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<To be detailed further here>

Executive Summary

On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked ICANN to convene a multistakeholder process to develop a proposal for the transition.

As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to propose reforms that would see ICANN attain a level of accountability to the global multistakeholder community that is satisfactory in the absence of its historical contractual relationship with the U.S. Government. This contractual relationship has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.

The CCWG-Accountability proposal does not deal directly with the governance of the IANA functions, but nevertheless must have broad public support for the IANA Stewardship Transition to proceed. In addition, the CWG-Stewardship proposal (the domain names component of the IANA Stewardship Transition) is significantly dependent and expressly conditioned on the implementation of specific ICANN-level accountability mechanisms by the CCWG-Accountability.

This 2nd draft proposal for public comment represents the latest work product of the CCWG-Accountability. It is focused on draft Work Stream 1 recommendations (Work Stream 1 is the CCWG-Accountability's work on changes to ICANN's accountability arrangements which must be in place, or committed to, prior to the IANA Stewardship Transition). In the first Public Comment in May 2015, the CCWG-Accountability sought feedback on the direction of its proposal, and preferences among alternatives proposed. Now, the CCWG-Accountability has incorporated the input received and agreed on a way forward which the group believes enhances ICANN's accountability and fulfills the requirements set out by the CWG-Stewardship. In this second Public Comment, the CCWG-Accountability is seeking agreement on whether or not the proposal meets the two conditions described previously.

The CCWG-Accountability has designed its work so that it may be coordinated with the timeline of the IANA Stewardship Transition. The Work Stream 1 proposals, when finalized, will be presented to the ICANN Board of Directors for transmission to NTIA along with the ICG assembled transition proposal.[1]

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[1] Please see ICANN 52 Board statement at https://www.icann.org/news/announcement-3-2015-02-12-en.

Initial Work to Determine Focus of the Work Stream 1 Proposal

The work started by assessing community comments on accountability from the launch of the Enhancing ICANN Accountability & Governance process from which the group was formed, the Accountability and Transparency Reviews, and the current mechanisms in place at ICANN.

From this initial output, Work Stream 1 mechanisms were defined as those that, when in place or committed to, would provide the community with confidence that any accountability mechanism to further enhance ICANN's accountability would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

The CCWG-Accountability then identified four building blocks that establish the foundation for what needs to be in place within the timeframe of the IANA Stewardship Transition. These building blocks are:

- **Principles** (i.e. the Constitution) – The Principles guarantee the Mission, commitments and core values of ICANN through the Bylaws.

- **Empowered Community** (i.e. the People and its Powers) – The Community refers to Supporting Organizations and Advisory Committees, which can jointly take action should ICANN breach the Principles.

- **ICANN Board of Directors** (i.e. the executive) – The ICANN Board is responsible for directing ICANN's affairs and is held accountable to the community through the community's powers.

- **Independent Appeals and Review Mechanisms** (i.e. the judiciary) –

    o The appeals mechanisms confer the power to review and provide redress, as needed.

    o The reformed Independent Review Panel that is more accessible and at lower cost, with a 7-member standing panel that serves and an independent judiciary and whose decisions are binding on ICANN.

Changes to ICANN Bylaws

Modifications to the ICANN Bylaws:

- Clarifying the **Mission** to reinforce the scope of organizational activities related to the DNS.

- Incorporating the **Affirmation of Commitments** so as to enshrine the community review processes.

A Set of Powers to Enhance Community Governance of ICANN

Giving the multistakeholder community more governance powers, as detailed below. These powers are intended to provide recourse as part of an escalation path in case of substantial disagreement between the Board and the community. They do not interfere with the day-to-day operations of ICANN.

1. **Power to reconsider or reject the Operating Plan and Budget:** The Community has the ability to consider the operating plans and budgets after they are approved by the Board (but before they come into effect) and reject them.

2. **Power to reconsider or reject changes to ICANN "Standard" Bylaws:** The Community has the ability to reject proposed Bylaws changes after they are approved by the Board but before they come into effect.

3. **Power to approve changes to "Fundamental" Bylaws:** The Community can determine a process for agreeing to any changes of the "Fundamental" Bylaws. The Community would have to give positive assent to any change, so the modification of Bylaws becomes a co-decision process between the Board and the Community.

4. **Power to appoint and remove individual ICANN Board Directors:** The Community organization that appointed a given Director could end their term and trigger another reappointment process. The general approach is that the appointing body is the removing body, but the process includes community wide discussion before such as a step is taken.

5. **Power to recall entire ICANN Board:** as last resort measure, the Community can trigger the removal of the entire ICANN Board of Directors. An Interim Board would be set up as part of this power to ensure continuity of operations.

Reforms to the Independent Review & Request for Reconsideration Processes

In addition to the aforementioned powers, a significantly enhanced Independent Review Process will serve as a fully independent judicial/arbitral function for the ICANN community. The Independent Review Panel should become a standing panel of independent panelists. These panelists would be selected through a community driven process. Materially affected parties, including in some cases the community itself, would have standing to initiate a procedure in front of the Panel. The decisions of the Panel would not only assess compliance with process and existing policy, but also the merits of the case against the standard of ICANN's Mission, Commitments and Core Values. Additionally, the decisions of the Panel would be binding upon the ICANN Board. Improvements in the accessibility of the Independent Review Process, especially with respect to costs, are also recommended.

As requested by the CWG-Stewardship, the Community can use this Independent Review Process to challenge a decision by the Board not to implement a recommendation of the IANA Function Review team.

The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, whereby any person or entity materially affected by an action (or inaction) of ICANN may request review or reconsideration of that action by the Board. These reforms include:

- Expanding the scope of permissible requests to include Board/staff actions or inactions that contradict established policy, ICANN's Mission, Commitments, or Core Values.

- Requiring the Board as a whole to approve reconsideration decisions.

- Focusing on having the ICANN Ombudsman performing the initial assessments of reconsideration requests in relation to the ICANN legal department.

- Broadening the types of decisions, providing more transparency in the dismissal process while also providing the Board with reasonable right to dismiss frivolous requests

- Engaging more with the Board directors as opposed to ICANN staff.

- Improving the transparency and accessibility to the process, allowing the extension of the time for filing a Request for Reconsideration from 15 to 30 days, and providing a rebuttal opportunity.

Designing a Community Mechanism for Legitimacy and Enforceability

Numerous legal structures, or mechanisms, have been explored by which the Community could organize to have "legal personhood" (or legal standing) in California. The CCWG-Accountability is recommending the Sole Member Model. This is the Community Mechanism in which ICANN's Supporting Organizations and Advisory Committees jointly participate to exercise their community powers via the Sole Member of ICANN. In this model, community decisions in the Community Mechanism would directly determine exercise of the rights. ICANN Bylaws would establish the Community Mechanism as the Sole Member of ICANN with legal personhood and describe the composition and powers of the Community Mechanism Sole Member. Together, the Supporting Organizations and Advisory Committees who wish to participate in the Community Mechanism act as a legal person of ICANN.

Each decision of the Sole Member would be made by the SOs and ACs through their own formal decision making processes, after a community-wide debate (including voting and no-voting groups). No SO or AC, or any individual, has to 'join' ICANN or the Sole Member in order to exercise their rights, and no new legal obligations arise for any ICANN participant.

The GNSO, ASO, ccNSO and ALAC have confirmed their intention to exercise voting possibility in this Community Mechanism. The Community Mechanism is designed in a sufficiently open fashion so that other ACs as well as potential new groups in ICANN can join and participate in a voting scheme at a later stage.

Fundamental Bylaws

ICANN's Bylaws actually can generally be changed by resolution of the Board with a two-third majority. The CCWG-Accountability proposes revising ICANN's Bylaws to establish a set of Fundamental Bylaws, which would hold special protections and can only be changed with 75% approval from the Board, based on prior approval by the Community (see Power #3, above). The proposed Fundamental Bylaws include the following:

- The Mission, Commitments, and Core Values
- The Independent Review Process
- The six community powers
- The manner in which Fundamental Bylaws can be amended
- The Community Mechanism as the Sole Member Model
- The IANA Function Review and the Customer Standing Committee, and any other requirements from the CWG-Stewardship.

Stress Testing the Recommended Enhancements

An essential part of the CCWG-Accountability Charter calls for stress tests to determine the stability of ICANN and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community. A series of 37 stress tests are developed in this proposal, addressing financial crisis or insolvency; failure to meet operational expectations or to account to external stakeholders; and legal action.

Implementation and Next Steps

Work Stream 1 changes must be implemented or committed to before any transition of IANA Stewardship from NTIA can occur. The CCWG-Accountability roughly estimates that nine months will be required for implementation, understanding that several parallel tracks of effort and change will be required, with some requiring multiple public comment periods.

In its deliberations and in discussion with its independent legal counsel, it has become clear that all requirements proposed in this report may be implemented while ICANN remains a public benefit corporation (also known as a not-for-profit organization in other jurisdictions) based in California. However, modifications will be required to ICANN's Articles of Incorporation and Bylaws in order to empower the multistakeholder community as proposed by the CCWG-Accountability.

The CCWG-Accountability's assessment is that its recommendations published for public comment are consistent with the CWG-Stewardship expectations regarding budget, community empowerment, review and redress mechanisms, as well as appeals mechanisms (including the specific requirements related to ccTLDs). The group is grateful to the CWG-Stewardship for the constructive and continued collaboration that was set up and held since 12 December 2014.

Elements for Consideration in Work Stream 2

Work Stream 2 is focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition. In working through Work Stream 1, the CCWG-Accountability has produced a list of elements to be considered in Work Stream 2, including:

- Refining the operational details of Work Stream 1 proposals, including but not limited to:
    - Establishing rules of procedure for the enhanced Independent Review Process.
    - Improving ICANN's budgeting and planning process to guarantee the ability for the Community to have input, and for that input to be given due consideration.
    - Defining ICANN Community Forum practical modalities.
    - Clarifying understanding of the fiduciary duties of Board Directors and related expectations concerning Director behavior for the Board.
- Further assessing enhancements to government participation in ICANN.
- Considering the issue of jurisdiction as described in Section 11.3.
- Enhancing SO and AC accountability (see Section 8.3).
- Instituting a culture of transparency within the ICANN organization:
    - Limiting ICANN's ability to deny transparency and disclosure requests.
    - Enhancing the Ombudsman's role and function.
    - Enhancing ICANN's whistleblower policy.
    - Increasing transparency about ICANN interactions with governments.
- Defining security audits and certification requirements for ICANN's IT systems.
- Considering improvements to diversity in all its aspects at all levels of the organization (see Section 8.1).
- Defining the modalities of how ICANN integrates human rights impact analyses, within its mission.

Fulfillment of Requirements

NTIA Requirements

The National Telecommunications and Information Administration (NTIA) [has requested](#) that ICANN "convene a multistakeholder process to develop a plan to transition the U.S. government stewardship role" with regard to the IANA Functions and related Root Zone management. In making its announcement, the NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model

- Maintain the security, stability, and resiliency of the Internet DNS

- Meet the needs and expectation of the global customers and partners of the IANA services

- Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

The group has assessed these criteria against CCWG-Accountability Work Stream 1 proposals. The following table documents how these proposals meet the relevant criteria and where in this report the relevant measures and details can be found. This includes a list of the stress tests conducted to assess whether the proposals would also meet the criteria in case of contingencies.

Criteria	Key proposals	Relevant stress tests	Assessment
Support and enhance the multistakeholder model	Enhancements of ICANN's Accountability are all enhancements to ICANN's multistakeholder model. The community empowerment mechanism relying on the Sole Member Community Model is deeply multistakeholder.	Stress Test #10 Stress Test #12 Stress Test #13 Stress Test #14 Stress Test #18 Stress Test #22 Stress Test #24 Stress Test #26 Stress Test #31 Stress Test #32 Stress Test #33 Stress Test #34	Requirement Met

Maintain the security, stability, and resiliency of the Internet DNS	Community powers related to budget or strategic plan veto, as well as Director removal or Board recall, include specific measures to guarantee continuity of operations.	Stress Test #1 Stress Test #2 Stress Test #5 Stress Test #6 Stress Test #7 Stress Test #11 Stress Test #17 Stress Test #19 Stress Test #25	Requirement Met
Meet the needs and expectation of the global customers and partners of the IANA services	The proposals address the needs of the CWG-Stewardship (see below). Specific requests from the numbering community have also been included to avoid interference with other, specific mechanisms related to numbering policies. No specific request from the technical community was received. See **CWG-Stewardship Proposal**.	Stress Test #1 Stress Test #2 Stress Test #5 Stress Test #6 Stress Test #11 Stress Test #17 Stress Test #19 Stress Test #20 Stress Test #21 Stress Test #25	Requirement Met
Maintain the openness of the Internet	Mission and core values of ICANN are updated to ensure that the scope of ICANN's mission remains limited to a coordination function, and will provide a standard of review for appeal in front of ICANN's	Stress Test #4 Stress Test #10 Stress Test #16 Stress Test #18 Stress Test #23 Stress Test #24 Stress Test #28 Stress Test #29	Requirement Met

	enhanced appeal mechanisms. See **Section 3 of the CCWG-Accountability proposal.**	Stress Test #30	
Would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution	The proposals are based on Mutual Accountability enhancements, instead of accountability towards a government led or intergovernmental organization. Governments are recognized as key stakeholders, especially in their role with regards to public policy. Also see **Section 6 of the CCWG-Accountability proposal.**	Stress Test #12 Stress Test #13 Stress Test #18 Stress Test #35	Requirement Met

CWG-Stewardship Dependencies

In the transmittal letter for the CWG-Stewardship transition plan to the ICG the CWG-Stewardship noted the following regarding its dependencies on the CCWG-Accountability work:

> *"The CWG-Stewardship proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms proposed by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). The co-Chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability Work Stream 1 recommendations, if implemented as expected, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG-Accountability. If any element of these ICANN level accountability mechanisms is*

not implemented as contemplated by the CWG-Stewardship proposal, this proposal will require revision."

The CWG-Stewardship requirements of the CCWG-Accountability are detailed on pages 20-21 of the CWG-Stewardship proposal transmitted on 25 June 2015.The Work Stream 1 proposals from the CCWG-Accountability address all of these conditions.

1. ICANN Budget

The proposal related to community rights regarding the development and consideration of the ICANN Budget and the IANA Budget can be found in Section 7.1.

The proposal includes the ability for the community to veto the IANA Budget, or the ICANN Budget. The description of the IANA Budget is aligned in this report with the CWG-Stewardship's description. Continuity measures are set up to ensure that the use of this power does not interfere with the Post-Transition IANA (PTI)'s continuity of operations.

2. ICANN Board and Community Empowerment Mechanisms

The proposals include the ability for the community to appoint and remove members of the Board, recall the entire Board, exercise oversight with respect to certain key ICANN Board decisions and approve amendments to ICANN's Fundamental Bylaws. Description of these mechanisms can be found in Section 7.3 (Removal of Individual Board Directors) and Section 7.4 (recall of the entire Board). The CCWG-Accountability details its proposals to ensure that the use of such powers does not interfere with the continuity of ICANN's operations.

3. IANA Function Review and Separation Process

The CCWG-Accountability proposals include the incorporation into the ICANN Bylaws of the sections of the Affirmation of Commitments related to the regular mandated reviews. A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws. Its specifications will be based on the requirements detailed by the CWG-Stewardship and the Bylaw drafting process will include the CWG-Stewardship.

The incorporation into the Bylaws of the procedure to implement a Separation Process should it arise from a Special IANA Function Review, including provision for the creation of the Separation Cross-Community Working Group (SCWG), its functions and voting thresholds for approving the end-result of the SCWG process (which could include a separation) is agreed on. Its specifications will be based on the requirements detailed by the CWG-Stewardship and the Bylaw drafting process will include the CWG-Stewardship.

As requested by the CWG-Stewardship, the community can use the Independent Review process (see Section 5.1) to challenge a decision by the Board not to implement a recommendation coming out of an IANA Function Review.

4. Customer Standing Committee

The incorporation into the Bylaws of the Customer Standing Committee into the Bylaws is agreed on, and the CWG-Stewardship can either draft its own Bylaw proposal or be included into a joint effort.

5. Appeals Mechanism

CCWG-Accountability proposals include significant enhancement of ICANN's existing appeals mechanisms, including the IRP. The IRP will be available to TLD managers to challenge ICANN decisions including with respect to issues relating to the IANA functions (with the exception of ccTLD delegations and redelegations, as requested by the CWG-Stewardship). Its standard of review will be based on ICANN's Mission and Core Values, which includes compliance with documented policies. The decisions of the IRP will be binding on the ICANN Board.

Further detail on the IRP can be found in Section 5.1.

6. Post-Transition IANA (PTI) Governance

The incorporation into the Bylaws of governance provisions related to PTI is anticipated. Specifications with respect to these PTI governance provisions will be based on the requirements to be detailed by the CWG-Stewardship and the Bylaw drafting process will include the CWG-Stewardship.

7. Fundamental Bylaws

The list of Bylaw sections that will be granted the status of Fundamental Bylaws includes all Bylaw sections relating to community powers (including Budget and Board removal/recall), the enhancements of the IRP and, considering this specific condition, the IANA Function Review and Separation Process, Customer Standing Committee, and PTI Governance.

Changing these Fundamental Bylaws will require, upon proposal by the Board, prior approval of the community with a 75% threshold, through the Community Mechanism as Sole Member.

Further detail on the Fundamental Bylaws can be found in Section 4.

1. Background

1.1 Introduction

On 14 March 2014 the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked the Internet Corporation for Assigned Names and Numbers (ICANN) to convene a multistakeholder process to develop a proposal for the transition.

As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to propose reforms that would see ICANN attain a level of accountability to the global multistakeholder community that is satisfactory in the absence of its historical contractual relationship with the U.S. Government. This contractual relationship has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.

Informed by community discussions and public comment periods, the final Revised Enhancing ICANN Accountability: Process and Next Steps includes identifying how, if any, ICANN's broader accountability mechanisms should be strengthened in light of the transition, including a review of existing accountability mechanisms such as those within the ICANN Bylaws and the Affirmation of Commitments.

Designed and approved by a Drafting Team (DT) composed of five ICANN community groups, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened in late 2014. The CCWG-Accountability Charter was circulated for adoption on 3 November 2014 – see Appendix B.

The CCWG-Accountability consists of 166 people, organized as 28 members, appointed by and accountable to the CCWG-Accountability chartering organizations, 138 participants, who participate as individuals, and 99 mailing list observers.

The CCWG-Accountability also includes:

- 1 ICANN Board liaison who brings the voice of the Board and Board experience to activities and deliberations;[2]

- 1 ICANN staff representative who provides input into the deliberations;[3]

- 1 former ATRT member who serves as a liaison and brings perspective and ensures that there is no duplication of work;[4]

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[2] Should there be an issue of a consensus call, the Board Liaison would not participate in such a consensus call.

[3] Should there be an issue of a consensus call, the staff representative would not participate in such a consensus call.

- 2 ICG liaisons who serve between CCWG-Accountability and ICG.

Seven Advisors have also been appointed by a Public Experts Group (PEG) to contribute research and advice, and to bring perspectives on global best practices to enrich the CCWG-Accountability discussion, all while engaging with a broader network of accountability experts from around the world.

For more information on background please refer to Appendix A.

1.2 Definitions and Legal Scoping

The CCWG-Accountability scoped out and elaborated a problem statement along with definitions to help refine its understanding of the task it was entrusted with. The group worked to produce a definition of what accountability is, and listed transparency, consultation, review mechanisms and redress mechanisms as criteria of accountability mechanisms.

As a general concept, the group proposed that accountability could be defined as processes whereby an actor answers to others for the effects on them of its actions and omissions. For the CCWG-Accountability, then, accountability involves the processes whereby ICANN answers to its stakeholders for the impacts on those stakeholders of ICANN's decisions, policies and programs.

The group proposed that accountability is comprised four dimensions:

1. **Transparency**, meaning that an actor (ICANN) is answerable to its stakeholders by being open and visible to them;

2. **Consultation**, meaning that the actor (ICANN) continually takes input from and explains its positions to the stakeholders;

3. **Review**, meaning that the actor's (ICANN's) actions, policies and programs are subject to outside monitoring and evaluation; and

4. **Redress**, meaning that the accountable actor (ICANN) makes compensations for any harms of its actions and omissions, for example, by means of policy changes, institutional reforms, resignations, financial reparations, etc.

Further, independence and checks and balances mechanisms were identified as two key qualities of any accountability mechanism. The group defined "checks and balances mechanisms" as a series of mechanisms put in place to adequately address the concerns from the various interested parties in the discussion and decision process, as well as to ensure that the decision is made with the due consideration of the interests of all stakeholders. Also, the group investigated two different non-exclusive views in order to assess independence, independence of persons participating in the decision process, and independence of a specific accountability mechanism with regards to other mechanisms.

The group flagged to whom should ICANN be accountable as an important component, and assembled a list of stakeholders which distinguished between affected parties and

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[4] Should there be an issue of a consensus call, the ATRT Expert would not participate in such a consensus call.

parties affecting ICANN. The following principles were agreed to guide the CCWG-Accountability's activities:

- ICANN accountability requires that it comply with its own policies, rules and processes (part of "due process", as a quality of fairness and justice);

- ICANN accountability requires compliance with applicable legislation, in jurisdictions where it operates;

- ICANN should be accountable to achieving certain levels of performance as well as security; and

- ICANN should be accountable to ensure that its decisions are for the benefit of the public, not just in the interests of a particular set of stakeholders or ICANN the organization.

1.3 Legal Advice

The CCWG-Accountability engaged two law firms to provide advice on the feasibility of its proposed frameworks and mechanisms, Adler & Colvin and Sidley Austin LLP.[5] The firms' work was coordinated through the Legal Subteam of the CCWG-Accountability. The legal advice was key to the CCWG-Accountability in formulating its recommendations.

For more information on the Legal Subteam's rules of engagement and methodology please refer to Appendix C.

1.4 Input Gathered from the Community: Required Community Powers

The group reviewed the collection of public comments received during the development of the Enhancing ICANN Accountability and categorized these as Work Stream 1 and Work Stream 2.

Work Stream 1 mechanisms were defined as those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability in light of its changing historical relationship with the U.S. Government would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

The mechanisms were divided in three sections:

1. **Mechanisms giving the ICANN community ultimate authority over the ICANN corporation:** Most of these were initially designated as Work Stream 1 since community Members need the leverage of IANA Stewardship Transition to obtain these Bylaws changes.

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[5] When referring to legal advice and counsel, this report refers to joint advice and counsel unless noted otherwise.

2. **Mechanisms to restrict actions of the Board and management of the ICANN corporation:** Most of these are initially designated as Work Stream 2 since community members could veto certain Board decisions if reserved for them if they are empowered in Work Stream 1 (1, above).

3. **Mechanisms to prescribe actions of the ICANN corporation:** Most of these are initially designated as Work Stream 1, since the community members could veto certain Board decisions if reserved for them if they are empowered in Work Stream 1 (above). For example, a bottom-up consensus process to change ICANN Bylaws might be rejected by the ICANN Board, but the community members could then veto that decision.

Work Stream 1 accountability mechanisms are presented in detail in Section 2.

In addition, the Cross Community Working Group (CWG) to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship) has advised the CCWG-Accountability, including in a [correspondence](#) from the CWG-Stewardship co-chairs dated 15 April 2015, the expectations from their group with regards to Work Stream 1 recommendations. These expectations are:

- **ICANN budget:** The CWG-Stewardship supported the ability for the community to approve a budget, including on IANA functions' costs. This expectation is dealt with in Section 7.1.

- **Community empowerment mechanisms:** The CWG-Stewardship is relying on the community empowerment and accountability mechanisms under consideration and being developed being in place at the time of the IANA Stewardship Transition. In particular, mechanisms such as: the ability to recall the ICANN Board decisions relating to periodic or special reviews of the IANA functions undertaken through the IANA Function Review (IFR), the ability to approve change to Fundamental Bylaws, as well as the related creation of a stakeholder community/member group in order ensure the ability to exercise these rights. This expectation is dealt with in Section 7.

- **Creation of a customer standing committee:** The CWG-Stewardship will be relying on the creation of a customer standing committee (CSC) within the ICANN Bylaws. Additionally, under the current CWG-Stewardship proposal, if not currently within their mandates, the ccNSO and/or GNSO would be empowered to address matters escalated by the CSC.

- **Review and redress mechanisms:** The CWG-Stewardship would like to have the assurance that an IANA Function Review (or related special review) could be incorporated as part of the Affirmation of Commitments mandated reviews integration into ICANN's Bylaws as a Fundamental Bylaw. This expectation is dealt with in Section 4. The CWG-Stewardship is also relying on a mechanism for a separation review once certain remedies are exhausted, which would trigger a separation of the Post-Transition IANA entity (PTI) from ICANN.

- **Appeal mechanisms (especially with regard to ccTLD related issues):** The CWG-Stewardship recommended that the CCWG-Accountability be mindful of the recommendations of the CWG-Stewardship in relation to an appeals mechanism for ccTLDs in delegation and re-delegation. The CWG-Stewardship conducted a survey among the ccTLDs as part of the work of Design Team B, and the results led to a recommendation, which noted that ccTLDs may decide to develop their own appeals mechanism regarding re/delegation at a later date

(post-transition). As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation/re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes. However, the CWG-Stewardship emphasized the importance and need for an appeal mechanism to cover any other issues that may involve IANA and noted that this is option is expected to be specifically called out as one of the possible escalation mechanisms[6] in the draft transition proposal. This expectation is dealt with in Section 5.

- **Fundamental Bylaws:** To address the various matters above, the CWG-Stewardship is also relying on these mechanisms being included as Fundamental Bylaws. This expectation is dealt with in Section 4.

1.5 Summary of Key Changes Since the Initial Draft Report (May 2015)

The following is a summary of the key changes the CCWG-Accountability has made to its proposal between the First Draft Report in May and this Second Draft Report. **The changes are significant.** They have been made in response to comments received during the public consultation on the Initial Draft Report, during numerous interactions with the ICANN community at the ICANN 53 meeting held in Buenos Aires in June 2015, and through further refinement and debate centered on the face-to-face meeting of the CCWG-Accountability in Paris in July 2015.

The reference model to empower the multistakeholder community

Although effective in meeting the requirement of empowering the multistakeholder community the Empowered SO/AC Membership Model also created a number of critical problems, including:

- The requirement for some SOs and ACs to establish legal persons, through which they participate as a member in the Empowered SO/AC Membership Model or to enforce rights was a significant issue for a number of SOs and ACs.

- The differential statutory rights between SOs and ACs that become members and SOs and ACs that were not members (chose not to participate in the Model).

- The significant risks associated with to the statutory rights of members, which allows them to dissolve ICANN and bring derivative suits.

- After considering various possible models and discussing options with external legal counsel the CCWG-Accountability has developed the "Community Mechanism as Sole Member" Model as its proposed model for empowering the community. This Model builds upon the more favorable concepts in the other

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[6] As a note of clarification, the CWG-Stewardship has been referring previously to this appeals mechanism as IAP (Independent Appeals Panel) but understands that the CCWG-Accountability is referring to this mechanism as Independent Review Mechanism (IRP), which would also include the option for appeal. As such the CWG-Stewardship will be updating its references.

models and simplifies certain implementation aspects.[7] Decisions of the SOs and ACs made through their existing processes would directly determine exercise of the rights of the Community Mechanism as Sole Member (Section 6) – in other words, no new decision-making group or committee is formed in this model.

- The selection of this model directly influences how the Community will exercise its powers as a member and has required the elaboration of the Community Mechanism, which now includes a community discussion phase before the exercise of any community powers (Section 7).

Additional stress tests

Assistant Secretary Larry Strickling's [statement] of 16 June 2015 suggested four additional stress tests to the CCWG-Accountability:

- **NTIA-1:** Test preservation of the multistakeholder model if individual ICANN's SOs and ACs opt out of having votes in community empowerment mechanism(s).

- **NTIA-2:** Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an SO or AC.

- **NTIA-3:** Barriers to entry for new participants.

- **NTIA-4:** Unintended consequences of "operationalizing" groups that to date have been advisory in nature (e.g. GAC).

Refinements to key elements

Along with the changes above, key elements of the proposal evolved and matured, some in significant fashion, but did not modify their fundamental concepts. These refinements include:

- Mission & Core Values, especially balancing of Core Values.

- Board removal and recall through the Community Mechanism as Sole Member.

- Independent Review Process by clarifying a community-driven [panelist] selection process, and providing further detail on the panels and the ability to appeal.

- Community power with regard to budget so as to provide continuity of operations and a PTI-IANA Budget veto as requested by the CWG-Stewardship.

- Work plan for Work Stream 2 to:

  o Enhance diversity and the culture of transparency within ICANN

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[77] In making this decision, the CCWG-Accountability relied on expert legal advice from its retained firms. The memo and other documentation provided to the CCWG-Accountability on this topic are available in Appendix G.

- o Further address concerns about community accountability. The 2nd Draft Report includes a recommendation for regular structural reviews of SOs and ACs to assess their accountability towards their participants as well as towards the stakeholders they are designed to represent.

- o Elaborate on a Commitment to human rights in the ICANN Bylaws.

- Details on an implementation plan for Work Stream 1, including a Bylaws drafting process.

The CCWG-Accountability thanks everyone who offered comments, input and feedback in response to the Initial Draft Report. That input and the discussions since have driven the significant changes to the initial model that underpin the Community Mechanism as Sole Member model proposed in this report. The significant concerns raised by the community have successfully been resolved, and the CCWG-Accountability looks forward to the scrutiny this report will encourage in teasing out remaining issues.

2. Accountability Mechanisms

The CCWG-Accountability identifies four building blocks that would form the accountability mechanisms required to improve accountability.
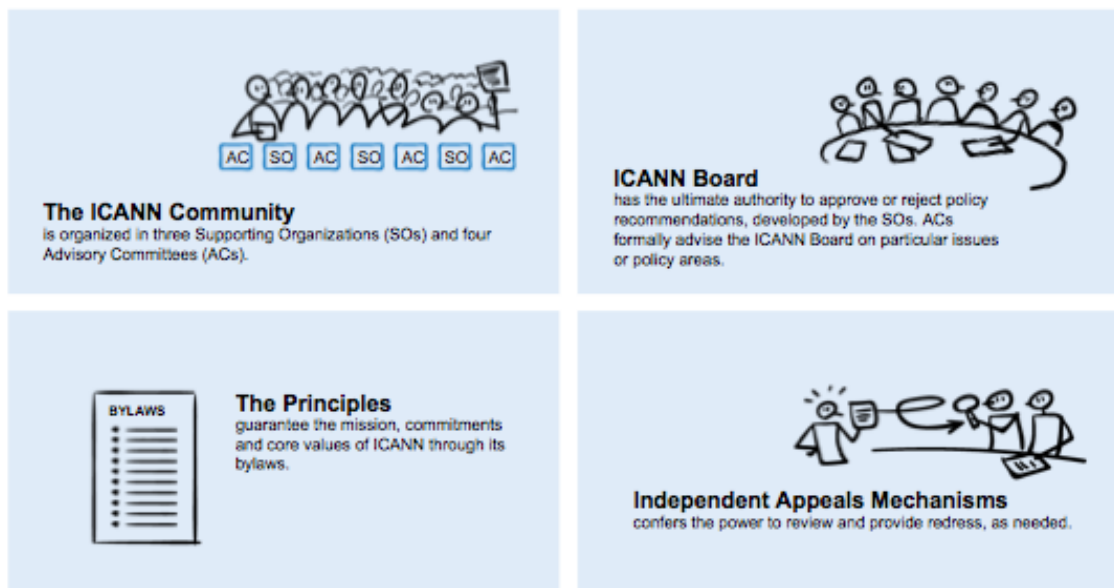
Drawing a state analogy:

- **Empowered community refers to the powers that allow the community (i.e., the people) to hold ICANN accountable for the principles.**
    - The group identified powers and associated mechanisms including the ability to:
        - Remove individual directors or recall the entire ICANN Board of Directors;
        - Approve or veto changes to the ICANN Bylaws, Mission, Commitments and Core Values; and
        - Reject Board decisions on Strategic Plan and budget, where the Board has failed to appropriately consider community input.
- **Principles form the Mission, Commitments and Core Values of the organization (i.e., the Constitution).**
    - The group proposes changes that should be made to the Mission, Commitments and Core Values in ICANN's Bylaws. For example, the group discussed how key provisions of the Affirmation of Commitments could be incorporated into the Bylaws.

- **ICANN Board (i.e., the Executive) is responsible for directing ICANN's affairs and is held accountable to the community through the community's powers.**
    - o The Board requires that periodic Structural Reviews be conducted and that such Reviews include an independent assessment of SO and AC accountability to their respective communities. These Reviews should include input from the wider community that each SOs and ACs is designed to represent.

- **Independent Appeals Mechanisms (i.e., the Judiciary), confers the power to review and provide redress, as needed.**
    - o The group proposes to strengthen the existing Independent Review Process suggesting improvements to its accessibility and affordability, and process design including establishment of a standing panel capable of issuing binding outcomes. The IRP panel decisions would be guided by ICANN's Mission, Commitments and Core Values.

This section of the public comment report details the key recommendations of the CCWG-Accountability.

3. Principles

Revised Mission, Commitments and Core Values

CCWG-ACCOUNTABILITY RESPONSE TO PUBLIC COMMENTS

ICANN's current Bylaws contain (a) a Mission statement; (b) a statement of Core Values; and (c) a provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment. These three sections are at the heart of ICANN's accountability: they obligate ICANN to action only within the scope of its limited Mission, and to conduct its activities in accordance with fundamental principles. As such, these three sections also provide a standard against which ICANN's conduct can be measured, and it can be held accountable through existing and enhanced accountability mechanisms.

The Initial Draft Proposal recommended several changes to clarify and strengthen these Bylaws provisions and to incorporate key elements of the Affirmation of Commitments. In particular, the Initial Draft Report proposed language to clarify and constrain ICANN's Mission statement, and to specify that ICANN's Mission does not include the regulation of services that use the DNS or the content those services carry or provide. The Initial Draft Report also proposed to divide the current Core Values into "Commitments" and "Core Values" and to articulate a test for balancing Commitments and Core Values to the extent necessary.

In general, commenters were very supportive of the proposed revisions to ICANN's Bylaws. The comments did reflect concerns about several aspect of the Initial Draft Report. Although we have provided a summary of all comments related to this section of the Initial Proposed Draft, annotated to reflect the CCWG-Accountability's response to those questions, we identify some of the biggest concerns below, and explain how the CCWG-Accountability addressed them.

ELABORATING AN ICANN COMMITMENT TO HUMAN RIGHTS

The CCWG-Accountability extensively discussed the opportunity to include into a Commitment related to human rights, within ICANN's stated Mission, in the ICANN Bylaws. The group commissioned a legal analysis of whether the termination of the IANA Functions Contract would induce changes into ICANN's obligations, within its defined Mission, with regards to Human Rights.[8] While no significant issue was found to be directly linked to the termination of the IANA Functions Contract, the group acknowledged the recurring debates around the nature of ICANN's accountability towards the respect of fundamental human rights within ICANN's Mission.

