

## **Annex 04 – Details on Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers**

### **1. Summary**

- The CCWG-Accountability has recommended five Community Powers that should be in place to improve accountability and ensure community engagement. These are:
  - Reject Budget or Strategy/Operating Plans
  - Reject changes to ICANN “Standard” Bylaws
  - Approve changes to “Fundamental” Bylaws
  - Remove individual ICANN Board Directors
  - Recall the entire ICANN Board
  
- The powers and associated processes were designed to ensure that no stakeholder can singlehandedly exercise any power and no circumstances would any individual section of the community be able to block the use of a power.

### **2. CCWG-Accountability Recommendations**

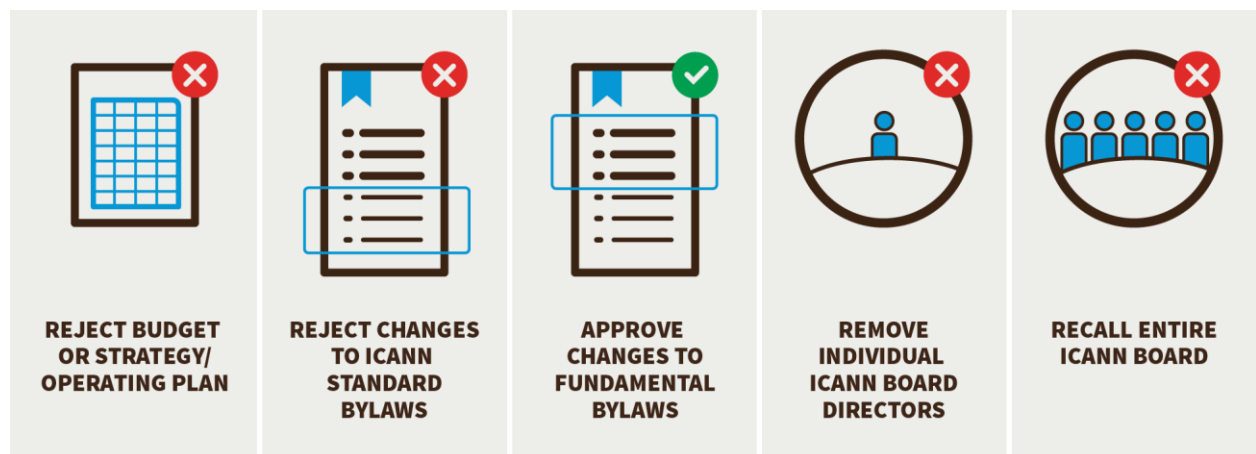
Define the following community powers as Fundamental Bylaws:

1. Reject Budget or Strategy/Operating Plans
  2. Reject changes to ICANN “Standard” Bylaws
  3. Approve changes to “Fundamental” Bylaws
  4. Remove individual ICANN Board Directors
  5. Recall the entire ICANN Board
- The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations, Advisory Committees and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.
  
  - The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the Supporting Organization and Advisory Committee leadership before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking

any action that would mean a material change in ICANN's strategy, policies, or management, including replacement of the serving President and CEO.

- Note: Details on what the powers do is presented in greater detail in the following section and the details of how these can be used can be found in Annex 2 – Details on Recommendation #2: Empowering the community through consensus: engage, escalate, enforce.

### 3. Detailed Explanation of Recommendations



The CCWG-Accountability has proposed a set of five Community Powers designed to empower the community to hold ICANN accountable for the organization's Principles (the Mission, Commitments, and Core Values). The proposed Community Powers are:

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The Power to Reject ICANN's Budget or Strategy/Operating Plans

The Power to Reject Changes to ICANN Standard Bylaws

The Power to Remove Individual ICANN Board Directors

The Power to Recall the Entire ICANN Board

The Power to Approve Changes to Fundamental Bylaws

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It is important to note that the above powers, as well as the launch of a Separation Cross Community Working Group<sup>1</sup>, (as required by the CWG-Stewardship dependencies), can be enforced by using the community Independent Review Process or the Power to recall the entire Board.

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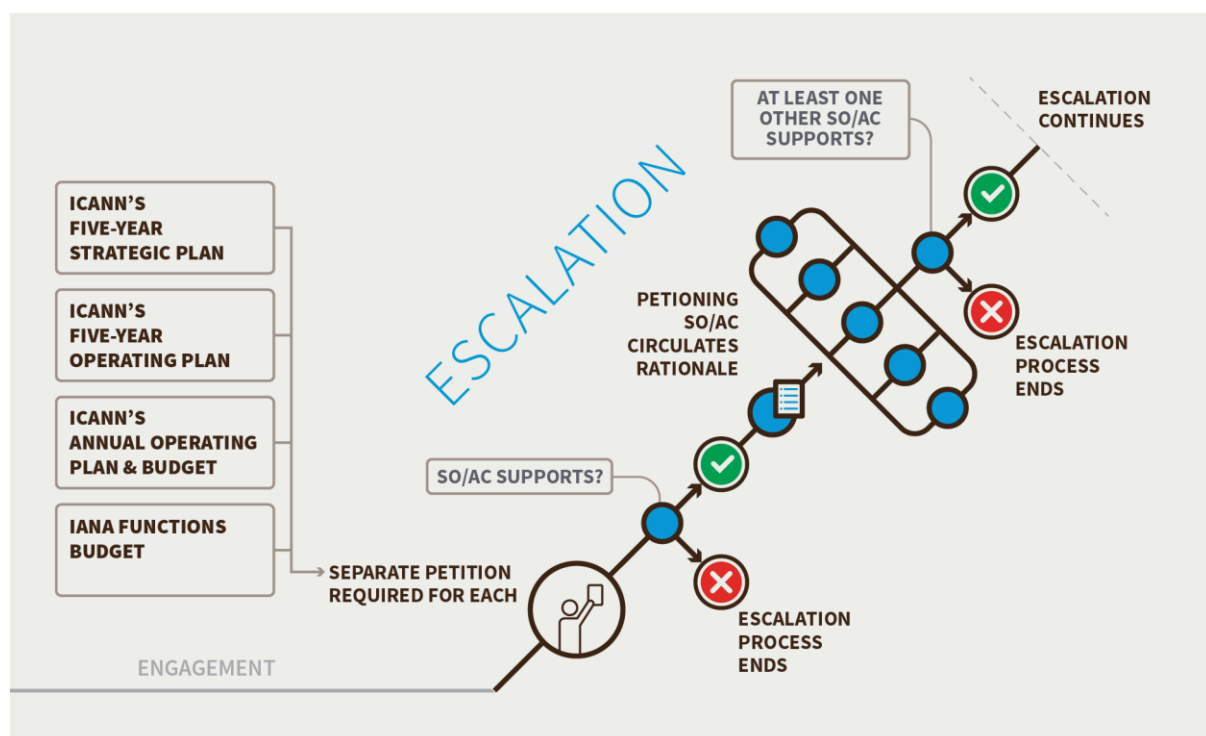
<sup>1</sup> If the CWG-Stewardship's IANA Function Review determines that a separation process is necessary, it will recommend the creation of a Separation Cross Community Working Group. This recommendation will need to be approved by a supermajority of each of the Generic Names Supporting Organization and the Country-Code Names Supporting Organization Councils, according to their normal procedures for determining supermajority, and will need to be approved by the ICANN Board after a public comment period, as well as a community mechanism derived from the CCWG-Accountability process.

