

SUMMARY COMPARISON OF ICANN BOARD COMMENTS MATRIX AND NOTES

CCWG Proposal	Board Response	GSS Notes
<p>Revise Mission Statement to clarify (i) Mission is “limited” to policy development/ implementation for stable/secure DNS and facilitating Internet openness, interoperability, resilience and/or stability, (ii) Mission does not include “regulation” of services that use DNS or the content they carry or provide, and (iii) ICANN powers are “enumerated” (i.e., ICANN can’t do anything not stated in the Bylaws. Also, CCWG has consensus on including Human Rights commitment</p>	<p>Support, but:</p> <ul style="list-style-type: none"> • Changes to Bylaws must be thoroughly reviewed before being finalized • Revised Bylaws must ambiguously maintain ICANN’s ability to enforce its agreements. • Human Rights bylaw is premature, because there continues to be debate within the CCWG and the community on this topic. However, Board is committed to upholding Human Rights as appropriate within its mission 	
<p>Revise Core Values</p>	<p>Support, but recognize that Board’s mandate includes responsibility to act in the global public interest within primary mission of ensuring SSR of Internet’s unique identifier systems</p>	
<p>Fundamental Bylaw changes (i.e., new Fundamental Bylaws or changes to existing Fundamental Bylaws) would require approval by 75% of CMSM</p>	<p>Support community approval of Fundamental Bylaws, but not creation of membership</p> <ul style="list-style-type: none"> • Empower SO/ACs through the Bylaws, “for example” by having “resolutions” supporting the change from each SO, and no advice against by any AC. • Public comment on bylaws changes • “An appropriate threshold of community approval must be demonstrated prior to enactment of any changes to Fundamental Bylaws.” • If Board fails to follow process, community can initiate reconsideration and MEM 	<ul style="list-style-type: none"> • This is only offered as an “example”; this needs to be thought through. • Thresholds are unclear; example implies it requires unanimity of SOs and no “advice against” from any AC. • “Resolutions” by SOs are a new concept; unclear what this implies. • Unclear whether Board would be prohibited from passing any change to Fundamental Bylaws if there is no approval by community (if so, failure to follow process would be a <i>per se</i> violation of Fundamental Bylaws)

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Claims that the Board violated Articles of Incorporation or any Bylaw would be brought by individuals/entities or CMSM through IRP	<ul style="list-style-type: none"> Individual/entity or the community may challenge violations of Articles and Bylaws through current IRP Community would use MEM (not IRP) to “review and enforce” claims that Board is not following “community powers” 	<ul style="list-style-type: none"> Unclear what enforcement powers MEM would have Unclear whether MEM would apply to all “community powers” Unclear what is meant by “community powers” (may be referring to Fundamental Bylaws)
IRP will be binding	MEM will be binding; no direct reference to whether IRP will be binding, though there is a broad “Agree” statement.	Unclear whether Board agrees IRP will be binding
Expert Panel appeals heard by IRP	Disagree. Expert Panel appeals process should be developed through the expert panel development process, e.g., a PDP.	
Broad interim relief through IRP	Interim relief limited to status quo protection	
Statute of limitations to be determined for IRP	Current 30 day statute of limitations in place until community agrees on different period.	Unclear whether “community” refers to CCWG, but rejection of WS2 implies it doesn’t
CMSM has standing to commence IRP to enforce its rights under Articles and Bylaws	Community standing to commence MEM for violation of “community powers”	
ccTLD delegation/redelegation issues and all ASO issues excluded from IRP	Agree; protocol parameter issues should also be excluded, per IAB request	
IRP Standard of Review is de novo and independent, focusing on whether it exceeds the scope of ICANN’s Mission or violates the Articles and Bylaws. Decisions based on merits.	Roll back to pre-April 2013 standard (basically, deleting the “defined standard of review”). Move further consideration of standard of review to ongoing work on IRP	Unclear whether “ongoing work” will be done by CCWG in WS2, but rejection of WS2 implies it won’t
Standing Panel for IRP to be selected as part of implementation.	No Standing Panel empanelled until scope of IRP is clarified.	Unclear what the effect of this delay would be. Unclear when MEM Standing Panel would be selected
Settlement efforts can involve mediation; CEP process to be clarified	Agree, but mediation lacks detail	Unclear whether Board agrees that CEP should be clarified, and who should do it

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IRP decision is binding and Board and staff directed to take appropriate action to remedy the breach; however, the panel shall not replace Board's judgment with its own judgment	IRP decision is binding unless there is a conflict with the Board's fiduciary responsibilities.	This limitation may be more significant than it seems.
IRP Admin costs borne by ICANN	IRP Admin costs borne by loser [status quo] MEM costs borne by ICANN	
Reconsideration scope to be expanded	Agree, and "unfair or illogical" decisions should be included	
Reconsideration review to be handled by Ombudsman rather than legal counsel	Agreed, but Ombudsman role needs to be better defined. Issues with Ombudsman's prior review of complaint, and tension between Ombudsman's confidentiality and general transparency	
Reconsideration Requestor has right of rebuttal to BGC's recommendation	Agree in principle, but many details to be ironed out.	
DIDP needs to be improved in WS2	DIDP should be improved, but as part of "continuing improvements work within ICANN" DIDP process is not intended as a process for community members to obtain information for their personal use on a confidential basis.	Unclear whether "continuing improvements work" refers to CCWG, but rejection of WS2 implies otherwise Unclear what this admonition means and what its intended effect is.
Community Mechanism as Sole Member	<ul style="list-style-type: none"> • Agree in principle with process for petitioning, discussion and decision among community • Disagrees with CMSM; proposes Multistakeholder Enforcement Mechanism (MEM) instead – binding arbitration enforceable in court [by whom?] • Decisions would be made in the broader Multistakeholder Model instead of only by SO/ACs that are (or are eligible to be) part of CMSM. 	<ul style="list-style-type: none"> • Unclear who would initiate MEM • Board's reaction points to need to clarify: <ul style="list-style-type: none"> ○ role of Community Forum in guiding decisions of CMSM ○ how to deal with potential imbalances in CMSM ○ role of AC's if they choose not to vote in the CMSM