In these discussions, some participants raised the following as accountability-related reasons for including a commitment to fundamental human rights in the Bylaws:

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[8]   The memo prepared by legal counsel is available here:
http://mm.icann.org/pipermail/accountability-cross-community/2015-July/004604.html.

- The NTIA criteria to maintain the openness of the Internet, including free expression and the free flow of information;

- The need to avoid extending ICANN's mission into content regulation;

- The importance of assessing the impact of ICANN policies on human rights within its defined mission.

Examples of potential Commitment formulation were:

1. *Within its mission and in its operations, ICANN will be committed to respect the fundamental human rights of the exercise of free expression and the free flow of information.*

2. *Within its mission and in it operations, ICANN will be committed to respect internationally recognized fundamental human rights.*

The group has achieved consensus on including a human rights related Commitment in ICANN's Bylaws within its defined Mission. However no particular wording currently proposed achieved consensus. Reiterating its commitment to articulate concrete proposals as part of its mandate, the CCWG-Accountability is calling for comments on this approach and the underlying requirements.

PRIVATE SECTOR LEADERSHIP AND ADVICE CONTRARY TO THE BYLAWS

A number of government commenters strongly objected to the proposed change in existing Core Value 11 which states that ICANN, "While remaining rooted in the private sector," should recognize "that governments and public authorities are responsible for public policy" and should duly taking into account governments' or public authorities' recommendations. After lengthy conversation, the CCWG-Accountability proposes to address these concerns in two ways:

- First, to remove confusion about the meaning of "private sector" in the ICANN Bylaws, we propose to expressly state that the private sector includes business stakeholders, civil society, the technical community and academia. Note: There is a minority view regarding the meaning of "private sector," suggesting instead to describe the term as including business providers, business users, individual end-users, civil society, academia and the technical community.

- Second, we propose to remove the language that was read by some commenters to remove ICANN's obligation to consult with the GAC on consensus Advice. Instead, we propose to amend Article XI of the Bylaws, to provide that each advisory committee should provide a rationale for its advice, with references to relevant applicable national or international law where appropriate. The proposed language also implements the recommendation of ATRT2 requiring ICANN to work with the GAC to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided.

- Third, we propose to clarify that the Independent Review Process applies to all violations of the ICANN Bylaws, including violations resulting from ICANN's action or inaction based on input from advisory committees or supporting organizations.

BALANCING AND RECONCILIATION TEST

A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the proposed balancing test for competing Core Values.

FREEDOM TO CONTRACT

Several commenters expressed concerns that by enumerating ICANN's powers specifically, ICANN would not be able to freely negotiate and enforce its contracts with, for example, registries and registrars. The CCWG-Accountability considered this concern, but concluded that the prohibition on regulation of services that use the Internet's unique identifiers or the content that they carry or provide does not act as a restraint on ICANN's contracting authority.

REVISED REPORT ON MISSION AND CORE VALUES

ICANN's current Bylaws contain (a) a Mission statement; (b) a statement of Core Values; and (c) a provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment. These three sections are at the heart of ICANN's accountability: they obligate ICANN to act only within the scope of its limited Mission, and to conduct its activities in accordance with certain fundamental principles. As such, these three sections also provide a standard against which ICANN's conduct can be measured and held accountable through existing and enhanced mechanisms such as Reconsideration and Independent Review.

The relevant language in the current Bylaws was adopted in 2003. Based on community input and our discussions since January, the CCWG-Accountability concluded that these provisions should be strengthened and enhanced to provide greater assurances that ICANN is accountable to its stakeholders and the global Internet community. In particular, the CCWG-Accountability found that:

- ICANN's Mission statement needs clarification with respect to the scope of ICANN's policy authority;

- The language in the Bylaws describing how ICANN should apply its Core Values is weak and permits ICANN decision makers to exercise excessive discretion;

- The current Bylaws do not reflect key elements of the Affirmation of Commitments; and

- The Board should have only a limited ability to change these key accountability provisions of ICANN's Bylaws.

SUMMARY OF RECOMMENDED CHANGES

The proposed language for Bylaw revisions is conceptual in nature at this stage; once there is consensus about direction developed through this comment process, the legal team will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.

The CCWG-Accountability is seeking input on a number of recommended changes to the ICANN Bylaws to address the deficiencies described above. We have deliberately attempted to minimize language changes, and in the charts that follow, we have included the existing language and provided a redline showing proposed changes. The group discussed how to balance the needs of limiting ICANN's Mission and the necessary ability of the organization to adjust to a changing environment. Below we provide a summary of the proposed changes.

1. **ICANN Mission Statement.** The CCWG-Accountability recommends the following changes to ICANN's "Mission Statement," (Bylaws, Article I, Section 1):

   a) Clarify that ICANN's Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the DNS and are reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS.

   b) Clarify that ICANN's Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide.

   c) Clarify that ICANN's powers are "enumerated" – meaning that anything not articulated in the Bylaws are outside the scope of ICANN's authority. This does not mean ICANN's powers can never evolve – but ensures that any changes will be deliberate and supported by the community.

2. **Core Values.** The CCWG-Accountability recommends the following changes to ICANN's "Core Values" (Bylaws, Article I, Section 2 and Article II, Section 3):

   a) Divide the existing Core Values provisions into Commitments and "Core Values."

      i. Incorporate into the Bylaws ICANN's obligation to operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition. These obligations are now contained in ICANN's Articles of Incorporation.

      ii. Designate certain Core Values as "Commitments". These values are so fundamental to ICANN's operation that they are intended to apply consistently and comprehensively. Those Commitments include ICANN's obligations to:

         1) Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

         2) Limit its activities to those within ICANN's Mission that require or significantly benefit from global coordination;

         3) Employ open, transparent, bottom-up, multistakeholder processes; and

         4) Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.

       iii.   Slightly modify the remaining Core Values to:

           1)   Reflect various provisions in the Affirmation of Commitments, e.g., efficiency, operational excellence, and fiscal responsibility;

           2)   Add an obligation to avoid capture.

3.   **Balancing or Reconciliation Test**

   a) Modify the "balancing" language in the Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

     These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.

4.   **Fundamental ("durable" or "enduring") Bylaws Provisions.**

   a) The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be adopted as "durable" or "enduring" elements of the ICANN Bylaws. Any modification to these Bylaws provisions would be subject to heightened standards including, for example, community ratification or subject to community veto.

DISCUSSION

To whom is ICANN accountable? For what is it accountable? Those questions were a necessary starting point for the work of the CCWG-Accountability, and the answers inform all of our recommendations. Our work on Independent Review attempts to answer the first question. The Bylaws changes recommended here are designed to answer the second. Most important, ICANN has a limited Mission, and it must be accountable for actions that exceed the scope of its Mission. In undertaking its Mission, ICANN is also obligated to adhere to policy supported by community consensus and an agreed-upon standard of behavior, articulated through its Commitments and Core Values. Taken together, the proposed Mission, Commitments, and Core Values statement articulate the standard against which ICANN's behavior can be measured and to which it can be held accountable. Because these Bylaws provisions are fundamental to ICANN's accountability, we propose that they be adopted as Fundamental Bylaws that can only be changed with the approval of the community subject to procedural and substantive safeguards.

4. Fundamental Bylaws

4.1 What is a "Fundamental Bylaw"

ICANN's Bylaws can generally be changed by resolution of the Board upon a 66% majority vote. The CCWG-Accountability believes that some aspects of ICANN's Bylaws are integral to the scope and nature of the organization, and that the authority to change such requirements should be vested more broadly than within the ICANN Board.

Therefore, the CCWG proposes to make some Bylaw provisions harder to change than others, in two ways: by sharing the authority to authorize changes between the ICANN Board and the ICANN community (organized through its SOs and ACs in the Community Mechanism as Sole Member discussed in Section 6), and by requiring higher thresholds to authorize changes than is the case for Standard Bylaws (all the other ICANN Bylaws, discussed in Section 7.2).

Such Bylaws will be identified as "Fundamental Bylaws". A specified list of Bylaws would attain status as Fundamental Bylaws. The following sub-sections explain how Bylaws become Fundamental, how the list of Fundamental Bylaws is changed, and which Bylaws the CCWG-Accountability proposes should become Fundamental.

Fundamental Bylaws would indirectly contribute to ICANN's accountability to the global Internet community by making decisions to change fundamental aspects of ICANN more widely shared with the community and more difficult to adopt than is currently the case through ICANN processes.

This is important in the context of the IANA Stewardship Transition, where the historic contractual relationship with the U.S. Government provided some assurance that the fundamental nature of ICANN was unlikely to be changed without widespread agreement. Without that relationship, procedural protections and more widely shared decision rights on core components of ICANN should help maintain and build the community's confidence in ICANN.

4.2 Establishing Fundamental Bylaws

Parts of ICANN's Bylaws will become Fundamental Bylaws by identifying them as such in the Bylaws, and by defining a different process to change them than the process used for changes to Standard Bylaws.

To implement this, a new provision would be added to the Bylaws that sets out:

1. Which sections of the Bylaws are Fundamental Bylaws (i.e. a list of the articles / sections / subsections that are fundamental).

2. How new Fundamental Bylaws can be defined and how existing Fundamental Bylaws can be changed or removed.

4.3 Adding New or Changing Existing Fundamental Bylaws

The purpose of these accountability reforms would not be served if ICANN could not change in response to the changing Internet environment, once a high threshold of agreement in the community exists. Therefore it is important to be able to define new Fundamental Bylaws over time, or to change or remove existing ones.

To establish a new Fundamental Bylaw or to change or remove an existing one, the following steps would be followed where the Board (or the staff through the Board) is proposing the addition or amendment:

1.   The Board would propose a new Fundamental Bylaw or a change to / removal of an existing one through the usual process, but would need to identify it as a Fundamental Bylaw Proposal throughout the process.

2.   The Board would need to approve the addition or amendment by a 75% vote of all directors then in office (higher than the usual threshold of 66%).

3.   Alongside the Board, the community through the Community Mechanism would also need to approve the change. The threshold to approve any changes to Fundamental Bylaws would be set at the same high bar (75% of all votes in the community mechanism cast in favor). Further details in Section 4.5 below.

4.   If the change were agreed, then the new/revised Fundamental Bylaw would appear in the Bylaws, and appropriate reference to the text as a Fundamental Bylaw would be added (if needed) to the part of the Bylaws that lists them. In the case of a revision to existing Bylaws text, the text would be amended. In the case of a removal, the text would be removed and the reference to that part would be removed.

The CCWG-Accountability does not propose that the community gain the power to directly propose changes to the Bylaws. While this is a statutory power of the Community Mechanism as Single Member model, its use would be subject to very high thresholds – explained in Section 6.

4.4 Which of the Current Bylaws Would Become Fundamental Bylaws?

The general approach should be to have only critical matters defined in the Fundamental Bylaws to avoid introducing unnecessary rigidity into ICANN's structures. It would harm, not help, accountability to make all changes to Bylaws face the same thresholds as are proposed for Fundamental Bylaws.

In the CCWG-Accountability's view, "critical matters" are those that define ICANN's Mission, Commitments and Core Values, the requirements of the IANA Stewardship Transition, and the core accountability tools the community requires.

Accordingly, the following would be made Fundamental Bylaws in the first instance:

1.   The Mission / Commitments / Core Values;

2. The framework for the Independent Review Process;

3. The manner in which Fundamental Bylaws can be amended;

4. The powers set out in Section 7 of this report;

5. The Community Mechanism as the Sole Member Model;

6. The IANA Function Review and the Separation Process required by the CWG-Stewardship's proposal;

7. The Post-Transition IANA governance and Customer Standing Committee structures, also required by the CWG-Stewardship's proposal.

The first CCWG-Accountability draft proposal included an explanation and question about whether existing ICANN bylaws requirement regarding location of headquarters should be a Fundamental Bylaw.

To summarize the explanation, we described Affirmation of Commitments paragraph 8(b), where "ICANN affirms its commitments to: (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community…"

ICANN's present Articles of Incorporation already state that ICANN is a nonprofit public benefit corporation organized under California law:

"3. 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. "

Any change to ICANN's Articles of Incorporation would require approval by both Board and Members:

"9. These Articles may be amended by the affirmative vote of at least two-thirds of the directors of the Corporation. When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment."

Under the proposal for the Community Mechanism as Sole Member, the Member would need to approve any change to ICANN's present status as a California nonprofit public benefit corporation.

The 'headquartered" commitment in 8b is already in current ICANN Bylaws, at Article XVIII Section 1:

"OFFICES.   The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish."

While the Board could propose a change to this Bylaws provision, the Community Mechanism as Sole Member could block the proposed change with a 75% voting threshold.

In its Initial Draft Report, the CCWG-Accountability asked commenters whether Bylaws Article XVIII Section 1 should keep its current status as a regular Bylaw, or be designated as a "Fundamental Bylaw". In the latter case, any Bylaws change would require approval by 75% vote of the Community Mechanism as Sole Member.

Three considerations suggest that CCWG not propose Article XVIII be designated as a Fundamental Bylaw:

> First, public comment on the first draft was evenly split on the question of whether to designate Article XVIII a Fundamental Bylaw. Supporting this designation were several commenters from the Commercial Stakeholders Group of GNSO. Governments were among those expressing strong opposition.

> Second, the Community Mechanism as Sole Member must approve with 2/3 vote any change to ICANN's Articles of Incorporation, which now state that ICANN is a California Nonprofit Public Benefit Corporation.

> Third, the Community Mechanism as Sole Member could block any proposed change to ICANN Bylaws Article XVIII, which states "The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California."

4.5 Power: Approve Changes to "Fundamental Bylaws"

The intention of Fundamental Bylaws is to make sure that critical aspects of the powers and processes required to maintain ICANN's accountability to the community, and the organization's purpose and core values, can be changed only as a result of a broad consensus that such change is necessary and appropriate.

As such, the power to approve changes to the Fundamental Bylaws would form part of the process set out for agreeing to any changes of the Fundamental Bylaws. Through the Community Mechanism as Sole Member, the SOs and ACs would have to give positive assent to any change before it was finalized, as part of a co-decision process between the Board and the community. By creating this special co-decision process, authority to change fundamental aspects of ICANN's governing framework is shared more broadly than it otherwise would be.

The Bylaws provisions recommended above for inclusion as Fundamental Bylaws by the CCWG-Accountability are unlikely to be changed frequently. Where changes are made, they are unlikely to arise with short notice or to be needed to deal with short-term operational situations. The CCWG-Accountability therefore does not believe that this community power, as proposed, poses any challenges to ICANN's ongoing operational viability or efficiency.

Such changes require a high degree of community assent, as the purpose of this power is to make changing Fundamental Bylaws possible only with very wide support from the community. The Board and the community must both approve any change by a 75% vote of all available votes as applicable.

For further information about the four other community powers recommended by the CCWG-Accountability, see Section 7 of this proposal.

5. Appeals Mechanisms

5.1 Independent Review Process Enhancement

Introduction

The consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN's existing Independent Review Process (IRP). Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith. Commenters called for a process that was binding rather than merely advisory. Commenters also strongly urged that the IRP be accessible, both financially and from a standing perspective, transparent, efficient, and that it be designed to produce consistent and coherent results that will serve as a guide for future actions.

Comments from Public Consultation

Commenters expressed support for the general idea of strengthening ICANN's Independent Review process; none expressed a contrary view. The Board declined to comment on the grounds that it could not respond to the IRP proposal without more detail. Regarding the overall structure of the IRP, two commenters urged that it "has to remain an internal mechanism within ICANN," i.e. that it not be designed as a "traditional court of international arbitration" or "international commercial arbitration panel." The CCWG-Accountability revised the text from the Initial Draft Report (4 May 2015) based on community input and further discussions.

The process described below calls for a standing, independent panel of skilled jurists/arbitrators who are retained by ICANN and can be called upon over time and across issues to resolve disputes regarding whether ICANN is staying within its limited technical Mission and acting in accordance with ICANN's Articles of Incorporation and/or Bylaws.

The proposal calls for a fully *independent* judicial/arbitral function. The purpose of a standing panel is to ensure that panelists are not beholden to ICANN or any of its constituent bodies – but a core skill of this IRP's panelists is the need to build a thorough and detailed understanding of how ICANN's Mission is implemented, and its commitments and values applied – over time and across a variety of situations.

The proposal does not establish a new international court or a new body of international law: it is not a Treaty function, and is internal to ICANN. It reviews application of rules for ICANN established by the ICANN multistakeholder community. Those rules remain under the control of the ICANN multistakeholder community, so this IRP remains a mechanism the community is using to ensure that its policies and processes are followed, and does not become a means to replace or subordinate the multistakeholder community to some other entity.

Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a Cross Community Working Group (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review.

1. **Purpose of the IRP:** The overall purpose is to ensure that ICANN does not exceed the scope of its limited technical Mission and complies with its Articles of Incorporation and Bylaws.

    a) Empower the community and affected individuals/entities to prevent "mission creep" enforce compliance with the Articles and Bylaws through meaningful, affordable, accessible expert review of ICANN actions.

    b) Ensure that ICANN is accountable to the community and individuals/entities for actions outside its Mission or that violate its Articles or Bylaws.

    c) Reduce disputes going forward by creating precedent to guide and inform ICANN Board, staff, SOs and ACs, and the community in connection with policy development and implementation.

2. **Role of the IRP:** The role of the Independent Review Process (IRP) will be to:

    a) Hear and resolve claims that ICANN through its Board of Directors or staff has acted (or has failed to act in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any Advisory Committee or Supporting Organization);

    b) Reconcile conflicting decisions of process-specific "expert panels"; and

    c) Hear and resolve claims involving rights of the Sole Member under the Articles or Bylaws (subject to voting thresholds).

3. **A Standing Panel:** The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially harmed by ICANN's action or inaction in violation of the Articles of Incorporation and/or Bylaws.

4. **Initiation of an IRP:** An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN's Articles of Incorporation and/or Bylaws. Matters specifically reserved to the Sole Member of ICANN in the Articles or Bylaws would also be subject to IRP review.

5. **Possible Outcomes of the IRP:** An IRP will result in a declaration that an action/failure to act complied or did not comply with ICANN's Articles of Incorporation and/or Bylaws. To the extent permitted by law, IRP decisions should be binding on ICANN.

    a) Decisions of a three-member decisional panel will be appealable to the full IRP Panel sitting en banc, based on a clear error of judgment or the application of an incorrect legal standard. The standard may be revised or supplemented via the IRP Sub Group process.

    b) This balance between the limited right of appeal and the limitation to the type of decision made is intended to mitigate the potential effect that one key decision of the panel might have on several third parties,

and to avoid an outcome that would force the Board to violate its fiduciary duties.

c) The limited right to appeal is further balanced by the community powers, relevant policy development process, and advice from ACs, each as set forth in the Bylaws.

d) IRP panelists will consider and may rely on prior decisions of other IRPs addressing similar issues.

e) Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff action where a complainant can demonstrate:

   i. Harm that cannot be cured once a decision has been taken or for which there is no adequate remedy once a decision has been taken;

   ii. Either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits; and

   iii. A balance of hardships tipping decidedly toward the party seeking the relief.

6. **Standing:** Any person/group/entity "materially affected" by an ICANN action or inaction in violation of ICANN's Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. They must do so within [number of days to be determined by IRP Sub Group] days of becoming aware of the alleged violation and how it allegedly affects them. The Sole Member has standing to bring claims involving its rights under the Articles and Bylaws. Issues relating to joinder and intervention will be determined by the IRP Sub Group, assisted by experts and the initial Standing Panel, based on consultation with the community.

7. **Community IRP:** The CCWG-Accountability recommends giving the community the right to have standing with the IRP. In such cases, ICANN will bear the costs associated with the Standing Panel, although the IRP Sub Group may recommend filing or other fees to the extent necessary to prevent abuse of the process.

8. **Exclusions; ccTLD Delegation/Redelegation:** In their letter dated 15 April 2015, the CWG-Stewardship indicated that, "any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation/re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes". As requested by the CWG-Stewardship, decisions regarding ccTLD delegations or revocations would be excluded from standing, until the ccTLD community, in coordination with other parties, has developed relevant appeals mechanisms.

9. **Exclusions; Numbering Resources:** The Address Supporting Organization has likewise indicated that disputes related to Internet number resources should be out of scope for the IRP. As requested by the ASO, decisions regarding numbering resources would be excluded from standing.

10. **Standard of Review:** The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on their own independent interpretation of the ICANN Articles and Bylaws in the context of applicable governing law.

The standard of review shall be an objective examination as to whether the complained-of action exceeds the scope of ICANN's Mission and/or violates ICANN's Articles and Bylaws. Decisions will be based on each IRP panelist's assessment of the merits of the claimant's case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts.

11. **Composition of Panel and Expertise:** Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration. Panelists should also possess expertise, developed over time, about the DNS and ICANN's policies, practices, and procedures. At a minimum, panelists should receive training on the workings and management of the domain name system. Panelists must have access to skilled technical experts upon request. In addition to legal expertise and a strong understanding of the DNS, panelists may confront issues where highly technical, civil society, business, diplomatic, and regulatory skills are needed. To the extent that individual panelists have one or more of these areas of expertise, the process must ensure that this expertise is available upon request.

12. **Diversity:** English as primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal tradition diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).

13. **Size of Panel:**

    a) Standing Panel – a minimum of 7 panelists

    b) Decisional Panel – 3 panelists

14. **Independence:** Members must be independent of ICANN, including ICANN SOs and ACs. Members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs and ACs, or any other party in an IRP.

    a) Selection and Appointment: The selection of panelists would follow a 4-step process: ICANN, in consultation with the community, will initiate a tender process for an organization to provide administrative support for IRP, beginning by consulting the community on a draft tender document.

    b) ICANN will then issue a call for expressions of interest from potential panelists; work with the community and Board to identify and solicit applications from well-qualified candidates with the goal of securing diversity; conduct an initial review and vetting of applications; and work with ICANN and community to develop operational rules for IRP.

    c) The community would nominate a slate of proposed panel members.

d) Final selection is subject to ICANN Board confirmation.

15. **Recall or Other Accountability:** Appointments made for a fixed term of five (5) years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed via the IRP Sub Group.

16. **Settlement Efforts:**

   a) Reasonable efforts, as specified in a published policy, must be made to resolve disputes informally prior to/in connection with filing an IRP case.

   b) Parties to cooperatively engage informally, but either party may inject independent dispute resolution facilitator (mediator) after initial CEP meeting. Either party can terminate informal dispute resolution efforts (Cooperative Engagement Process or mediation) if, after specified period, that party's concludes in good faith that further efforts are unlikely to produce agreement.

   c) The process must be governed by clearly understood and pre-published rules applicable to both parties and be subject to strict time limits. In particular, the CCWG-Accountability will review the Cooperative Engagement Process as part of Work Stream 2.

17. **Decision Making:**

   a) In each case, a 3-member panel will be drawn from the Standing Panel. Each party will select one panelist, and those panelists will select the third. We anticipate that the Standing Panel would draft, issue for comment, and revise procedural rules. Focus on streamlined, simplified processes with rules that are easy to understand and follow.

   b) Panel decisions will be based on each IRP panelist's assessment of the merits of the claimant's case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts. All decisions will be documented and made public and will reflect a well-reasoned application of the standard to be applied.

18. **Decisions:**

   a) Panel decisions would be determined by a simple majority. Alternatively, this could be included in the category of procedures that the IRP Panel itself should be empowered to set.

   b) The CCWG-Accountability recommends that IRP decisions be "precedential" – meaning, that panelists should consider and may rely on prior decisions. By conferring precedential weight on panel decisions, the IRP can provide guidance for future actions and inaction by ICANN decision-makers, which is valuable. It also reduces the chances of inconsistent treatment of one claimant or another, based on the specific individuals making up the decisional panel in particular cases.

   c) The CCWG-Accountability intends that if the Panel determines that an action or inaction by the Board or staff is in violation of the Articles or Bylaws, that decision is binding and the Board and staff shall be

directed to take appropriate action to remedy the breach. However, the Panel shall not replace the Board's fiduciary judgment with its own judgment.

d) It is intended that judgments of a decisional panel or the Standing Panel would be enforceable in the court of the U.S. and other countries that accept international arbitration results.

19. **Accessibility and Cost:**

a) The CCWG-Accountability recommends that ICANN would bear all the administrative the costs of maintaining the system (including Panelist salaries), while each party should bear the costs of their own legal advice. The Panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access, for example by access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded form utilizing the process.

b) The Panel should complete work expeditiously; issuing a scheduling order early in the process, and in the ordinary course should issue decisions within a standard time frame (six months). The Panel will issue an update and estimated completion schedule in the event it is unable to complete its work within that period.

20. **Implementation:** The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG-Accountability (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review.

21. **Transparency:** The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust independent review process. We recommend reviewing and enhancing the Documentary Information Disclosure Policy (DIDP) as part of the accountability enhancements in Work Stream 2.

5.2 Reconsideration Process Enhancement

Introduction

The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, whereby the ICANN Board of Directors is obliged to reconsider a recent decision or action / inaction by ICANN's Board or staff, and which is

provided for in Article IV, Section 2 of ICANN's Bylaws. The key reforms proposed include: the scope of permissible requests has been expanded to include Board/staff actions or inactions that contradict ICANN's Mission or Core Values and for reconciling conflicting/inconsistent "expert opinions," and the time for filing a Request for Reconsideration has been extended from 15 to 30 days. Additionally, the grounds for summary dismissal have been narrowed and the ICANN Board of directors must make determinations on all requests (rather than a committee handling staff issues). Another proposed change is that ICANN's Ombudsman should make the initial substantive evaluation of the requests to aid the Board Governance Committee in its recommendation, and then requesters are provided an opportunity to rebut the Board Governance Committee's recommendation before a final decision by the entire Board. More transparency requirements and firm deadlines in issuing of determinations are also proposed.

Standing

Amend "who" has proper standing to file a Reconsideration Request to widen its scope by including Board/staff actions/inactions that contradict ICANN's Mission or core values (was only policies before). It is noted that under the existing Bylaws paragraph 2 significantly reduces the rights purportedly granted in paragraph 1 of the Reconsideration Request process.

ICANN'S BYLAWS COULD BE REVISED (ADDED TEXT IN RED BELOW):

a. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN shall have in place a process by which any person or entity mater/staff.

b. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

c. One or more ICANN Board or staff actions or inactions that contradict established ICANN policy(ies), its Mission, Commitments and/or Core Values; or

d. One or more actions or inactions of the ICANN Board/staff that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

e. One or more actions or inactions of the ICANN Board/staff that are taken as a result of the Board's reliance on false or inaccurate ~~material~~ relevant information.

In their letter dated 15 April 2015, the CWG-Stewardship request indicated "As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes." As requested by the CWG-Stewardship, decisions regarding ccTLD delegations or revocations would be excluded from standing, until relevant appeal mechanisms have been developed by the ccTLD community, in coordination with other interested parties.

Disputes related to Internet number resources are out of scope of the IRP.

Goals

The CCWG-Accountability proposals aim to:

- Broaden the types of decisions, which can be re-examined to include Board/staff action/inaction against ICANN's Mission or Core Values (as stated in Bylaws / Articles) and for the purpose of reconciling conflicting/inconsistent expert panel opinions.

- Provide more transparency in dismissal process.

- Provide the Board with reasonable right to dismiss frivolous requests, but not solely on the grounds that the complainant failed to participate in a relevant policy development or public comment period or that the request is vexatious or querulous.

- Propose to amend Paragraph 9 on BGC summary dismissal as follows:

    o The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous ~~querulous or vexatious~~; or ~~(iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable.~~ The Board Governance Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

Composition

The group considers there is need to rely less on the ICANN legal department (who holds a strong legal obligation to protect the corporation) to guide the BGC on its recommendations. More Board member engagement is needed in the overall decision-making process.

Requests should no longer go to ICANN's lawyers (in-house or out-house) for the first substantive evaluation. Instead, the Requests shall go to ICANN's Ombudsman who would make the initial recommendation to the BGC. The Ombudsman may have more of an eye for fairness to the community in looking at these requests. Note the Bylaws charge the BGC with these duties, so BGC would utilize the Ombudsman instead of its current practice of ICANN's lawyers to aid the BGC's in its initial evaluation.

All final determinations of reconsideration requests are to be made by the entire Board (not only requests about Board actions as is the current practice).

Amend Paragraph 3:

f.   The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

    o Evaluate requests for review or reconsideration;

    o Summarily dismiss insufficient requests;

- o Evaluate requests for urgent consideration;
- o Conduct whatever factual investigation is deemed appropriate;
- o Request additional written submissions from the affected party, or from other parties;
- o ~~Make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors~~; and
- o Make a recommendation to the Board of Directors on the merits of the request, as necessary.

And delete Paragraph 15 since the Board will make all final decisions regarding requests related to staff action/inaction.

Decision-Making

Transparency improvements are needed regarding the information that goes into the Board's decision-making process and the rationale for why decisions are ultimately taken. Recordings / transcripts should be posted of the substantive Board discussions on the option of the requester.

Provide a rebuttal opportunity to the BGC's final recommendation (although requesters can't raise new issues in a rebuttal) before the full Board finally decides.

Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within sixty days from request filing wherever possible, and in no case more than 120 days from the date of the request.

Propose to amend reconsideration rules as follows:

The Board Governance Committee shall make a final ~~determination or a~~ recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final ~~determination or~~ recommendation. In any event, the BGC's final recommendation to the Board shall be made within 90 days of receipt of the Request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the Request. The Requestor may file a rebuttal to the recommendation of the BGC within 15 days of receipt of it, which shall also be promptly posted to ICANN's website and provided to the entire Board for its evaluation.

The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board and its rational shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. In any event, the Board's final decision shall be made within 120 days of receipt of the Request. The final recommendation shall be promptly posted on ICANN's website. In any event, the Board's final decision shall be made within 120 days of decision on the recommendation is final.

Accessibility

Extend the time deadline for filing a Reconsideration Request from 15 to 30 days from when Requester learns of the decision/inaction.

Amend paragraph 5 as follows:

1. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within 30 days after:

   a) For requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale; or

   b) For requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or

   c) For requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

Due Process

ICANN's Document and Information Disclosure Policy (DIDP) is an important issue to be addressed in Work Stream 2 and should be improved to accommodate the legitimate need for requesters to obtain internal ICANN documents that are relevant to their requests.

All briefing materials supplied to the Board should be provided to the Requester so that they may know the arguments against them and have an opportunity to respond (subject to legitimate and documented confidentiality and privilege requirements).

Final decisions should be issued sooner – changes will include an affirmative goal that final determinations of the Board should be issued within sixty days from request filing wherever possible, and in no case more than 120 days from the date of the request.

Requesters should be provided more time to learn of action/inaction and to file the request.

Transparency improvements throughout the process are called for, including more complete documentation and prompt publication of submissions and decisions including their rationale.

6. Community Mechanism as Sole Member Model

In developing a mechanism to empower the ICANN multistakeholder community, the CCWG-Accountability agreed on the following:

- To enhance ICANN's accountability.

- To be as restrained as possible in the degree of structural or organizing changes required in ICANN to create the mechanism for these powers.

- To organize the mechanism along the same lines as the community – that is, in line and compatible with the current SO and AC structures (without making it impossible to change these in future).

- To address the CWG-Stewardship dependencies

- To include the following powers which would be embedded in "Fundamental Bylaws" (a CWG-Stewardship dependency) and would also be legally enforceable

  - Reconsider/reject the ICANN budget, the IANA budget and ICANN strategic/operating plans (CWG-Stewardship dependency)

  - Reconsider/reject changes to ICANN "standard" Bylaws

  - Approve changes to "Fundamental" Bylaws (CWG-Stewardship dependency)

  - Remove individual ICANN Directors (along with appointment, a CWG-Stewardship dependency)

  - Recall the entire ICANN Board (CWG-Stewardship dependency)

  - Reconsider/reject Board decisions relating to reviews of the IANA functions; including the procedure to implement a separation process relating to PTI (CWG-Stewardship dependency)

The first CCWG-Accountability draft proposal presented as a reference model for the community mechanism an SO/AC Membership Model.[9] However, there were significant concerns expressed in the Public Comment from 4 May – 3 June 2015, and in order to respond to the feedback received, the CCWG-Accountability initiated work on alternative solutions. Core concerns about the ability of the ICANN community to fully participate in the new accountability framework were integral to the work in devising a new approach.

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[9] For further detail on the proposed SO/AC Membership Model, please see the first draft proposal (Section 5.1.1). In addition, please refer to Appendix G, which provides key legal documents that informed the CCWG-Accountability, including a comparison of the three models considered.

At the Paris meeting on 17-18 July 2015, the CCWG-Accountability considered 3 distinct models:

- The **"Empowered SO/AC Membership" Model**, which would rely on direct participation by SOs and ACs in a potential or actual membership body for exercise of community powers but would not require legal personhood (except for enforceability) and would allow opt-in re legal status.

- The **"Empowered SO/AC Designator" Model**, which would formalize and expand upon the current roles of SOs and ACs in designating ICANN directors for exercise of community powers without a membership body but would not require legal personhood (except for enforceability) and would allow opt-in re legal status.

- The **"Community Mechanism as Sole Member" Model**, which is an alternative that builds upon the more favorable concepts in the other models and simplifies certain implementation aspects. Decisions of the SOs/ACs in the Community Mechanism would directly determine exercise of the rights of the Community Mechanism as Sole Member.

Following discussions, and consultations with external legal counsel, the CCWG-Accountability concluded that it should proceed with the Community Mechanism as Sole Member given the understanding that:

- It provides the required legal enforceability that the Empowered SO/AC Designator Model and Empowered SO/AC Membership Model could not.

- It removes the problematic requirement for some SOs and ACs that they become legal persons, whether to participate as a member in the Empowered SO/AC Membership Model or to enforce rights in both the Empowered SO/AC Membership Model and Empowered SO/AC Designator Model.

- It avoids the problem of differential statutory rights between SOs and ACs that become members and SOs and ACs that were not members, associated with the Empowered SO/AC Membership Model.

- By allowing action only upon support of the community through the Community Mechanism, it limits the issues related to the statutory rights of members associated with the Empowered SO/AC Membership Model, which would allow members to dissolve ICANN and bring derivative suits.

The subsections below explain the Community Mechanism as Sole Member Model. (As with any model, it is anticipated that there may be a level of detail that must be resolved in the drafting of appropriate Bylaws. Draft Bylaws implementing the model, as refined after this Public Comment process, will be subject to further review and approval by the ICANN community).