## ***The Power to Reject ICANN's Budget or Strategic/Operating Plans***

The right to set budgets and strategic direction is a critical governance power for any organization. By allocating resources and defining the goals to which these resources are directed, Strategic Plans, Operating Plans and Budgets have a significant impact on what ICANN does and how effectively it fulfils its role. The ICANN community already plays an active role in giving input into these key documents through participation in the existing consultation processes ICANN organizes.

To provide additional accountability safeguards, the CCWG-Accountability has proposed that the community be given the power to reject:

- ICANN's Five-Year Strategic Plan
- ICANN's Five-Year Operating Plan
- ICANN's Annual Operating Plan & Budget
- The IANA Functions Budget



The CCWG-Accountability has determined that a separate petition would be required for each Budget or Strategic/Operating plan being challenged. A Budget or Strategic/Operating plan could only be challenged if there are significant issue(s) brought up in the Engagement Phase that were not addressed prior to approval.

A Supporting Organization or Advisory Committee petitioning to reject a budget or strategic/operating plan would be required to circulate a rationale and obtain support for its petition from at least one other Supporting Organization or Advisory Committee according to the Escalation Process.

The Escalation and Enforcement processes for rejecting any Strategic, Operating or Annual Budget would be the detailed process presented in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce.

Should the power be used to reject the annual budget, a caretaker budget would be enacted (details regarding the caretaker budget are currently under development).

### ***The IANA Functions Budget***

Under this power the community will be able to consider the IANA Functions Budget as a separate budget. The IANA Functions Budget is currently part of ICANN's Annual Operating Plan & Budget.

The CCWG-Accountability recommends that there should be two distinct processes with respect to the community's power to reject the IANA Budget and its power to reject the ICANN Budget, meeting the requirements set forward by the IANA Stewardship Transition proposal. The use of the Community Power to reject the ICANN Budget would have no impact on the IANA Budget, and a rejection of the IANA Budget would have no impact on the ICANN Budget.

In addition, to reinforce the bottom up, collaborative approach that ICANN currently uses to enable the community to give input into budget documents, the CCWG-Accountability recommends adding such a consultation process into the ICANN Bylaws for the IANA functions Budget.

The Escalation and Enforcement processes for rejecting an IANA Functions Budget would be the detailed process presented in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce.

Should the power be used to reject the annual IANA Functions budget, a caretaker budget would be enacted (details regarding the caretaker budget are currently under development).

### ***The Power to Reject Changes to ICANN Standard Bylaws***

In addition to the safeguard against the possibility that the ICANN Board could unilaterally amend Fundamental Bylaws without consulting the community, the CCWG-Accountability recommends that the community be given the power to reject changes to Standard ICANN Bylaws after the Board approves them, but before the changes come into effect. Any changes approved by the Board would take 15 days to come into effect to enable the community to decide whether a petition to reject the change should be initiated.

This power, with respect to Standard Bylaws, is a rejection process that is used to tell the ICANN Board that the community does not support a Board-approved change. It does not enable the community to re-write a Standard Bylaw change that has been proposed by the Board.

The escalation and enforcement processes for this power are as presented in "Recommendation #2: Empowering the community through consensus: engage, escalate, enforce."

### ***The Power to Approve Changes to Fundamental Bylaws***

To safeguard against the possibility that the ICANN Board could unilaterally amend Bylaws without consulting the community, the CCWG-Accountability determined that the community consultation process should be reinforced in Fundamental Bylaws. The proposed set of Fundamental Bylaws would be harder to change than the Standard Bylaws for two reasons:

- The authority to change Fundamental Bylaws would be shared between the ICANN Board and the ICANN community

- The required threshold of support to change a Fundamental Bylaw would be significantly higher than the threshold to change a Standard Bylaw

The CCWG-Accountability emphasizes the importance for the ICANN Board and ICANN community to be able to define new Fundamental Bylaws over time, or to change or remove existing ones to ensure that ICANN can adapt to the changing Internet environment.

The escalation processes for this power is as follows:

### **Step 1. The ICANN Board approves a change to the Fundamental Bylaws**

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#### **Step 2. Conference Call (15 days to organize and hold from the date the decision is made by the ICANN Board to approve a change to the Fundamental Bylaws)**

- ⊙ ICANN hosts a conference call open to any interested participants and will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised

#### **Step 3. Decision to hold a Community Forum (7days from the end of the conference call)**

- ⊙ If three or more Supporting Organizations or Advisory Committees support holding a Community Forum within the 7-day period the Community Forum will be organized
  - ⊙ If the proposal to hold a Community Forum does not obtain the required support during the 7 days the process goes directly to deciding to use the community power.
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#### **Step 4. Holding a Community Forum (15 days to organize and hold the event from the date of the decision to hold it)**

- ⊙ The Community Forum would be planned for 1 to 2 days
- ⊙ The Community Forum would be open to all interested participants and ICANN will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
- ⊙ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any Supporting Organization or Advisory Committee may circulate in writing their preliminary views on the exercise of this community power
- ⊙ The Community Forum will not make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage. This decision is up to the Supporting Organizations and/or Advisory Committees to determine after the forum
- ⊙ The Community Forum should be managed/moderated in a fair and neutral manner
- ⊙ Should the relevant Supporting Organizations or Advisory Committees determine a need for further deliberation, a second and third session of the Community Forum could be held

- ⦿ Staff will collect and publish a public record of the Forum(s), including all written submissions
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#### **Step 5. Decision to use a Community Power as an Empowered Community (15 days from the conclusion of the Community Forum)**

- ⦿ If four or more Supporting Organizations and/or Advisory Committees support and no more than one objects within the 15-day period, the Sole Designator will use its power to approve the change to the Fundamental Bylaws.
  - ⦿ If the required thresholds during the 15-day period, are not met the escalation ends without the changes to the Fundamental Bylaws being approved.
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#### **Step 6. Advising the ICANN Board (1 day)**

- ⦿ The Empowered community will advise the Board of its decision.