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Petition can be started by one SO/AC voting by simple majority	Agreed, but subject to discussion of threshold	
Discussion by all SO/ACs including (but not limited to) in Community Forum	Agreed	
Decision period during which voting SO/ACs cast vote in Community Mechanism	Disagree with CMSM; approvals can be by resolution from specified number of SOs and advice from ACs (e.g., exercise of community power could require 2 SOs and advice against by no more than one AC)	As noted above, resolutions are a new concept
Power to reject (veto) strategic and operating plans, and budgets	<p>Consultation right, similar to that when Board is not going to follow GAC advice. If Board elects to pass budget despite community concern, the budget cannot increase by more than 10% and may not include substantial new items not accepted by the Community; Board must provide substantial reasons in the public interest for not accepting community's view.</p> <p>If the Community feels this decision is inconsistent with Mission and Core Values, then it may initiate a MEM and/or recall director(s) or the Board</p>	Consultation right is a clear step down from an approval right. However, if it is truly handled with the deference that GAC advice currently receives, that may mitigate this significant change somewhat. However, there is no assurance that the current GAC level of deference would in fact be applied.
Power to veto changes to standard Bylaws	Community can "demonstrate an objection to a Bylaws change" using the current SO/AC structure.	Details of this are lacking, but it is clearly not a veto. It is unclear what the effect of this "objection" would be.

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<ul style="list-style-type: none"> • Power to remove individual directors, without limitation or requirements for causes. • Petition for NomCom appointed directors would go through CMSM process. • Petition for other directors must be initiated by the body that appointed them. 	<ul style="list-style-type: none"> • Use of pre-service letters with specified reasons for removal: (i) violations of governance standards; (ii) refusal to abide by the processes set forth to enable new community empowerment areas; (iii) failure to follow MEM. • Intermediate steps and options; tiered sanctions for continuous violations; develop standards of behavior (noting that BGC has already developed such standards) • Asserts that pre-service letters would preclude ability of Board to remove Directors without cause. • SO/AC's could petition Board to exercise pre-service letter for any director. Appointing body has no special role in this process. 	<ul style="list-style-type: none"> • Unclear what “refusal to abide by processes set forth to enable new community empowerment areas” means • The “specified grounds” would limit discretion of community to remove a director. • Unclear if Board would be bound to comply with community petition, and what would enforce it? • Unclear what this petition process is, and how it relates to the petition/discussion/decision process for community decision-making. • Unclear how Board would be bound to follow petition. • A director appointed by a SO/AC could be removed by petition of the community even that SO/AC did not want him/her removed.
Power to remove entire Board, without limitations and requirements, but with higher threshold	Community bodies could decide to have Board exercise pre-service letters. Removal of 8 or more directors requires higher threshold.	Unclear what this decision process would be, and whether Board would be bound to follow it.
Diversity to be a focus of WS2	ICANN needs a path for continuous evolution and improvement. Continuing improvements process discussed below.	Board rejects WS2 and wants work done within ICANN processes
Staff Accountability: Clarify expectations of staff, etc., in WS2	Continuing improvements process should handle this.	Board rejects WS2 and wants work done within ICANN processes
SO and AC Accountability: Review SO/AC accountability mechanism as part of structural reviews as part of WS1; various enhancements in WS2	Lack of progress on discussing community accountability is one of the “key gaps” of the Proposal. Address in continuing improvements process.	Board rejects WS2 and wants work done within ICANN processes

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Incorporate AoC reviews into Bylaws	Recommends coordination among community and staff working on review standardization effort (?). Opposed to requirement that recommendations of CCCT review be implemented prior to new rounds of gTLDs on basis that it creates a “barrier to entry” (?)	Unclear what this review standardization effort is, and whether it is currently a staff-only effort. Unclear what grounds for opposition to CCCT review implementation issue is; citation of “barriers to entry” seems off-target
Stress Tests identified two new requirements: incorporate ATRT2 recommendation to respond to advice from ACs; institutionalize current practice that Board consultation requirement only applies to GAC consensus advice.	Board fully agrees with these recommendations.	
As part of WS1, commit ICANN to implement WS2 recommendations when they are made post-transition, so long as they are consensus based	Board terms these “continuous improvement,” and wants these to be handled in existing mechanisms, e.g., ATRT reviews, or in new mechanism to be developed. Suggest bylaw that requires high threshold of community for such continuous improvements and that requires criteria along the lines of NTIA criteria. “The Board is concerned that treating areas that are naturally part of continuous improvements work as part of the conditions for the IANA Stewardship Transition may serve as a bar to the successful conclusion of the IANA Stewardship Transition effort.” ???!!!	Board rejects WS2 and wants work done within ICANN processes