6.1 The Community Mechanism: SO/AC Membership Model
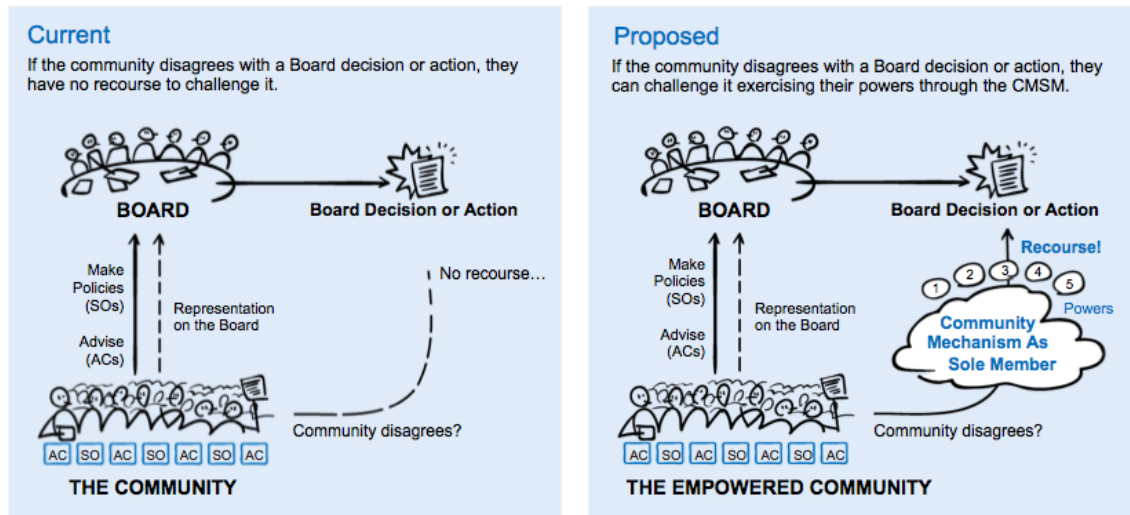
As the name implies, under the Community Mechanism as Sole Member Model ICANN would remain a California public benefit corporation (also known as a not-for-profit corporation in some jurisdictions), but its internal governance structure would be transformed from a structure having no members, to a structure having a single member. This change will not require any re-incorporation or affect ICANN's status as a nonprofit or tax-exempt organization, and can be simply implemented through Bylaw amendments approved by the ICANN Board.

As required by law, the Sole Member in the Community Mechanism as Sole Member Model would be a legal person created through the ICANN Bylaws as an unincorporated association. The Community Mechanism as Sole Member Model would rely on direct participation by SOs and ACs in this sole member for exercise of community powers but would not require any of them to have legal personhood. The Sole Member would have no officers or directors and no assets.

ICANN's SOs and ACs would participate in this Sole Member. Participating in the Sole Member would allow the participating SOs and ACs, as a group, to provide instructions to the Sole Member to use its member powers to exercise the community powers only as directed by the SOs and ACs (for example, to approve change to the Fundamental Bylaws). Participating SOs and ACs would not meet as the Member, and no representatives would cast votes. The directions for voting would come from the SOs and ACs themselves. No SO or AC, or any individual, has to 'join' ICANN or the Sole Member in order to exercise their rights, and no new legal obligations arise for any stakeholder.

It is important that before participating SOs and ACs make decisions regarding how to vote in exercising a community power, they discuss the matter among themselves and with each other. Section 6.2 below sets out the CCWG-Accountability's proposal on how to implement a simple system to do this, based on experience with the work of the CCWG-Accountability itself.

The SOs and ACs that wish to participate by voting in the Sole Member would simply indicate they wish to do so at the time of its creation and would not be required to make

any changes to their current SO/AC structure to enable this. SOs or ACs choosing not to participate through voting initially could opt in later as set out in Section 6.2. New SOs or ACs that are created at a later date could choose to participate in the Sole Member at any time, but this would require the current participants to approve this and the ICANN Bylaws to be amended to reflect their participation.

The SOs and ACs that participate in voting in the Sole Member would do so according to a set of rules described in the ICANN Bylaws that would be created specifically for this purpose. The SOs and ACs could only instruct the Sole Member to exercise its powers as a group and would do so by using a voting mechanism as defined in the Bylaws (the exception to acting as a group is related to the appointing and removing of individual directors, as explained in the next paragraph). The rules would describe the number of votes each SO and AC would have in this process and the minimum number of votes required to instruct the Sole Member to exercise a power. Each power could have a different minimum number of votes required to instruct the Sole Member (e.g. rejecting a Bylaw change will require a minimum of 66% support vs. approving a Fundamental Bylaw change will require a minimum of 75% support). Each SO and AC would be responsible for defining their processes for voting under these rules. The Chair of each SO and AC would be responsible for communicating the votes or decisions of the SO and AC to the ICANN Board. This pass-through of cumulative votes and decisions would become the act of the Sole Member.

ICANN Directors would technically be appointed or removed by the Sole Member.

The Sole Member would only be capable of acting at the direction of the entities specified in the Bylaws (SOs, ACs, and NomCom) with respect to the appointment of individual Directors. In order to maintain the current arrangements for such appointment, the member rules expressed in ICANN's Bylaws would require the Sole Member to use its power to appoint a director on the instructions of the specific SO, AC, and NomCom responsible for appointing that director as per the current ICANN Bylaws, without requiring a community-wide vote.

For Director removal, those directors appointed by an SO or the At-Large community could be removed by that SO or that community only. The Sole Member implements their decision. For directors appointed by NomCom, any SO or AC would be able to petition for removal and a process of SOs and ACs participating in the Community Mechanism as Sole Member would vote on removal as detailed in Section 6.2.

Early indications are that the ASO, ccNSO, GNSO and ALAC would be the initial set of voting participants in the Sole Member (with remaining and future SOs and ACs able to opt-in to voting participation). Each of these aforementioned SOs and ACs would have 5 votes on any proposal to instruct the Sole Member (for a total of 20 votes at the start of the system).

There is no requirement or expectation than a participating SO or AC cast all its votes identically for a given issue (meaning all 5 in support or all 5 against). Instead, CCWG-Accountability anticipates that the votes each SO and AC casts will be a reflection of the balance of views within that SO or AC (or where possible of that sub-division, where votes have been allocated to sub-divisions). That is, block voting (casting all votes in favor or against the use of a power, even where there are diverse views) is not encouraged.

Under these arrangements the decisions and powers of the Community Mechanism as Sole Member could be enforced through the internal Independent Review Panel process

with the force of binding arbitration and, if necessary, further backed through judicial proceedings.

In circumstances where the Bylaws provide for the resolution of disputes between ICANN and other parties through the IRP, the Community Mechanism as Sole Member will also have the ability to require ICANN to enter into the IRP and abide by its outcome, should it not do so voluntarily. This power to require ICANN to abide by its Bylaws through the use of the IRP would be set forth in the Bylaws, backed, if necessary, due to the Community Mechanism as Sole Member membership status through judicial proceedings.

As the Sole Member of ICANN, the Community Mechanism would enjoy all the rights that the law provides to members. The general approach of the CCWG-Accountability is that none of these statutory rights should be easily exercised, other than the power mentioned in the preceding paragraph. As such, the recommendation is that to deploy any of those other statutory rights should require very strong to full consensus of the participating SOs and ACs (that is, a significant supermajority vote);[10] In contrast, the power to require ICANN to enter into an IRP through recourse to judicial proceedings if necessary should be exercisable based on a simple majority vote.

6.2 Influence in the Community Mechanism

The CCWG-Accountability considered the decision weights of the various parts of the community. The following table sets out the voting distribution proposed by the CCWG-Accountability.

COMMUNITY SEGMENT	COMMUNITY MECHANISM "VOTES"
ASO	5
ccNSO	5
GNSO	5
At-Large	5
GAC[11]	5
SSAC[12]	2

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[10] Requiring unanimity is not advisable because it allows a sole participant to effectively veto the use of key statutory powers. For further detail on the mandatory statutory member rights in the Community Mechanism as Sole Member context, please see Appendix G for a chart and additional documents provided by external legal counsel.

[11] At the time of publication, the GAC had not yet determined whether or not to participate in the Community Mechanism.

[12] At the time of publication, the SSAC had not yet determined whether or not to participate in the Community Mechanism.

RSSAC[13]	2

This proposed voting weight is unchanged from the proposal made in our first Public Comment Report, and attracted the most support from CCWG-Accountability participants during the last meetings finalizing this Report. There were three minority views expressed:

- One is that there should be a distinction in voting authority between SOs and ACs, with SOs having greater voting influence (e.g. 5 votes for SOs, 2 votes for ACs).

- Another view is that there should be five votes allocated to each of the SOs and ACs.

- A third view is that there should be four votes each for ASO, ccNSO, and GNSO, and two votes for ALAC. The GAC, the SSAC and the RSSAC would participate fully in discussions in the ICANN Community Forum (introduced in Section 6.3) but would not vote in the Community Mechanism

Although each SO/AC has a specific number of votes, those votes may be subdivided however the SO/AC decided and, in particular, fractional votes (e.g. allocating 0.75 of a vote or 1.25 votes) are allowed. This allows voting capability to be allocated within the SO or AC. Such allotment would be done through a formal decision of the SO or AC. The SO or AC or the appropriate sub-group must designate the individuals who officially communicate its decisions regarding votes. If no other decision is made, the Chair of the SO or AC is assumed to be the person who can communicate its votes.

At the time of drafting, it is anticipated that the first four SOs and ACs listed above will be initial participants with voting rights in the Community Mechanism. The Bylaws that establish the Community Mechanism as Sole Member model will provide for the voting rights set out above, even for those ACs that are not planning to participate at this stage.

If such an AC was to decide in future to participate, it would formally resolve to do so by means of its usual processes and give notice publicly to the ICANN community of this decision. Three months following such announcement (the "notice period"), that AC would "join" the Community Mechanism (that is, on that date it is granted the right to participate on the same basis as the other voting SOs and ACs). Such an incoming AC would not be able to cast votes on any decision that where the Decision Period (see Section 6.2 for a description of the various phases in the exercise of community powers) had begun on the date it "joined", but would be eligible to do so for decisions that had not yet reached that point.

If an SO or AC at some future point decided it no longer wished to participate in the Community Mechanism as Sole Member on a voting basis, it could resolve to leave the mechanism through its usual processes. Such a decision would take effect immediately after notice was publicly given to the ICANN community.

When an SO or AC joins or leaves the community mechanism, it cannot reverse this decision until at least one year has passed from the end of the relevant notice period.

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[13] At the time of publication, the RSSAC had not yet determined whether or not to participate in the Community Mechanism.

This proposal gives influence on an equal basis between the existing SOs and ACs. If a new SO or AC is formed in future, inclusion of that SO or AC in the Community Mechanism would require changes to the Fundamental Bylaws where the Community Mechanism as Sole Member is established.

The logic for multiple "votes" per participant in the Community Mechanism among the five SOs and ACs allocated this number is to allow for greater diversity of views, including the ability to represent all the ICANN regions in each participating group.

The CCWG-Accountability anticipates that the votes each SO and AC casts will be a reflection of the balance of views within that SO or AC (or where possible of that sub-division, where votes have been allocated to sub-divisions). That is, block voting (casting all votes in favor or against the use of a power, even where there are diverse views) is not encouraged.

As noted in Section 6.3, no votes are exercised until after petitioning and discussion phases are completed.

Quorums and vote counting

The CCWG-Accountability proposes that for the purposes of the simplest possible administration of the voting system that the thresholds expressed for each community power should be **absolute thresholds**.

This means that if a threshold is 66%, then 66%+ of the votes that could be cast by participants in the Community Mechanism as Sole Member at that time need to be 'yes' votes for the threshold to be met. No votes, abstentions or non-participation would all be treated the same way.

An alternative approach that adjusted the thresholds based uniquely on the number of yes/no votes and not including the number of abstentions or non-votes was considered, but adds significant complexity and so is not the CCWG-Accountability's preference at this time.

6.3 An ICANN Community Forum

In developing the Sole Member Model, the CCWG-Accountability has been careful to specify that any decisions made by the Member are simply decisions by those SOs and ACs who have votes within it (as set out in Section 6.2). Those SOs and ACs make their decisions as to how to allocate their votes internally.

Alongside the powers granted to the community through the Sole Member Model, the CCWG-Accountability has determined that there needs to be a forum where the use of any of the powers is discussed across the whole ICANN community – before the power under consideration is used.

This discussion phase would help the community reach well-considered conclusions about using its new powers, and would ensure that decisions were taken on the basis of shared information as well as what was known within the individual decision-making processes of the SOs and ACs that cast votes in the Community Mechanism.

Importantly, it would also create an opportunity for Advisory Committees that aren't currently participating in the Community Mechanism to offer their insight, advice and recommendations on the proposed exercise of a community power.

An ICANN Community Forum would bring together people from all the SOs and ACs, the ICANN Board and Staff representatives.

Before a community power could be exercised, there would be discussion and debate in this forum. People would have a chance to examine the issue before a decision was made. Decisions made would thereby be better informed, and the community's views more considered, than simply allowing SOs and ACs to make decisions through the Community Mechanism without such conversation.

This sort of forum would have no standing and would make no decisions. It would be open to participation from the full diversity of the ICANN community. It should be open to members of the public – certainly to observe all its proceedings, and probably to participate as well.

Such a forum could also be the basis of a Mutual or Public Accountability Forum, suggested as an annual meeting in conjunction with ICANN's Annual General Meeting at the third meeting of the year. Such an event would help the various components of the ICANN system hold each other to account, transparently and in public.

The CCWG-Accountability will pursue the establishment of the ICANN Community Forum in the implementation phase of Work Stream 1.

7. Community Powers

In the Initial Draft Report, the CCWG-Accountability proposed five new Community Powers that would grant the community the ability to:

- Reject / reconsider Board decisions on budgets, operating plans or strategic plans
- Reject /reconsider proposed changes to standard ICANN bylaws
- Co-approve changes to Fundamental Bylaws
- Remove individual ICANN Directors
- Recall the entire ICANN Board of Directors

Feedback on these proposed powers was generally positive, both in the Public Comments received in response to our first report and in discussions with the ICANN community during ICANN 53 in Buenos Aires in June 2015.

In preparing this Second Draft Report, the CCWG-Accountability has further refined these powers, with improvements made in response to the suggestions provided by the community in the public comment period and in Buenos Aires.

The following sub-sections explain how the powers are exercised, and then describe all of the powers in detail except for the co-decision right for changes to Fundamental Bylaws. The Fundamental Bylaws power is described in Section 4 of this report to keep all the details about Fundamental Bylaws in single section.

How are the community powers used?

The community powers are exercised when decisions to do so are made by the Community Mechanism described in Section 6 of this report. There are three steps involved in making use of one the powers:

- **Petition** – to trigger the process for considering a power's use
- **Discussion** – community discussion of whether to exercise the power
- **Decision** – SOs and ACs cast their votes to decide whether the power is used or not

The way this process works in general terms is set out below, but there are specific changes to some parts that apply to specific powers, as detailed in the following sub-sections.

Notable exceptions to this three-step process are for the powers to remove an ICANN director appointed by an SO or AC (where there is an initiating trigger vote in the SO or AC to start consideration of the process) or to co-approve changes to Fundamental Bylaws (where its use is automatically triggered by any proposal for changes to Fundamental Bylaws). To Recall the Entire ICANN Board requires two SOs or ACs (at least one of which is an SO) to sign a petition.

The petition step is to test whether there is enough support to start the formal discussion and decision-making about whether to exercise a community power.

A window of time to allow a petition will be built into relevant ICANN processes, but will generally be a maximum period of fifteen days from the announcement[14] of the decision that might trigger the power's use.

To trigger community consideration for the use of a community power, an SO or AC has to agree by a resolution of its governing body that the power should be used – the threshold to agree the resolution is a simple majority (enough votes to exceed 50%).[15]

DISCUSSION

Where a petition succeeds, the whole community through its SOs and ACs discusses the proposed use of the power, including through the proposed ICANN Community Forum (see Section 6.3 for the concept of the Forum).

This Discussion Period lasts for fifteen days, starting the day after a valid petition has been received. It will include online discussion and a specific online meeting of the ICANN Community Forum called within the discussion window.

All SOs and ACs would be participants in the ICANN Community Forum, and so there will be a mixture of formal and informal discussion, advice and consideration going on – within the Forum and informally within SOs and ACs during this period.

DECISION

After the discussion window has closed, a specified time period for SOs and ACs that have voting rights in the Community Mechanism begins.

This Decision Period lasts for fifteen days, starting the day after the conclusion of the discussion window period.

The process by which SOs and ACs vote, quorum requirements, and other associated matters are described in Section 6.2 of this report. The threshold of votes required to exercise a power is described alongside each power in the following sub-sections.

7.1 Power: Reconsider/reject Budget or Strategy/Operating Plans

The right to set budgets and strategic direction is a critical governance power for an organization. By allocating resources and defining the goals to which they are directed, strategic and operating plans and budgets have a material impact on what ICANN does

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[14] Work Stream 1 implementation will work out processes to make sure such announcements are clearly known to the community.

[15] The exception is for exercising the power to Recall the Entire ICANN Board – see the petitioning detail for this power in Section 7.4 below.

and how effectively it fulfills its role. Financial commitments are made on behalf of the organization that are difficult to unwind after the fact.

Today, the ICANN Board makes final decisions on strategic and operating plans and on budgets. While ICANN consults the community in developing strategic/business plans, these budgets and strategic plans are put to the community without always including sufficient detail to facilitate thoughtful consideration. As a result, for example, the CWG-Stewardship Final Proposal has expressed a requirement that the budget be transparent with respect to the IANA Function's operating costs with clear itemization of such costs to the project level and below as needed. Under the CWG-Stewardship Final Proposal, an itemization of IANA costs as set forth in the IANA Budget would include "Direct Costs for the IANA department", "Direct Costs for shared resources" and "Support functions allocation". Furthermore, the CWG-Stewardship Final Proposal states that these costs should be itemized into more specific costs related to each specific function to the project level and below as needed. Currently, there is no mechanism defined in the Bylaws that requires ICANN to develop such budgets and plans in a way that includes a community feedback process. Even if feedback were unanimous, the Board could still opt to ignore it.

The IANA Budget[16], in particular, requires protection as recommended by the CWG-Stewardship's Final Proposal. The IANA Functions budget must be managed carefully and not decreased (without public input) regardless of the status of the other portions of the budget. Therefore it is proposed that there are two distinct processes with respect to the IANA Budget and the ICANN Budget. As such, use of the community power to veto the ICANN Budget would have no impact on the IANA Budget, and a veto of the IANA Budget would have no impact on the ICANN Budget.

The process by which budgets, operating plans and strategic plans are developed must be enhanced to include greater transparency and community involvement earlier such that community buy-in must be an integral part of the process. Improved interaction between the staff, board and community is essential for strategic planning within a multi-stakeholder organization. The CCWG-Accountability proposes that Work Stream 2 develop improvements along these lines.

Accordingly, this new power would give the community the ability to consider strategic and operating plans and budgets (both ICANN general and, separately, with respect to the budget for the IANA Functions) after they are approved by the Board (but before they come into effect) and reject them. The rejection could be of the proposed ICANN Budget or the IANA Budget, or of a proposed ICANN-wide strategic or operating plan. The petition would state which Budget or plan was being subject to veto. A separate petition is required for each Budget or plan being challenged.

If the exercise of this power leads to no budget for either or both of ICANN and the IANA Functions being in place at the start of a new financial year, a caretaker budget struck at the same level as the previous year's budget will apply, to allow for continued operation of ICANN and/or of the IANA Functions while the budget disagreement is resolved.

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[16] The CWG-Stewardship set out its requirements for IANA Budget transparency at pages 31 and 32 and in Appendix P of its final report (11 June 2015). The CCWG-Accountability requires ICANN to produce at least that amount of detail regarding the IANA Budget. This will be provided for in the Bylaws in the appropriate place and will have the status of Fundamental Bylaws.

A community decision to reject a Budget or a plan after it has been approved by the ICANN Board will be based on perceived inconsistency with the purpose, Mission and role set out in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The rationale for any community veto should be Consensus based. The veto could only concern issues that had been raised in the consultations conducted before the Board approved the budget or plan. New issues could not be raised for a second veto – all issues must be raised for consideration in a first veto process.

The petitioning, discussion and decision timelines for this power are the defaults set out in the previous sub-section.

To account for this timeline, 40 days minimum should be added to the budget / operating planning process. If this time cannot be added for practical reasons due to the nature of the budget approval process, the consequence as noted above is that a rejection would see ICANN and/or the IANA Functions operating on the previous year's budget until the disagreement was resolved.

Because time pressures are less acute for strategic plans, a period of 30 days can be allowed for each stage when the veto relates to a strategic plan. On the same basis, 60 days should be added to the strategic planning process.

If the community exercised its veto power with respect to any budget, operating or strategic plan, the Board would have to absorb the feedback that came with the decision, make adjustments and propose an amended budget or plan. If the community does not accept the revised proposal as suitable, it can exercise a second veto (at the higher threshold noted below).

No limit is proposed to the number of times the community can veto a strategic plan, but the CCWG-Accountability recommends that the Board and the community enter into dialogue above and beyond established processes should a strategic plan be vetoed more than once.

Where a budget or operating plan has been rejected for a second time, ICANN will operate on the previous year's budget for the new fiscal year. The Board will propose a new budget for the subsequent financial year in the usual way. The Board will continue to have the ability to make out-of-budget funding decisions on the same basis as it does today.

If the community regards the Board's response to a second veto as unacceptable, the other Community Powers (as set out in this Section) are available for use.

To succeed, a veto would require a 66% level of support in the Community Mechanism. A 75% level of support is required for a second veto on the same budget or plan.

7.2 Power: Reconsider/reject Changes to ICANN "Standard" bylaws

This Section applies to "Standard Bylaws" which are all those Bylaws that are not Fundamental Bylaws (see Section 4)

ICANN's Bylaws set out the details for how power is exercised in ICANN, including by setting out the company's Mission, Commitments and Core Values. Changes to those Bylaws have been discussed in Section 4 on Fundamental Bylaws.

It is possible for the Board to amend Standard Bylaws in ways that the community may not support. For example, the Board could unilaterally change the ccNSO's Policy Development Policy, or the Stakeholder Group structure of the GNSO, or the composition of the Nominating Committee.

Therefore, this power would give the SOs and ACs who participate in the Community Mechanism as Sole Member (with input from the larger community) the right to reject proposed changes to Standard Bylaws after they are approved by the Board (but before they come into effect). This power would be available in response to any proposed change to Standard Bylaws.

The timeframes and processes required for this power to be exercised (petition, discussion and decision) are the default ones set out in the introduction to this Section, with the petition window of fifteen days starting when the Board's decision to make a change to a Standard Bylaw is announced.

Before initiating the process to reject changes to the Standard Bylaws, we expect there will be, as there is today, a public comment period (40 days is the standard period) for the community to provide feedback to the proposed changes. Therefore, the relatively short petitioning window is acceptable.

To succeed, a veto would require a 66% level of support in the Community Mechanism. Note that for the Board to propose a Standard Bylaws amendment, two-thirds (66%) of the Board must vote in favor of the change.

Where a veto was successful, the Board would have to absorb the feedback, make adjustments, and propose a new set of amendments to the Bylaws as per its usual processes

This power does not allow the community to re-write a Board-proposed Bylaw change: it is a rejection process where the Board gets a clear signal that the ICANN community is not supportive.

There is no limit to the number of times a proposed change can be rejected, but the threshold for sending one back is the high threshold set out above, which is high enough to limit any potential for abuse of this power by a small number of SOs or ACs.

The impact of this power is to keep ICANN operating under the existing Bylaws despite changes proposed by the Board unless the community by inaction in response to an amendment does not object. If the petitioning period expires with no valid petition, fifteen days after a Standard Bylaws change is announced, the change goes into effect.

7.3 Power: Removing Individual ICANN Board Directors

The Board is the governing body of ICANN, with main responsibilities that include employing the President and CEO, appointing the Officers, overseeing organizational policies, making decisions on key issues, defining the organization's strategic and operating plans and holding the staff to account for implementing them.

Of ICANN's sixteen Directors, fifteen are appointed for a fixed three-year term and generally are in office for the whole term that they are appointed for by his or her SO or AC, or by the Nominating Committee. In addition the Board appoints the President and CEO (confirmed each year at the Annual General Meeting), who serves on the Board *ex officio* (by reason of his or her position as President and CEO). The power to remove

individual Directors of the ICANN Board is currently available only to the Board itself (though this will change with the Single Member Model the CCWG-Accountability is proposing[17]), and can be exercised through a 75% vote of the Board. Today there is no limitation[18] on the Board's power to remove a director specified in the Bylaws.

This power would allow for the removal of a Director before his or her fixed term comes to an end, with no rules set as to limitations on such removal or requirements for a particular cause for such removal. It is expected that this power would only be exercised in cases of serious difficulty with a particular Director.

For the seven Directors appointed by one of the three SOs or by the At-Large Community), a process led by that organization or subdivision would decide on the Director's removal. Only the SO or AC that appointed the Director could decide on that director's removal. For the purposes of such a removal process, SO means the SO or for the case of the GNSO, the GNSO House that has the Bylaw right to appoint a director.

The following process applies for removing a Director appointed by an SO or AC:

1. A decision to start consideration of a Director's removal requires a call to do so, approved by a simple majority in the SO or AC which originally appointed the director.

2. Where such a call to remove a Director meets the required threshold is announced, within fifteen days a meeting of the ICANN Community Forum (see Section 6.3 for the concept) will be convened. At that meeting:

   a) The Chair of the forum must not be associated with the petitioning SO or AC or with the Director involved;

   b) Representatives of the appointing/removing SO or AC must explain why they seek the Director's removal;

   c) The Director has the opportunity to reply and set out his or her views; and

   d) Questions and answers can be asked of the appointing/removing SO or AC and of the Director involved by all the other participants in the forum

3. Within fifteen days after the meeting of the forum, the SO or AC which originally appointed the Director makes its decision through its usual process.

4. The threshold to cause the removal of the director is 75% of the votes cast in the SO or AC which originally appointed the Director.

5. If the threshold is met, then, as will be set out in the bylaws, the Community Mechanism as Sole Member automatically implements this decision, and the Director is removed.

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[17] If the CCWG-Accountability's Single Member Model is implemented, the Board could only remove directors for causes specified in the California corporate code – see the memo from 23 April 2015 entitled "Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart". For further detail on legal advice provided, see Appendix G.

[18] Today there are escalation paths, up to and including removal from the Board, for Board member violations of the Code of Conduct and Conflict of Interest Policies, but the Bylaws do not currently require such a violation to occur prior to Board removal.

6. If no decision is made within fifteen days, the process lapses and the director remains in place.

7. No new call to consider the removal of that same director can be made during the term they are serving on the Board following a vote to remove them failing or no decision being made.

For directors appointed by the Nominating Committee, the SOs and ACs participating in the Community Mechanism as Sole Member would make a decision on the director's removal through the process detailed below. Any participating SO or AC would be able to petition for the removal of a Director appointed by the Nominating Committee.

The following process applies for removing a director appointed by the Nominating Committee:

1. A petition to start consideration of a director's removal requires a simple majority in one of the participating SOs or ACs.

2. Where a petition to remove a director meets the required threshold is announced, within fifteen days a meeting of the ICANN Community Forum will be convened. At that meeting:

   a) The Chair of the Forum must not be associated with the petitioning SO or AC or with the Director involved;

   b) Representatives of the petitioning SO or AC must explain why they seek the Director's removal;

   c) The Director has the opportunity to reply and set out his or her views; and

   d) Questions and answers can be asked of the petitioning SO/s or AC/s and of the director involved by all the other participants in the Forum

3. Within fifteen days after the meeting of the Forum, the Community Mechanism as Sole Member, through votes of participating SOs and ACs, makes a decision as to whether the Director is removed or not.

4. The threshold to cause the removal of the Director is 75% of the votes available in the Community Mechanism.

5. If the threshold is met, the Community Mechanism as Sole Member has made its decision and the Director is removed.

6. If no decision is made within fifteen days, the process lapses and the Director remains in place.

7. No new call to consider the removal of that same Director can be made during the term they are serving on the Board following a vote to remove them failing or no decision being made.

Where a Director who had been appointed by an SO or AC is removed, that SO or AC is responsible for filling the vacancy through the usual process (as set out in Article VI, Section 12.1 of the Bylaws).

Where a Director who has been appointed by the Nominating Committee is removed, the Nominating Committee may appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several "reserve" candidates in place, should any or all of its Directors be removed under this power (or as part of the recall of the entire ICANN Board described in Section 7.4).

In all cases, Directors appointed to replace directors removed by this power fill the same "seat" and their term will come to an end when the term of the Director they are replacing would have done. A Director appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

As part of Work Stream 2, the CCWG-Accountability is recommending the development of community standards that will guide Board members, SOs, and ACs regarding expected behavior of Directors, and the expectations which if not met could be expected to lead to a petition for their removal. Such standards would help establish common expectations across the community – they would not be criteria for, nor limitations on, the exercise of this power, or give any grounds for a director subject to removal to appeal or challenge the decision. The development of such standards should be a matter of priority in Work Stream 2.

7.4 Power: Recalling the Entire ICANN Board

There may be situations where removing individual ICANN Directors is not viewed as a sufficient accountability remedy for the community: where a set of problems have become so entrenched that the community wishes to signal its lack of confidence in the Board by considering a recall of the entire ICANN Board in one decision.

Beyond the power set out above in Section 7.3 to remove individual Directors, this power would allow the community to consider and cause the recall of the entire ICANN Board (with the exception of the President of ICANN, who serves on the Board ex officio). The community would initiate use of this power by petition of SOs or ACs as set out below. Implementation of this community power would be set out in Bylaws as below, which incorporates the general petition and notice procedures set out in the introduction to this Section.

- A petition of at least two of the SOs or ACs, at least one of which must be an SO, (indicated by signature following the decision of a simple majority of that SO or AC's governing body) (a "Valid Petition") is received.

- Upon receipt of the Valid Petition, within a time that will be defined in the Bylaws (probably 7 days) the responsible person will:

    o Provide notice to the SOs and ACs of any issue identified with respect to the validity of the Valid Petition, with an unlimited period to cure; or

    o Provide notice to all SOs and ACs participating in the Community Mechanism as Sole Member that (a) a Valid Petition has been received, including a copy of the Valid Petition, (b) setting forth a Discussion Period of 15 days and a Decision Period of 15 days thereafter, and (c) calling for all SOs and ACs that have the right to appoint Directors to select one (or two, depending on their allocation) directors to notify by the close of the Discussion Period of the person[s] it has selected to serve on an Interim Board (for only so long as necessary until a replacement election could be held) should a vote in favor of recall of the entire Board occur, such notice to include a signed statement from the candidate(s) of their willingness to serve and any other information that the Bylaws require Board candidates to provide prior to election. SOs and ACs must nominate at least one such prospective Director.

- A Director that is a member of the Board subject to the recall vote is not eligible to serve on the Interim Board.

After a Valid Petition is raised, the Discussion Period would provide fifteen days for SOs and ACs to individually and collectively deliberate and discuss whether the recall of the entire ICANN Board is warranted under the circumstances – including through a meeting of the proposed ICANN Community Forum.

At the end of the Discussion Period, each SO and AC would then have the fifteen calendar days of the Decision Period to follow its own internal processes to decide how to vote on the matter, with its vote certified in writing by the Chair of the SO or AC.

It would be preferable for a decision of this sort to be the result of cross-community consensus. Therefore, a suitably high threshold for the exercise of this power, [75%] of all the votes available within the Community Mechanism as Sole Member Model (see Section 6) would have to be cast in favor of recall for the recall to be effective.

This threshold was chosen to stop any particular SO or AC from being able to prevent the recall of the Board, based on initial voting participation by four SOs and/or ACs in the Community Mechanism, but to be as high as possible without allowing that to occur.

It is expected that recall of the entire ICANN Board would rarely, if ever, occur. Should it occur, however, there must be a Board immediately in place to serve as a fiduciary caretaker for ICANN until an election can be held for Replacement Board Directors.

As previewed above, in the event that the threshold is met for a recall of the entire Board, simultaneous with that vote, Directors to serve on the Interim Board will be selected automatically. The Interim Board will consist of the group of candidates that each SO and AC was required to provide by the end of the Discussion Period, and it would replace the ICANN Board upon the threshold being met.

In addition, the NomCom will amend its processes so as to be able to supply two candidates to serve on such an Interim Board if required (such candidates to be confirmed by the NomCom each year at the time of ICANN's Annual General Meeting, and to be available for service on an Interim Board or if required due to community recall of an individual Director, until the date of the next Annual General Meeting). The NomCom would only name such Directors to serve on the Interim Board should a vote to recall the Board succeed.

Due to its short term, this Interim Board is not subject to the diversity requirements that apply to the ICANN Board generally.

Since the President serves on the Board by virtue of his or her executive position and is not subject to the usual election/selection processes, recall of the entire Board would not affect the President's position either as President or as a Director serving on the ICANN Board.

- The Bylaws shall provide that the Interim Board will be in place only so long as required for the selection/election process for the Replacement Board and in no event longer than [120 days].
  - In selecting a Replacement Board, SOs and ACs and the NomCom may, if they so choose, select Directors who were recalled and/or directors serving on the Interim Board. In other words, service on the recalled Board or the Interim Board does not disqualify service on the Replacement Board.

- The Directors selected for the Interim Board, and later those selected for the Replacement Board, will step into the terms that were vacated by the recalled directors. Each SO and AC and the NomCom shall determine which of the terms the interim and replacement Directors shall fill. In this way there will be no disruption to the staggered terms of the ICANN Board.

- The Interim Board will have the same powers and duties as the Board it replaces because it is critical to the stability of ICANN (and required by law) that at all times there is a fiduciary in place. However, the Bylaws will provide that absent compelling circumstances it is the expectation that the Interim Board will consult with the community (at least through the SO and AC leadership and including where practicable through the ICANN Community Forum) before taking any action that would be a material change in strategy, policies or management, including without limitation, replacement of the President.

- Under the Community Mechanism as Sole Member Model, the collective results of the vote of the SOs and ACs becomes the action of the Community Mechanism as Sole Member Model without any further Board action; the Interim Board would be in place as of the time that it is determined that the community vote satisfied the threshold for recall, and both the CMSM and the Interim Board would have the power to enforce their rights in relation to that vote.

Finally, the CCWG-Accountability acknowledges the dependency between this Community Power in Section 7.4 and the CWG-Stewardship reference as follows:

1. **Community Empowerment Mechanisms.** The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:

   a) The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;

There was one minority view filed regarding this Section 7.4, as follows:

The majority view within CCWG-Accountability was that the threshold for the use of this power should be set very high, requiring achievement of a ¾ voting threshold to be exercised. As the majority view states: "This threshold was chosen to stop any particular SO or AC being able to prevent the recall of the Board, but to be as high as possible without allowing that to occur."

This reflects the view of the majority that recalling the entire Board would be highly destabilizing to the organization, and should only occur as a last resort.

However, this procedure does raise the possibility that recall of the entire Board could be requested by one or more SOs and still not attract sufficient support to take effect. The minority viewpoint is that such an outcome would be even more destabilizing to ICANN than Board recall. If an entire operational community, as established within an SO, had formally stated that it had lost confidence in the Board, and yet the Board remained in office nonetheless, that would cause a crisis of confidence in ICANN as an institution.

Confidence in ICANN can only be maintained if the operational communities it serves each have confidence in the Board.