### ***The Power to Remove Individual ICANN Board Directors***

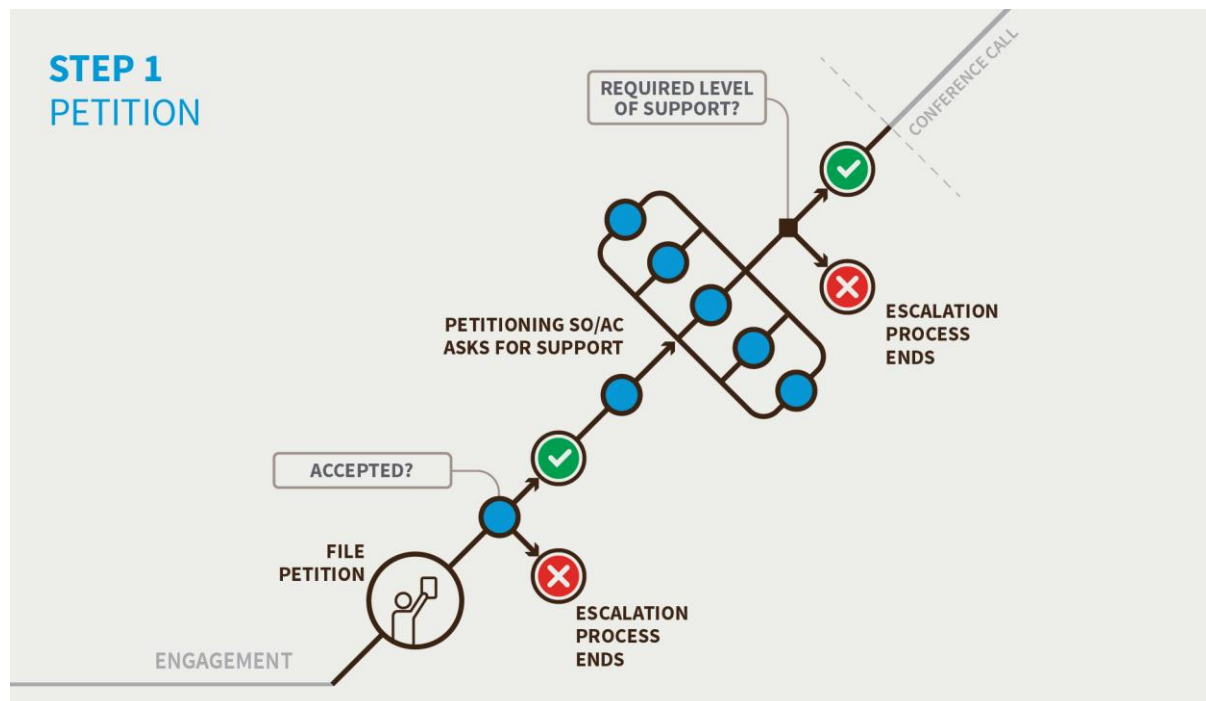
The proposed power to Remove Individual ICANN Board Directors would allow for the removal of a Director before the Director's current term comes to an end. This was a formal requirement from the CWG-Stewardship. Currently, the power to remove Individual Directors is only available to the Board itself as per the existing Bylaws.

Given ICANN Board Directors can be nominated in two significantly different ways, specific SO/AC nomination or Nomination Committee (NomCom) nomination, the processes for removing each type of Director will be different.

In cases where the nominating Supporting Organization or Advisory Committee perceives that there is a significant issue with its appointed Director it can use the following escalation process to determine if removal of the Director is recommended. It is important to note that this process can only be used once during a Director's term if the process reaches the step of holding a community forum or above and then fails to remove the Director:

### ***Directors nominated by the Nominating Committee***

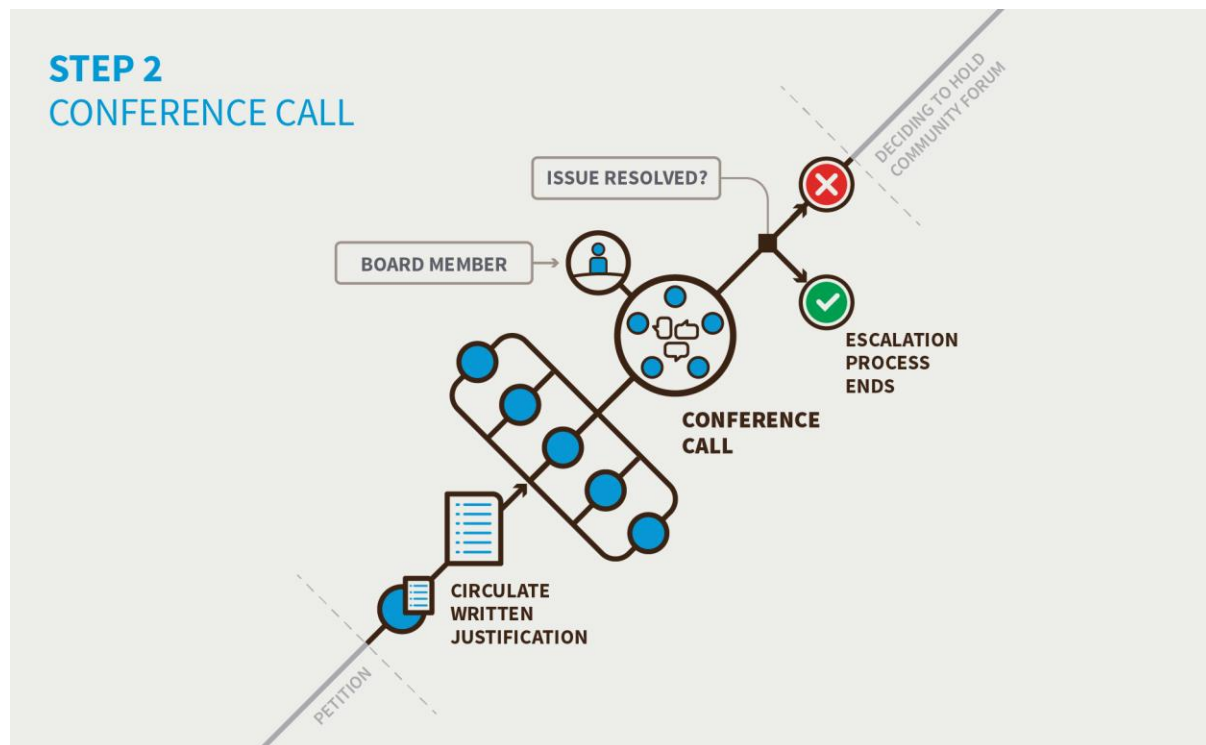
#### **Step 1. Triggering Individual ICANN Board Director Removal by Community Petition (15 days from the official posting of the original petition)**



- ⦿ Begin a petition in a Supporting Organization or Advisory Committee
- ⦿ Any individual can begin a petition as the first step to using a Community Power.
- ⦿ For the petition to be accepted, the Supporting Organization or Advisory Committee, in accordance with its own mechanisms, must accept the petition
- ⦿ If the Supporting Organization or Advisory Committee does not approve the petition within the 15 days the escalation process terminates
- ⦿ If the Supporting Organization or Advisory Committee approves the petition it contacts the other Supporting Organizations or Advisory Committees to ask them to support the petition so a conference call can be organized that will allow the entire community to discuss the issue. At least one additional Supporting Organization and/or Advisory Committee must support the petition (for a minimum of 2) for a conference call to be organized
- ⦿ If a minimum of two Supporting Organizations or Advisory Committees support the petition within 15-days, a conference call is organized
- ⦿ If the petition fails to gather the required level of support, the escalation process terminates.

