board. Such membership or association may also be terminated for cause by the Board of Trustees.

ARTICLE 4 Structure

4.1 Member Representative

Each Member shall have one vote, which shall be exercised by a Member Representative, in the election of Trustees, to amend these Bylaws and for such other matters as Members may be entitled to vote as a matter of law. A Member shall initially designate or subsequently

replace its Member Representative by filing written notice with the Secretary of the Corporation setting forth the name and official address of its Member Representative.

4.1.1. Annual Meeting of the Members

The Member Representatives shall meet annually to elect the Board of Trustees and to conduct such other business as may be required by law, these Bylaws or the Corporation's Certificate of Incorporation. The Annual Meeting of the Members shall be held within the first three calendar months of each year, beginning in 1991. Notice of the date, time and place of the Annual Meeting of the Members shall be provided by the Corporation not less than thirty nor more than sixty days prior to the Annual Meeting date.

4.1.2. Other Meetings of the Members

The Board of Trustees may call, upon at least thirty days' notice, other meetings of the Members as may be required.

4.1.3. Notice of Meetings

Written notice of a meeting stating the place, day and hour of any meeting of Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, by or at the direction of the President, or the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at such Member's address as it appears on the records of the Corporation, with postage thereon prepaid. Alternatively, notice of a meeting may be given electronically, provided such notice is given in accordance with procedures established by the Board of Trustees and approved by the Members.

4.1.4 Information Action by Members

Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of Members, may be taken without a meeting if a consent in writing, setting forth the

action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

4.1.5 Quorum

One-third of the Members eligible to vote at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of the Members, a majority of the Members present may adjourn the meeting from time to time without further notice.

4.1.6 Proxies

At any meeting of the Members, a Member entitled to vote may vote by proxy executed in writing by the Member or by its duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

4.1.7 Manner of Acting

A majority of the votes entitled to be cast on a matter to be voted upon by the Members present or represented by a proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater portion is required by law or by these Bylaws. Any ballot of the Members taken electronically shall be valid provided such ballot is conducted in accordance with the procedures established by the Board of Trustees and approved by the Members.

ARTICLE 5

Board of Trustees

5.1 Powers and Responsibilities

The Board of Trustees shall exercise all the powers of a Board and other such powers as are given it by law, or the Certificate of Incorporation, or these Bylaws. The Board of Trustees is responsible for conducting the affairs of the Corporation. It shall have the power to set policy and approve budgets, including the power to establish fees to be charged to Members and Affiliates and to establish the terms for acceptance of gifts and grants by the Corporation. It shall be

responsible for ensuring that the purpose of the Corporation is fulfilled and that the Bylaws are followed. The Board shall have the final exclusive management of the Corporation. The Board shall be responsible for and be empowered to elect all officers of the Corporation.

5.2 Composition and Election

Effective with the adoption of the Amended and Restated Bylaws

(i)

the Board of Trustees shall consist of twelve elected Trustees, plus the President of the Corporation, if the President is not a Trustee elected

by the Members, and (ii) the elected Trustees shall be divided by lot into three classes (I, II, and III) each comprised of four Trustees. The initial term of the office for members of Class I shall expire at the Annual Meeting of Members in 1991; the initial term of office for members of Class II shall expire at the Annual Meeting of Members in 1992; and the initial term of the office for members of Class III shall

expire at the Annual Meeting of Members in 1993. Their successors shall

be elected for three year terms pursuant to paragraph 5.4.3.

Each elected Trustee must be an employee of a Member at the time of his/her election to the Board by the Members or his or her appointment by the Trustees to fill a vacancy.

5.3 Terms and Vacancies

A Trustee may serve no more than two successive full terms unless

the Board of Trustees votes, by a two-thirds majority of the full Board

in office at the time, to allow that Trustee to be nominated and re-elected. A Trustee who has served two successive full terms may also be

re-elected after being off the Board for at least one year.