The proposal of the minority for addressing this problem is that each of the three SOs should be able to exercise the power to recall the entire Board individually. A high threshold should be set for reaching consensus within the SO for using this power, rather than between SOs and ACs should advise on the use of this power rather than take part in the decision.

8. Accountability Requirements

During the first public comment period on the draft document built by the CCWG-Accountability, there were several comments with regards to general accountability requirements such as diversity, staff accountability, and SO and AC accountability and how the proposed mechanisms, so far, did not address these topics fully.

The CCWG-Accountability acknowledged these valuable comments and, in this Section, describes the assessments that it conducted with regards to each of these issues, and the respective proposals to enhance ICANN's accountability. Distinction between Work Stream 1 and Work Stream 2 proposals has been defined according to the same criteria used overall, as mentioned in Section 11.

8.1 Diversity

Problem Statement

The current CCWG-Accountability draft refers to diversity in several places: the Independent Review Panel composition, AoC review teams composition, the Community Mechanism as Sole Member, etc.

Some comments express concern about diversity. Several commenters requested more details about the concrete steps, or asked to more explicit support enhancements of diversity within ICANN.[19]

It is not just a middle and long-term issue (Work Stream 2) but also some immediate actions (Work Stream 1) must be taken.

Overall, the concern expressed by some is related to the ability of the ICANN community (through the Board/NomCom/SO/ACs, the review teams or other groups) to represent the diversity of views, origins and interests of the global Internet community.

On the other hand some commenters, while acknowledging the importance of diversity in the accountability mechanisms, have expressed their view that diversity requirement should not prevail over skills or experience requirements.

As the community becomes empowered, there's a concern that the newly created bodies need to include the dimension of diversity:

- On Independent Review: "Brazil considers that geographic, cultural and gender diversity is a key element and should be a mandatory criterion in the selection of IRP panelists."

- Other (including in the Community Mechanism as Sole Member): "Improve diversity in all its aspects at all levels of the organization" could already be better reflected in Work Stream 1 proposal."

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[19] Comments that included reference to diversity came from: AFNIC, Gov: ES - BR - IN - FR, CCG, Linx, JPNIC, IPC, ZR, Jan Scholte, Eco, BC, ISPCP, Board, SBT

A multidimensional approach will be useful to be taken into account regarding diversity.

A, non-exhaustive, unordered list of elements, that is under discussion and includes but is not limited to:

- Skill set

- Region

- Origin

- Culture

- Language

- Gender

- Age

- Disability

- Stakeholder group

- ...

In the comment to include a continuous improvement path regarding diversity within ICANN, we can underline the following regarding Work Stream 1:

- Make explicit commitments regarding diversity in the proposed new accountability bodies.

- Expand ATRT reviews into **Accountability, Transparency and Diversity Reviews**. The review team would be tasked to assess and make recommendations regarding diversity across all ICANN bodies.

- Establish threshold regarding composition of each body (will depend of the body and of the overall composition) to avoid possible blocking on certain votes.

- Transform the Structural Reviews into **Structural Accountability, Transparency and Diversity Reviews of SOs and ACs**, under the Board's supervision.

In the comments, we can underline the following proposals regarding Work Stream 2:

- Set-up a Diversity Office and an Election Office: Those two offices can be merged and can be included or not in the Office of the ICANN Ombudsman

- Include regional (if not other) diversity among the main ICANN leadership position and in each groups.

- Rotation of the ICANN meetings in all the ICANN regions.

Some have linked the Diversity issue(s) with the following items:

- Limit the number and the length of office/mandate

- Election

- Conflict of interest

- Translation

First study steps (identifying – reviewing – next steps)

As a result of this work, the CCWG-Accountability divided its work into the following steps:

1. Identify the existing mechanisms in place for Board/Staff/NC/SO/AC/SHG… regarding diversity.

2. Review existing mechanisms in order to assess if they address the concerns expressed by the community during the first public comment period.

3. Build a list of activities that should be taken in both Work Stream 1 and Work Stream 2.

The documents to be reviewed are:

1. ICANN Bylaws

2. The Affirmation of Commitments

3. ATRT 1 recommendations and ATRT 2 recommendations

4. Organizing Documents of each ICANN Supporting Organizations and Advisory Committees

An initial review of existing ICANN documentation shows that there are provisions regarding regional diversity for some ICANN groups.

AFFIRMATION OF COMMITMENTS

The Affirmation of Commitments didn't include any reference regarding diversity.

ACCOUNTABILITY AND TRANSPARENCY REVIEWS

The Accountability and Transparency Reviews have made no specific recommendation with regards to Board/SO/AC diversity.

BYLAWS

ICANN bylaws state:

Board

> "One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America."

NomCom

> **"Section 5. DIVERSITY**
>
> In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN

Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by Section 4 of this Article, make selections guided by Core Value 4 in Article I, Section 2."

ccNSO Council

"The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in Section 4(7) through (9) of this Article;"

ASO

"Under the terms of the MoU signed between ICANN and the RIRs in October 2004, the NRO Number Council now performs the role of the Address Supporting Organization Address Council (ASO AC).

The regional policy forum of each RIR selects two members. The Executive Board of each RIR also appoints one person from its respective region ."

"The ASO Address Council shall consist of the members of the NRO Number Council ."

GNSO Council

Regarding the GNSO the "only" diversity dimension is at the level of the Stakeholder Group that selects the council members.

GAC

No reference

SSAC

No reference

RSSAC

No reference

ALAC

"The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI."

ICANN Staff

No reference

Having reviewed and inventoried the existing mechanisms related to Board/NomCom/SO/AC diversity, while some diversity arrangements exist within ICANN documents, diversity does not appear as one of the areas where ICANN continuously strives to improve.

Recommendations

Therefore, the CCWG-Accountability recommends the following actions with the view to enhancing (further) ICANN's effectiveness in promoting diversity:

1. Include diversity as an important element for the creation of any new structure, such as the IRP (see Section 5.1 for diversity requirements for the panel) and the ICANN Community Forum (see Section 6.3 for diversity requirements for the Forum)

2. Evaluate a proposed evolution of the ATRT into **Accountability, Transparency and Diversity Reviews** and of the **Structural Reviews into Structural Accountability, Transparency and Diversity Reviews of SOs and ACs** as part of Work Stream 2.

3. Perform, as part of Work Stream 2, a more detailed review to establish a full inventory of the existing mechanisms related to diversity for each and every ICANN group (including Stakeholder Groups, Constituencies, Regional At-Large Organizations, the Fellowship program and other ICANN outreach programs), as after an initial review of the current documents, it is clear that they do not address the full concerns raised by the larger community on the diversity issue.

4. Identify the possible structures that could follow, promote and support the strengthening of diversity within ICANN.

5. Carry out a detailed working plan on enhancing ICANN diversity as part of Work Stream 2.

6. Strengthen commitments to outreach and engagement in order to create a more diverse pool of ICANN participants, so that diversity is better reflected in the overall community and thus more naturally reflected in ICANN structures and leadership positions.

8.2 Staff Accountability

During the first public comment period several comments were received with regards to ICANN staff accountability and how the proposed mechanisms, so far, centered their impact only in ICANN's Board of Directors.

The comment made by CENTR recommends that an "accountability literacy, culture and attitude" is fostered: not only establishing, but also disclosing existing programs on training and audit for ICANN staff in order to have staff be accountable on their day-to-day actions.

In general, management and staff should be working for the benefit of the community and in line with ICANN's purpose and mission. While it is obvious that they report to and are held accountable by the Board (the President & CEO) or the President & CEO (management & staff), the purpose of their accountability is the same as that of the organization:

- Complying with ICANN's rules and processes;

- Comply with applicable legislation;

- Achieve certain levels of performance as well as security;

- Make their decisions for the benefit of the community and not in the interest of a particular stakeholder or set of stakeholders or ICANN the organization alone.

After considering the comments received by the community, the CCWG-Accountability assessed how to address the concerns raised during the first public comment period.

Work was divided into the following steps:

1. Identify the existing accountability mechanisms in place applicable to ICANN staff.

2. Review existing mechanisms in order to assess if they address the concerns expressed by the community during the first public comment period.

3. Build a list of activities that should be taken in both Work Stream 1 and Work Stream 2.

The reviewed documents were:

    a. [ICANN Bylaws](#)

    b. [The Affirmation of Commitments](#)

    c. [ATRT 1 recommendations](#) and [ATRT 2 recommendations](#)

A first review of existing ICANN documentation shows that there is almost no provisions that oblige Staff to be held accountable to the SO/ACs or the larger internet community with regards to their actions.

Also, the reviewed documentation shows that most, if not all, mechanisms currently in place are aimed at holding ICANN Board of Directors accountable but they do not refer to Staff as part of that accountability effort in a way that properly addresses the concerns raised by the community during the public comment period.

An inventory of existing accountability mechanisms shows that documents reviewed include the following mechanisms:

AFFIRMATION OF COMMITMENTS (AOC)

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, are centered in commitments undertaken by the Board of Directors and not necessarily by Staff. Therefore, while recognizing that Staff is part of ICANN the Organization, there should be specific expectations and commitments established for Staff to be held accountable not only to the internal hierarchy of the organization but also to those SO/ACs and the larger internet community to which their day-to-day actions should benefit.

The identified mechanisms or criteria in the Affirmation of Commitments by which SO/ACs should conduct their work in relation to the DNS are: paragraph 7 and paragraph 9.1 e).

ACCOUNTABILITY AND TRANSPARENCY REVIEWS

Although Staff is constantly referred to in the Accountability and Transparency Review Teams recommendations, there is no particular recommendation that relates directly to Staff accountability. However, one area in which the 2nd Accountability and Transparency Review Team (ATRT2) did make recommendation concerning the staff deals with the operation of 'whistleblowing' activities by staff, and the need to insure that

there is a safe means by which staff can inform the community of problems and issue that only they can see.

BYLAWS

ICANN bylaws establish different mechanisms that subject Staff to be held accountable not only to the ICANN community but also to the larger community outside ICANN. The identified existing mechanisms are:

- Article IV, Section 2.2 a.

- Article IV, Section 2.3 f.

- Article V, Section 2.

- Article XIII, Section 4.

Recommendations

Having reviewed and inventoried the existing mechanisms related to Staff Accountability, areas of improvement include clarifying expectations from staff as well as establishing appropriate redress mechanisms. The CCWG-Accountability recommends taking the following actions as part of its Work Stream 2:

1. Develop a document that clearly describes the role of ICANN staff vis-a-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors.

2. Consider the creation of a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by Staff in relation to their interactions with all stakeholders, establishment of regular independent (internal + community) surveys/audits to track progress and identify areas that need improvement, establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the Ombudsman enhancement item of Work Stream 2.

8.3 SO and AC Accountability

As new institutional arrangements increase community powers in ICANN, legitimate concerns arise regarding the accountability of the community (organized as SOs and ACs) in enacting those powers. In other words, "Who watches the watchers?".

In response to these concerns, the CCWG-Accountability divided its work into the following steps:

- Identify the existing accountability mechanisms in place for SO/ACs.

- Review existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the first public comment period.

- Build a list of steps to enhance SO/AC accountability that should be taken respectively in Work Stream 1 and Work Stream 2.

The reviewed documents were:

1. [ICANN Bylaws](#)
2. [The Affirmation of Commitments](#)
3. [ATRT 1 recommendations](#) and [ATRT 2 recommendations](#)
4. [Operational rules and procedures of the various SOs and ACs](#)

A first review of existing ICANN documentation shows that the provisions that oblige SO/ACs to be held accountable to their constituents or the larger internet community with regards to their actions, decisions or advice, are limited in number and scope.

An inventory of existing accountability mechanisms shows that documents reviewed include the following mechanisms:

AFFIRMATION OF COMMITMENTS (AOC)

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, they should also be seen as applicable to the SO/ACs that form the wider ICANN organizational structure as defined in its bylaws.

The identified mechanisms or criteria in the Affirmation of Commitments by which SO/ACs should conduct their work in relation to the DNS are: paragraph 3 and paragraph 9.

ACCOUNTABILITY AND TRANSPARENCY REVIEWS

The Accountability and Transparency Reviews have made no direct recommendations with regards to SO/AC transparency or accountability.

BYLAWS

ICANN Bylaws state that each SO and AC shall establish its own charter and procedural documents. Further research needs to be done at SO and AC level to verify existing accountability mechanisms put in place for each SO and AC.

It is also important to review whether SO/ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example, it should be reviewed and discussed if Core Values should be applicable not only to the corporation's actions but also to the SO/ACs activities.

Recommendations

Having reviewed and inventoried the existing mechanisms related to SO/AC accountability, it is clear that current need to be enhanced in light of the new responsibilities associated with the Work Steam 1 proposals. The CCWG-Accountability recommends the following steps:

1. **As part of Work Stream 1 proposals:**
   - Include the review of SO and AC accountability mechanisms into the independent periodical structural reviews performed on a regular basis These reviews should include consideration on the mechanisms that each

SO/AC, as the case may be, has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.

- o This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:
  - *The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

2. **As part of the Work Stream 2 proposals:**

- o The subject of SO and AC accountability should be included in the purview of the Accountability and Transparency Review process as part of Work Stream 2 working plan.

- o Evaluate the proposed "Mutual Accountability Roundtable" to assess its viability and if viable, and undertake the necessary actions to implement it.[20]

- o A detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.

- o Assess whether the Independent Review process would also be applicable to SO and AC activities as well.

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[20] CCWG-Accountability Advisor Willie Currie introduced a short description of the concept as such:

The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new community powers construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO and all supporting organizations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how their constituency addressed the issue, indicating what worked and didn't work. This could be followed by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement.

9. Incorporation of the Affirmation of Commitments

The Affirmation of Commitments (AoC) is a 2009 bilateral agreement between the U.S. Government and ICANN. After the IANA agreement is terminated, the Affirmation of Commitments will become the next target for elimination since it would be the last remaining aspect of a unique United States oversight role for ICANN.

If the AoC were to be terminated without any equivalent replacement, ICANN would no longer be held to these important affirmative commitments including the related requirement to conduct community reviews. If this were allowed to occur it would significantly diminish ICANN's accountability to the global multistakeholder community.

Elimination of the AoC as a separate agreement would be a simple matter for a post-transition ICANN, since the AoC can be terminated, by either party, with just 120-days' notice. The CCWG-Accountability evaluated the contingency of ICANN unilaterally withdrawing from the AoC (see Stress Test 14 in Section 10.3) and proposed these two accountability measures:

> Preserve in ICANN Bylaws any relevant ICANN commitments from the AoC, including Sections 3, 4, and 8.

> Bring the four AoC review processes into ICANN's Bylaws. Two of the reviews include ICANN commitments that will be preserved in the Reviews section of the Bylaws.

Other sections in the AoC are either preamble text or commitments of the U.S. Government. As such they do not contain commitments by ICANN, and so they cannot usefully be incorporated in the Bylaws.

After these aspects of the AoC are adopted in the ICANN Bylaws, ICANN and the NTIA should mutually agree to terminate the AoC. Care should be taken when terminating the AoC to not disrupt any AoC Reviews that may be in process at that time.

Suggestions gathered during comment periods in 2014 on ICANN accountability and the IANA Stewardship Transition suggested several ways the AoC Reviews should be adjusted as part of incorporating them into ICANN's Bylaws:

- Ability to sunset reviews, amend reviews, and create new reviews.

- Community stakeholder groups should appoint their own representatives to review teams.

- Give review teams access to ICANN internal documents.

- Require the ICANN Board to consider approval and begin implementation of review team recommendations, including from previous reviews. The CCWG-Accountability concluded that some review team recommendations could be rejected or modified by ICANN, for reasons such as feasibility, time, or cost. If the community disagreed with the Board's decision on implementation, it could invoke a Reconsideration or IRP to challenge that decision, with a binding result

in the case of an IRP. In addition, CCWG-Accountability independent legal counsel advised that ICANN Bylaws could not require the Board to implement review team recommendations because that could conflict with fiduciary duties or other Bylaws obligations.

- In Bylaws Article IV, add a new section for Periodic Review of ICANN Execution of Key Commitments, with an overarching framework for the way these reviews are conducted and then one subsection for each of the four current AoC Reviews.

  - o [*Note:* Legal counsel has not reviewed the underlying proposed Bylaw revisions at this stage. The proposed language for Bylaw revisions is conceptual in nature at this stage; once there is consensus about direction developed through this comment process, the legal team will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.]

Bylaw That Provides a Framework for All Periodic Reviews

All of the reviews listed in this Section would be governed by Bylaw provisions along the following general lines:

PROPOSED BYLAW TEXT	COMMENT
ICANN will produce an annual report on the state of improvements to Accountability and Transparency. ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the Review Teams defined in this section.	This is a new recommendation based on one in ATRT2 and is more important as reviews are spread further apart.
Review teams are established to include both a fixed number of members and an open number of participants. Each SO and AC participating in the Review may suggest up to 7 prospective members for the Review Team. The group of chairs of the participating SOs and ACs will select a group of up to 21 Review Team members, balanced for diversity and skills, to include up to 3 members from each participating SO and AC . In addition, the ICANN Board may designate one director as a member of the Review Team.	The AoC has no specific requirements for number of members from each SO and AC. The AoC lets the Board and GAC Chairs designate Review Team members, and has no diversity requirement.
If consensus cannot be reached among the participants, consensus will be sought among the members. In the event a consensus cannot be found among the members, a majority vote of the members may be taken. In this case both a majority recommendation and a minority response should be provided in the final report of the Review Team.	While showing a preference for consensus, a resolution procedure should be defined. It is important to avoid both tyranny of the majority and capture by a minority.
Review Teams may also solicit and select independent experts to render advice as requested by the Review Team, and the review team may choose to accept or reject all or part of this advice.	This was not stated in the AoC, but experts have been appointed to some AoC Review Teams.
Confidential Disclosure to Review Teams: To facilitate transparency and openness regarding ICANN's deliberations and operations, the Review Teams, or a subset thereof, shall have access to ICANN internal information and documents. If ICANN refuses to reveal documents or information requested by the Review Team, ICANN must provide a justification to the Review Team. If the Review Team is not satisfied with ICANN's justification, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request. For documents and information that ICANN does disclose to the Review Team, ICANN may designate certain documents and information as not for disclosure by the Review Team, either in its report or otherwise. If the Review Team is not	New ability to access internal documents, with non-disclosure provisions.

satisfied with ICANN's designation of non-disclosable documents or information, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the non-disclosure designation. A confidential disclosure framework shall be published by ICANN. The confidential disclosure framework shall describe the process by which documents and information are classified, including a description of the levels of classification that documents or information may be subject to, and the classes of persons who may access such documents and information. The confidential disclosure framework shall describe the process by which a Review Team may request access to documents and information that are designated as classified or restricted access. The confidential disclosure framework shall also describe the provisions of any non-disclosure agreement that members of a Review Team may be asked to sign. The confidential disclosure framework must provide a mechanism to escalate and/or appeal the refusal to release documents and information to duly recognized Review Teams.	
The draft report of the Review Team should describe the degree of consensus reached by the Review Team.	Public commenter requested transparency as to degree of consensus reached.
The Review Team should attempt to assign priorities to its recommendations.	Board requested prioritization of recommendations
The draft report of the Review will be published for public comment. The Review Team will consider such public comment and amend the Review as it deems appropriate before issuing its final report and forwarding the recommendations to the Board.	
The final output of all Reviews will be published for public comment. The Board shall consider approval and begin implementation within six months of receipt of the recommendations.	AoC requires Board to 'take action' within 6 months.

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	NOTES
1. Accountability & Transparency Review. The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders.	The commitment to do a Review now becomes part of ICANN Bylaws. The second part of this sentence ("its commitment to maintain…") clarifies an ICANN commitment that would also become part of the Bylaws.
Issues that may merit attention in this Review include: (a) assessing and improving ICANN Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;	Public commenter suggested making this a suggestion instead of a mandated list of topics.
(b) assessing the role and effectiveness of GAC interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.	Rephrased to avoid implying a Review of GAC's effectiveness.
The Review Team shall assess the extent to which prior Accountability and Transparency Review recommendations have been implemented.	AoC required ATRT to assess all AoC Reviews.
The Review Team may recommend termination or amendment of other periodic Reviews required by this section, and may recommend additional periodic Reviews.	This is new. A recommendation to amend or terminate an existing Review would be subject to public comment. And the subsequent Bylaws change would be subject to IRP challenge.
This Review Team should complete its review within one year of convening its first meeting.	New.
This periodic Review shall be convened no less frequently than every five years, measured from the date the previous review was convened.	The AoC required this Review every 3 years.

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	NOTES
2. Preserving Security, Stability, and Resiliency. The Board shall cause a periodic Review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS. In this Review, particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the Reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical Mission.	The commitment to "operational stability, reliability, resiliency, and global interoperability of the DNS" will also be part of Bylaws Core Values (see Section 3 for further detail).
The Review team shall assess the extent to which prior Review recommendations have been implemented.	Make this explicit.
This periodic Review shall be convened no less frequently than every five years, measured from the date the previous Review was convened.	AoC required this Review every 3 years.

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	NOTES
3. Promoting Competition, Consumer Trust, and Consumer Choice. ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.	This Review includes a commitment that becomes part of ICANN Bylaws, regarding future expansions of the TLD space.
The Board shall cause a Review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year. This Review will examine the extent to which the expansion of gTLDs has promoted competition, consumer trust, and consumer choice, as well as effectiveness of: (a) the gTLD application and evaluation process; and (b) safeguards put in place to mitigate issues involved in the expansion.	Re-phrased to cover future new gTLD rounds. "Batched" is used to designate a batch of applications, as opposed to continuous applications.
The Review team shall assess the extent to which prior Review recommendations have been implemented.	Make this explicit.
Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous Review required by this section have been implemented.	New.
These periodic Reviews shall be convened no less frequently than every five years, measured from the date the previous Review was convened.	AoC also required this Review 2 years after the 1st year Review.

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	NOTES
4. Reviewing effectiveness of WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.	Changed title to reflect likelihood that WHOIS will be replaced by new Directory Services.
ICANN commits to enforcing its existing policy relating to WHOIS/Directory Services, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information.	This Review includes a commitment that becomes part of ICANN Bylaws, regarding enforcement of existing policy WHOIS requirements.
The Board shall cause a periodic Review to assess the extent to which WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust.	
This Review will consider the OECD guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013.	New. A public comment submission noted that OECD guidelines do not have the force of law.
The Review Team shall assess the extent to which prior Review recommendations have been implemented.	Make this explicit.
This periodic Review shall be convened no less frequently than every five years, measured from the date the previous Review was convened.	The AoC required this Review every 3 years.

The CWG-Stewardship has also proposed an IANA Function Review that should be added to the ICANN Bylaws, as a Fundamental Bylaw.

IANA FUNCTION REVIEW AND SPECIAL IANA FUNCTION REVIEW
The CWG-Stewardship recommends that PTI's performance against the ICANN – PTI contract and the Statement of Work (SOW) be reviewed as part of the IANA Function Review (IFR). The IFR would be obliged to take into account multiple input sources including community comments, IANA Customer Standing Committee (CSC) evaluations, reports submitted by the PTI, and recommendations for technical or process improvements. The outcomes of reports submitted to the CSC, Reviews and comments received on these reports during the relevant time period will be included as input to the IFR. The IFR will also review the SOW to determine if any amendments should be recommended. The IFR mandate is strictly limited to evaluation of PTI performance against the SOW and does not include any evaluation relating to policy or contracting issues that are not part of the IANA Functions Contract between ICANN and PTI or the SOW. In particular it does not include issues related to policy development and adoption processes, or contract enforcement measures between contracted registries and ICANN. The first IFR is recommended to take place no more than 2 years after the transition is completed. After the initial Review, the periodic IFR should occur at intervals of no more than 5 years. The IFR should be outlined in the ICANN Bylaws and included as a Fundamental Bylaw as part of the work of the CCWG-Accountability and would operate in a manner analogous to an AoC Review. The Members of the IANA Function Review Team (IFRT) would be selected by the SOs and ACs and would include several liaisons from other communities. While the IFRT is intended to be a smaller group, it will be open to participants in much the same way as the CWG-Stewardship is. While the IFR will normally be scheduled based on a regular cycle of no more than five years in line with other ICANN Reviews, a Special IANA Function Review (Special IFR) may also be initiated when CSC Remedial Action Procedures (as described in the CWG-Stewardship Proposal) are followed and fail to correct the identified deficiency and the IANA Problem Resolution Process (as described in the CWG-Stewardship Proposal) is followed and fails to correct the identified deficiency. Following the exhaustion of these escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process, and the IANA Problem Resolution Process and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SOs and ACs , the Special IFR could be triggered. In order to trigger a Special IFR, it would require a vote of both of the ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority). The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IANA Function Review. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of the IANA Functions operation, including the CSC, but should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs. The results of the IFR or Special IFR will not be prescribed or restricted and could include recommendations to initiate a separation process, which could result in termination or non-renewal of the IANA Functions Contract between ICANN and PTI among other actions.

10. Stress Tests

10.1 Introduction

An essential part of our CCWG-Accountability Charter calls for stress testing of accountability enhancements.

'Stress Testing' is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. In the financial industry for example 'stress testing' is routinely run to evaluate the strength of institutions.

The CCWG-Accountability Charter calls for stress testing of accountability enhancements in both Work Streams 1 and 2. Among deliverables listed in the charter are:

> **Identification of contingencies to be considered in the stress tests.** Review of possible solutions for each Work Stream including stress tests against identified contingencies.

> The CCWG-Accountability should consider the following methodology for stress tests:

> - Analysis of potential weaknesses and risks;

> - Analysis existing remedies and their robustness;

> - Definition of additional remedies or modification of existing remedies;

> - Description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies.

CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition.

The CCWG-Accountability Stress Test Work Party documented contingencies identified in prior public comments. The Stress Test Work Party then prepared a draft document showing how these stress tests are useful to evaluate existing and proposed accountability measures.

The exercise of applying stress tests identified changes to ICANN Bylaws that might be necessary to allow the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

10.2 Forcing the Board to Respond to Advisory Committee Formal Advice

Several stress tests indicate the need for a community power to force ICANN to take a decision on previously-approved Review Team Recommendations, consensus policy, or formal advice from an Advisory Committee (SSAC, ALAC, GAC, RSSAC).

The CCWG-Accountability is developing enhanced community powers to challenge a Board decision, but this may not be effective in cases where the Board has taken no decision on a pending matter. In those cases, the community might need to force the Board to make a decision about pending AC advice in order to trigger the ability for the community to challenge the decision via Reconsideration or IRP processes.

Recommendation 9 from ATRT2[21] may answer this need:

9.1. ICANN Bylaws Article XI should be amended to include the following language to mandate Board response to Advisory Committee formal advice:

> *The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action (or lack of action) it took and the rationale for doing so.*

This ATRT2 recommendation has not yet been reflected in ICANN Bylaws, so this change should be required before the IANA stewardship transition.

10.3 Require Consultation and Mutually Acceptable Solution for GAC Advice

Stress Test 18 addresses ICANN's response to GAC advice in the context of NTIA's statement regarding the transition: "NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution". This Stress Test was applied to existing and proposed accountability measures, as seen below:

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[21] See page 11 of the following document:
https://www.icann.org/en/system/files/files/draft-recommendations-31dec13-en.pdf

Stress Test #18: Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's Board
Consequence(s): Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free expression, for example.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for GAC advice. This is required for any GAC advice, not just for GAC consensus advice. Today, GAC adopts formal advice according to its Operating Principle 47: "*consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.*" But the GAC may at any time change its procedures to use majority voting instead of its present consensus.	One proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where GAC advice was supported by GAC consensus. The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN bylaws would require trying to find a mutually acceptable solution only on advice that had GAC consensus. GAC can still give ICANN advice at any time, with or without consensus.

The CCWG-Accountability proposes a response to Stress Test 18 to amend the ICANN Bylaws such that only consensus advice would trigger the obligation to try to find a mutually acceptable solution. The proposal is to amend ICANN Bylaws, Article XI Section 2 clause j as seen below. (Addition is bold and underlined)   Clause k is also shown for completeness but is not being amended.

> *j: The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.* **With respect to Governmental Advisory Committee advice that is supported by consensus**, *the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

> *k: If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.*

Note that the proposed Bylaws change for Stress Test 18 does not interfere with the GAC's method of decision-making. If the GAC decided to adopt advice by majority voting or methods other than today's consensus process, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."

Moreover, ICANN would still have to explain why GAC advice was not followed: "In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice."

The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to "try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution". That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus.

The GAC currently uses the following consensus rule for its decisions: "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection." The proposed bylaws change above recognizes that GAC may, at its discretion, amend its Operating Principle 47 regarding "Provision of Advice to the ICANN Board."

NTIA gave specific requirements for this transition, including advice that Stress Test 18 is a direct test of the requirement to avoid significant expansion of the role of governments in ICANN decision-making. The proposed Bylaws change is therefore an important part of the community's proposal.

It is noted that GAC Representatives are continuing to discuss the proposal.

10.4 Purpose and Methodology

The purpose of these stress tests is to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.

Also, note that our charter does not ask that probability estimates be assigned for contingencies. Probabilities are not needed to determine whether the community has adequate means to challenge ICANN's reactions to the contingency.

CCWG-Accountability Work Team 4 gathered an inventory of contingencies identified in prior public comments. That document was posted to the wiki at https://community.icann.org/display/acctcrosscomm/ST-WP+--+Stress+Tests+Work+Party.

We consolidated these into five 'stress test categories' listed below, and prepared draft documents showing how these stress tests are useful to evaluate ICANN's existing, and CCWG-Accountability's proposed, accountability measures.

I. FINANCIAL CRISIS OR INSOLVENCY (#5, 6, 7, 8 AND 9)

ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the domain name industry, or the general global economy. It could also result from a

legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes domain name registrations obsolete.

II. FAILURE TO MEET OPERATIONAL OBLIGATIONS (#1, 2, 11, 17, AND 21)

ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation over the objections of stakeholders, such as those defined as 'Significantly Interested Parties' [http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf].

III. LEGAL/LEGISLATIVE ACTION (#3, 4, 19, AND 20)

ICANN is the subject of litigation under existing or future policies, legislation, or regulation. ICANN attempts to delegate a new TLD, or re-delegate a non-compliant existing TLD, but is blocked by legal action.

IV. FAILURE OF ACCOUNTABILITY (#10, 12, 13, 16, 18, 22, 23, 24 AND 26)

Actions (or expenditure of resources) by one or more ICANN Board Directors, the President and CEO, or other Staff, are contrary to ICANN's Mission or Bylaws. ICANN is "captured" by one stakeholder segment, including governments via the GAC, which either is able to drive its agenda on all other stakeholders, or abuse accountability mechanisms to prevent all other stakeholders from advancing their interests (veto).

V. FAILURE OF ACCOUNTABILITY TO EXTERNAL STAKEHOLDERS (#14, 15, 25)

ICANN modifies its structure to avoid obligations to external stakeholders, such as terminating the Affirmation of Commitments, terminating presence in a jurisdiction where it faces legal action, moving contracts or contracting entities to a favorable jurisdiction. ICANN delegates, subcontracts, or otherwise abdicates its obligations to a third party in a manner that is inconsistent with its Bylaws or otherwise not subject to accountability. ICANN merges with or is acquired by an unaccountable third party.

Applying Additional Stress Tests

Public comment participants may conceive of other contingencies and risks beyond the 26 stress tests identified in this section. In that case, we encourage commenters to apply their own stress test analysis. To do so, a commenter can examine ICANN's present accountability mechanisms to determine whether they adequately address the contingency. Then, the commenter can examine the proposed accountability enhancements in this document, and assess whether they would give the community adequate means to challenge Board decisions and to hold the Board accountable for its actions.

For example, the stress test team evaluated contingencies that could generally be described as external events (cyber attack, financial crisis, etc.). We discovered that while some risk mitigation was possible, it became clear that no accountability framework could eliminate the risk of such events or entirely alleviate their impact. Instead, it was critical to explore the ability of the community to hold the ICANN Board and management accountable for their preparation and reaction to the external events. The proposed accountability measures do provide adequate means to do so.

Note that we cannot apply stress tests definitively until CCWG-Accountability and CWG-Stewardship have refined mechanisms/structures to test. This draft applies stress tests to a 'snapshot' of proposed mechanisms under consideration at this point in the process.

Also, note that several stress tests can specifically apply to work of CWG-Stewardship regarding transition of the IANA naming functions contract (see Stress Tests #1, 2, 11, 17, 19, 20, 21, 25.)

The stress test exercise demonstrates that Work Stream 1 recommendations do enhance the community's ability to hold ICANN's Board and management accountable, relative to present accountability measures. Moreover the CWG-Stewardship proposal includes requirements for several accountability measures that are proposed by CCWG-Accountability.

One stress test regarding appeals of ccTLD revocations and assignments (Stress Test 21) has not been adequately addressed in either the CWG-Stewardship or CCWG-Accountability proposals, since the ccNSO is undertaking policy development pursuant to the Framework of Interpretation approved in 2014.

The following table shows the stress test scenarios for each of our five categories of risk, alongside existing accountability mechanisms and measures and proposed accountability measures.

Following the categories of risk, there are several additional stress tests that were added after publication of the first draft proposal on 3-May-2015. The additional stress tests were suggested during CCWG discussions, public comments, and a request from NTIA.

Conclusions have been drawn after discussion and exploration of each hypothetical scenario, indicating whether existing measures and mechanisms are deemed adequate; and the adequacy and effectiveness of any proposed measures or mechanisms.

10.5 Stress Test Category I: Financial Crisis or Insolvency

Stress Test #5: Domain industry financial crisis.

Stress Test #6: General financial crisis.

Stress Test #7: Litigation arising from private contract, e.g., breach of contract.

Stress Test #8: Technology competing with DNS.

Consequence(s): Significant reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN's ability to operate; loss affecting reserves sufficient to threaten business continuity.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
ICANN could propose revenue increases or spending cuts, but these decisions are not subject to challenge by the ICANN community.	One proposed measure would empower the community to veto ICANN's proposed operating plan and annual budget. This measure enables the community to block a proposal by ICANN to increase its revenues by adding fees on registrars, registries, and/or registrants.
The community has input in ICANN's budgeting and Strategic Plan.	
Registrars must approve ICANN's variable registrar fees. If not, registry operators pay the fees.	Another proposed measure is community challenge to a Board decision using a reconsideration request and/or referral to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a revenue or expenditure decision, the new IRP could reverse that decision.
ICANN's reserve fund could support operations in a period of reduced revenue. The reserve fund is independently reviewed periodically.	
CONCLUSIONS:	
Existing measures would be adequate, unless the revenue loss was extreme and sustained.	Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.