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**Step 2. Conference Call (7 days to organize and hold from the date the decision is made to hold the call)**

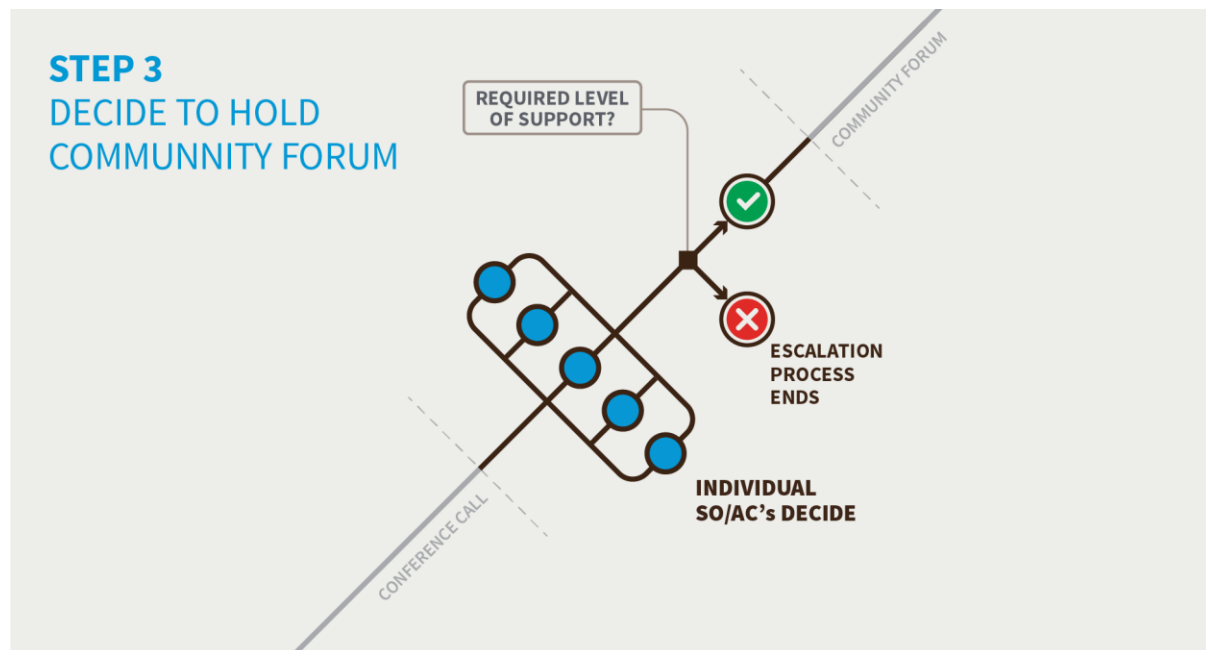


- ⦿ The petitioning Supporting Organizations and/or Advisory Committees circulate written justification for exercising the community power in preparation for the conference call. Any Supporting Organization or Advisory Committee may contribute preliminary thoughts or questions in writing before the call is held via a specific archived email list set up for this specific issue.
- ⦿ ICANN hosts a conference call open to any interested participants and will provide support services. The ICANN Board Director that is the subject of the petition will be invited and is expected to attend and be prepared to address the issues raised
- ⦿ If the community and the ICANN Board Director can resolve the issue on the conference call, the escalation terminates
- ⦿ If the community and the ICANN Board Director cannot resolve the issue the community must decide if it wishes to hold a Community Forum.

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**Step 3. Decision to hold a Community Forum (7 days from the end of the conference call)**

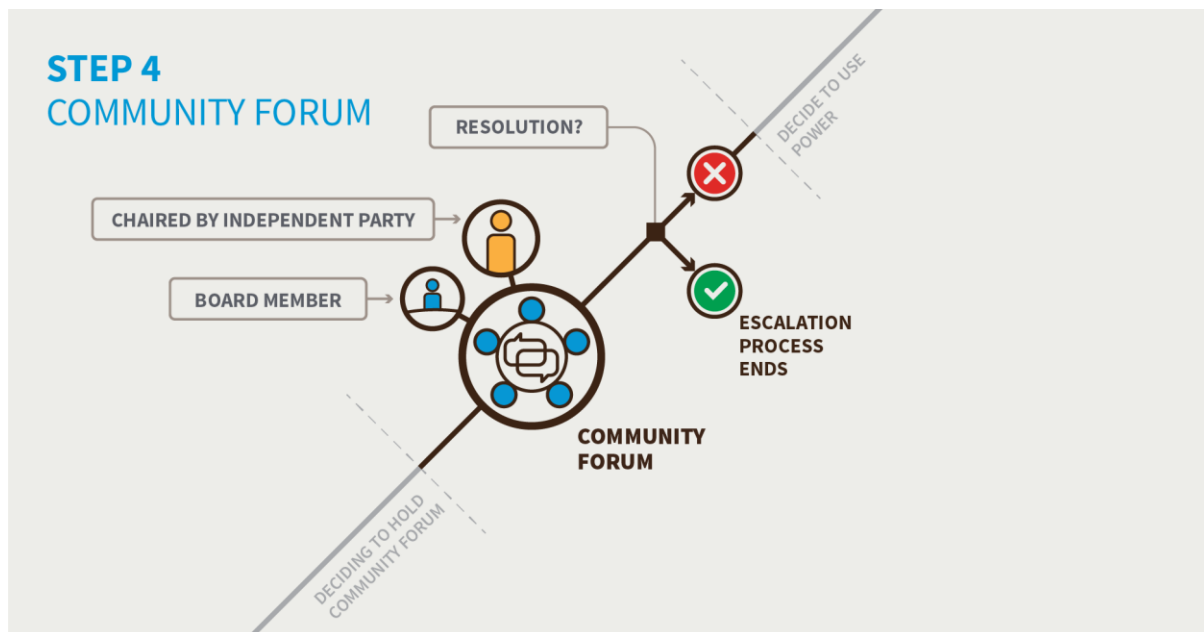




- ⦿ If the community and the ICANN Board Director cannot resolve the issue on the conference call, the Supporting Organizations and/or Advisory Committees must decide if they want to hold a Community Forum. This would be a one or two day event, possibly face-to-face, where the ICANN community would explore in detail the issue between the ICANN Board Director and the community and the potential avenues for resolution or action.
- ⦿ If two or more Supporting Organizations or Advisory Committees support holding a Community Forum within the 7-day period the Community Forum will be organized
- ⦿ If the proposal to hold a Community Forum does not obtain the required support during the 7 days the escalation process terminates