If an elected Trustee ceases to be employed by a Member at any time, such Trustee shall be deemed to have resigned from the Board on the day of the cessation of such employment unless, within sixty days, the Board of Trustees (excluding the subject Trustee) votes to retain such Trustee as a member of the Board until the next Annual Meeting of the Members. Vacancies in the Board of Trustees resulting from death, resignation, retirement, disqualification, removal from office or any other cause shall be filled only by the Board of Trustees then in office, even if less than a quorum. A Trustee elected by the Board to

fill a vacancy, other than a Trustee retained following cessation of his or her employment by a Member, shall serve until the completion of the vacated term.

5.4 Election of Trustees

5.4.1. Election at the Annual Meeting of the Members

At each Annual Meeting of the Members, the Members shall elect (i) four Trustees to succeed those Trustees in the class whose term expires at that Annual Meeting, and (ii) a Trustee or Trustees to fill the vacancies, if any, in the seats of any other elected Trustees, with such Trustee or Trustees to hold office for the remainder of the full term of the class or classes of Trustees in which the vacancy or vacancies occurred and until their successors have been elected and have qualified.

5.4.2. Nomination of Candidates for Trustee

At least four months before the Annual Meeting of the Members, the Board of Trustees, acting on the recommendations of the Chairman, shall name a Nominating Committee consisting of three Member Representatives of whom at least one shall not be a Trustee and of whom one shall be a Trustee not standing for re-election in that election. The latter shall chair the Nominating Committee. The Nominating Committee shall select a slate of nominees for Trustee consisting of at least fifty percent more candidates than the number of Trustee positions to be filled. No member of the Nominating Committee may be included on the Nominating Committee's slate of nominees.

In addition, the Nominating Committee shall receive Petitions of Nomination from the Member Representatives for candidates for Trustee. Such petitions shall be addressed to the Nominating Committee, and shall be received no later than the December 1 immediately preceding the Annual Meeting for which the nomination is intended. Any persons for whom at least five percent of the Member Representatives submit Petitions of Nomination shall be included on the ballot as a nominee

for
Trustee, subject to his or her agreement to serve if elected.

The Nominating Committee shall publish its own slate of nominees and a list of all candidates nominated by petition at least one month before the Annual Meeting. Said slate and the list of all candidates nominated by petition shall be included in the Notice of Annual Meeting referred to in paragraphs 4.1.1 and 4.1.3 above. Notwithstanding anything to the contrary in the foregoing, no proposed nominee shall be included on such list or slate (i) unless such person shall have notified the Nominating Committee that he/she will serve as a Trustee if elected, or (ii) if such proposed nominee is employed by the same Member employing a Trustee then on the Board and whose term expires after such Annual Meeting.

5.4.3. Election Procedures

Each Member Representative is eligible to vote for one candidate for each Trustee position being filled. Votes may be cast only for individuals nominated by the Nominating Committee or by petition as set forth in paragraph 5.4.2. In each election, starting with the Annual Meeting in 1991, the four candidates receiving the highest number of votes shall be elected to the three year term expiring at such Annual Meeting. If unexpired terms are being filled, the candidates with the next highest numbers of votes shall be elected to those positions, the longest terms being assigned to those candidates with the highest number of votes. In case of a tie for the last positions begin filled, a runoff election among the tied candidates shall be held.

5.5 Meetings of the Board of Trustees

5.5.1. Annual Meetings

The Annual meeting of the Board of Trustees shall be held as soon as practicable following the Annual Meeting of the Members. This meeting shall be open to all Member Representatives or their designees, to a representative of each Affiliate as allowed and defined in the Policy Manual, and to guests invited by the Trustees. Any person attending a Board Meeting who is not a Trustee shall be deemed present

merely in the capacity of auditor.

5.5.2. Special Meetings

Special Meetings of the Board of Trustees may be called on at least thirty day's notice to the Trustees or upon written request filed with the Secretary of the Corporation by one-third or more of the Trustees then holding office. A Special Meeting of the Board of Trustees may be called without notice when a waiver thereof in writing is signed by each Trustee entitled to such notice, whether before or after the time required for such notice.