Stress Test #9: Major corruption or fraud.	
Consequence(s): Major impact on corporate reputation, significant litigation and loss of reserves.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
ICANN has an annual independent audit that includes testing of internal controls designed to prevent fraud and corruption. ICANN maintains an anonymous hotline for employees to report suspected fraud. ICANN Board can dismiss the CEO and/or executives responsible. The community has no ability to force the Board to report or take action against suspected corruption or fraud.	One proposed measure is to empower the community to force ICANN's Board to consider a recommendation from an Accountability and Transparency Review Team (ATRT). An ATRT could make recommendations to avoid conflicts of interest. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. Another proposed measure would empower the community to veto ICANN's proposed annual budget. This measure enables blocking a budget proposal that is tainted by corruption or fraud. If ICANN's Board were involved, or if the Board did not act decisively in preventing corruption or fraud (for instance by enforcing internal controls or policies), a proposed measure empowers the community to remove individual directors or recall the entire Board.
CONCLUSIONS: Existing measures would not be adequate if litigation costs or losses were extreme and sustained.	 Proposed measures are helpful, but might not be adequate if litigation costs and losses were extreme and sustained.

10.6 Stress Test Category II: Failure to Meet Operational Expectations

Stress Test #1: Change authority for the root zone ceases to function, in part or in whole.

Stress Test #2: Delegation authority for the root zone ceases to function, in part or in whole.

Consequence(s): Interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Under the present IANA functions contract, NTIA can revoke ICANN's authority to perform IANA functions and re-assign this role to different entity/entities. After NTIA relinquishes the IANA functions contract, this measure will no longer be available.	The CWG-Stewardship proposal includes various escalation procedures to prevent degradation of service, as well as a framework (operational) for the transition of the IANA function. The CWG-Stewardship proposes that IANA naming functions be legally transferred to a new Post-Transition IANA entity (PTI) that would be an affiliate controlled by ICANN. The CWG-Stewardship proposes a multistakeholder IANA Function Review (IFR) to conduct reviews of PTI. Results of IFR are not prescribed or restricted and could include recommendations to initiate a separation process which could result in termination or non-renewal of the IANA Functions Contract with PTI, among other actions. The CWG-Stewardship proposes the ability for the multistakeholder community to require, if necessary and after other escalation mechanisms and methods have been exhausted, the selection of a new operator for the IANA functions. Suggestions for Work Stream 2: Require annual external security audits and publication of results, and require certification per international standards (ISO 27001) and publication of results.
CONCLUSIONS: Existing measures would be inadequate after NTIA terminates the IANA contract.	Proposed measures are, in combination, adequate to mitigate this contingency.

Stress Test #11: Compromise of credentials.	
Consequence(s): Major impact on corporate reputation, significant loss of authentication and/or authorization capacities.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
Regarding compromise of internal systems:	Regarding compromise of internal systems:
Based upon experience of the recent security breach, it is not apparent how the community holds ICANN management accountable for implementation of adopted security procedures.	The proposed IRP measure could challenge ICANN's Board or management for any action or inaction that conflicts with Bylaws. An IRP challenge might therefore be able to force ICANN to conduct an after-action report and disclose it to the community.
It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report.	Through the IRP measure, the community might also be able to force ICANN management to execute its stated security procedures for employees and contractors.
Regarding DNS security:	Regarding DNS security:
Beyond operating procedures, there are credentials employed in DNSSEC.	One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review such as *Security Stability and Resiliency*. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
ICANN annually seeks SysTrust Certification for its role as the Root Zone KSK manager.	
The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities.	
Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.	A proposed Bylaws change would require ICANN's Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could challenge that Board decision with an IRP.
	Suggestions for Work Stream 2:
	Require annual external security audits and publication of results.
	Require certification per standards (ISO 27001) and publication of results.
CONCLUSIONS:	
Existing measures would not be adequate.	Proposed measures, in combination, would be helpful to mitigate effects of this scenario. Work Stream 2 suggestions could add risk prevention measures.

Stress Test #17: ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by the technical community or other stakeholder groups.	
Consequence(s): DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
In 2013-14, the community demonstrated that it could eventually prod ICANN management to attend to risks identified by SSAC. For example: dotless domains (SAC 053); security certificates and name collisions such as .mail and .home (SAC 057) NTIA presently gives clerical approval for each delegation to indicate that ICANN has followed its processes. NTIA could delay a delegation if its finds that ICANN has not followed its processes. It is not clear if that would/could have been a finding if ICANN attempted to delegate a new TLD such as .mail or .home.	One proposed measure is to empower the community to force ICANN's Board to consider recommendations from an Affirmation of Commitments Review such as a Review of Security, Stability, and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. A proposed Bylaws change would require ICANN Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could challenge that Board decision with an IRP.
CONCLUSIONS: Existing measures were adequate to mitigate the risks of this scenario.	Proposed measures enhance community's power to mitigate the risks of this scenario.

Stress Test #21: A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager.

However, the IANA functions manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a designated manager.

But the IANA functions manager does not document that: significantly interested parties agree; that other stakeholders had a voice in selection; the designated manager has demonstrated required capabilities; there are not objections of many significantly interested parties.

This stress test examines the community's ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place.

Consequence(s): Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Under the present IANA contract with NTIA, the IANA Department issues a boiler-plate report to the ICANN Board, which approves this on the Consent Agenda and forwards to NTIA, which relies on the Board's certification and approves the revocation, delegation or transfer.	From the CWG-Stewardship final proposal: "CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and redelegations in the IANA Stewardship Transition proposal."
There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN's certification that process was followed properly.	From CWG-Stewardship co-chair correspondence on 15-Apr-2015: "As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes."
See GAC Principles for delegation and administration of ccTLDs. GAC Advice published in 2000 and updated in 2005 specifically referenced to Sections 1.2 & 7.1.	Regarding CCWG-Accountability proposed measures:
See [Framework of Interpretation](#), 20-Oct-2014.	One proposed CCWG-Accountability measure could give the community standing to request Reconsideration of management's decision to certify the ccTLD change. Would require a standard of review that is more specific than amended ICANN Mission, Commitments and Core Values.
	Another proposed CCWG-Accountability mechanism is community challenge to a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN took action to revoke or assign management responsibility for a ccTLD, the IRP mechanism might be enabled to review that decision. Would require a standard of review. (cont.)
CONCLUSIONS:	Proposed measures do not adequately empower the community to address this scenario. CCNSO

Stress Test #21: A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager.

However, the IANA functions manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a designated manager.

But the IANA functions manager does not document that: significantly interested parties agree; that other stakeholders had a voice in selection; the designated manager has demonstrated required capabilities; there are not objections of many significantly interested parties.

This stress test examines the community's ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place.

Consequence(s): Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Existing measures would not be adequate.	is developing policy pursuant to the Framework of Interpretation.

10.7 Stress Test Category III: Legal/Legislative Action

Stress Test #3: Litigation arising from existing public policy, e.g., antitrust suit. In response, ICANN Board would decide whether to litigate, concede, settle, etc.

Consequence(s): Significant interference with existing policies and/or policy development relating to relevant activities.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The community could develop new policies that respond to litigation challenges.	After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:
An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use the IRP.	The community could develop new policies that respond to litigation challenges.
Reconsideration looks at process but not the substance of a decision.	Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws (including Mission, Commitments and Core Values) and ICANN's established policies.
ICANN must follow orders from courts of competent jurisdiction.	However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator.
	Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.
	An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.

Stress Test #4: New regulations or legislation.

For example, a government could cite anti-trust or consumer protection laws and find unlawful some rules that ICANN imposes on TLDs. That government could impose fines on ICANN, withdraw from the GAC, and/or force ISPS to use a different root, thereby fragmenting the Internet.

In response, ICANN's Board would decide whether to litigate, concede, settle, etc.

Consequence(s): Significant interference with existing policies and/or policy development relating to relevant activities.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The community could develop new policies that respond to new regulations. An ICANN Board decision on how to respond to the regulation (litigate or change policy/implementation) could not be challenged by the community at-large, which lacks standing to use the IRP. Reconsideration looks at the process but not the substance of a decision. ICANN must follow orders from courts of competent jurisdiction.	After ICANN's Board responded to the regulation (litigate or change policy/implementation), the community would have several response options: The community could develop new policies that respond to the regulation. Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN's established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures would be an improvement but might still be inadequate.

Stress Test #19: ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.

In response, the ICANN Board would decide whether to litigate, concede, settle, etc.

Consequence(s): The entity charged with root zone maintenance could face the question of whether to follow ICANN's re-delegation request or to follow the court order.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Under the present agreement with NTIA, the entity performing root zone maintenance is protected from lawsuits since it is publishing the root per a contract with the US Government.	ICANN could indemnify the root zone maintainer against liability, so long as the RZM was performing under the scope of contract and not in breach.
However, the IANA Stewardship Transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits.	While it would not protect the root zone maintainer from lawsuits, one proposed mechanism is community challenge of ICANN decision to re-delegate. This challenge would take the form of a Reconsideration or IRP. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.
A separate consideration:	
An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.	
Reconsideration looks at the process but not the substance of a decision.	
ICANN must follow orders from courts of competent jurisdiction.	After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the decision could be challenged via Reconsideration or IRP, based on the standard of review in the amended Mission, Commitments and Core Values; however, it is highly unlikely that the community could cause ICANN to reopen a settlement reached with a third party, or act contrary to a court decision.
CONCLUSIONS: Existing measures are not adequate.	Proposed measures are adequate to allow the community to challenge and reverse decisions of ICANN Board and management.

Stress Test #20: A court order is issued to block ICANN's delegation of a new TLD, because of a complaint by existing TLD operators or other aggrieved parties.

For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string.

In response, the ICANN Board would decide whether to litigate, concede, settle, etc.

Consequence(s): ICANN's decision about how to respond to court order could bring liability to ICANN and its contract parties.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Before delegation, the community lacked standing to object to string similarity decisions. Reconsideration requests looks at the process but not at *substance* of the decision. An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use an IRP. Reconsideration looks at the process but not the substance of a decision. ICANN must follow orders from courts of competent jurisdiction, and may consider such factors as the as cost of litigation and insurance.	Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation. A future new gTLD Guidebook could give the community standing to file objections. Remedial: After the ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options: One measure would give the community standing to file for Reconsideration or institute an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN's established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. The IRP could assess ICANN's response to the court decision, although it would not alter the court's decision. One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, *Consumer Trust, Choice, and Competition*. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
CONCLUSIONS: Existing measures would be inadequate.	Proposed measures would be an improvement but might still be inadequate.

10.8 Stress Test Category IV: Failure of Accountability

Stress Test #10: Chairman, CEO, or Officer acting in a manner inconsistent with the organization's mission.

Stress Test #24: An incoming Chief Executive institutes a "strategic review" that arrives at a new, extended mission for ICANN. Having just hired the new CEO, the Board approves the new mission / strategy without community consensus.

Consequence(s): The community ceases to see ICANN as the community's mechanism for limited technical functions, and views ICANN as an independent, *sui generis* entity with its own agenda, not necessarily supported by the community. Ultimately, the community questions why ICANN's original functions should remain controlled by a body that has acquired a much broader and less widely supported Mission. This creates reputational problems for ICANN that could contribute to capture risks.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand its scope too broadly. The Community has some input in ICANN budgeting and Strategic Plan, and could register objections to plans and spending on extending ICANN's Mission. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	One proposed measure empowers the community to veto ICANN's proposed strategic plan or annual budget. This measure could block a proposal by ICANN to increase its expenditure on extending its Mission beyond what the community supported. Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, consistent with the fiduciary duties of the directors. The IRP decision would be based on a standard of review in the amended Mission Statement, including "ICANN shall have no power to act other than in accordance with, and as reasonably appropriate to achieve its Mission.".
CONCLUSIONS: Existing measures are inadequate after NTIA terminates the IANA contract.	Proposed measures in combination are adequate.

Stress Test #12: Capture of ICANN processes by one or several groups of stakeholders.	
Consequence(s): Major impact on trust in multistakeholder model, prejudice to other stakeholders.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
Regarding capture by governments, the GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN Bylaws (Article XI, Section 2, item 1j) nonetheless require the board to try "to find a mutually acceptable solution". The community has no standing to challenge a Board decision to accept GAC advice, thereby allowing GAC to capture some aspects of ICANN policy implementation. Regarding internal capture by stakeholders within an AC or SO, see Stress Test 33.	CCWG-Accountability proposals for community empowerment rely upon supermajority to veto ICANN budgets and strategic plans, and to remove ICANN Board director(s). A supermajority requirement is an effective prevention of capture by one or a few groups, provided that quorum requirements are high enough. Each AC/SO/SG may need improved processes for accountability, transparency, and participation that are helpful to prevent capture from those outside that community. These improvements may be explored in WS2. To prevent capture by governments, another proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to obligate trying to find a mutually agreeable solution only where GAC advice was supported by GAC consensus.
CONCLUSIONS: Existing measures would be inadequate.	Proposed measures would be adequate.

Stress Test #13: One or several stakeholders excessively rely on accountability mechanism to "paralyze" ICANN.	
Consequence(s): Major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
Current redress mechanisms might enable one stakeholder to block implementation of policies. But these mechanisms (IRP, Reconsideration, Ombudsman) are expensive and limited in scope of what can be reviewed. There are no present mechanisms for a ccTLD operator to challenge a revocation decision.	CCWG-Accountability proposals for community empowerment rely upon a supermajority to veto ICANN budgets and strategic plans and to recall the ICANN Board. A supermajority requirement is an effective prevention of paralysis by one AC/SO. However, some CCWG-Accountability proposals may make redress mechanisms more accessible and affordable to individual stakeholders, increasing their ability to block implementation of policies and decisions. Proposed improvements for Reconsideration and IRP include the ability to dismiss frivolous or abusive claims and to limit the duration of proceedings.
CONCLUSIONS: Existing measures seem to be adequate.	Improved access to Reconsideration and IRP could allow individuals to impede ICANN processes, although this risk is mitigated by dismissal of frivolous or abusive claims.

Stress Test #16: ICANN engages in programs not necessary to achieve its limited technical Mission. For example, ICANN uses fee revenue or reserve funds to expand its scope beyond its technical Mission, giving grants for external causes.
Consequence(s): ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to expand scope without community support. But as a result of the IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain the IANA contract with NTIA. The community was not aware of the ICANN Board's secret resolution to initiate negotiations to create NetMundial. There was no apparent way for the community to challenge/reverse this decision. The community has input in ICANN budgeting and Strategic Plan. Registrars must approve ICANN's variable registrar fees, though Registrars do not view this as an accountability measure. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	One proposed measure is empowering the community to veto ICANN's proposed strategic plan and budget. This measure could block a proposal by ICANN to increase its expenditure on initiatives the community believed were beyond ICANN's limited Mission. However, the entire budget would have to be rejected since there is no proposal for line-item veto. Another proposed mechanism is a challenge to a Board decision, made by an aggrieved party or the community as a whole. This would refer the matter to an IRP with the power to issue a binding decision. If ICANN made a commitment or expenditure outside the annual budget process, the IRP mechanism enables reversal of that decision. Another proposal is to amend ICANN Bylaws to prevent the organization from expanding its scope beyond ICANN's amended Mission, Commitments and Core Values. If ICANN's Board proposed to amend/remove these Bylaws provisions, another proposed measure would empower the community to veto a proposed Bylaws change. For Fundamental Bylaws, the community must approve changes proposed by the Board.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures in combination may be adequate.

Stress Test #18: Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's Board.	
Consequence(s): Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free online expression, for example.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
Current ICANN Bylaws (Section XI) give due deference to GAC advice, including a requirement to try "to find a mutually acceptable solution." This is required for any GAC advice, not just for GAC consensus advice. Today, GAC adopts formal advice according to its Operating Principle 47: "*consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.*"[22] But the GAC may at any time change its procedures to use majority voting instead of consensus.	One proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where GAC advice was supported by GAC consensus. The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN's Bylaws would require trying to find a mutually acceptable solution only on advice that had GAC consensus. GAC can still give ICANN advice at any time, with or without consensus.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures are adequate.

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[22] ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at
https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

Stress Test #22: ICANN Board fails to comply with Bylaws and/or refuses to accept the decision of a redress mechanism constituted under the Bylaws.	
Consequence(s): Community loses confidence in multistakeholder structures to govern ICANN.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to ignore Bylaws or an IRP decision. But as a result of the IANA stewardship transition, ICANN would no longer need to follow its Bylaws in order to retain the IANA contract with NTIA. Aggrieved parties can ask for Reconsideration of Board decisions, but this is currently limited to questions of whether process was followed. Aggrieved parties can file an IRP, but decisions of the panel are not binding on ICANN. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged. Another proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review such as an *Accountability and Transparency Review*. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. One proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to comply with its Bylaws or policies, the proposed IRP enables a reversal of that decision. If the ICANN Board were to ignore binding IRP decisions, the CMSM could seek enforcement in any court respecting international arbitration results. Another proposed measure empowers the community to recall the entire ICANN Board.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures in combination are adequate because the community has power to recall the Board.

Stress Test #23: ICANN uses RAA or Registry contracts to impose requirements on third parties, outside the scope of ICANN Mission. (e.g. registrant obligations.)

Affected third parties, not being contracted to ICANN, have no effective recourse.

Contracted parties, not affected by the requirements, may choose not to use their ability to challenge ICANN's decision.

This issue occurs in policy development, implementation, and compliance enforcement.

Consequence(s): ICANN may be seen as a monopoly leveraging power in one market (domain names) into adjacent markets.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
During policy development, affected third parties may participate and file comments. Affected third parties may file comments on proposed changes to registry and registrar contracts. Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies. Affected third parties (e.g. registrants and users) have no standing to challenge ICANN's management and Board on how it has *implemented* approved policies. If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.	A proposed measure to empower an aggrieved party (e.g. registrants and users) to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, based on standard for review in the amended Mission, Commitments and Core Values, or in established policies. Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. That IRP decision would be based on a standard of review in the amended Mission statement, including "ICANN shall have no power to act other than in accordance with, and as reasonably appropriate to achieve its Mission."
CONCLUSIONS: Existing measures are inadequate.	Proposed measures would be adequate.

Stress Test #26: During implementation of a properly approved policy, ICANN staff substitutes their preferences and creates processes that effectively change or negate the policy developed. Whether staff does so intentionally or unintentionally, the result is the same.	
Consequence(s): Staff capture of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
The reconsideration review mechanism allows for appeal to the Board of staff actions that contradict established ICANN policies. However, reconsideration looks at the process but not the substance of a decision. An ICANN Board decision could not be challenged by the community at-large, which lacks standing to use the IRP.	A proposed measure would allow the community mechanism to challenge a Board decision by reconsideration or referral to an IRP with the power to issue a binding decision. The standard of review would look at the revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process"
CONCLUSIONS: Existing measures are inadequate.	Proposed measures would be adequate.

10.9 Stress Test Category V: Failure of Accountability to External Stakeholders

Stress Test #14: ICANN or NTIA choose to terminate the Affirmation of Commitments.

Consequence(s): ICANN would no longer be held to its Affirmation commitments, including the conduct of community reviews and required implementation of review team recommendations.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days notice. As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments. But as a result of the IANA stewardship transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain its Affirmation of Commitments.	One proposed mechanism would give the CMSM standing to challenge a Board decision by referral to an IRP with the power to issue a binding decision. If ICANN cancelled the Affirmation of Commitments, the IRP mechanism could enable reversal of that decision. Another proposed measure is to import Affirmation of Commitments provisions into the ICANN Bylaws, and dispense with the bilateral Affirmation of Commitments with NTIA. Bylaws would be amended to include Affirmation of Commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in paragraph 9. If ICANN's Board proposed to amend the AoC commitments and reviews that were added to the Bylaws, another proposed measure would empower the community to veto that proposed Bylaws change. Some of the AoC commitments would be designated as Fundamental Bylaws, for which changes would require supermajority approval by the community mechanism. Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.
CONCLUSIONS: Existing measures are inadequate after NTIA terminates the IANA contract.	Proposed measures in combination are adequate.

Stress Test #15: ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN's failure to enforce contracts, or other actions.	
Consequence(s): Affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
As long as NTIA controls the IANA contract, ICANN could risk losing IANA functions if it were to move in order to avoid legal jurisdiction. Paragraph 8 of the Affirmation of Commitments requires ICANN to remain headquartered in the US, but the Affirmation of Commitments can be terminated by ICANN at any time. As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments. Article XVIII of ICANN Bylaws holds that ICANN "shall" maintain a US presence. But the ICANN Board alone can change the Bylaws, and the community has no binding power to block the changes.	Article XVIII of ICANN Bylaws holds that ICANN "shall" maintain a US presence. If ICANN's Board proposed to amend this Bylaws provision, one proposed measure would empower the community to block that proposed Bylaws change. If Article XVIII were designated as a Fundamental Bylaw, changes would require supermajority approval by the community mechanism.
CONCLUSIONS: Existing measures are inadequate once NTIA terminates IANA contract.	Proposed measures improve upon existing measures, and may be adequate.

Stress Test #25: ICANN delegates or subcontracts its obligations under a future IANA functions operator agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.
Consequence(s): Responsibility for fulfilling the IANA functions could go to a third party that was subject to national laws that interfered with its ability to execute IANA functions.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The present IANA contract ([link](#)) at C.2.1 does not allow ICANN to sub-contract or outsource its responsibilities to a 3rd party without NTIA's consent. NTIA could exert its control over ICANN's decision as long as it held the IANA contract but would not be able to do so after it relinquishes the IANA contract. Nor would NTIA's required principles for transition be relevant after transition occurred.	The CWG-Stewardship "recommends that an ICANN fundamental bylaw be created to define a separation process that can be triggered by a Special IFR if needed." There is no allowance in the CWG-Stewardship proposal to allow ICANN to sub-contract or outsource its IANA responsibilities to a 3rd party other than to PTI. If a separation process were initiated a new IANA functions operator could be selected only with involvement of the empowered community. The CCWG-Accountability is proposing to empower the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to follow Bylaws requirements to have the community define public interest, the IRP mechanism enables a reversal of that decision. The standard of review would look at the revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process." Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.
CONCLUSIONS: Existing measures would not be adequate after NTIA relinquishes the IANA contract.	Proposed measures are adequate to allow the community to challenge ICANN decisions in this scenario.

After publication of the CCWG-Accountability first draft proposal, new stress tests were suggested in the CCWG-Accountability discussion list and in the public comments received. Below are new stress tests added for publication in the CCWG-Accountability's second draft proposal:

Stress Tests were suggested by a scenario that might give ultimate authority to a state-based American court and allow it to make binding and precedent setting decisions about the interpretation of ICANN's mission. Two stress tests (27 and 28) were designed for this scenario.

Stress Test #27: Board refuses to follow community recommendation, triggering a "Member" to sue ICANN in the California courts. For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation but the ICANN board decides to reject the recommendation.	
Consequence(s): Gives ultimate authority to a state-based American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts. Member access to court relief is not available under ICANN's present structure.	The CCWG-Accountability proposal does not give any of the ACs or SOs the power to force ICANN's Board to accept and implement the ATRT recommendation. This is intentional, since the ICANN Board could cite cost or feasibility in deciding not to implement part of a Review Team recommendation. If the ICANN Board refused to implement the ATRT recommendation, the CMSM could challenge the board's decision with an IRP. An IRP panel of 3 international arbitrators (not a Court) could hold that the ATRT recommendation does <u>not</u> conflict with "substantive limitations on the permissible scope of ICANN's actions". The IRP decision cancels the board decision to reject the ATRT recommendation. Any court recognizing arbitration results could enforce the IRP decision. If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options: The CMSM could vote to recall the board. The CMSM could vote to block the very next budget or operating plan if it did <u>not</u> include the ATRT recommendation.
CONCLUSIONS: Not applicable to ICANN's existing accountability measures.	California courts would not interpret ICANN mission statement, so proposed measures are adequate to mitigate the risk of this scenario.

Stress Test #28: Board follows community recommendation, but is reversed by IRP decision, triggering a "Member" to sue ICANN in California courts.

For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation. ICANN board decides to accept the recommendation, believing that it does not conflict with ICANN's limited Mission Statement in the amended bylaws

Consequence(s): Gives ultimate authority to a state-based American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts. Member access to court relief is not available under ICANN's present structure.	An aggrieved party or the CMSM could challenge board's decision with an IRP. An IRP panel (not a Court) could determine that the ATRT recommendation <u>does</u> conflict with "substantive limitations on the permissible scope of ICANN's actions". The IRP panel could thereby cancel the board decision to accept and implement the ATRT recommendation. If the board ignored the IRP ruling and continued to implement its earlier decision, parties to the IRP could ask courts to enforce the IRP decision. Judgments of the IRP Panel would be _enforceable_ in any court that _accepts international arbitration results._ If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options: The CMSM could vote to recall the board. The CMSM could vote to block the very next budget or operating plan if it did <u>not</u> include the ATRT recommendation.
CONCLUSIONS: Not applicable to ICANN's existing accountability measures.	California courts would not interpret ICANN's mission statement because a CMSM claim would be subject to an exclusive binding decision by the IRP, so proposed measures are adequate.

Public commenters requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.

Stress Test #29: (Similar to #23) ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations.

ICANN also insists that legacy gTLD operators adopt the new gTLD contract upon renewal.

Consequence(s): ICANN effectively becomes a regulator of conduct and content on registrant websites.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. Affected registrants may file comments on the proposed gTLD contract renewals. Affected registrants and users have no standing to use IRP to challenge ICANN decision.	The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. The proposed IRP allows any aggrieved party to challenge ICANN's enforcement actions, resulting in a binding decision. The IRP challenge could assert that RAA provision was not the result of consensus policy and violates Mission Statement, Commitments and Core Values in amended bylaws. The IRP standard of review would look at revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process".
CONCLUSIONS: Existing measures would not be adequate to challenge ICANN enforcement decision.	Proposed measures would be adequate to challenge ICANN enforcement decision.

Stress Test #30: (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.
Consequence(s): ICANN effectively becomes a regulator of conduct and content on registrant websites.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. Affected registrars could challenge ICANN's termination decisions with Reconsideration or IRP, although the standard of review is only on whether ICANN followed process. Affected registrants and users have no standing to use IRP to challenge ICANN decision.	The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. The proposed IRP allows any aggrieved party to challenge ICANN's enforcement actions, resulting in a binding decision. IRP challenge could assert that RAA provision was not the result of consensus policy and violates Mission, Commitments and Core Values in amended bylaws. The IRP standard of review would look at revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process".
CONCLUSIONS: Existing measures would not be adequate to challenge ICANN enforcement decision.	Proposed measures would be adequate to challenge ICANN enforcement decision.

Several individuals requested evaluation of a stress test scenario where the individual designated by an AC/SO failed to follow their AC/SO voting instructions when communicating AC/SO vote for any of the community powers proposed by CCWG-Accountability.

Stress Test #31: "Rogue" voting, where an AC/SO vote on a community power is not exercised in accord with the express position of the AC/SO.	
Consequence(s): Voting on a community power would be challenged as invalid, and the integrity of voting could be questioned more broadly.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
AC/SO community powers are not available under ICANN's Bylaws.	An AC/SO could develop internal processes to ensure that any vote communicated would match the AC/SO voting instructions.
	If an AC/SO vote communicator voted against the instructions of their AC/SO, the voting rules for CMSM could specify procedures to invalidate a vote:
	If any elected AC/SO officer is aware that the person designated to communicate the AC/SO vote did not follow AC/SO instructions, an AC/SO officer could publicize this issue to ICANN staff and to all other AC/SO communities.
	After notice, the results of community vote would be set aside, pending correction of the problem by the AC/SO. Correction might involve giving more explicit instructions to the vote communicator, or replacing the person in that role.
	After the problem has been remedied, another round of voting would occur.
CONCLUSIONS:	
Not applicable to ICANN's existing accountability measures.	Proposed measures would be adequate to avoid "rogue voting" problems.

There are four stress test items suggested in NTIA Secretary Larry Strickling's statement of 16-Jun-2015 (link):

NTIA-1: Test preservation of the multistakeholder model if individual ICANN AC/SOs opt out of having votes in community empowerment mechanisms.

NTIA-2: Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an AC/SO.

NTIA-3: Barriers to entry for new participants.

NTIA-4: Unintended consequences of "operationalizing" groups that to date have been advisory in nature (e.g. GAC)

Each of these NTIA stress tests is shown below.

Stress Test #32: (NTIA-1) Several AC/SOs opt-out of exercising community powers (blocking budget, blocking op plan, blocking changes to bylaws, approving changes to fundamental bylaws, recalling board members)	
Consequence(s): ICANN's multistakeholder model would be in question if multiple stakeholders did not participate in community powers.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
AC/SO community powers are not available under ICANN's Bylaws.	In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to exercise community powers.
	The SSAC and RSSAC said they don't intend to exercise voting in community powers, but that does not remove these ACs from ICANN's multistakeholder process. The SSAC and RSSAC would continue advising the board and community on matters relevant to them. Other AC/SOs can ask for SSAC/RSSAC advice before they exercise community powers.
	The SSAC and RSSAC could later decide to exercise community mechanism voting rights that were provided in the bylaws, or request Bylaws amendments to enable this.
	There may be instances where only 2 or 3 AC/SOs exercise their community mechanism powers, but their participation would still represent global stakeholders as long as GNSO, ccNSO, ALAC and ASO were among the voters.
CONCLUSIONS:	
Not applicable to ICANN's existing accountability measures.	ICANN's multistakeholder model would be preserved, even if multiple AC/SOs decided not to exercise the new community powers.
Stress Test #33: (NTIA-2) Participants in an AC/SO could attempt to capture an AC/SO, by	

arranging over-representation in a working group, in electing officers, or voting on a decision.

Consequence(s): Internal capture, whether actual or perceived, would call into question ICANN's credibility in applying the multistakeholder model.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
ICANN's Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption. AC/SOs can revise their charters and operating procedures if they see the need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments. If a 'captured' AC/SO sent advice /policy to the board, it is not clear how disenfranchised AC/SO members could challenge the board decision to follow that advice/policy.	ICANN's Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption. AC/SOs can revise their charters and operating procedures if they see a need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments. If a 'captured' AC/SO sent advice /policy to the board, a disenfranchised AC/SO could challenge the board decision to follow that advice/policy, using reconsideration or IRP. The standard of review would be ICANN's amended bylaws, including a requirement that policies "are developed through a bottom-up, consensus-based multistakeholder process"
CONCLUSIONS: Existing accountability measures are not likely to be adequate.	Proposed accountability measures are more likely to be adequate.

Stress Test #34: (NTIA-3) Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.	
Consequence(s): Barriers to entry, whether actual or perceived, would call into question ICANN's credibility in applying the multistakeholder model.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
ICANN's Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes. Affirmation of Commitments requires period reviews of Accountability and Transparency, including "(d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community;" ICANN's Ombudsman might help new entrants to join AC/SOs.	ICANN's Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes. Affirmation of Commitments requires periodic reviews of Accountability and Transparency, including "(d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community;" ICANN's Ombudsman might help new entrants to join AC/SOs. CCWG proposes a new Core Value in ICANN's Bylaws, requiring ICANN to employ "open, transparent and bottom-up, private sector led, multistakeholder policy development processes that seek input from the public, for whose benefit ICANN shall in all events act". This would be the standard of review for IRPs that could be brought by anyone encountering barriers to entry to an AC/SO.
CONCLUSIONS: Existing accountability reviews can help erode barriers to entry, though not in real-time.	Proposed changes to Core Values and IRP could provide faster solutions to barriers encountered by new entrants.

Stress Test #35: (NTIA-4) Unintended consequences of "operationalizing" groups that formerly only gave advice to the ICANN board. (for example, the GAC)

Consequence(s): An AC that previously gave only advice on a narrow scope of issues could affect voting on community powers that extend beyond that narrow scope.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Advisory Committees (ACs) have no community powers or voting rights under ICANN's Bylaws. That said, ICANN has given significant deference to GAC advice in the new gTLD program, resulting in significant effects on operations for new gTLD registries and registrars.	In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to exercise community powers. While an AC such as the GAC could expand its scope of influence by voting on community powers, there are several ways that CCWG proposed to reduce GAC's ability to affect ICANN operations: Per Stress Test 18 and the proposed Bylaws change, GAC advice would obligate ICANN to try to "find a mutually acceptable solution" only when the GAC provides consensus advice. In Core Values, we say the Private Sector leads the multistakeholder process. In Core Values, we restrict ICANN's scope of activities. For the Affirmation of Commitments reviews, the GAC Chair would no longer approve/appoint review team members. The new IRP gives community ability to overturn a Board decision to accept GAC advice that goes against the Mission and Core Values in the amended bylaws.
CONCLUSIONS: Existing accountability measures have already given advisory committees significant influence over ICANN operations.	Proposed accountability measures would treat ACs as multi-equal stakeholders in exercising community powers, while also reducing the GAC's ability to affect ICANN operations.

The ICANN board sent a letter on 20-Jun-2015 with 156 questions regarding impact and implementation testing of CCWG proposals. (link)   Two questions included requests for stress testing the CCWG proposal for a membership-based model:

> What unintended consequences may arise from empowering (e.g., approval rights, etc.) entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members or the community as a whole and have stress tests been conducted for each of these consequences?

> What are the risks associated with empowering members to bring lawsuits against ICANN, each other and other parties and have stress tests been conducted for reach of these situations?

Both scenarios are addressed in Stress Test 36:

Stress Test #36: Unintended consequences arising from empowering entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members, or the community as a whole.	
Consequence(s): An entity could exercise statutory powers accorded to members under California law, and pursue legal actions that would harm interests of the ICANN community.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
ACs and SOs have no joint community powers or voting rights under ICANN's Bylaws. ICANN's Bylaws do not recognize any members as defined under California Nonprofit Public Benefit Corporation law.	CCWG proposes that each AC and SO may exercise voting on enumerated community powers. No other individuals or entities could exercise these powers. These powers require supermajority voting that prevents any one AC/SO from advancing its interests against the interests of the broader community. CCWG proposes to have the CMSM as the Sole Member of ICANN. Only the CMSM could acquire legal status and rights of a Member, and so legal action would only be brought if supported by the ACs and SOs participating in the CMSM, and a high threshold could be required. Individuals and entities – including ACs and SOs – could not become members. They could not acquire statutory rights given to members under California law, and could not bring suits against ICANN.

11. Items for Consideration in Work Stream 2

The CCWG-Accountability Charter states that:

In the discussions around the accountability process, the CCWG-Accountability will proceed with two Work Streams:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;

- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

While Work Stream 2 is not necessary to be implemented or committed to before the transition takes place, the Charter insists that they should remain firmly within the scope of the CCWG-Accountability. The items listed below should therefore be considered as no less important than the Work Stream 1 items.

11.1 Commitment to Work Stream 2

Concerns were raised within the CCWG-Accountability about the incentives for ICANN to implement Work Stream 2 proposals when they are finalized after the IANA Stewardship Transition has taken place. The CCWG-Accountability recommends an interim Bylaw provision to ensure ICANN's commitment, noting that such provisions have been successfully used in the past.[23]

> **Recommendation:** The CCWG-Accountability recommends that the Board adopt a transitional provision in its Bylaws which would commit ICANN to implement the CCWG-Accountability recommendations, and task the group with creating further enhancements to ICANN's accountability including, but not limited to the following list of issues (see below). This transitional provision must

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[23] ICANN has, where appropriate, used transitional provisions within its Bylaws to identify issues that are necessary to address on a transitional basis, but will expire upon the occurrence of another event. The broadest use of a transitional provision was in 2002, after the large ICANN Evolution and Reform effort, which made commitments to future occurrences such as a new MoU between ICANN and a group of Regional Internet Registries at the time when new obligations would come into force for the ASO, or obligations that would be taken on by the ccNSO once formed. See https://www.icann.org/resources/unthemed-pages/Bylaws-2002-12-15-en#XX.