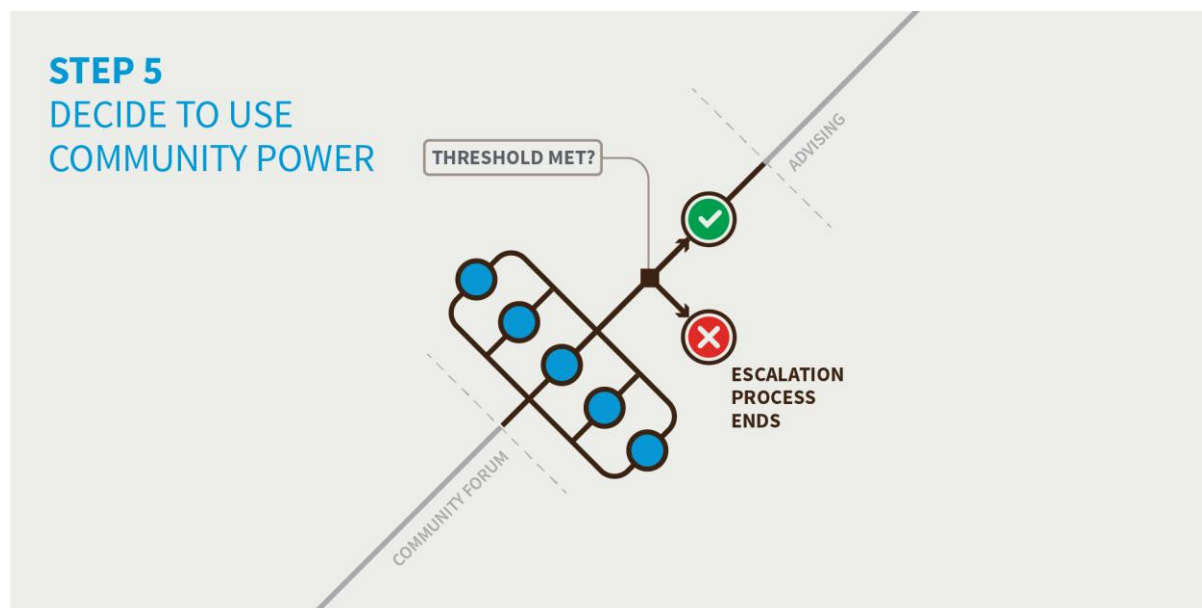
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**Step 4. Holding a Community Forum (15 days to organize and hold the event from the date of the decision to hold it)**



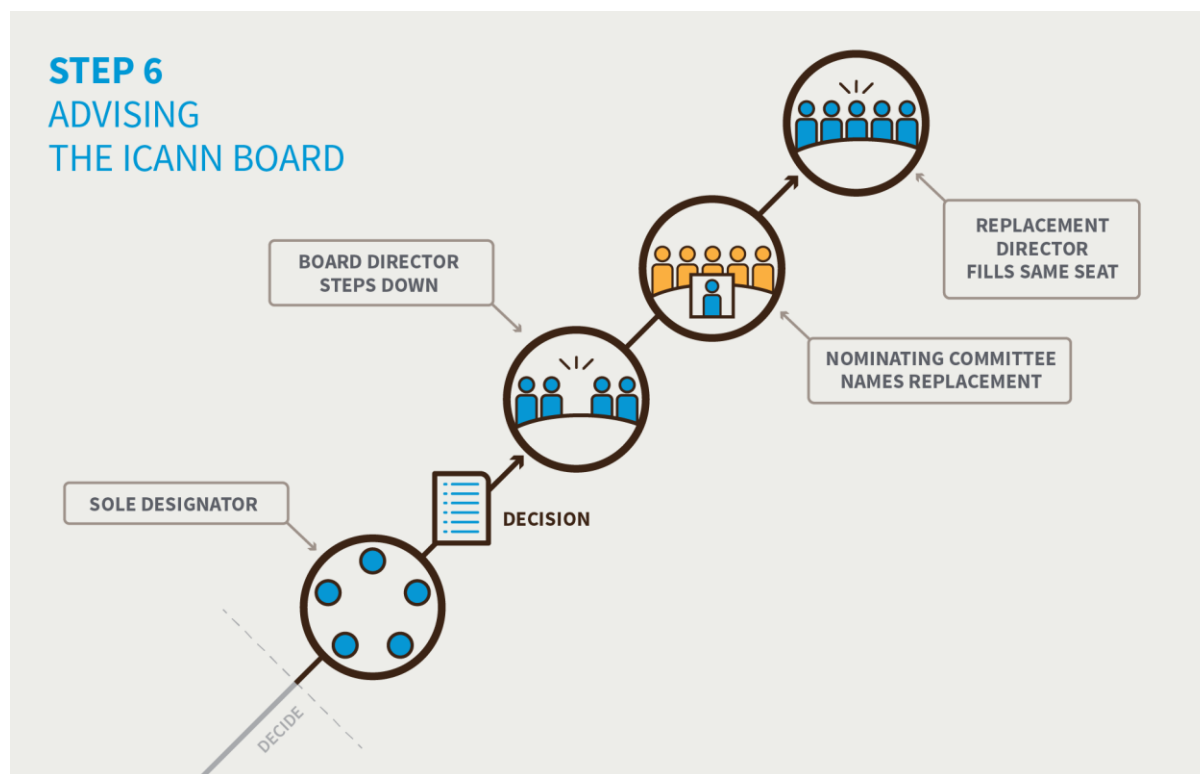
- ⦿ The Community Forum would be planned for 1 to 2 days
  - ⦿ The Community Forum would be open to all interested participants and ICANN will provide support services. The ICANN Board Director that is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised.
  - ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any Supporting Organization or Advisory Committee may circulate in writing their preliminary views on the exercise of this community power
  - ⦿ The Community Forum will not make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage. This decision is up to the Supporting Organizations and/or Advisory Committees to determine after the forum
  - ⦿ The Community Forum should be managed/moderated in a fair and neutral manner
  - ⦿ Should the relevant Supporting Organizations or Advisory Committees determine a need for further deliberation, a second and third session of the Community Forum could be held
  - ⦿ Staff will collect and publish a public record of the Forum(s), including all written submissions
  - ⦿ If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point this process cannot be used again by the community to remove this specific ICANN Board Director during its current term.
  - ⦿ If the Empowered Community and the ICANN Board Director cannot resolve the issue, the community must decide if it wishes to take further action.
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### Step 5. Decision to use a Community Power as an Empowered Community (15 days from the conclusion of the Community Forum)