5.5.3. Notice of Meetings

Notice of Meetings of the Board of Trustees shall be deemed to have been given when transmitted by electronic mail or when mailed postage prepaid by regular mail to the addresses registered with the Corporation for the Trustees, Member Representatives, and those representatives of Affiliates entitled to attend.

5.5.4. Executive Sessions

A Special or Annual Meeting, or any portion thereof, may be designated an Executive Session of the board, open only to members of the Board and others invited by the Board to attend, upon majority vote of the Trustees.

5.5.5. Publication of Decisions Reached in Special Meetings and Executive Sessions

Any decision reached in a Special meeting or an Executive Session of a meeting of the Board of Trustees shall be made accessible by electronic mail to all Member Representatives within thirty days following the meeting.

5.5.6. Meeting Procedures

A majority of the full Board in office at the time of meeting shall constitute a quorum. Decisions, except where otherwise noted in these Bylaws, shall be made by a majority vote of those present when a quorum is constituted. Meetings shall be governed by Robert's Rules of Order unless determined otherwise by a majority of Trustees present.

Any action required by law to be taken at a meeting of Trustees, or any action which may be taken at a meeting of Trustees, may be taken without a meeting if a consent in writing, setting forth the action so

taken, shall be signed by all of the Trustees. Members of the Board of Trustees or any committee designated thereby may hold or participate in a meeting of the Board of Trustees or such committee by means of conference telephone or similar communications equipment provided that all such persons so participating in such meeting can hear each other at the same time.

5.6 Removal and Resignation of Board Members

Any Trustee may resign by filing a written resignation with the Secretary, such resignation to take effect on the date specified therein. Any Trustee may be removed by a two-thirds majority of the entire Board then in office whenever, in its judgment, the best interests of the Corporation would be served thereby.

5.7 Compensation of Board Members

Trustees shall not receive any salaries for their services as Trustees. Reasonable expenses of Trusteeship incurred in the conduct of corporate business may be reimbursed as determined by the Board from time to time. Nothing herein contained shall be construed to preclude any Trustee from serving the Corporation, on a contractual basis, in some other capacity and receiving compensation therefore. Any such compensation shall be approved by the Board of Trustees and recorded in the minutes of the Board meeting at which the contract for the services is approved or renewed and also in the minutes of the Annual meeting of the Board following approval and/or renewal of the contract. Any such contract must be renewed at least annually.

5.8 Officers

5.8.1 Officers Named

The Corporation shall have a Chairman, a President, a Secretary, and a Treasurer, all of whom must be Trustees and elected to such offices by the Board of Trustees. The Board may also elect other officers who need not be Trustees and who shall have the authority and perform the duties prescribed by the Board of Trustees.

5.8.2. Election of Officers

The officers shall be elected annually by the Board of Trustees,

ordinarily at its Annual Meeting. If the election of officers is not held at this meeting, such election shall be held as soon thereafter as is reasonably practicable. New offices may be created and filled at any meeting of the Board. Each officer shall hold office until his or her successor shall be duly elected. Vacancies from among the officers may be filled by the Board at any Board meeting. Any Trustee may stand for any office.

5.8.3 Chairman

The Chairman shall preside at all meetings of the Board of Trustees and perform such other duties as may be prescribed by the Board of Directors.

5.8.4 President

The President shall be the chief executive officer of the Corporation and shall, in general, supervise and control all of the business and affairs of the Corporation. He may sign contracts or other instruments which the Board of Trustees has authorized to be executed, except in the cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws or by statute to some other officer or agent of the Corporation; and in general he shall perform all duties as may be prescribed by the Board of Trustees from time to time. If the Board of Trustees elects a President who is not also a Trustee elected by the Members, the President shall serve as an additional, ex-officio Trustee with vote.

5.8.5 Treasurer

The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation, and in general perform all the duties incident to the office of Treasurer and such other duties as may be assigned by the President or by the Board of Trustees.