There is also precedent for the use of transitional terms after the GNSO was restructured, and the Board seat selected by the At-Large Community was implemented.

be incorporated in the Bylaws as part of Work Stream 1, prior to the IANA Stewardship Transition.

The language of this transitional Bylaw provision should provide to CCWG-Accountability Work Stream 2 recommendations, when supported by Full consensus or consensus as described in the CCWG-Accountability Charter, and endorsed by the Chartering organizations, similar status to recommendations from AoC Review Teams.[24] The Board's decision would be subject to challenge through enhanced Reconsideration and Independent Review processes.

11.2 Items for Consideration in Work Stream 2

During the course of its deliberations, the CCWG-Accountability encountered several items that it considered should be resolved as part of Work Stream 2. The list at the date of this report is as follows:

- Refining the **operational details** of Work Stream 1 proposals, including but not limited to:
  - Establishing rules of procedure for the enhanced Independent Review Process.
  - Improving ICANN's budgeting and planning process to guarantee the ability for the community to have input, and for that input to be given due consideration.
  - Defining ICANN Community Forum practical modalities.
  - Clarifying understanding of the fiduciary duties of Board Directors and related expectations concerning Director behavior for the Board.
- Further assessing enhancements to **governments participation** in ICANN.
- Considering the issue of **jurisdiction** as described in Section 11.3 below.
- Enhancing **SO and AC accountability** (see Section 8.3).
- Instituting a **culture of transparency** within the ICANN organization:
  - Limiting ICANN's ability to deny transparency and disclosure requests.
  - Enhancing the Ombudsman's role and function.
  - Enhancing ICANN's whistleblower policy.
  - Increasing transparency about ICANN interactions with governments.
- Defining security **audits** and certification requirements for ICANN's IT systems.
- Considering improvements to **diversity** in all its aspects at all levels of the organization (see Section 8.1).
- Defining the modalities of how ICANN integrates **human rights** impact analyses, within its mission.

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[24] The transitional Bylaw provisions will require the ICANN Board to consider approval and begin implementation of review team recommendations within six months.

11.3 Jurisdiction: A Multi-Layered Issue

Jurisdiction directly influences the way ICANN's accountability processes are structured and operationalized. The fact that ICANN today operates under the legislation of the state of California grants the corporation certain rights and implies the existence of certain accountability mechanisms but also imposes some limits with respect to the accountability mechanisms it can adopt. The topic of jurisdiction is, as a consequence, of relevance for the CCWG-Accountability. In particular, a question one may ask to frame the discussion is, "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?"

Current situation:

ICANN is a public benefit corporation incorporated in California and subject to California state laws applicable U.S. federal laws and both state and federal court jurisdiction. ICANN is also a tax exempt entity under U.S. federal tax law.

In addition, ICANN is subject to a provision in paragraph 8 of the Affirmation of Commitments signed in 2009 between ICANN and the U.S. Government, through its Commerce Department, as follows:

> *8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.*

ICANN's Bylaws also state that its principal offices shall be in California as follows:

> *ARTICLE XVIII: OFFICES AND SEAL*
>
> **Section 1. OFFICES**
>
> The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.
>
> ICANN also has offices in other countries and operates in other regions of the world and is subject to the laws of the jurisdictions in which it has offices and operates.

A Multi-Layered Issue:

The CCWG-Accountability has acknowledged that jurisdiction is a multi-layered issue and has identified the following "layers":

1. **Place and jurisdiction of incorporation & operations, including governance of internal affairs, tax system, human resources, etc.**

   Associated requirements:

a) Strong corporate governance legislation, providing efficient accountability,

b) At the same time enabling flexibility so that the multistakeholder model can be translated into this legal framework.

2. **Jurisdiction of places of physical presence.**

Associated requirements:

a) Places of physical presence need to provide stable labor legal frameworks (to hire staff)

b) Some level of flexibility for visas (to accommodate international staff and travel by community members)

c) Physical presence should also take into account security concerns, both for the sake of staff as well as for operations.

3. **Governing law for contracts with registrars and registries and ability to sue and be sued in a specific jurisdiction about contractual relationships.**

Associated requirements:

a) Stable and predictable legal regime

b) Affordability of legal actions for parties other than ICANN (both in terms of costs and in terms of understanding the legal system)

c) Balancing the need for level playing field amongst contracted parties across the globe and the necessity of each contracted party to comply with national legislation

4. **Ability to sue and be sued in a specific jurisdiction for action & inaction of staff, and for redress and review of Board Decisions, IRP, and other Accountability and Transparency issues, including the Affirmation of Commitments**

Associated requirements:

a) On the one hand, some stakeholders consider that the ability to enforce the accountability mechanisms in front of a court are essential.

b) On the other hand, other stakeholders do not find acceptable that the legal system of a single country would play such a role in ICANN's accountability framework. Their requirement would be to avoid as much as possible the use of any single country's legal system.

5. **Relationships with the national jurisdictions for particular domestic issues (ccTLDs mangers, protected names either for international institutions or country and other geographic names, national security, etc.), privacy, freedom of expression**

Associated requirements:

    a)   No specific jurisdiction should be in a position to over-rule domestic jurisdictions when dealing with particular domestic issues (for example jurisdiction of incorporation interfering with a decision regarding a specific ccTLD policy).

    b)   Some commenters have touched upon the possibility of tailor-made host country agreements.

6. Meeting NTIA requirements

An overarching requirement of the CCWG-Accountability is represented by the criteria set by the NTIA at the outset of the IANA Stewardship Transition.

Associated requirements:

    a)   Support and enhance the multistakeholder model

    b)   Maintain the security, stability, and resiliency of the Internet DNS

    c)   Meet the needs and expectation of the global customers and partners of the IANA services

    d)   Maintain the openness of the Internet

    e)   The proposal cannot replace the NTIA role with a government-led or an inter-governmental organization solution.

Initial gap assessment based on current CCWG-Accountability proposals:

At this point of the work of the CCWG-Accountability, taking into account the comments received, the following issues have been identified for further investigation:

- Requirement 4 (ability to sue and be sued to enforce Bylaws or accountability mechanisms): while some consider this requirement to be necessary, others would avoid as much as possible the use of any single country's legal system.

- Trade-off between CCWG-Accountability requirements and options under California law, particularly when discussing the community empowerment model.

- Whether IRP decisions against ICANN would be binding despite local jurisdiction decisions.

- Requirement 3 on governing law for contracts with registrars and registries may require further investigation.

While these issues require further investigation, the CCWG-Accountability has not yet conducted a substantive examination of alternative jurisdictions that would better fit its requirements. While some commenters suggest that incorporation of ICANN under other legal systems, such as Swiss not-for-profit, would be beneficial (yet the basis for their assumption remains uncertain), further analysis and deliberation is needed on a fact-based approach to be entertained during Work Stream 2.

Consideration of jurisdiction in Work Stream 2 will include:

- Confirming and assessing the gap analysis, clarifying all concerns regarding the multi-layer jurisdiction issue.

- Identifying potential alternatives and benchmarking their ability to match all CCWG-Accountability requirements them with the current framework.

- Consider potential Work Stream 2 recommendations based on the conclusions of this analysis.

The timeline considered for this work is consistent with the overall approach for Work Stream 2. A specific subgroup of the CCWG-Accountability will be formed and, while reporting to the CCWG-Accountability as a whole, tasked to undertake the steps described above. Two periods of public comments are envisaged, around ICANN55 and ICANN56. Recommendations will be submitted by ICANN57.

11.4 Work Plan for CCWG-Accountability Work Stream 2

The CCWG-Accountability has already undertaken a significant amount of work to define the scope of the various Work Stream 2 items. However, it is apparent that Work Stream 2 items are, in substance as well as timing, dependent upon the completion of Work Stream 1 items. As a consequence, the adoption of a work plan for Work Stream 2 cannot be completed until the ICANN54 Dublin meeting.

The initial plan, however, includes the following key milestones:

- **October 2015 (ICANN54):** Definition of scope of work and organization into subgroups.

- **October 2015 to end of January 2016:** Drafting of proposals by subgroup, under supervision by CCWG-Accountability.

- **End of January 2016 until early March 2016:** 40-day Public Comment period, including discussions during ICANN55 in Marrakech.

- **March until mid-May 2016:** Refinement of proposals by subgroups, under supervision by CCWG-Accountability.

- **Mid-May till end of June 2016:** Second 40-day Public Comment period, including discussions during ICANN56 in Latin America.

- **By end of July 2016:** Finalize proposals and deliver to Chartering Organizations. Obtain approval and deliver proposals to ICANN Board at ICANN57.

12. Implementation Plan and Timing

12.1 Timeline

The timeline below is a review of the CCWG-Accountability Work Stream 1 effort.
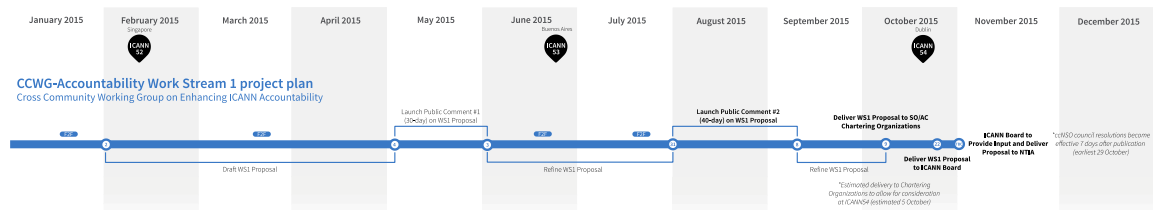
Full IANA Stewardship Transition and Enhancing ICANN Accountability timeline.

The subsequent timeline predominantly focuses on Work Stream 1 and its corresponding implementation. Work Stream 2 remains in basic form until there is more clarity on what accountability mechanisms will make up its scope.

A full view version of this timeline exists on the CCWG-Accountability Wiki.
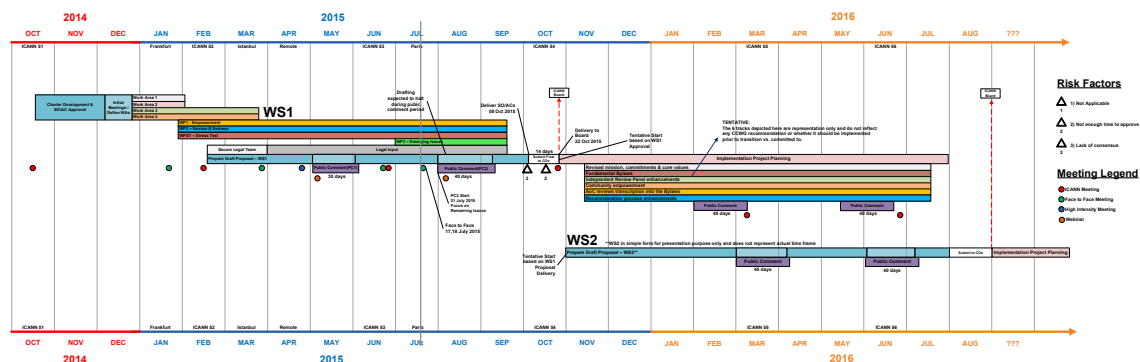
12.2 Next Steps

- The second Public Comment Report sets out the CCWG-Accountability's proposal after receiving a first round of public comment, having considered these inputs and engaged with the community during ICANN53. After the second Public Comment period closes, the CCWG-Accountability will reconvene to

finalize Work Steam 1 proposal(s) for submission to Chartering Organizations and eventually to the ICANN Board. Key milestones include:

- CCWG-Accountability reviews the second round of public comment and refines its proposal to prepare the final version.

- CCWG-Accountability delivers the final proposal to SOs/ACs for approval.

- CCWG-Accountability finalizes specifications for changes to the ICANN Bylaws.

- CCWG-Accountability prepares materials for ICANN54 and hosts several sessions to further inform the community on the final proposal.

- CCWG-Accountability delivers the final proposal to the ICANN Board.

- CCWG-Accountability certifies that changes to the Bylaws are consistent with its Work Stream 1 proposals.

- The CCWG-Accountability begins Implementation Oversight of Work Stream 1 items that are not Bylaw changes and begins its work on Work Stream 2.

12.3 Implementation

The CCWG-Accountability views the oversight of Work Stream 1 implementation as a key element of its mandate. Work Stream 1 accountability changes have to be implemented or committed to before any transition of IANA Stewardship from NTIA can occur. The CCWG-Accountability estimates that implementation should take about nine months with several concurrent tracks, some of which will require multiple public comment periods. The CCWG-Accountability has tentatively outlined the following six tracks for implementation of Work Stream 1:

- Revising Mission, Commitments and Core Values.

- Establishing Fundamental Bylaws.

- Completing the Independent Review Panel enhancements.

- Establishing Community empowerment mechanism and incorporation of the community Powers into the Bylaws.

- Implementing the Affirmation of Commitments reviews into the Bylaws.

- Completing the Reconsideration process enhancements.

A significant number of CCWG-Accountability Work Stream 1 recommendations involve updating the ICANN Bylaws. A best-case timeline for implementation can be found below. Indeed, apart from the IRP enhancements, most of the Work Stream 1 recommendations will be implemented through updating the ICANN Bylaws.

The CCWG-Accountability has initiated a process to kick-start the drafting of Bylaws changes to implement its proposals. This is being done to meet the expectation of the US Congress that the set of Bylaw changes necessary for the transition should be adopted prior to NTIA certifying the transition proposal. This process is currently underway and Bylaw drafting has started for those parts of the proposal that were widely supported during the first public comment:

- Incorporating AoC reviews into the Bylaws

- CWG-Stewardship dependencies, as appropriate

CCWG-Accountability expects to deliver a set of Bylaw changes in time for their approval by the ICANN Board in mid-November 2015.

Implementation of the IRP enhancements beyond the relevant Bylaw changes, will include:

- Selecting panelists
- Establishing the secretariat for the panel
- Defining the rules of procedure

CCWG-Accountability anticipates that this will occur over a 9-month period and this should be completed by July 2016.

12.4 Bylaws Drafting Process

The Bylaw drafting process has been developed following discussions with the ICANN community at the ICANN53 meeting in Buenos Aires, and considering comments by the ICANN Board and ICANN legal staff to find a common ground with the requirements of the CCWG-Accountability to identify an acceptable and appropriate process.

Requirements

Consistent with the CCWG-Accountability's working methods, the process for drafting Bylaws is based on the concept of requirements:

- All final decisions about Bylaws proposed to the ICANN Board would be approved by the CCWG-Accountability and/or the relevant CCWG-Accountability subgroup.

- The CCWG-Accountability's decisions and those of its subgroups would be informed by independent legal advice.

- ICANN legal staff provides legal advice to the ICANN Board.

- The drafting process will be based on a collaborative effort between the CCWG-Accountability and its subgroups, ICANN legal staff and the CCWG-Accountability's independent legal counsel. This collaborative effort shall be based on specifications derived from the first public comment proposal and subsequent public comment and other advice received.

Bylaw drafting process

1. Specifications for revised Bylaws will be developed based on the CCWG-Accountability's first public comment proposal, and the revisions to the proposal made in light of public comment received and other contributions, particularly during consultations held during ICANN53 Buenos Aires. The specification will be approved by the relevant CCWG-Accountability subgroup, while considering any advice provided by ICANN legal staff and independent legal counsel.

2. The CCWG-Accountability will be responsible for approving the specification and initiate the Bylaws drafting process. Note: the specification may be presented in the form of rough Bylaws drafts.

3. Initial Bylaws drafting and refining based on the specification will be undertaken by ICANN legal staff in collaboration with independent legal counsel.

4. Initial draft review: the relevant CCWG-Accountability subgroup, supported by both ICANN legal staff and independent legal counsel, will review the draft to ensure it meets the specification and intent of the CCWG-Accountability. The CCWG-Accountability subgroup will be responsible for approving the independent review.

5. An independent review will be conducted by the CCWG-Accountability's independent legal counsel (ICANN legal staff may also review), to assess compliance with the specification and ensure the absence of any unintended consequence.

6. The CCWG-Accountability subgroup will review the independent review advice and will make adjustments as necessary. The draft Bylaws and advice will be shared with the CCWG-Accountability and with the ICANN Board.

7. The full CCWG-Accountability members and participants will be responsible for deciding on any conflict of interpretation, and will be responsible for approving the Bylaw change for inclusion in a proposal that the draft be presented for public comment. In the situation where there is a conflict of interpretation, the full CCWG-Accountability will send the draft Bylaw back to the CCWG-Accountability subgroup and legal teams for further refinement.

The process of final approval of the Bylaws developed by this process would use the processes of the ICANN Board and the ICANN community.

Glossary

See also https://www.icann.org/resources/pages/glossary-2014-02-03-en.

ADVISORY COMMITTEE (AC)	An Advisory Committee (AC) is a formal advisory body made up of representatives from the Internet community to advise ICANN on a particular issue or policy area. Several are mandated by the ICANN Bylaws and others may be created as needed. Advisory Committees have no legal authority to act for ICANN, but report their findings and make recommendations to the ICANN Board. See also: https://www.icann.org/resources/pages/governance/bylaws-en/#XI.
AFFIRMATION OF COMMITMENTS (AOC)	The Affirmation of Commitments is the 2009 agreement that reaffirmed ICANN's independence, and the U.S. Dept. of Commerce's and ICANN's commitment to accountability and transparency, DNS security and stability, competition and consumer choice, international participation, periodic community reviews, and related activities.
AFFIRMATION OF COMMITMENTS REVIEWS (AOC REVIEWS)	Periodic community review of four key objectives are required under the AoC to assess and report on ICANN's progress toward 1) ensuring accountability, transparency (see "ATRT"), 2) preserving security, stability and resiliency of the DNS, 3) promoting competition, consumer trust and consumer choice, and 4) WHOIS policy;
ALAC — AT-LARGE ADVISORY COMMITTEE	The At-Large Advisory Committee (ALAC) is a body within the ICANN structure responsible for considering and providing advice on the activities of ICANN, as they relate to the interests of individual Internet users (the "At-Large" community). See also: http://www.atlarge.icann.org/.
ASO — ADDRESS SUPPORTING ORGANIZATION	The ASO advises the ICANN Board of Directors on policy issues relating to the allocation and management of Internet Protocol (IP) addresses. See also: https://aso.icann.org/.
ATRT – ACCOUNTABILITY AND TRANSPARENCY	Reviews required under the AoC to assess and report on ICANN's progress toward ensuring accountability and transparency by providing recommendations to enhance accountability and transparency activities throughout ICANN.

REVIEW	
BCG – BOARD GOVERNANCE COMMITTEE	The Board Governance Committee (BGC) is a committee responsible for conducting periodic evaluations of the performance of the Board and each of its members.
BOTTOM-UP PROCESSES	A fundamental principle of ICANN's decision-making process is that policy analysis and decisions progress from a stakeholder level (made up of directly affected parties, Internet users, companies and anyone else who wishes to participate in the process) to the ICANN Board level. The process provides the opportunity for open and equal participation at all levels, as practical and possible.
CCNSO — THE COUNTRY-CODE NAMES SUPPORTING ORGANIZATION	The Country Code Names Supporting Organization (ccNSO) is a body within the ICANN structure created for and by ccTLD managers. The ccNSO provides a forum for country code Top Level Domain (ccTLD) managers to meet and discuss topical issues of concern to ccTLDs from a global perspective. The ccNSO provides a platform to nurture consensus, technical cooperation and skill building among ccTLDs and facilitates the development of voluntary best practices for ccTLD managers. It is also responsible for developing and recommending global policies to the ICANN Board for a limited set of issues relating to ccTLDs, such as the introduction of Internationalised Domain Name ccTLDs (IDN ccTLDs). Membership in the ccNSO is open to all ccTLD managers responsible for managing an ISO 3166 country- code top-level domain. See also: http://ccnso.icann.org/.
CCTLD — COUNTRY CODE TOP LEVEL DOMAIN	A country code top-level domain (ccTLD) is an Internet top-level domain generally used or reserved for a country, a sovereign state, or a dependent territory. See also: http://www.iana.org/cctld/cctld.htm.
CCWG-ACCOUNT ABILITY	The Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened to design a proposal that ensures that ICANN's accountability and transparency commitments to the global Internet community are maintained and enhanced upon transition from the historical relationship with the U.S. Government. See also: https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability.
COMMUNITY MECHANISM AS	The Community Mechanism as Sole Member is the proposed corporate governance model that will enable SOs and ACs to exercise the powers

SOLE MEMBER	that will be vested in them after the IANA stewardship transition takes place.
COOPERATIVE ENGAGEMENT PROCESS (CEP)	As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an Independent Review Process (IRP), the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought before the IRP Panel. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review. Cooperative engagement is expected to be between ICANN and the requesting party, without reference to outside counsel. See Also: https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf.
CONSENSUS	Consensus is a form of decision-making employed by various supporting organizations within ICANN. The method to establish whether one has reached consensus differs per supporting organization, for example, the following method is used in the GNSO: Full consensus - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus. Consensus - a position where only a small minority disagrees, but most agree.[25]
CONSOLIDATED RIR IANA STEWARDSHIP PROPOSAL (CRISP) TEAM	The Consolidated RIR IANA Stewardship Proposal Team (CRISP Team) was established by the Internet Number Community through the Regional Internet Registries to produce a proposal for IANA activities related to the allocation of blocks of Internet Number Resources, the IANA Number Registries, administration of the special-purpose "IN-ADDR.ARPA" and "IP6.ARPA" DNS zones, and other related registry management tasks. See also: https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team.
CONSTITUENCY GROUPS	"Constituency Group" is a technical term referring to a group of stakeholders united around a particular common interest or perspective.
CWG-STEWARDSHIP	The Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship)

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[25] For those that are unfamiliar with ICANN usage, you may associate the definition of "Consensus" with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term "Consensus" as this may have legal implications.

	whose main goal is to produce a consolidated transition proposal for the elements of the IANA Functions related to the Domain Name System.
	See also: https://community.icann.org/x/37fhAg.
DIRECTORS	Natural persons who direct the activities and affairs of ICANN as a not-for-profit public benefit corporation and have fiduciary duties with respect to exercise of corporate power. Directors are distinguished from observers and liaisons, who can attend Board meetings but cannot vote.
	See also: https://www.icann.org/resources/pages/governance/bylaws-en/#VI.
DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP)	ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. A principal element of ICANN's approach to transparency and information disclosure is the identification of a comprehensive set of materials that ICANN makes available on its website as a matter of course.
DNS — DOMAIN NAME SYSTEM	The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address – just like a telephone number – which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.
FIVE-YEAR OPERATING PLAN	Five-Year Operating Plan is a means of planning and executing portfolios of ICANN work in alignment with the strategic objectives and goals articulated in the Strategic Plan. This plan serves as a link between strategy and the one year operating plan and budget, setting out planned outcomes (key success factors), means of measuring progress (key performance indicators), operational risks, dependencies and resources needed to accomplish goals.
FUNDAMENTAL BYLAWS	A Fundamental Bylaw is a Bylaw provision that requires both a high level of community approval and approval of the ICANN Board as described in Section 4 before it can be amended or removed.
GAC — GOVERNMENTAL ADVISORY	The GAC is an Advisory Committee comprising appointed representatives of national governments, multi-national governmental organizations and treaty organizations, and distinct economies. Its

COMMITTEE	function is to advise the ICANN Board on matters of concern to governments. The GAC operates as a forum for the discussion of government interests and concerns, including consumer interests. As an Advisory Committee, the GAC has no legal authority to act for ICANN, but reports its findings and recommendations to the ICANN Board. See also: https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee
GNSO — GENERIC NAMES SUPPORTING ORGANIZA-TION	The GNSO is the successor to the responsibilities of the Domain Name Supporting Organization (DNSO) that relate to the generic top-level domains. The GNSO is the body of six constituencies, as follows: the Commercial and Business constituency, the gTLD Registry constituency, the ISP constituency, the non-commercial users constituency, the registrar's constituency, and the IP constituency. See also: http://gnso.icann.org/en/.
GTLD — GENERIC TOP LEVEL DOMAIN	A generic top-level domain (gTLD) is one of the categories of top-level domains (TLDs) maintained by the Internet Assigned Numbers Authority (IANA) for use in the Domain Name System of the Internet. It is visible to Internet users as the suffix at the end of a domain name.
IANA — INTERNET ASSIGNED NUMBERS AUTHORITY	ICANN has performed the IANA (Internet Assigned Numbers Authority) functions on behalf of the global Internet community since 1998. The IANA functions include: the maintenance of the registry of technical Internet protocol parameters; the administration of certain responsibilities associated with Internet DNS root zone and the allocation of Internet numbering resources. See also: http://www.iana.org/.
IANA STEWARDSHIP TRANSITION COORDINATION GROUP (ICG)	The IANA Stewardship Transition Coordination Group (ICG) was formed to coordinate the development of a proposal among the communities affected by the IANA functions. The creation of the ICG was initiated and facilitated by ICANN, and the membership of the ICG has been defined by the Internet communities participating in it. The groups' sole deliverable is a proposal to the NTIA recommending a transition plan of NTIA's stewardship of IANA functions to the Internet community, consistent with the key principles outlined in the NTIA announcement on March 14, 2014. See also: https://www.icann.org/en/stewardship/.
IANAPLAN WORKING GROUP	The IETF established the IANAPLAN Working Group (IANAPLAN WG) to produce a proposal for the transition of IANA functions related to the maintaining of the codes and numbers contained in a variety of Internet protocols developed by the IETF. See also: http://www.ietf.org/iana-transition.html.

ICANN — THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS	The Internet Corporation for Assigned Names and Numbers (ICANN) is not-for-profit public benefit corporation that operates internationally and has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions. Originally, the Internet Assigned Numbers Authority (IANA) and other entities performed these services under U.S. Government contract. ICANN now performs the IANA function. As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition; to achieving broad representation of global Internet communities; and to developing policy appropriate to its Mission through bottom-up, consensus-based processes. See also: https://www.icann.org/.
ICANN COMMUNITY FORUM (ICF)	The ICANN Community Forum is a forum where the exercise of any of the community powers is discussed across the whole ICANN community – before the power under consideration is used. This discussion phase would help the community reach well-considered conclusions about exercising its new powers, and would ensure that decisions were taken on the basis of shared information as well as what was known within the individual decision-making processes of the SOs and ACs that cast votes in the Community Mechanism as Sole Member proposed model.
IETF — INTERNET ENGINEERING TASK FORCE	The Internet Engineering Task Force (IETF) is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. It is open to any interested individual. The IETF develops Internet Standards and in particular the standards related to the Internet Protocol Suite (TCP/IP).
INDEPENDENT REVIEW PROCESS (IRP)	The Independent Review Process (IRP) is a process for independent third-party review of Board actions or inactions alleged by an affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws.
INDEPENDENT REVIEW PROCESS PANEL (IRP PANEL)	Independent Review Process Panel (IRP Panel) is an independent panel charged with reviewing actions of the ICANN Board contested under the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws (each such process an Independent Review Process (IRP)). See also: https://www.ietf.org/.
INTERNET PROTOCOL (IP)	The communications protocol underlying the Internet, IP allows networks of devices to communicate over a variety of physical links. Each device or service on the Internet has at least one IP address that uniquely identifies

	it from other devices or services on the Internet. An IP address is the numerical address and DNS naming uses user-friendly names to locate the devices and services.
MULTI-STAKEHOLDER APPROACH	The Multistakeholder Approach is an organizational framework or structure for governance and policymaking which aims to bring together all stakeholders to collaborate and participate in the dialogue, decision-making and implementation of solutions to identified problems or goals. The Multistakeholder Approach at ICANN is comprised of a diverse set of stakeholders with an interest in Internet numbering, naming and protocols from around the world who have organized into various Supporting Organizations, Constituencies and Advisory Committees, and agree to operate in an open, bottom-up, consensus-driven, and transparent manner.
NETMUNDIAL PRINCIPLES	The NETmundial meeting, which took place in Sao Paolo, Brazil on 23-24 April 2014, was the first multistakeholder-designed event to focus on the future of Internet governance. NETmundial identified a set of common principles and important values that contribute to an inclusive, multistakeholder, effective, legitimate, and evolving Internet governance framework, and recognized that the Internet is a global resource which should be managed in the public interest. See also: http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf.
NOMINATING COMMITTEE (NOMCOM)	The Nominating Committee (NomCom) is an independent committee tasked with selecting eight members of the ICANN Board of Directors, five members of the At-Large Advisory Committee, three members of the Generic Names Supporting Organization (GNSO), and three members of the Country-Code Names Supporting Organization (ccNSO). See also: https://www.icann.org/resources/pages/nomcom-2013-12-13-en.
NTIA – U.S. DEPARTMENT OF COMMERCE NATIONAL TELECOMMUN-ICATIONS AND INFORMATION ADMINISTRATION	The U.S. Department of Commerce National Telecommunications and Information Administration (NTIA) is the Executive Branch agency that is principally responsible for advising the President of the United States on telecommunications and information policy issues. NTIA maintains a contract with ICANN for the technical coordination of the Internet's domain name and addressing system. In March 2014, NTIA announced its intent to transition out of its contractual role, with respect to the IANA Functions, and requested proposals from the ICANN multistakeholder community for that transition. See also: http://www.ntia.doc.gov/.
OMBUDSMAN	The ICANN Ombudsman investigates and addresses complaints brought

	by the ICANN community. The Ombudsman is independent, impartial, and neutral, a reviewer of facts and an investigator of complaints about unfairness. See also: https://www.icann.org/resources/pages/accountability/ombudsman-en.
PDP — POLICY DEVELOPMENT PROCESS	A set of formal steps, as defined in the ICANN Bylaws, to guide the initiation, internal and external review, timing and approval of policies needed to coordinate the global Internet's system of unique identifiers.
PRIVATE SECTOR	Private sector includes businesses, not-for-profit bodies, individual persons, non-governmental organizations, civil society and academic institutions.
RALOS – REGIONAL AT-LARGE ORGANIZATIONS	The At-Large community is structured into five Regional At-Large Organizations (RALOs). These organizations serve as the communication forum and coordination point, to promote and assure the participation of regional Internet user communities within ICANN activities as well as enhance knowledge and capacity building.
RECONSIDER-ATION PROCESS	Reconsideration Process is a mechanism to challenge ICANN staff action taken against ICANN policies, or ICANN Board actions taken without consideration of material information or based upon false or inaccurate information.
REGISTRAR	Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies that have been accredited by ICANN appears in the Accredited Registrar Directory.
REGISTRY	The "Registry" is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator; users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.
REVIEW MECHANISMS	A review mechanism is a process to assess how a decision or policy is being put in place. ICANN has a series of review mechanisms mandated in its Bylaws to ensure its accountability and transparency.
RIR — REGIONAL INTERNET	There are currently five RIRs: AfriNIC, APNIC, ARIN, LACNIC and RIPE NCC. These not-for-profit organizations are responsible for distributing and managing IP addresses on a regional level to Internet service

REGISTRY	providers and local registries.
ROOT SERVERS	The root servers contain the IP addresses of all the TLD registries – both the global registries such as .com, .org, etc. and the 244 country-specific registries such as .fr (France), .cn (China), etc. This is critical information. If the information is not 100% correct or if it is ambiguous, it might not be possible to locate a key registry on the Internet. In DNS parlance, the information must be unique and authentic.
ROOT SERVER SYSTEM ADVISORY COMMITTEE (RSSAC)	The Root Server System Advisory Committee ("RSSAC") advises the ICANN community and the ICANN Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. See also: https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en.
ROOT ZONE	The root zone is the central directory for the DNS, which is a key component in translating readable host names into numeric IP addresses. See Also: www.iana.org/domains/root/files.
SO — SUPPORTING ORGANIZATIONS	The SOs are the three specialized policy developments bodies that provide the ICANN Board of Directors with policy recommendations on issues relating to domain names (GNSO and CCNSO) and IP addresses (ASO).
SPONSOR	A Sponsor is an organization to which is delegated some defined ongoing policy-formulation authority regarding the manner in which a particular sponsored TLD is operated. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.
SSAC — SECURITY AND STABILITY ADVISORY COMMITTEE	The SSAC is the President's standing committee on the security and stability of the Internet's naming and address allocation systems. Their charter includes a focus on risk analysis and auditing. SSAC consists of approximately 20 technical experts from industry and academia as well as operators of Internet root servers, registrars, and TLD registries.

	See also: https://www.icann.org/groups/ssac.
STAKEHOLDER	A stakeholder is any individual or group affected by the actions of ICANN. Stakeholders at ICANN include Country Code top level domain name registries; generic top-level domain registries and registrars; regional internet registries who manage the regional distribution of Internet number resources including IP address and Autonomous System Numbers; the thirteen root name server operators; commercial interests - including those representing large and small businesses, intellectual property interests and providers of Internet and other communications services; non-commercial interests – including non-commercial users and not-for-profit organizations; governmental interests – including national governments, multi-national governmental organizations and treaty organizations, and distinct economies; technical experts from industry and academia; and Internet users worldwide.
STAKEHOLDER GROUPS	Stakeholder Groups represent a wide variety of individuals that compose the ICANN community. Stakeholder Groups function as caucuses, and are intended to facilitate the creation of new constituencies as well as self-growth and expansion.
STANDARD BYLAWS	A Standard Bylaw is a Bylaw that is not, by definition, a Fundamental Bylaw, and may be amended by the ICANN Board unless the community decides to object. The Bylaws as a whole (Standard and Fundamental) set out the structures and rules for governance and operations within ICANN.
STRESS TEST	Stress Testing is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. Stress tests have been used to analyse how certain ICANN and DNS ecosystem risks or contingencies can be mitigated by applying the accountability mechanisms available to the CCWG-Accountability.
TLD — TOP-LEVEL DOMAIN	TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (rightmost) ".", such as "net" in "www.example.net". The administrator for a TLD controls what second-level names are recognized in that TLD. The administrators of the "root domain" or "root zone" control what TLDs are recognized by the DNS. Commonly used TLDs include .com, .net, .edu, .jp, .de, etc.
WORK STREAMS	CCWG-Accountability Work Stream 1 has focused on mechanisms to enhance ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition. Work Stream 2 is focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the

| | IANA Stewardship Transition. |

Appendix A: Background

Background

This section includes an overview of the Enhancing ICANN Accountability & Governance process, and its foundation in the NTIA IANA Functions' Stewardship Transition.

Background On The NTIA IANA Functions' Stewardship Transition

On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked ICANN to convene a multistakeholder process to develop a proposal for the transition.

