

CMSM

Areas of agreement

- There is support and appreciation for the enforceability of community powers.
- Sole Member Model is an improvement from 1st draft Reference Model: SO/AC Membership Model.
- CWG-Stewardship: "We believe that the powers provided by the CCWG-Accountability draft proposal as described above and the community empowerment mechanism described in the proposal together adequately satisfy these CWG-Stewardship requirements, including by ensuring that the community powers specified in the CWG-Stewardship final transition proposal are legally enforceable."
- Support for principle of community mechanism to enforce community powers.
- There is consensus to be as restrained as possible in the degree of structural or organization changes required in ICANN to create the mechanism for these powers.
- There is consensus 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).
- There is consensus about the importance of having open community deliberation as part of the exercise of Community powers (the Community Forum).

Areas Needing Clarification/Refinement

- Further detail needed of the process surrounding the Community Forum.
- Indications from commenters that full support and, in some cases determining a position, would not be achievable until further detail and clarification were provided.
- Calls for more simplicity in the Model and its explanation.
- Must be a minimum number of SOs and ACs participating for the Model to work.

Areas of Concern/Divergence

- Lack of consensus on whether the community should take decisions through

formal voting or through establishing consensus.

- Lack of consensus on the voting allocations between SOs and ACs. Comments expressed concern for “dilution and authority and influence of SO community”. Most commenters on this issue expressed support for voting allocations along the lines of ICANN’s existing board structure.
- Lack of consensus on the composition of the community within the Model (e.g. role of Advisory Committees). Comments indicated concern over the possible “duality” of the governmental role in the Model. Several comments expressed concern that providing votes to GAC will fail to meet NTIA requirements.
- Comments expressed concern over the extent of changes required in ICANN’s structure with the model.
- Proposal that enforceability for narrowed community powers could be provided for by binding arbitration to enforce fundamental bylaws, instead of the CMSM Model.

Options for CCWG Consideration

1. Continue to evolve SMM to address specific points of concern raised in public comment, while maintaining “membership” model.
2. Explore how maximum legal enforcement can be achieved for desired community powers under an empowered designator model for comparison.

Sub-Issues within the Models:

1. Single Member and Single Designator Models
 - a. Voting or consensus basis;
 - i. Move away from “voting” and towards “consensus” for decision-making purposes within the community mechanism.
 - ii. Consider community powers only may be exercised by the community as a whole, based on consensus or near consensus of the whole of it.
 - iii. Consider option of consensus definition depending on absence of recommendations or advice against when using community powers.
 - iv. Consider option of consensus definition depending on absence of recommendations or advice against.
 - b. Reconsider role of the ACs in the Model’s community forum. Should some ACs be non-voting / decisional and rather, advisory only?
 - c. Reconsider voting allocations between SOs-ACs to be more in-line with balance of appointments to ICANN board.
 - d. Consideration of advice from those SOs and ACs opting out of the decision-making mechanism;•
 - e. Maintaining balance of power to prevent capture of/by those opting-in to the

- decision-making mechanism;•
- f. Factoring in conflicts of interest and fiduciary or other responsibilities (such as public interest) into the decision-making design;•
- g. Ensuring accountability of the new structure to the broader community and the global public interest.

2. **MEM based issues:**

- a. Decide which powers, if any, can be enforced in a MEM based model, and if they are sufficient to meet community powers and other requirements.
 - b. Ascertain whether community can enter binding arbitration without personhood.
 - c. Ascertain whether community has standing in court without personhood.
 - d. Ascertain whether ICANN can be bound by a binding arbitration if it declines to enter into it or otherwise attempts to frustrate the process.
 - e. Ascertain the level of personal or other risk community members must undertake to exercise or enforce any of the community powers.
 - f. Ascertain whether the MEM meets CWG-Stewardship, NTIA, and other external requirements.
 - g. Ascertain whether the MEM meets all required stress tests.
 - h. How does the community make decisions within this model
3. **Issues pertinent to either model:** decision-making process has to be absolutely capture-proof and require that any exercise of community powers is backed by a consensus or near consensus of the whole community
4. Consider determining a “fixed understanding” of who will vote or otherwise make decisions in the mechanism before decisions are made by CCWG about which Model to finally propose.