- ⦿ If three or more Supporting Organizations and/or Advisory Committees support and no more than one objects within the 15-day period, the Sole Designator will use its power. The community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons
  - ⦿ If the proposal to use a Community Power as the Empowered Community does not meet the required thresholds during the 15-day period, the escalation process terminates
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### Step 6. Advising the ICANN Board (1 day)

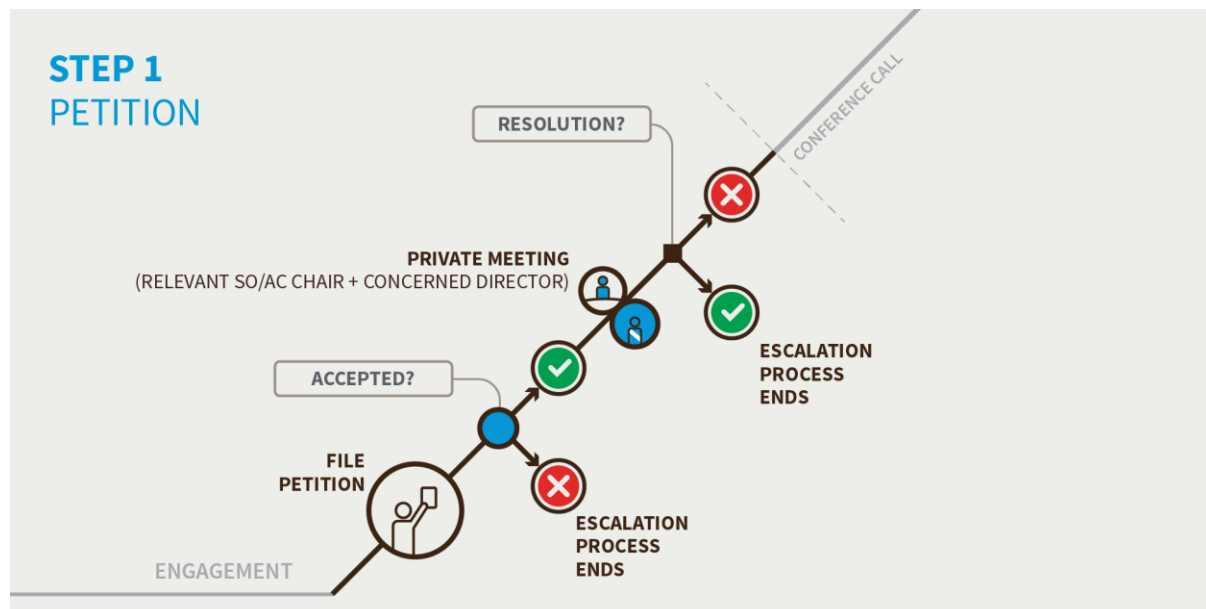


- ⦿ If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct it to comply with the decision.
- ⦿ Naming a replacement
  - The Nominating Committee may instruct the Sole Designator to appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several “reserve” candidates in place.
  - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end.

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### ***Directors Nominated by a Supporting Organization or Advisory Committee***

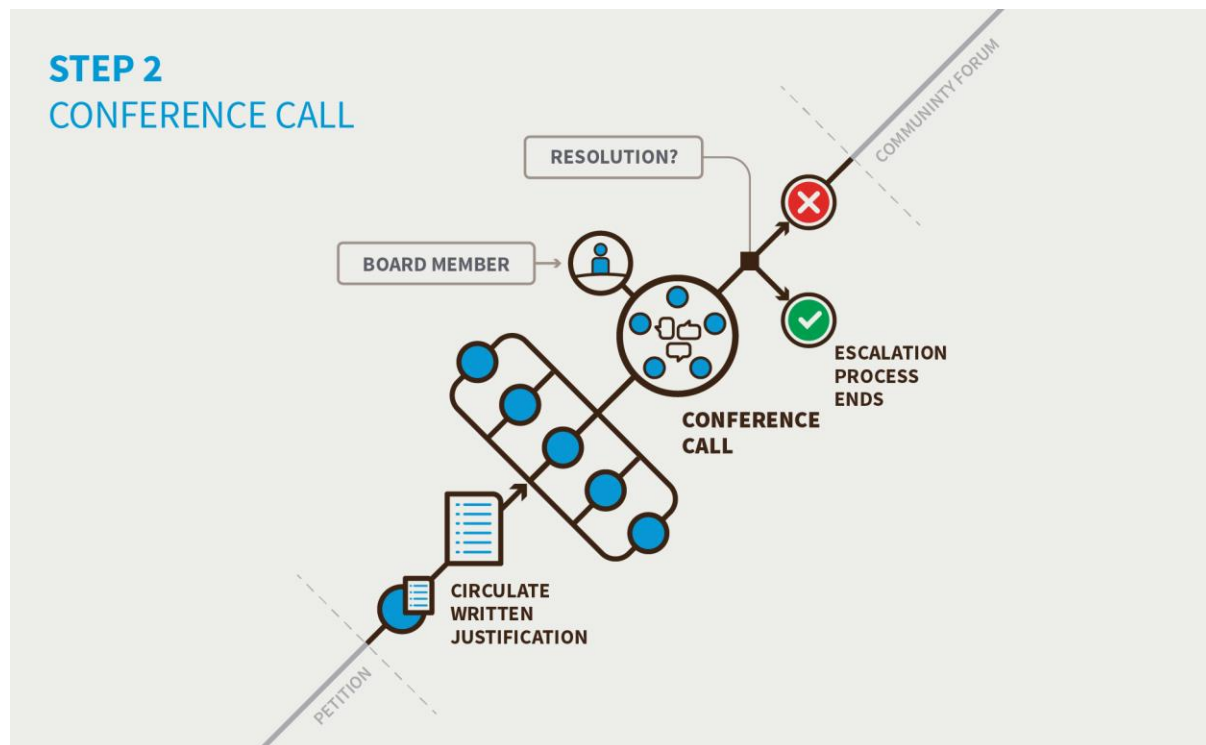
**Step 1. Triggering Individual ICANN Board Director Removal by Community Petition (15 days from the official posting of the original petition)**



- ⊙ The petition can only be started in the SO or AC that nominated the Director.
- ⊙ Any individual can begin a petition as the first step to using a Community Power.
- ⊙ For the petition to be accepted, the Supporting Organization or Advisory Committee, in accordance with its own mechanisms, must accept the petition
- ⊙ If the Supporting Organization or Advisory Committee does not approve the petition within the 15 days the escalation process terminates
- ⊙ If a petition is accepted, the Chair of the relevant Supporting Organization or Advisory Committee will meet promptly in private (by phone or in-person) with the concerned Director to discuss the approved petition. If no resolution is found, the Supporting Organization or Advisory Committee schedules a Conference Call within 7 days of the petition being accepted.