In making its announcement, NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model;

- Maintain the security, stability, and resiliency of the Internet DNS;

- Meet the needs and expectation of the global customers and partners of the IANA services;

- Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

The IANA Stewardship Transition Coordination Group (ICG) was formed in July 2014 to assemble and deliver through the ICANN Board to NTIA a transition proposal consistent with the key principles outlined in the NTIA announcement. The ICG is made up of 30 individuals representing 13 communities of both direct and indirect stakeholders of the IANA functions. Direct stakeholders are "direct customers" of the IANA functions, e.g. top-level domain registry operators, while indirect stakeholders are all those who benefit from performance of the IANA functions, e.g., businesses and end users.

In September 2014, the ICG published a Request for Proposals (RFP) to the three communities. The three operational communities with direct operational or service relationships with the IANA functions i.e. Domain Names, Number Resources and Protocol Parameters were asked to provide a formal response to the ICG regarding its community's use of the IANA functions, its existing, pre-transition arrangements, proposed post-transition oversight and accountability arrangements, and any anticipated transition implications.

Each of the three operational communities formed working groups to develop a proposal:

- **Domain Names:** Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship)

- **Number Resources:** Consolidated Regional Internet Registries (RIRs) IANA Stewardship Proposal Team (CRISP Team); and

- **Protocol Parameters:** IANAPLAN Working Group (IANAPLAN WG)

In January 2015, the ICG received a proposal from the Protocol Parameters community and a proposal from the Numbering Resources community; the Domain Names community finalized its proposal for the ICG in June 2015.

Following submissions from the three communities, the ICG is assessing the respective outputs and assembling a complete proposal for the transition. This will provide opportunities for additional input and comment.

Introduction To The Enhancing ICANN Accountability & Governance Process

As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to propose reforms that would see ICANN realize a level of accountability to the global multistakeholder community that is satisfactory in the absence of its historical contractual relationship with the U.S. Government. This contractual relationship has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.

Informed by community discussions held in March 2014 at ICANN's public meeting in Singapore, ICANN published a proposed process on Enhancing ICANN Accountability, with an opportunity for public dialogue and community feedback from 6 May – 27 June 2014, in addition to the comments received during the dedicated Enhancing ICANN Accountability session held on 26 June 2014 at the ICANN 50 meeting in London. The comments related to the development of the process were considered in the refinement of the second iteration of the process published on 14 August 2014. In response to community requests for additional time to review proposals and post questions and comments, ICANN provided an additional 21-day comment period from 6-27 September 2014.

The final Revised Enhancing ICANN Accountability: Process and Next Steps includes considering how ICANN's broader accountability mechanisms should be strengthened in light of the transition, including a review of existing accountability mechanisms such as those within the ICANN Bylaws and the Affirmation of Commitments.

Formation of the CCWG-Accountability

Following public comment periods and discussions on accountability, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened, designed and approved by a Drafting Team (DT) composed of five ICANN community groups. Further information, including document drafts and meeting transcripts of the Drafting Team that developed the CCWG-Accountability Charter (see Appendix B), is available on the CCWG-Accountability Wiki site.

The CCWG-Accountability Charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the Charter:

- Generic Names Supporting Organization (GNSO) on 13 November 2014

- At-Large Advisory Committee (ALAC) on 18 November 2014

- Country Code Names Supporting Organization (ccNSO) on 20 November 2014

- Governmental Advisory Committee (GAC) on 8 December 2014

- Address Supporting Organization (ASO) on 9 December 2014

- Security and Stability Advisory Committee (SSAC) on 6 July 2015

Composition of the CCWG-Accountability

The CCWG-Accountability consists of 162 people, organized as 28 members, appointed by and accountable to the CCWG-Accountability chartering organizations, 136 participants, who participate as individuals, and 99 mailing list observers. Each of the Chartering Organizations may appoint a minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures.

THE CCWG-ACCOUNTABILITY ALSO INCLUDES:

- 1 ICANN Board liaison who brings the voice of the Board and Board experience to activities and deliberations;

- 1 ICANN staff representative who provides input into the deliberations;

- 1 former ATRT member who serves as a liaison and brings perspective and ensures that there is no duplication of work;

- 2 ICG members who participate in the CCWG-Accountability, including two who serve as liaisons between the two groups.

Seven Advisors have also been appointed by a Public Experts Group (PEG) to contribute research and advice, and to bring perspectives on global best practices to enrich the CCWG-Accountability discussion, all while engaging with a broader network of accountability experts from around the world.

The CCWG-Accountability is open to all: anyone interested in the work of the CCWG-Accountability can join as a participant or observer. Participants may be from a chartering organization, from a stakeholder group or organization not represented in the CCWG-Accountability or currently active within ICANN, or self-appointed. For those who are merely interested to monitor the CCWG-Accountability conversations, there is the possibility to sign up as a mailing list "observer" which offers read-only access to the mailing list.

The group first met in December 2014 and has held weekly meetings since. It operates in a transparent environment: its mailing-lists discussions, meeting archives, drafts and correspondence are documented on a public wiki space.

Work Streams

Per the CCWG-Accountability Charter, the work of the CCWG-Accountability would proceed in two Work Streams defined as follows:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition

- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition

Methodology

This section describes the methodology through which the CCWG-Accountability developed and completed the Work Stream 1 proposal.

Defining Requirements for Work Stream 1

The primary goal of the CCWG-Accountability is to deliver proposals that would enhance ICANN's accountability towards all stakeholders. The first step in achieving this goal was to understand and describe the status quo. To do this efficiently, the CCWG-Accountability established four initial Work Areas:

- **Work Area 1:** Existing Accountability Mechanisms (including the Affirmation of Commitments reviews on accountability)

- **Work Area 2:** Review Input from Public Comment and Categorize Items into Work Streams 1 & 2 (Work Stream 1 & Work Stream 2)

- **Work Area 3:** Review Issues Identified by CWG-Stewardship

- **Work Area 4:** Identify Contingencies (especially in relation to Work Stream 1)

The four areas were populated with volunteer CCWG-Accountability members and participants who had dedicated mailing lists and wiki spaces to advance their work.

Work Area 1: Inventory of Existing Accountability Mechanisms

One of the first deliverables within the CCWG-Accountability was an inventory of existing accountability mechanisms on 15 December 2014, delivered just one week after the CCWG-Accountability first met. The inventory was the starting point of CCWG-Accountability's discussions about which ICANN accountability mechanisms should be enhanced to address the risks the group had identified, and where gaps would remain and the group would need to develop new mechanisms to mitigate against those risks.

Work Area 2: Assessment of Comments to Date

Another area of initial CCWG-Accountability work focused on a review of the collection of comments received during the development of the Enhancing ICANN Accountability process and assessed whether they were issues to address as part of Work Stream 1 or Work Stream 2. The group categorized the comments based on the following rationale:

- Work Stream 1 is designated for accountability enhancement mechanisms that must be in place or committed to, before IANA transition occurs.

- Work Stream 1 mechanisms are those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability would be implemented if it had consensus support from the community, even if it were to encounter ICANN

management resistance or if it were against the interest of ICANN as a corporate entity.

- All other consensus items could be in Work Stream 2, provided the mechanisms in Work Stream 1 are adequate to force implementation of Work Stream 2 items despite resistance from ICANN management and board.

In addition to categorizing the comments, the ATRT Expert reviewed the comments and noted, where relevant, a reference to ATRT recommendations. Work Area 2 was complete as of 15 January 2015.

Work Area 3: Interrelation with the CWG-Stewardship Work

The CCWG-Accountability also reviewed the accountability elements identified by the CWG-Stewardship. In light of the clear linkage between the works of the two groups, the CWG-Stewardship and CCWG-Accountability Co-Chairs agreed that it would be valuable for the CWG-Stewardship to provide the CCWG-Accountability with a list of issues it identified during its deliberations where the work of both groups may overlap. A robust collaboration was built between the two groups including leadership coordination call and exchange of letters.

In January 2015, the CCWG-Accountability extensively discussed the CWG-Stewardship list of issues, offered input and indicated that these avenues of work would be one of the focuses of CCWG-Accountability attention.

While the work was completed in March 2015, the collaboration was maintained throughout the end of their respective mandates.

Work Area 4: Stress Test and Contingencies Work Party

A final area of focus was on the identification the main stress tests and contingencies that the CCWG-Accountability would use to test the proposed mechanisms and solutions, once elaborated.

The goal of this group was to identify the main contingencies that CCWG-Accountability should use to test proposed mechanisms and solutions once they are elaborated. The group defined contingencies as consisting of:

- An event (threat) to the IANA Functions Contract;
- Its consequence, such as creating significant interference with existing policy or the policy development processes, and;
- What contingency plan, if any, is known to exist.

21 broad scenarios were initially identified, including for example, the impact of financial crisis in the domain name industry, capture by one or more stakeholders, and termination of the Affirmation of Commitments. A full list is available from the Work Area 4 webpage.

The group also received inputs from the ICANN Board Risk Committee on enterprise-wide risks identified within ICANN, as an input to its work. Furthermore, details of strategic risks that ICANN may face are identified in "ICANN Strategic Plan for fiscal years 2016-2020".

This work continues through the Stress Tests Work Party (ST-WP): During the Istanbul Meeting of the CCWG, bundled the stress testing into 5 Categories Financial Crisis or Insolvency, Failure to meet Operational Obligations, Legal / Legislative Actions, Failure in Accountability and Failure in Accountability to External Stakeholders) ; Post Istanbul, the ST-WP continued with regular review of the existing Stress Tests and continued with its identification of stress tests and their application. In reviewing the first public comment, there were an additional nine stress tests identified and included in the 2nd draft for public comment. Section 10 of this proposal details the 'to date' and ongoing work of the Stress Test Work Party.

Defining Work Stream 1 High Level Requirements

The Frankfurt face-to-face meeting on 19-20 January 2015 was a key turning point for the CCWG-Accountability: the group moved from an assessment phase into a development phase. As part of this development phase, the CCWG-Accountability mapped out Work Stream 1 requirements leading to a restructure of the group into two Work Parties:

- **Work Party 1:** Community Empowerment is considering powers for the community to hold ICANN to account, and to develop a consensus on the most appropriate mechanisms to allow the community to exercise these powers. WP1 will set out the necessary changes that would be required (e.g. Bylaws changes) to deliver these.

- **Work Party 2:** Review and Redress is considering enhancements to existing accountability and new mechanisms and the creation of a standard for review and redress, the goal is to develop a clearly articulated standard against which ICANN's actions are evaluated.

Work Party 1 and Work Party 2 were formed following the Frankfurt meeting in January 2015. Work Party 3 was formed after the end of the first public comment period in order to address those issues flagged by the community that had not been discussed previously by the CCWG-Accountability.

Work Party 1: Community Empowerment

A new working group was formed to consider proposed powers for the community to hold ICANN to account, and to develop a consensus on the most appropriate mechanisms (or structures) that would allow the community to exercise these powers.

Powers and mechanisms were defined as follows:

- Powers are actions the community should be able to take to maintain and improve ICANN's accountability;

- Mechanisms are the structures or processes by which the community exercises its powers.

Work Party 2: Review & Redress

A second new working group was tasked with considering enhancements to existing accountability mechanisms and the creation of new accountability mechanisms to allow for review and redress for those affected by ICANN's failure to carry out its mission

statement, and to hold ICANN accountable for carrying out its mission in compliance with agreed-upon standards.

Work Party 2 articulated the following principles to guide its work:

- Ensure that ICANN actions relate to issues that are within its stated mission and require ICANN to act consistent with clearly articulated principles;

- Ensure that the ICANN Board can be held to its Bylaws;

- Ensure that ICANN carries out its mission consistent with a binding statement of values/principles;

- Prevent scope/mission creep through bylaws changes, policy, policy implementation, contracts and/or other mechanisms.

Work Party 3: Emerging Issues

A third new working party was tasked with reviewing the feedback received in the first public comment period with regards to issues flagged by the community as not being already addressed by the discussions and the draft proposal published by the CCWG-Accountability. Three topics were identified as emerging from feedback after the first public comment period:

- Enhancement of SO/AC accountability as the first draft document was perceived to be centered in Board accountability only.

- Enhancement of Staff accountability so that the mechanisms being discussed might also be applicable to Staff's action or inaction.

- Enhancement of diversity within ICANN and especially with regards to that of the newly created bodies being proposed.

Building Blocks

In February 2015, the CCWG-Accountability identified four building blocks that would form the accountability mechanisms required to improve accountability.

Drawing a state analogy:

- Empowered community refers to the powers that allow the community i.e. the people to take action should ICANN breach the principles.

- Principles form the Mission, Commitments and Core Values of the organization i.e the Constitution.

- ICANN Board represents the executive entity the community may act against, as appropriate.

- Independent Review Mechanisms, i.e. the judiciary, confers the power to review and provide redress, as needed.

The accountability framework was compared to a cookbook populated with recipes for which the CCWG-Accountability would need to identify ingredients. A distinction was made between triggered actions i.e. triggered by the community and non-triggered i.e. part of a normal ICANN processes. A template was designed to structure and help identify ingredients. A set of criteria was also suggested to frame discussions.

Legal Advice

The CCWG-Accountability engaged two law firms to receive expertise on feasibility of its proposed frameworks and mechanisms, Adler & Colvin and Sidley Austin LLP. The legal advice was key to the CCWG-Accountability in formulating its recommendations.

The CCWG-Accountability Legal Subteam's rules of engagement and working methodologies are described in Appendix C.

After a successful first phase lead by the Legal Subteam, and in response to the need for increased agility in the interaction between the external lawyers and the working parties, it was decided that the Legal Subteam should be dissolved in order to provide a more agile and direct interaction with the independent counsel. Rules of engagement changed: placing the Co-Chairs in charge of certifying the assignments for the lawyers but the rest of the general procedural rules stand and all interactions with counsel continue to be on record, public and open to anyone for participation or observation.

Definitions & Scoping

The CCWG-Accountability scoped out and elaborated a problem statement along with definitions to help refine its understanding of the task it was entrusted with. The group endeavored to produce a definition of what accountability is, listed transparency, consultation, review mechanisms and redress mechanisms as criteria of accountability mechanisms.

As a general concept, the group proposed that accountability encompassed processes whereby an actor answers to others for the effects on them of its actions and omissions. For the CCWG-Accountability, then, accountability involves the processes whereby ICANN answers to its stakeholders for the impacts on those stakeholders of ICANN's decisions, policies and programs.

The group proposed that accountability is comprised four dimensions: One, transparency, means that an actor (ICANN) is answerable to its stakeholders by being open and visible to them. A second, consultation, means that the actor (ICANN) continually takes input from and explains its positions to the stakeholders. Third, review means that the actor's actions, policies and programs are subject to outside monitoring and evaluation. The fourth dimension, redress, means that the accountable actor makes compensations for any harms of its actions and omissions, for example, by means of policy changes, institutional reforms, resignations, financial reparations, etc.

Independence and checks and balances were identified as two key qualities of any accountability mechanism. The group defined "checks and balances mechanisms" as a series of mechanisms put in place to adequately address the concerns from the various interested parties in the discussion and decision process, as well as to ensure that the decision is made in the interest of all stakeholders. The group investigated two different non-exclusive views in order to assess independence: independence of persons participating in the decision process, and independence of a specific accountability mechanism with regards to other mechanisms.

The group flagged to whom should ICANN be accountable as an important component, and assembled a list of stakeholders which distinguished between affected parties and parties affecting ICANN. The following principles were agreed to guide CCWG-Accountability's activities:

- ICANN accountability requires that it comply with its own rules and processes (part of "due process", as a quality of fairness and justice);

- ICANN accountability requires compliance with applicable legislation, in jurisdictions where it operates;

- ICANN should be accountable to achieving certain levels of performance as well as security;

- ICANN should be accountable to ensure that its decisions are for the benefit of the public, not just in the interests of a particular set of stakeholders or ICANN the organization.

Appendix B: Charter

To download a PDF version of the Charter document, see [here](#).

Cross Community Working Group (CCWG) Charter

WG NAME:	CROSS COMMUNITY WORKING GROUP ON ENHANCING ICANN ACCOUNTABILITY	
Section I: Cross Community Working Group Identification		
Chartering Organizations:	ASO, GAC, ccNSO, ALAC, GNSO, SSAC	
Charter Approval Date:	The CCWG charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the charter: - GNSO on 13 November 2014 - ALAC on 18 November 2014 - ccNSO on 20 November 2014 - GAC on 8 December 2014 - ASO on 9 December 2014 - SSAC on 9 July 2015	
Name of WG Chair(s):	Mathieu Weill, Thomas Rickert, León Sanchez	
CCWG Workspace URL:	https://community.icann.org/display/acctcrosscomm/ CCWG+on+Enhancing+ICANN+Accountability	
CCWG Mailing List:	accountability-cross-community@icann.org	
Resolutions adopting the charter:	Title:	
	Ref # & Link:	

Section II: Problem Statement, Goals & Objectives and Scope

PROBLEM STATEMENT

The National Telecommunications and Information Administration (NTIA) has requested that ICANN "convene a multistakeholder process to develop a plan to transition the U.S. government stewardship role" with regard to the IANA Functions and related root zone management. In making its announcement, the NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model

- Maintain the security, stability, and resiliency of the Internet DNS

- Meet the needs and expectation of the global customers and partners of the IANA services

- Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

During discussions around the transition process, the community raised the broader topic of the impact of the change on ICANN's accountability given its historical contractual relationship with the United States and NTIA. Accountability in this context is defined, according to the NETmundial multistakeholder statement, as the existence of mechanisms for independent checks and balances as well as for review and redress.

The concerns raised during these discussions around the transition process indicate that the existing ICANN accountability mechanisms do not yet meet stakeholder expectations. Recent statements made by various stakeholders suggest that current accountability mechanisms need to be reviewed and, if need be, improved, amended, replaced, or supplemented with new mechanisms (see for instance ATRT recommendations) in light of the changing historic contractual relationship with the U.S. Government. Considering that the NTIA has stressed that it is expecting community consensus regarding the transition, a failure to meet stakeholder expectations with regards to accountability may create a situation where NTIA does not accept the IANA transition proposal as meeting its conditions. Thus reviewing ICANN's accountability mechanisms was considered to be crucial for the transition process.

GOALS AND OBJECTIVES

The CCWG-Accountability is expected to deliver proposals that would enhance ICANN's accountability towards all stakeholders.

The term stakeholder should be considered for the CCWG-Accountability in its wider acceptance, for instance by relying on the definition provided by the European Framework for Quality Management (EFQM): a person, group or organization that has a direct or indirect stake or interest in the organization because it can either affect the organization or be affected by it. This includes but is not limited to all ICANN SOs and ACs.

The goal is for the transition proposal regarding the IANA functions to be communicated to NTIA in a timeframe which is consistent with the expiration date of the current IANA Functions Contract, which is set at 30th September 2015. The CCWG-Accountability will therefore work as expeditiously as possible to identify those mechanisms that must be in place or committed to before the IANA Stewardship Transition in light of the changing historical contractual relationship with the U.S. Government (Work Stream 1) and those mechanisms for which a timeline for implementation may extend beyond the IANA Stewardship Transition (Work Stream 2).

In order to facilitate evaluation and adoption of its proposals, the CCWG-Accountability is expected to provide a detailed description on how its proposals would provide an adequate level of resistance to contingencies ("stress tests"), within the scope of each Work Stream.

Further, Work Stream 1 may identify issues that are important and relevant to the IANA stewardship transition but cannot be addressed within this time frame, in which case, there must be mechanisms or other guarantees that can ensure that the work would be completed in a timely manner as soon as possible after the transition.

SCOPE

The CCWG-Accountability will investigate accountability mechanisms regarding all of the functions provided by ICANN.

In the discussions around the accountability process, the CCWG-Accountability will proceed with two Work Streams:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;

- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

The CCWG-Accountability will allocate issues to Work Stream 1 and Work Stream 2. Some issues may span both Work Streams.

Suggested questions to be considered as part of Work Stream 1 include, but are not limited to:

- What would be the impact of NTIA's transition of the IANA Functions Contract in ensuring ICANN's accountability and what potential accountability concerns could this cause?

- What enhancements or reforms are required to be implemented or committed to before the NTIA Stewardship Transition?

- If the implementation of enhancements or reforms are to be deferred, how can the community be assured they will be implemented?

- How will these enhancements or reforms be stress-tested?

- What enhancements or reforms must be committed to before the NTIA Stewardship Transition, but could be implemented after.

- How will these enhancements or reforms be stress-tested?

- Suggested questions to be considered as part of Work Stream 2 include, but are not limited to:

- What enhancements or reforms can be addressed after the NTIA Stewardship Transition?

- If there are enhancements or reforms that can be addressed after NTIA disengages, what new or existing processes ensure they will be addressed and implemented?

- How will these enhancement or reforms be stress-tested?

- Suggested questions to be considered as part of both Work Stream 1 and 2 include, but are not limited to:

- What mechanisms are needed to ensure ICANN's accountability to the multi-stakeholder community once NTIA has disengaged from its stewardship role?

- What enhancements or reforms are needed to ICANN's existing accountability mechanisms?

- What new accountability reforms or mechanisms are needed?

- If accountability enhancements and reforms are made through changes to ICANN's Articles of Incorporation or By-Laws, how can the community be assured that those changes will be permanent, or not subject to unilateral amendment by the ICANN Board at a later date?

Other topics within scope of the work of the CCWG-Accountability include, but are not limited to [ATRT2 Recommendation 9, and more specifically 9.2](#).

Link with scope of Cross Community Working Group (CWG) to Develop an IANA Stewardship Transition Proposal on Naming Related Functions, and other groups developing the IANA Stewardship Transition proposal:

This process on Enhancing ICANN Accountability is taking place alongside a parallel and related process on the transition of the stewardship of the IANA functions through the CWG to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (hereinafter CWG-Stewardship). The CWG-Stewardship's scope is focused on the arrangements required for the continuance of IANA functions in an accountable and widely accepted manner after the expiry of the IANA Functions Contract. Accountability for the administration of the IANA functions (i.e., implementation and operational accountability) is not within the scope of the CCWG-Accountability as it is being dealt with by the CWG-Stewardship. Nevertheless, the two processes are interrelated and interdependent and should appropriately coordinate their work.

Other groups' (i.e. the numbers and protocol parameters communities, as outlined in the ICG Request for Proposals) proposals are intended to cover accountability issues related to the IANA Stewardship Transition, as well as issues already being considered by RIRs and IETF communities related in their respective areas in their engagement with ICANN. These issues are outside of scope of the CCWG-Accountability. The CCWG-Accountability will communicate with these groups to ensure that the CCWG-Accountability does not cover issues going beyond its scope.

Section III: Deliverables, Timeframes, and Reporting

DELIVERABLES

In working towards its deliverables, the CCWG-Accountability will, as a first step, establish and adopt a high-level work plan and tentative associated schedule, which should be publicly available. Both work plan and associated schedule, should take into account and be on activities under Work Stream 1 and Work Stream 2, and align the timelines for Work Stream 1 with the CWG-Stewardship and ICG timelines. In addition, the work plan and schedule should include time frames and methods for public consultation and expected date for submission of Draft Proposal(s) and Final Proposal(s) and revisions thereof for Work Stream 1 and 2, and should establish an expected date for submission of a Board Reports. In those cases where there are incompatibilities, these should be informed to the CWG-Stewardship and/or ICG and discuss ways to address the incompatibilities.

In the course of its work the CCWG-Accountability should update and refine it work plan and schedule regularly, and make the amended work plan and associated schedule publicly available.

The following non-exhaustive list of areas of work shall guide the working group in establishing a work plan. The CCWG-Accountability may add additional tasks at its sole discretion:

- Review of the guidelines given in this charter

- A definition/description of what differentiates a Work Stream 1 issue from a Work Stream 2 issue

- Identify which issues to go into Work Stream 1 and which issue to go into Work Stream 2

- Provide timeline of key dates and target date of proposal(s) for each Work Stream

- Review of existing accountability mechanisms, including a review of their efficiency based on prior work such as ATRT reviews and proposals for changes, enhancements, and additional mechanisms

- Identification of contingencies to be considered in the stress tests

- Analysis of core issues based on the current situation analysis, in relation to the CCWG-Accountability's goal and the IANA Stewardship Transition

- Identification of priorities to focus work on such issues with highest potential to enhance ICANN's accountability

- Review and analyze statements, responses and questions provided by the U.S. Department of Commerce

- Review of possible solutions for each Work Stream including stress tests against identified contingencies. The CCWG-Accountability should consider the following methodology for stress tests

- o Analysis of potential weaknesses and risks

- o Analysis existing remedies and their robustness

- o Definition of additional remedies or modification of existing remedies

- o Description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies

- o CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition.

Examples of individual items to be looked at may include:

- Affirmation of Commitments (see https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en)

- Expert Panel (ASEP) as one basis for its discussions

- 2013 Report of the Accountability & Transparency Review Team (see https://www.icann.org/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf)

- Operation and Viability of current Reconsiderations process

- Operation and Viability of the CEP (cooperative engagement process) within the Independent Review

- Independent Review Process (IRP) criteria

- Possible solutions including

- Input received in relation to solutions as part of earlier public comment periods (see https://www.icann.org/en/system/files/files/proposed-solutions-25aug14-en.pdf)

- Input received in CCWG-Accountability comment periods

REPORTING

The co-chairs of the CCWG-Accountability will brief the chartering organizations on a regular basis as well as their representatives on the ICG (particularly in relation to Work Stream 1).

Section IV: Membership, Staffing and Organization

MEMBERSHIP CRITERIA

Membership in the CCWG-Accountability, and in sub-working groups should these be created, is open to members appointed by the chartering organizations. To facilitate scheduling meetings and to minimize workloads for individual members, it is highly recommended that individual members participate in only one sub-working group, should sub-working groups be created. Each of the chartering organizations shall appoint a

minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures. Best efforts should be made to ensure that individual members:

- Have sufficient expertise to participate in the applicable subject matter (see for example https://www.icann.org/resources/pages/enhancing-accountability-faqs-2014-08-22-en#12 for areas identified for expertise);

- Commit to actively participate in the activities of the CCWG-Accountability on an ongoing and long-term basis; and

- Where appropriate, solicit and communicate the views and concerns of individuals in the organization that appoints them.

In appointing their members, the chartering organizations should note that the CCWG-Accountability's decision-making methodologies require that CCWG-Accountability members act by consensus, and that polling will only be used in rare instances and with the recognition that such polls do not constitute votes.

Chartering organizations are encouraged to use open and inclusive processes when selecting their members for this CCWG-Accountability. Best efforts should also be made to ensure that the CCWG-Accountability and any sub-working groups, if created, have representation from each of ICANN's five regions.

In addition, the CCWG-Accountability will be open to any interested person as a participant. Participants may be from a chartering organization, from a stakeholder group not represented in the CCWG-Accountability, or may be self-appointed. Participants will be able to actively participate in and attend all CCWG-Accountability meetings, work groups and sub-work groups. However, should there be a need for a consensus call or decision, such consensus call or decision will be limited to CCWG-Accountability members appointed by the chartering organizations.

All members and participants will be listed on the CCWG-Accountability's Wiki. The mailing list of CCWG-Accountability will be publicly archived. All members and participants in this process are required to submit a Statement of Interest (SOI) following the procedures of their chartering organization or, where that is not applicable the GNSO procedures may be followed or alternatively a statement should be provided which at a minimum should include name, whether the participant is representing a certain organization or company as part of his/her participation in this effort, areas of specific interest in relation to this effort, material relationship with other parties affected by ICANN and primary country of residence.

Volunteer co-chairs appointed by the chartering organizations, should a chartering organization decide to appoint a co-chair to the CCWG-Accountability, will preside over CCWG-Accountability deliberations and ensure that the process is bottom-up, consensus-based and has balanced multistakeholder participation. ICANN is expected to provide day-to-day project administration and secretariat support and, upon request of the CCWG-Accountability co-chairs, professional project facilitators or expert assistance.

In addition to the working relationship between groups developing the IANA Stewardship Transition proposal which is detailed in a subsequent section, the CCWG-Accountability will include a liaison from the ICANN Board, who would be an active member of the CCWG-Accountability, bringing the voice of the Board and Board experience to activities and deliberations. The CCWG-Accountability will also include an ICANN Staff representative to provide input into the deliberations and who is able to participate in this

effort in the same way as other members of the CCWG-Accountability. Should there be a need for any consensus call(s), neither the Board liaison nor the Staff representative would participate in such a consensus call.

GROUP FORMATION, DEPENDENCIES AND DISSOLUTION

Each of the chartering organizations shall appoint members to the CCWG-Accountability in accordance with their own rules and procedures.

WORKING RELATIONSHIP WITH THE ICG, THE CWG, AND OTHER GROUPS DEVELOPING THE IANA STEWARDSHIP TRANSITION PROPOSAL

The co-chairs of the CCWG-Accountability will discuss and determine, along with representatives of the ICG, the CWG-Stewardship, and other groups developing the IANA Stewardship proposal, the most appropriate method of sharing information and communicating progress and outcomes, particularly in relation to Work Stream 1. This could, for example, be done through regular Chairs calls. In particular, the co-chairs will agree the method by which the final Work Stream 1 deliverable of the CCWG-Accountability, the "Enhanced ICANN Accountability Related to the IANA Stewardship Transition Proposal" will be provided from the CCWG-Accountability to the ICG and CWG-Stewardship. The delivery of this Work Stream 1 Proposal is expected to occur following approval of the ICANN Board as outlined in Section V of this charter (see also https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d).

EXPERT ADVISORS

In addition to input from the community, the CCWG-Accountability is expected to solicit and consider the input from the up to seven Advisors selected by the Public Experts Group (PEG) to provide independent advice, research and identify best practices, at an early stage of its deliberations. In addition to input that is specifically solicited by the CCWG-Accountability, the CCWG-Accountability is also expected to give due consideration to any additional advice or input that the Advisors provide as part of the CCWG-Accountability deliberations. The Advisors are expected to contribute to the dialogue similar to other CCWG-Accountability participants. However, should there be a need for any consensus call(s), the Advisors would not participate in such a call.

In addition to the advisors selected by the PEG, the CCWG-Accountability may also identify additional advisors or experts to contribute to its deliberations in a similar manner as the Advisors selected by the PEG. Should additional costs be involved in obtaining input from additional advisors or experts, prior approval must be obtained from ICANN. Such a request for approval should at a minimum include the rationale for selecting additional advisors or experts as well as expected costs.

The CCWG-Accountability should integrate one Accountability and Transparency Review Team (ATRT) past participant to bring perspective and avoid duplication of work. Should there be a need for any consensus call(s), the ATRT Expert would not participate in such a consensus call (unless the ATRT Expert is also selected as a member by one of the chartering organizations).

The ICANN Staff assigned to the CCWG-Accountability will fully support the work of the CCWG-Accountability as requested by the co-chairs, including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate by the CCWG-Accountability. ICANN will provide access to relevant experts and professional facilitators as requested by the CCWG-Accountability Chairs. ICANN staff, in a coordinated effort with the CCWG-Accountability, will also ensure that there is adequate outreach to ensure that the global multistakeholder community is aware of and encouraged to participate in the work of the CCWG-Accountability.

Staff assignments to the Working Group: ICANN will provide sufficient staff support to support the activities of the CCWG-Accountability.

The CCWG-Accountability is encouraged to identify any additional resources beyond the staff assigned to the group it may need at the earliest opportunity to ensure that such resources can be identified and planned for.

Section V: Rules of Engagement

DECISION-MAKING METHODOLOGIES

In developing its Proposal(s), work plan and any other reports, the CCWG-Accountability shall seek to act by consensus. Consensus calls should always make best efforts to involve all members (the CCWG-Accountability or sub-working group). The Chair(s) shall be responsible for designating each position as having one of the following designations:

   a) Full Consensus - a position where no minority disagrees; identified by an absence of objection

   b) Consensus – a position where a small minority disagrees, but most agree

In the absence of Full Consensus, the Chair(s) should allow for the submission of minority viewpoint(s) and these, along with the consensus view, shall be included in the report.

In a rare case, the chair(s) may decide that the use of a poll is reasonable to assess the level of support for a recommendation. However, care should be taken in using polls that they do not become votes, as there are often disagreements about the meanings of the poll questions or of the poll results.

Any member who disagrees with the consensus-level designation made by the Chair(s), or believes that his/her contributions are being systematically ignored or discounted should first discuss the circumstances with the relevant sub-group chair or the CCWG-Accountability co-chairs. In the event that the matter cannot be resolved satisfactorily, the group member should request an opportunity to discuss the situation with the Chairs of the chartering organizations or their designated representatives.

SO and AC support for the Draft Proposal(s)

Following submission of the Draft Proposal(s), each of the chartering organizations shall, in accordance with their own rules and procedures, review and discuss the Draft

Proposal(s) and decide whether to adopt the recommendations contained in it. The chairs of the chartering organizations shall notify the co-chairs of the WG of the result of the deliberations as soon as feasible.

Supplemental Draft Proposal

In the event that one or more of the participating SO's or AC's do(es) not adopt one or more of the recommendation(s) contained in the Draft Proposal(s), the Co-Chairs of the CCWG-Accountability shall be notified accordingly. This notification shall include at a minimum the reasons for the lack of support and a suggested alternative that would be acceptable, if any. The CCWG-Accountability may, at its discretion, reconsider, post for public comments and/or submit to the chartering organizations a Supplemental Draft Proposal, which takes into accounting the concerns raised.

Following submission of the Supplemental Draft Proposal, the chartering organizations shall discuss and decide in accordance with its own rules and procedures whether to adopt the recommendations contained in the Supplemental Draft Proposal. The Chairs of the chartering organizations shall notify the Co-Chairs of the CCWG-Accountability of the result of the deliberations as soon as feasible.

Submission Board Report

After receiving the notifications from all chartering organizations as described above, the Co-Chairs of the CCWG-Accountability shall, within 10 working days after receiving the last notification, submit to the Chair of the ICANN Board of Directors and Chairs of all the chartering organizations the CCWG-Accountability Board Report, which shall include at a minimum:

a) The (Supplemental) Proposal as adopted by the CCWG-Accountability; and

b) The notifications of the decisions from the chartering organizations

c) Documentation of the process that was followed, including, but not limited to documenting the process of building consensus within the CCWG-Accountability and public consultations.

In the event one or more of the chartering organizations do(es) not support (parts of) the (Supplemental) Proposal(s), the Board Report shall also clearly indicate the part(s) of the (Supplemental) Final Proposal(s) which are fully supported and the parts which not, and which of the chartering organizations dissents, to the extent this is feasible.

Board consideration and interaction with CCWG-Accountability and chartering organizations

It is assumed that after submission of the Board Report, the ICANN Board of Directors will consider the Proposal(s) contained in this Report in accordance with the process outlined in its resolution of 16 October 2014 (see https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d):

Resolved (2014.10.16.17), the Board commits to following the following principles when considering the Cross Community Working Group Recommendations on Enhancing ICANN Accountability and Governance:

1. *These principles apply to consensus-based recommendations from the Cross Community Working Group on Enhancing ICANN Accountability and Governance.*

2. *If the Board believes it is not in the global public interest to implement a*

recommendation from the Cross Community Working Group on Enhancing ICANN Accountability and Governance (CCWG Recommendation), it must initiate a dialogue with the CCWG. A determination that it is not in the global public interest to implement a CCWG Recommendation requires a 2/3 majority of the Board.