5.8.6. Secretary

The Secretary shall keep the minutes of the meetings of the Corporation and of the Board of Trustees; see that all notices are duly

given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and the Corporate Seal; keep a register of the electronic and post office address of each Trustee, Member, Member Representative, Affiliate, Affiliate representative, which information shall be furnished to the Secretary by such Trustees, Members, Member Representatives, and Affiliates, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the president or by the Board of Trustees.

5.9 Removal and Resignation of Officers

Any officer may resign by filing a written resignation with the Secretary, such resignation to take effect on the date specified therein. Any officer may be removed by a two-thirds majority of the entire Board then in office whenever, in its judgment, the best interests of the Corporation would be served thereby.

Vacancies among the officers may be filled by the Board until the next annual election of officers.

5.10 Committees of Trustees

The Board of Trustees, by resolution adopted by a majority of the Trustees in office, may designate and appoint one or more committees, each of which shall consist of two or more Trustees, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Trustees in the management of the Corporation, except that no such committee shall have the authority of the Board of Trustees in reference to amending, altering or repealing the Bylaws; electing, appointing or removing any member of any such committee or any Trustee or officer of the Corporation; restating the Certification of Incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefore; adopting a plan for the distribution of the assets of the Corporation; or amending, altering or repealing any resolution of the Board of Trustees. The designation and appointment of any such committee and the delegation thereto of

authority shall not operate to relieve the Board of Trustees, or any individual Trustee, of any responsibility imposed upon it, him or her by law.

ARTICLE 6
Amendment of Bylaws

These Bylaws may be amended at any meeting of the Members, by a two-thirds majority of Member Representatives voting. Notice that amendment of the Bylaws will be under consideration shall be stated in the notice of any meeting at which any amendment to the Bylaws will be voted upon. A proposed amendment may emanate from the Board of Trustees or by petition supported by a minimum of twenty percent of the Member Representatives.

ARTICLE 7
Liability and Indemnification

7.1 Indemnification

The Corporation shall indemnify any person who becomes a party or is threatened to be made a party to any pending or completed action, suit or proceeding, whether civil, criminal, or administrative (including an action by or in the right of the Corporation), by reason of the fact that the person is or was a Trustee, officer, or employee of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts actually and reasonably paid or incurred, in settlement or otherwise, by such person. Notwithstanding the above, indemnification shall not occur in relation to matters as to which any person shall be adjudged to be liable for fraud or willful or wanton misconduct in the performance of duty or as acting outside the scope of his or her authority and to such matters as shall be settled by agreement predicated on the existence of such liability. The person shall, however, be indemnified to the extent that the court in which such action or suit was brought shall determine, upon application, that despite adjudication of liability and in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity

for such expenses as the court shall deem proper. Indemnification with respect to amounts paid in settlement or as a result of negotiation or plea bargaining is conditioned upon proposed settlement being submitted to and approved by the Corporation in advance. Such approval shall not be unreasonably withheld.

7.2 Procedures

Any indemnification under Section 7.1 above (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper under the circumstances set forth in Section 7.1 above. Such determination shall be made (a) by the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit or proceeding or (b) if such a quorum is not obtainable, or if a quorum of the disinterested Trustees so directs, by independent legal counsel in a written opinion. Provided, however that if a person has been successful in defense of any action, suit, claim or proceedings referred to in Section 7.1 above, such person shall automatically be indemnified against expenses (including attorneys' fees), actually and reasonably incurred by such person in connection therewith, without the necessity of a determination that he or she met the applicable standard of conduct set forth in Section 7.1 above.

ARTICLE 8

Miscellaneous

8.1 Corporate Seal

The Board of Trustees shall provide a corporate seal.

8.2 Fiscal Year

The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in the following year.

8.3 Nomenclature

8.3.1 Board of Trustees

Within these Bylaws the term "Board" refers to the Board of Trustees of the Corporation; "Trustee" and "Board Member" are both used to refer to an individual member of the Board of Trustees.

8.3.2 Gender and Number

In the appropriate cases, the singular shall be deemed to include the plural, the plural and singular, the feminine gender the masculine, and the masculine gender the feminine, as the sense of their use shall herein require.