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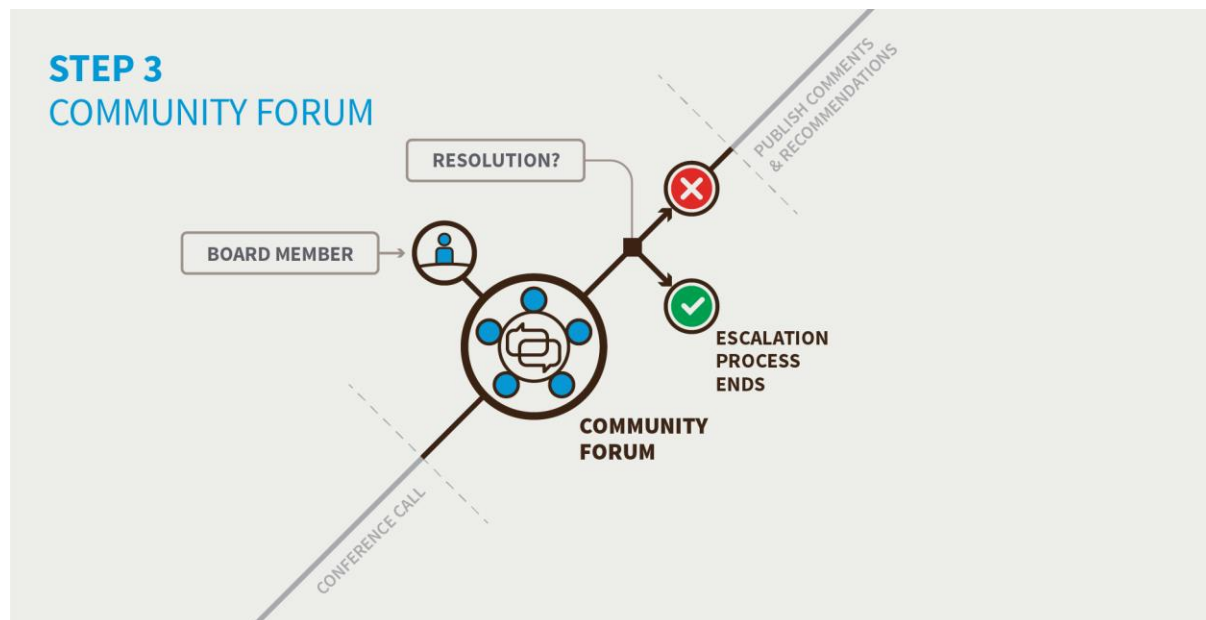
**Step 2. Conference Call (7 days to organize and hold from the date the petition is approved)**



- ⦿ The petitioning Supporting Organization and/or Advisory Committee circulates written justification for exercising the community power in preparation for the conference call. Any Supporting Organization or Advisory Committee may contribute preliminary thoughts or questions in writing before the call is held via a specific archived email list set up for this specific issue.
- ⦿ ICANN hosts a conference call open to any interested participants and will provide support services. The ICANN Board Director that is the subject of the petition will be invited and is expected to attend and be prepared to address the issues raised
- ⦿ If the community and the ICANN Board Director can resolve the issue on the conference call, the escalation terminates.
- ⦿ If the community and the ICANN Board Director cannot resolve the issue progresses automatically to holding a Community Forum.

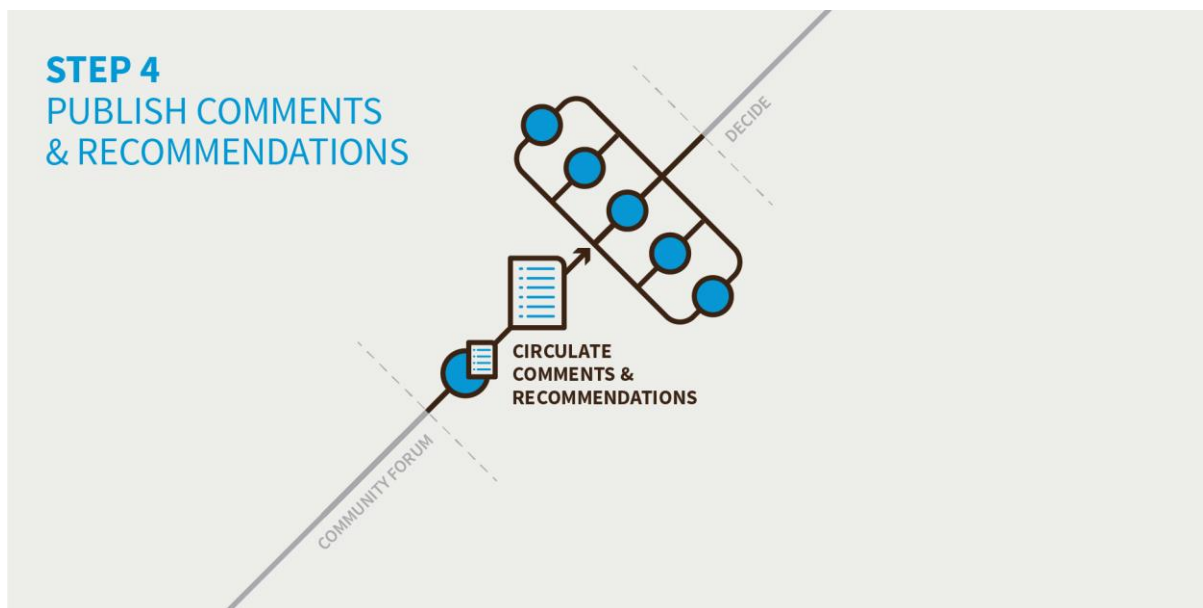
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**Step 3. Holding a Community Forum (15 days to organize and hold the event from the date of the decision to hold it)**



- ⦿ The Community Forum would be planned for 1 to 2 days
- ⦿ The Community Forum would be open to all interested participants and ICANN will provide support services. The ICANN Board Director that is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised.
- ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any Supporting Organization or Advisory Committee may circulate in writing their preliminary views on the exercise of this community power
- ⦿ The Community Forum will not make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage. This decision is up to the Supporting Organizations and/or Advisory Committees to determine after the forum
- ⦿ The Community Forum should be managed/moderated in a fair and neutral manner and cannot involve a representative of the nominating SO or AC.
- ⦿ Should the relevant Supporting Organizations or Advisory Committees determine a need for further deliberation, a second and third session of the Community Forum could be held
- ⦿ Staff will collect and publish a public record of the Forum(s), including all written submissions
- ⦿ If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point this process cannot be used again by the community to remove this specific ICANN Board Director during its current term.
- ⦿ If the Empowered Community and the ICANN Board Director cannot resolve the issue, the community must decide if it wishes to take further action.
  - At the end of the Community Forum the Community Forum Chair will issue a formal call for comments and recommendations from the community within 7 days, and input received will be sent to the relevant Supporting Organization or Advisory Committee and posted publicly.