3. *The Board must provide detailed rationale to accompany the initiation of dialogue. The Board shall agree with the CCWG the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

4. *The CCWG will have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.*

5. *If a recommendation is modified through the CCWG, it is returned back to the Board for further consideration. The CCWG is to provide detailed rationale on how the modification addresses the concerns raised by the Board.*

6. *If, after modification, the Board still believes the CCWG Recommendation is not in the global public interest to implement the CCWG Recommendation, the Board may send the item back to the CCWG for further consideration, again requiring a 2/3 vote of the Board for that action. Detailed rationale for the Board's action is again required. In the event the Board determines not to accept a modification, then the Board shall not be entitled to set a solution on the issue addressed by the recommendation until such time as CCWG and the Board reach agreement.*

Before submitting a modified recommendation to the ICANN Board of Directors, as envisioned under 5. of the Board resolution, the CCWG-Accountability will submit a Draft Supplemental Board Report to the chartering organizations containing:

a) The modified recommendations, and associated detailed rationale,

b) The Board decision, and associated detailed rationale

c) The recommendation as contained in the Board Report

Following submission of the Draft Supplemental Board Report, the chartering organizations shall discuss and decide in accordance with their own rules and procedures whether to adopt the modified recommendations contained in the report. The Chairs of the chartering organizations shall notify the co-chairs of the CCWG-Accountability of the result of the deliberations as soon as feasible.

After receiving the notifications from all chartering organizations, the co-Chairs of the CCWG-Accountability shall, within 10 working days after receiving the last notification, submit to the Chair of the ICANN Board of Directors and Chairs of all the chartering organizations the CCWG-Accountability Supplemental Board Report, which shall include at a minimum:

a) The modified recommendations, and associated detailed rationale.

b) The notifications of the decisions from the chartering organizations.

c) Documentation of the process that was followed, including, but not limited to documenting the process of building consensus within the CCWG-Accountability

and consultations with the chartering organizations.

If, in accordance with 6., the Board determines not to accept a modified recommendation, the CCWG-Accountability shall follow the procedure regarding the Supplemental Board Report, as just described, to reach agreement with the Board.

MODIFICATION OF THE CHARTER

In the event this charter does not provide guidance and/or the impact of the charter is unreasonable for conducting the business of the CCWG-Accountability, the co-chairs have the authority to determine the proper actions. Such action may, for example, consist of a modification to the Charter in order to address the omission or its unreasonable impact, in which case the Co-Chairs may propose such modification to the chartering organizations. A modification shall only be effective after adoption of the amended Charter by all chartering organizations, in accordance with their own rules and procedures.

PROBLEM/ISSUE ESCALATION & RESOLUTION PROCESSES

All participants are expected to abide by the ICANN Expected Standards of Behavior.

The co-chairs are empowered to restrict the participation of someone who seriously disrupts the working group. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place; in extreme circumstances, this requirement may be bypassed. This restriction is subject to the right of appeal as outlined above.

In the event that no consensus is reached by the CCWG-Accountability, the co-chairs of the CCWG-Accountability will submit a Report to the chartering organizations. In this Report the co-chairs shall document the issues that are considered contentious, the process that was followed and will include suggestions to mitigate prevention of consensus. If, after implementation of the mitigating measures consensus can still not be reached, co-chairs shall prepare a Final Report documenting the processes followed, including requesting suggestions for mitigating the issues that are preventing consensus from the chartering organizations. The Final Report will be submitted to the ICANN Board and the chartering organizations requesting closure of the CCWG-Accountability by the chartering organizations.

CLOSURE & WORKING GROUP SELF-ASSESSMENT

The CCWG-Accountability will consult with their chartering organizations to determine when it can consider its work completed. The CCWG-Accountability and any sub-working groups shall be dissolved upon receipt of the notification of the Chairs of the chartering organizations or their designated representatives.

Appendix C: Legal Counsel

Introduction

The CCWG-Accountability engaged two law firms to advise and counsel on their work. At the time of engagement, the CCWG-Accountability created a Legal Subteam to coordinate the work of the firms (the methodology for this group is further described below).

However, following the release of the Initial Draft Report in May 2015, the Legal Subteam was disbanded and the relationship with the law firms was redesigned: the CCWG-Accountability Chairs, not the Legal Subteam, would have direct contact with the firms and certify requests from the group. This new method of engagement allows for more direct consultation between the leadership and the law firms while at the same time allowing for better staff-supported costs tracking.

The requests and responses are tracked on the public Wiki space here: https://community.icann.org/x/OiQnAw.

Scope of work

Adler & Colvin will be the primary source of advice on corporate governance law and California not-for-profit law.

Sidley & Austin will be addressing international law and jurisdiction issues and any additional topic, as deemed appropriate.

Rules of Engagement

Law firms' coordination

Sidley & Austin will be the coordinating firm. Both firms are expected to work on the different issues assigned to them but Sidley Austin will coordinate how the complementary and collaborative work will be developed by the firms. It is of the essence for the success of the group to avoid having duplicate work that may impact in duplicate billable hours.

Private coordination meetings between lawyers would be acceptable and desirable. Information should flow freely between law firms.

Legal advice

While recognizing that Sidley Austin will be coordinating the work of both law firms with the aim of having a harmonized voice, law firms should state any deferring views they may have on any particular issue where this difference happens. Furthermore, should

this difference in views happen, each law firm will be required to provide the rationale for its deferring view.

During face-to-face meetings/calls, high-level legal advice should come in real time in reply to anyone raising a question within the Charter's scope.

Lawyers' involvement with Work Parties of the CCWG-Accountability will be key for next steps as it is them that are building the proposals that will be subject to public comment. Therefore, the Legal Subteam and the law firms should be able to provide these Work Parties with the tools they need to build feasible and legally viable proposals.

It is of the essence that as a next step the law firms analyze the different templates of powers and mechanisms attached herein in order to provide advice on whether those powers and mechanisms are legally viable in the first place and if not, which would be the alternatives. On a second phase, the law firms will be asked to advice on how these mechanisms and powers may be implemented in a holistic view of the accountability enhancement process.

Legal Subteam Methodology

When the Legal Subteam was active, the following methodology and working methods applied:

Legal Subteam and law firms' coordination

Law firms report to the CCWG-Accountability and receive instructions from the Legal Executive Subteam only. Legal Executive Subteam Members include: León Sánchez (lead); Athina Fragkouli; Robin Gross; David McAuley; Sabine Meyer; Edward Morris; Greg Shatan and Samantha Eisner (support);

Should there be the need for a call between the available members of the Executive Legal Subteam and any of the law firms in order to address urgent matters without the ability to setup a public call, it will always be required to provide proper debrief to the open list in a timely fashion. This method will be exceptional.

A single mailing list will be used. Legal Subteam members who are not listed in the Legal Executive Subteam have viewing rights to help streamline communications. Posting privileges should carry request privileges.

The mailing list remains open to any observers.

Activities and requests will be documented on the dedicated wiki page - https://community.icann.org/display/acctcrosscomm/Legal+SubTeam.

Mailing list

All formal requests, including follow-up clarifications, are made in writing and communicated through the public mailing list ccwg-accountability5@icann.org – public archives available at http://mm.icann.org/pipermail/ccwg-accountability5/.

Conference calls

All weekly calls are to be recorded, transcribed and archived in the public wiki space here: https://community.icann.org/x/kw4nAw.

Legal Subteam and law firms coordination call will be held on Wednesdays: 14:00-15:00 UTC Legal Subteam only - 15:00-16:00 UTC Legal Subteam and lawyers.

Calls are open to anyone.

Requests for advice

No individual outside the Executive Legal Subteam should send requests to law firms.

Law firms are to alert the Legal Executive Subteam of any requests made by individuals outside the Legal Executive Subteam.

Only tasks assigned by memorandum will be subject for lawyers work. It is important that both law firms continue to follow the calls of the CCWG-Accountability and the discussion in the mailing lists as there might be important topics or questions raised over the different discussions that might provide context to the assignments made by the Legal Subteam.

Questions will continue to be gathered and compiled in a single document by the Legal Subteam to keep track of the different concerns and questions raised within the larger group and they will be triaged in order to then be assigned formally to the lawyers.

On each assignment, the Legal Subteam will do its best effort to provide as much context as possible to better guide the lawyers on the needs that the particular assignment is trying to address.

Requests for legal advice should be numbered consecutively for reference purposes.

All requests are archived in the public wiki space here: https://community.icann.org/x/4gknAw.

Appendix D: Work Area 1 Outcome

Inventory of Existing ICANN Accountability Mechanisms

ICANN Bylaws and Bylaws-Mandated Redress Mechanisms

ICANN Bylaws specifically provide four avenues for review:

- **Reconsideration Process (Art. IV, Sec. 2):** mechanism to challenge staff action taken against ICANN policies, or Board actions taken without consideration of material information or based upon false or inaccurate information.

- **Independent Review Process (IRP) (Art. IV, Sec. 3):** allows for claims that the ICANN Board acted in a manner inconsistent with its Bylaws or Articles of Incorporation to be considered by an independent panel of neutrals.

- **Organizational Reviews (Art. IV, Sec. 4):** As required by the Bylaws, periodic reviews of the performance and operation of each Supporting Organization, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee are organized to determine whether that organization has a continuing purpose in the ICANN structure, and, if so, whether any change in structure or operations is desirable to improve its effectiveness. These regular reviews allow an examination of the continuing efficacy of ICANN's component entities.

- **Office of the Ombudsman (Art. V):** reviews claims of unfairness by ICANN or its constituent entities. The Ombudsman framework is consistent with international standards. Office of Ombudsman publishes on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns.

Policy Consideration Requirements: Bylaws-Based Advisory Mechanisms

Bylaws define ICANN's relationships to its component entities, including its Supporting Organizations (GNSO, ccNSO, and ASO) and Advisory Committees (SSAC, GAC, ALAC, and RSSAC). The Bylaws include detailed requirements for how the Board considers community-developed policies and receives advice. Some of these relationships are further defined through more detailed documentation, such as the Memorandum of Understanding with the Address Supporting Organization.

Affirmation Of Commitments

Signed with the United States Department of Commerce (DoC) on 30 September 2009, the Affirmation of Commitments contains joint commitments relating to ICANN's technical coordination role of the Internet Domain Name System. The commitments uphold the multi-stakeholder model, commit to operate in a transparent manner and in the global public interest, and, among other things, to undertake community-led, regular

reviews relating to accountability and transparency as well as on three other fundamental organizational objectives. More information about the Accountability and Transparency Reviews are outlined below.

Headquarters

ICANN, as a California Not-for-Profit Public Benefit Corporation, is obligated to follow the laws of the State of California. ICANN is also subject to both California and U.S. laws and regulations regarding ICANN's tax-exempt, public benefit status, which each require ICANN to act in furtherance of its stated public benefit purposes. These laws, as well as the laws of other places where ICANN has a presence, carry with them obligations. For example, under law, all ICANN Directors hold a fiduciary duty to act in the best interests of ICANN, and not for their own personal (or business) benefit. ICANN has the ability to sue and be sued for its actions and to be held responsible in a court of proper jurisdiction for its dealings with the global community.

Accountability and Transparency Review Teams 1 and 2 Recommendations

Periodic assessments of ICANN's progress toward ensuring accountability, transparency and the interests of global Internet users are undertaken by community-led Review Teams. The first accountability and transparency review, conducted in 2010 by the Accountability and Transparency Review Team 1 (ATRT1), resulted in a set of recommendations. A second review was launched in 2013 - in compliance with the Affirmation of Commitments timeframe. Pursuant to the Affirmation of Commitments, the Second Accountability and Transparency Review Team (ATRT2) assessed the extent to which the ICANN board and staff implemented the recommendations arising of the ATRT1, in addition to the core scope, and issued a set of recommendations.

Contractual Requirements

ICANN enters into a variety of contractual arrangements through which it takes on obligations. While meeting these requirements are a matter of contractual compliance for ICANN, at times the contracts also include broader accountability requirements as well. Some of these contracts include:

- The IANA Functions Contract with the NTIA, which incorporates, for example, a customer complaint resolution process at c.2.9.2.g as well as requirements for how ICANN is to consider delegation requests for ccLTDs (C.2.9.2.c) and gTLDs (C2.9.2.d).

- Registry Agreements and Registrar Accreditation Agreements (see https://www.icann.org/resources/pages/agreements-policies-2012-02-25-en and https://www.icann.org/resources/pages/registries/registries-agreements-en) Through these agreements, there are escalation paths set out in the event of disagreement between ICANN and the Registry or Registrar, in each case leading to the ultimate reference to arbitration if needed

   o Both Registry and Registrar Contracts include a requirement to follow "Consensus Policies", which are policies developed through the ICANN multistakeholder process and approved with high thresholds of support. Most commercial contracts do not include the ability to insert new

obligations in this way, and so the requirements on the ICANN Board and the ICANN community in developing and approving these policies are high and must be followed.

- o The consensus policies may only cover specific issues that are specified within the agreements, and may not touch on other specific areas (such as pricing terms). Historically, this has been referred to as the "picket fence" around where ICANN could mandate registry and registrar compliance with obligations that are not specifically included within the contracts.

- o Detailed topics subject to "Consensus Policy" are defined in the gTLD Registry and Registrar Agreements.

ICANN Board of Directors Documentation

Documents relating to the Board of Directors include briefing materials, resolutions, preliminary reports and minutes. Since 2010, the ICANN Board has provided a rationale for its decisions, which are published in both Resolutions and Minutes. All resolutions of the Board are tracked in a searchable tool, with information on how the mandate within each resolution was achieved. The Board also makes public how it addresses the advice it receives from the Advisory Committees, with both a GAC Register of Advice as well as the new Advice tracking tool.

General ICANN Operational Information

Financial information includes an annual budgeting process developed with community input, the posting of quarterly financial reports (following the practice of listed companies), as well as the annual posting of ICANN's Audited Financial Statements, and the annual Form 990 tax filing. For tracking of ICANN's operational activities, information about current projects across the organization is posted. ICANN also maintains the Documentary Information Disclosure Policy (DIDP) for members of the public to request the release of information within ICANN that is not already publicly available.

ICANN Board Selection Process

The selection of voting Board Directors occurs through different community processes. The Nominating Committee appoints eight Directors, ICANN's Supporting Organizations appoint six Directors (specifically, the Address Supporting Organization the Country-Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO) each appoint two Directors), and the At-Large Community appoints one Director. Directors serve staggered terms enabling some annual renewal of the Board. Mechanisms for the removal or Directors and Non-Voting liaisons are described in ICANN Bylaws. The President and CEO of ICANN, who is appointed by the Board, also serves a Board member.

Appendix E: Work Area 2 Outcome

Input Gathered from the Community: Required Community Powers

As indicated in Section 2, the CCWG-Accountability reviewed the collection of public comments received during the development of the Enhancing ICANN Accountability process and categorized them as Work Stream 1 and Work Stream 2. Work Stream 1 mechanisms were defined as those that, when in place or committed to, would provide the community with confidence that any accountability mechanisms necessary to enhance ICANN's accountability within the timeframe of the IANA Stewardship Transition would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

The mechanisms were divided into three sections:

1. **Mechanisms giving the ICANN community ultimate authority over the ICANN corporation:** Most of these were initially designated as Work Stream 1, since community Members need the leverage of the IANA Stewardship Transition to obtain these Bylaws changes.

2. **Mechanisms to restrict actions of the ICANN Board of Directors and management of the ICANN corporation:** Most of these were initially designated as Work Stream 2, since the Members could reverse ICANN Board or management decisions if Members are empowered in Work Stream 1 (see 1 above).

3. **Mechanisms to prescribe actions of the ICANN corporation:** Most of these were initially designated as Work Stream 2, since the Members could reverse ICANN Board or management decisions if Members are empowered in Work Stream 1 (above). For example, a bottom-up consensus process to change ICANN bylaws might be rejected by the ICANN Board, but the Members could then reverse that decision and force the change.

In addition, the CWG-Stewardship co-Chairs detailed, in a correspondence dated 15 April 2015, the expectations from their group with regards to CCWG-Accountability Work Stream 1 recommendations. These expectations are:

*   **ICANN budget:** The CWG supports the ability for the community to "veto" a budget;

*   **Community empowerment mechanisms:** The CWG-Stewardship will be relying on the community empowerment and accountability mechanisms that the CCWG-Accountability is currently considering and developing as a part of Work Stream 1. In particular, mechanisms such as: the ability to review ICANN Board decisions relating to periodic or ad-hoc reviews of the IANA functions undertake through the IANA Review Function (PRF or possibly IRF); the ability to approve or reject board decisions on PRF as well as the related creation of a stakeholder

community / member group in order ensure the ability to trigger these kinds of abilities;

- **Review and redress mechanisms:** The CWG-Stewardship would like to have the assurance that an IANA Periodic Review (or related ad-hoc review) could be incorporated as part of the Affirmation of Commitments mandated reviews integration into ICANN's Bylaws.

- **Appeal mechanisms (especially with regard to ccTLD related issues):** The CWG-Stewardship recommends that the CCWG-Accountability be mindful of the recommendations of the CWG-Stewardship in relation to an appeals mechanism for ccTLDs in delegation and re-delegation. The CWG-Stewardship has conducted a survey among the ccTLDs as part of the work of our Design Team B, and the results led to a recommendation which notes that ccTLDs may decide to develop their own appeals mechanism regarding re/delegation at a later date (post-transition). As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes. However, the CWG-Stewardship does want to emphasize the importance and need for an appeal mechanism to cover any other issues that may involve IANA, and notes that this is option is expected to be specifically called out as one of the possible escalation mechanisms[26] in the draft transition proposal.

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[26] As a note of clarification, the CWG-Stewardship has been referring previously to this appeals mechanism as IAP (Independent Appeals Panel) but understands that the CCWG-Accountability is referring to this mechanism as Independent Review Mechanism (IRP), which would also include the option for appeal. As such the CWG-Stewardship will be updating its references.

Appendix F: Affirmation of Commitments

1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce ("DOC") and the Internet Corporation for Assigned Names and Numbers ("ICANN"), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (DNS)[27], globally by a private sector led organization, the parties agree as follows:

2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet's success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet's underlying infrastructure - the DNS - is required to ensure interoperability.

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation

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[27] For the purposes of this Affirmation the Internet's domain name and addressing system (DNS) is defined as: domain names; Internet protocol addresses and autonomous system numbers; protocol port and parameter numbers. ICANN coordinates these identifiers at the overall level, consistent with its mission.

of new generic top level domain names (gTLDs) or is an expression by DOC of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.

6. DOC also affirms the United States Government's commitment to ongoing participation in ICANN's Governmental Advisory Committee (GAC). DOC recognizes the important role of the GAC with respect to ICANN decision-making and execution of tasks and of the effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the Internet DNS.

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:

> 9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public

comment, and will include the following (or their designated nominees): the Chair of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

9.2 Preserving security, stability and resiliency: ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further

review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN will organize a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, as well as experts, and representatives of the global law enforcement community, and global privacy experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

10. To facilitate transparency and openness in ICANN's deliberations and operations, the terms and output of each of the reviews will be published for public comment. Each review team will consider such public comment and amend the review as it deems appropriate before it issues its final report to the Board.

11. The DOC enters into this Affirmation of Commitments pursuant to its authority under 15 U.S.C. 1512 and 47 U.S.C. 902. ICANN commits to this Affirmation according to its Articles of Incorporation and its Bylaws. This agreement will become effective October 1, 2009. The agreement is intended to be long-standing, but may be amended at any time by mutual consent of the parties. Any party may terminate this Affirmation of Commitments by providing 120 days written notice to the other party. This Affirmation contemplates no transfer of funds between the parties. In the event this Affirmation of Commitments is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. All obligations of the DOC under this Affirmation of Commitments are subject to the availability of funds.

FOR THE NATIONAL

TELECOMMUNICATIONS

INFORMATION ADMINISTRATION:

_____

Name: Lawrence E. Strickling

Title: Assistant Secretary for
Communications and Information

Date: September 30, 2009

FOR THE INTERNET CORPORATION
AND FOR ASSIGNED NAMES AND
NUMBERS:

_____

Name: Rod Beckstrom

Title: President and CEO

Date: September 30, 2009

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Appendix G: Legal Documents

In their role as counsel to the CCWG-Accountability the law firms Sidley Austin and Adler & Colvin have provided a number of memoranda, charts, and legal reviews of report text. In this Appendix, the group presents a selection of key documents that were essential in the process of producing the Second Draft Report. The full list of documents is available on the public Wiki space at: https://community.icann.org/x/pqw0Aw.

- [Chart of Mandatory Statutory Member Rights Relevant to the Community Mechanism as Sole Member](#) – 30 July 2015 (also displayed below)
- [Options for Board Replacement in the Event of Full Board Recall](#) – 18 July 2015
- [Empowered SO/AC Membership & Designator Models with Community Mechanism as Sole Member Model](#) – 17 July 2015
- [Description and Comparison of Empowered SO/AC Membership and Designator Model](#) – 07 July 2015
- [Updated Legal Assessment: Revised Summary Chart and Governance Chart](#) – 16 June 2015
- [Use of Unincorporated Associations in ICANN Governance](#) – 03 May 2015
- [Overview of Community Powers](#) – 24 April 2015
- [Response to Questions Re: Unincorporated Associations](#) – 23 April 2015
- [Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart](#) – 23 April 2015
- [Updated Sidley Austin, Adler & Colvin Joint Preliminary Analysis](#) – 10 April 2015

Chart of Mandatory Statutory Member Rights Relevant to the Community Mechanism as Sole Member

This Chart is referred to in Section 6 and copied below for ease of reference.

Mandatory Statutory Member Rights[28] Relevant to CMSM[29] and Methods of Limiting the Exercise of Those Rights

Statutory Member Right	Limit on CMSM's exercise[30]	
	Proposed Vote in CMSM[31]	ICANN Board Action Required[32]

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[28] For a full listing of all rights which must be granted to members of a California nonprofit public benefit corporation, see Responses to Questions from Samantha Eisner from June 8, 2015, As the sole statutory member of ICANN, the CMSM will have all the rights of a member under California corporate law that were listed in the table from the June 8 memorandum.

[29] Certain of the rights listed in the table to the June 8 memorandum, such as meeting or voting rights, are relevant only in multiple-member contexts, and are not applicable where a corporation has a sole member. Accordingly, these rights will not apply to the CMSM for practical purposes. Similarly, in the CMSM model, there will be no classes of members, so rights given to member classes will be inapplicable as well. We have not listed these rights herein, but they include rights relating to (11b/c) suits to resolve director/member deadlock, (19) due process for member expulsion, (21-28, 31) member meetings and voting, and (32) equality of member rights. We have also omitted for simplicity certain other member rights, such as the rights to (16) receive reports and (20,29) be protected from liabilities, and (30) the right to approve certain corporate obligations (which may, but need not, be provided to members in the Bylaws).

[30] By limit on CMSM's exercise, we mean what sort of structural restraints exist to make sure that the exercise of powers by the CMSM will reflect the consensus of the community and have received full consideration. For certain actions—such as bylaw amendments or articles of incorporation amendments (including those which would eliminate the member structure), or approval of mergers or sales of substantially all the assets of the corporation--California law allows third persons to be given approval rights, in addition to whatever member or Board approvals are otherwise required. These third persons could be participants in the CMSM or from outside the CMSM entirely.

[31] The CMSM governing provisions that will be incorporated into the ICANN Bylaws can be as flexible as desired. These provisions can provide that the CMSM will exercise its statutory rights as the sole member of ICANN in the same manner as the other decisions under consideration. Thus, the decision to exercise any statutory right in the table could be made through the same community voting mechanism that will exist for making decisions to exercise the essential community powers, with the same SOs and ACs having the same number of votes. At the same time, however, if the CCWG-Accountability decides it would be preferable, each such right could have different requirements for its exercise by the CMSM, including the percentage of votes (available

1	Elect directors	Per CCWG-Accountability proposal	
2	Unilaterally set/change board size stated in the bylaws through a CMSM-initiated and approved bylaw amendment	Supermajority/consensus	
3	Remove directors without cause	Per CCWG-Accountability proposal	
4.a	Fill board vacancies as a result of director removal	Per CCWG-Accountability proposal	
4.b	Fill board vacancies caused by reasons other than removal	Per CCWG-Accountability proposal	
5	Approve bylaw amendments which would materially and adversely affect the sole member's voting rights	Per CCWG-Accountability proposal	
6/7	Unilaterally initiate and adopt amendments to bylaws that extend or increase the length of directors' terms; and	Supermajority/consensus	
8	Unilaterally adopt, amend, or repeal other bylaw provisions	¾ vote (same as for fundamental bylaws)	✓
9	Approve amendments to articles of incorporation	Supermajority/consensus	
10	Amend governing documents to terminate member structure	Majority	
11.a	Approve indemnification of a corporate agent	Supermajority/consensus	

or cast) required to approve the CMSM's exercise of the right.   We have indicated the rights where a higher threshold has been discussed, or would logically follow from the thresholds for similar rights, by "supermajority/consensus." Rights which might reasonably be exercised with a lower threshold, but which we are not aware have been discussed, are noted as "majority."

[32] For certain actions, California corporate law requires the approval of both the member and the Board of Directors; neither can act without the other. These are marked in the table. This limitation on the power of CMSM as the sole member is not optional.

11.d	Bring suit to remove a director for fraud, dishonesty, abuse of authority, or breach of fiduciary duty[33]	Supermajority/consensus	
12	Bring suit against a third party in the corporation's name (a "derivative suit"), including an action to remedy a breach of charitable trust or against a director for self-dealing	Supermajority/consensus	✓
13	Approve merger	Supermajority/consensus	✓
14	Petition for court-ordered involuntary dissolution of the corporation	Supermajority/consensus	
15	Elect to voluntarily dissolve the corporation	Supermajority/consensus	
17	Inspection rights	Majority	
18	Member resignation	Supermajority/consensus	

Appendix H: Minority Statements

In producing the Second Draft Report, the CCWG-Accountability agreed to include minority statements for those who objected to the overall set of recommendations in the document.[34] In order for minority statements to be published at the same time as part of the Second Draft Report, they needed to be received by 12:00 UTC on 1 August 2015. Three minority statements were received by the deadline and included below in order received.

Any minority statements received after the deadline are published on the CCWG-Accountability Wiki space at: https://community.icann.org/x/6oxCAw.

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[33] The power to require ICANN to enter into an IRP—as opposed to filing a derivative suit--would be accomplished by a simple majority vote.

[34] As an alternative to minority statements, the option to provide a dissenting opinion to individual questions was proposed. Dissenting opinions are included in the body of the Report and are available for those who do not wish their objection to an individual aspect of the report to be perceived as opposition to the overall approach proposed in the Second Draft Report.

Eberhard Lisse -
CCWG-Accountability Member (ccNSO-Appointed)

Dear Co-Chairs

I am the Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain ("ccTLD") Manager of .NA with 24 years uninterrupted service and corresponding experience. I have been appointed by ICANN's county code Names Supporting Organization ("ccNSO") as a member to the Cross Community Working Group on Enhancing ICANN Accountability ("CCWG Accountability").

I had previously (2015-06-03) had to comment on the so called "Draft Recommendations" of the CCWG Accountability[35] after its publication, I was prevented by the Co-Chairs from submitting my minority viewpoints to be added to the "report" which I view to be in violation of its Charter.[36]

The CCWG Accountability submits a proposal which in terms of its Charter must focus

> *[...] on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.*

It does not do so.

I do not agree with, and formally object to the proposal for the following reasons:

[resume]

1. The proposal is rushed (due to an arbitrary, self-imposed and unrealistic deadline), overly complex, hard to understand even by members and participants of the CCWG Accountability themselves, and in my view only adds additional layers without achieving much, if anything:

    a. One of the members of the CCWG Accountability stated in a revealing email to the main list on 2015-07-30:[37]

    > *I think it's also important to note the proposal currently under discussion changes nothing about ICANN's day-to-day, month-to-month, or even year-to-year operations and community engagement structures. Only in very rare cases would the proposed Sole Member community empowerment model come into play. [...]*[38]

    > *While the anticipated model establishes important checks and balances and shared authority through a community*

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[35] http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00020.html

[36] https://community.icann.org/display/acctcrosscomm/Charter

[37] http://mm.icann.org/pipermail/accountability-cross-community/2015-July/004650.html

[38] The sentence removed [...] draws the conclusion: *"In my opinion, its existence would be a powerful deterrent to bad behavior and would therefore become an available but largely unneeded tool."* with which I do not agree, at all. Just the opposite is true.

> *empowerment mechanism, with an escalation path to enforce them, it otherwise doesn't structurally change ICANN at all.*

b. In the Statement of Policy on the Management of Internet Names and Addresses[39] due process requirements were already made in 1998:

> *The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents.*

In my view ICANN's failure to ensure due process has been the norm rather than the exception.

c. Assuming an Independent Review Panel staffed by eminent jurists to be correct in stating:[40]

> *93. [...] the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.*

It is painfully obvious that this proposal would not have prevented these certain actions and inactions.

2. I have very strong concerns about the way the CCWG Accountably has dealt with ICANN's Accountability to Human Rights.

Anything more restrictive than

> *Within its mission and in its operations, ICANN will respect fundamental human rights, in particular the exercise of free expression, free flow of information and due process.*

is unacceptable.

3. The proposal obviously does not contain accountability measures for ccTLD Managers.

I have in my previous comments stated why this is necessary and remain convinced that it is

4. The questions under what statutory powers this transfer will occur, what in fact it is that is transferred and what is not transferred, remain unanswered.

And they **must** be answered in order for any transfer of the functions and/or the root zone to occur.

5. I have previously commented on the process of the CCWG Accountability which I view as in violation of its Charter and non-inclusive.

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[39] http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses

[40] https://www.icann.org/en/system/files/files/final-declaration-09jul15-en.pdf

Therefor I renew my objections against the process, for the record.

I must, unfortunately, point out that despite several members/participants requesting sufficient time to duly consider the final version of this proposal prior to drafting minority viewpoints, if any, and even the Ombudsman expressing concerns about fairness in this regard Co-Chairs allowed less than 24 hours for consideration of the complete, final frozen document. Depending on the time zone one found oneself in this allowed mere minutes, in practical terms, for addition of Minority Viewpoints such as these into the proposal.

I find myself in agreement with the conclusions of the visionary article by Phil Corbin in which he stated as early as November 2014:

The result of this flawed approach will be that, if the CWG-Stewardship group has completed its work by July 2015, the CCWG will be under intense internal and external institutional and political pressure to agree that it has "done enough" to meet the woefully low bar set by this Charter for Work Stream 1 mechanisms, with decisions on all remaining work deferred for later.

and am concerned that he may be correct in saying:

But once the transition has transpired the urgency will be gone, community cohesion may erode, and IANA-related leverage will be forfeited. And even if worthwhile recommendations emerge post-Transition the Board will retain ultimate authority to reject any and all through intransigence. Therefore, a vitally important and historic opportunity for lasting and meaningful ICANN accountability may be squandered unless this Charter is further considered and strengthened prior to final adoption and commencement of the CCWG's work.

In the presence of this objection it follows that the proposal does not have Full Consensus and I submit these minority viewpoints to be added to the proposal as required by the Charter.

I urge ccTLD Managers to reject this proposal and the NTIA not to accept it as is.

Sebastien Bachollet
CCWG-Accountability Member (ALAC-Appointed)

For an accountable, diverse, open, transparent, multistakeholder ICANN that gives rise to confidence

As time is short, it is an individual (hoping that it will reflect the view of some At-Large participants and end-users) minority statement.

Let me start first that I recognize a lot of improvements in this new version of the report of the CCWG-Accountability to be subject to the second comments period.

But I still need to be convinced that some of the proposals are not putting the organization at risk.

- At risk of rigidity: more difficult if not impossible to evolve the organization in a fast evolving world.

- At risk of stagnation: too many processes and deciding bodies, to be taken into account with not enough people.
- At risk of un-governability: let's take 3 groups – The Community – The Board – The Staff – one wanting to change gears, one wanting to brake and one wanting to speed-up.

THE COMMUNITY POWERS

1. **Reconsider/reject budget or strategy/operating plans**

   It is not compatible with the budget (or strategic and operational plans) development planning. The solution must be to build consensus during the development of the budget, before the discussions and the decisions of the Board of Directors.

   A solution for a better community participation in budget preparation (and accounts) would be, for example, to publish all financial data of the organization in **open data**.

2. **Reconsider / Reject changes to ICANN « standard » Bylaws**

3. **Approve changes to « Fundamental » Bylaws**

   The articles of association of ICANN (Bylaws) should be divided into 3 parts

   a) The Fundamental articles (validation a priori by The Community).

   b) The Basic articles (validation a posteriori by The Community).

   c) The articles that should go into an Operational Document (direct agreement between the Board, the staff and the AC or SO concerned).

4. **Removing individual ICANN Directors**

   Removing a member of the Board, by its electoral group, due to disagreement, contradicts his/her independence.

5. **Recalling the entire ICANN Board**

   a) The process is very complex and will put the organization in jeopardy by

       i. **Distracting** part of the time of the participants and staff instead of advancing work related to the functions of ICANN.

       ii. Possible **capture** by one group (A single Nomcom will select half of the Board in one go – Staff with long standing knowledge)

   b) **Alternative proposal**

       i. During a given year the community will be able to recall up to **7 members of the Board of Directors**.

       ii. The proposed 7 allows to retain 9 members who then can stay in charge of the day-to-day business until the election of seven new members.

       iii. With the annual election of 5 members, that makes up to 12 members who can be changed each year.

Edward Morris
CCWG-Accountability Participant

Section: 6.2

SO's and AC's were established for different and complementary purposes: the SO's, combined, were created to establish policy throughout the domain name space. The AC's were established, in part, to consider and provide advice on policy created by the SO's. As these structures were created to be complementary rather than competitive, entities were allowed to join both SO's and AC's and exercise power therein.

Some proposals provide voting rights in the community mechanism to both SO's and AC's. If accepted, this would empower entities with memberships in multiple SO's / AC's with magnified voting strength in the community mechanism in violation of the generally accepted democratic legal principle of "one person, one vote". To correct this impropriety the following language should be incorporated into any proposal offering voting rights to both AC's and SO's:

Entities with membership in multiple supporting organizations and/or advisory committees may only exercise voting privileges on issues connected to or directly related to the community mechanism in one such supporting organization or advisory committee.

Section: 6.2

This statement is in opposition to the proposed threshold standard that would count no votes, abstentions and non-participation all as no votes. This standard actually eliminates the positive statement that is abstention: that is, that after considering the matter at hand the adherent does not wish to support the proposal yet does not wish to obstruct those who do. This positive voting option should be available to all groups participating in the community mechanism. It certainly should not be equated with opposition to a proposal, as it is no such thing. The abstention option might prove of particular value on issues that, although important, only impact a small portion of the community. The following standard is proposed:

Thresholds should be based upon the number of yes votes compared with the combined number of no votes and potential votes of non-participants. Abstentions should be treated as neither yes nor no votes, and should not be considered when determining whether a threshold has been met.