**Step 4. Supporting Organizations and/or Advisory Committees publish their comments and recommendations (7 days)**



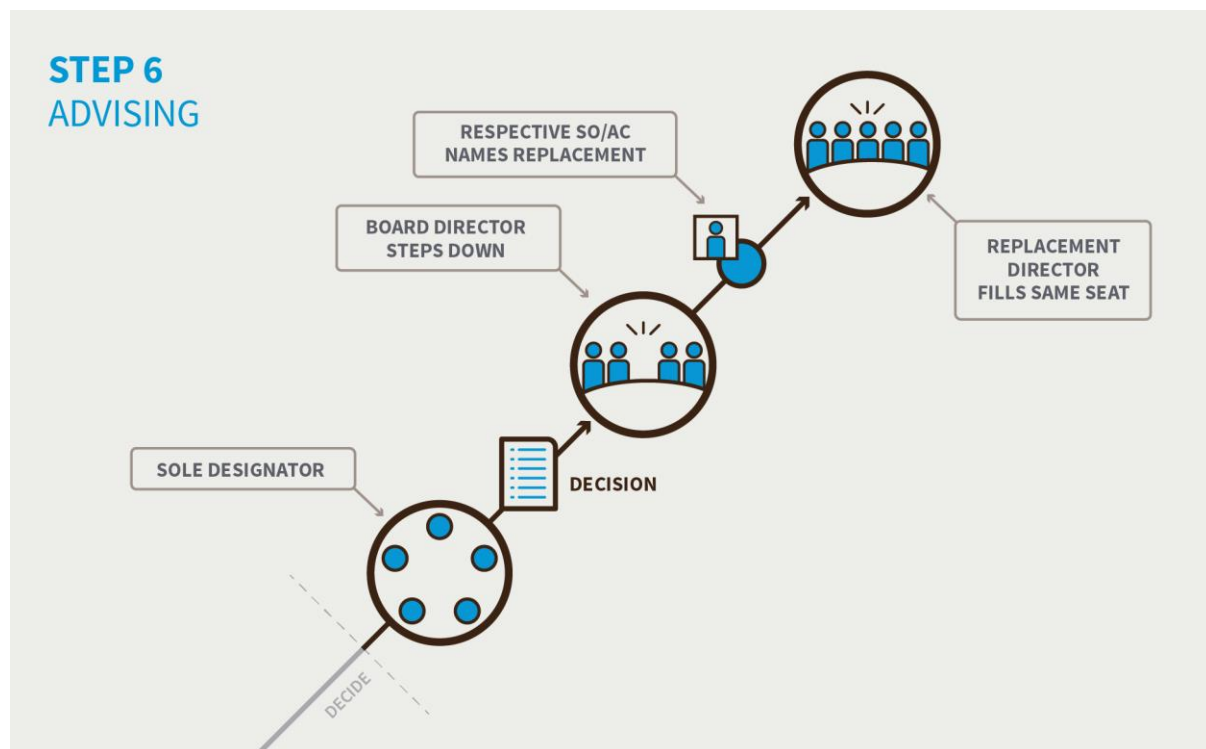
**Step 5. Decision to use a Community Power as an Empowered Community (7 days from the conclusion of the period for SO and AC comments)**



- ⦿ If the nominating Supporting Organization or Advisory Committee supports using the power within the 7-day period, the Sole Designator will use its power. The Supporting Organization or Advisory Committee will also publish an explanation of why it has chosen to do so.
- ⦿ If the nominating Supporting Organization or Advisory Committee does no support using the power within the 7-day period, the escalation process terminates



## Step 6. Advising the ICANN Board (1 day)



- ⦿ If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct it to comply with the decision.
- ⦿ Naming a replacement
  - The respective Supporting Organization or Advisory Committee is responsible for nominating an individual to fill the vacancy on the ICANN Board through its usual process (as set out in Article VI, Section 12.1 of the Bylaws).
  - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end. 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.

### ***The Power to Recall the Entire ICANN Board***

The CCWG-Accountability believes there may be situations where removing Individual Directors from ICANN’s Board may not be a sufficient accountability remedy for the community.

In cases where the community perceives that a set of problems has become impossible to resolve, the community may wish to signal its lack of confidence in the Board by petitioning for a recall (i.e. the removal) of the entire ICANN Board (except the CEO who is appointed by the Board). The power to recall a Board is a critical enforcement mechanism for the community under the Sole Designator model because it can be used to support the other Community Powers and provide a final and binding accountability mechanism.

By exercising this power, the entire ICANN Board (except the CEO) could be removed by the community. However, it is unlikely that the community would use this power lightly, and the engagement and escalation pathways are designed to encourage agreement between the Board and the community. If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.

The CCWG-Accountability expects that this power would only be exercised as a last resort after all other attempts at resolution have failed. As a recall of the Board would be extremely disruptive for the entire organization, the CCWG-Accountability has included several safeguards in the proposed escalation process to ensure that this decision reaches the maturity and level of support needed before it can be used.

The Escalation and Enforcement processes for recalling the entire would be the detailed process presented in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce except for the fact that SOs and ACs and the NomCom must have Directors ready to stand in to be the Interim Board prior to deciding to use the power to recall the entire Board.

### ***Interim Board***

The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations, Advisory Committees and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the Supporting Organization and Advisory Committee leadership before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies, or management, including replacement of the serving President and CEO.

## **4. Changes from the 'Second Draft Proposal on Work Stream 1 Recommendations'**

The powers have not changed since the second draft. The mechanisms for using them (as described in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce) have.

## 5. How does this meet the CWG-Stewardship Requirements?

- The Power to Reject ICANN’s Budget or Strategy/Operating Plans directly meets the following CWG- Stewardship requirement ICANN - Budget: Community rights regarding the development and consideration of the ICANN Budget
- The Power to Remove Individual ICANN Board Directors and The Power to Recall the Entire ICANN Board directly meets the following CWG- Stewardship requirement - **ICANN Board**: Community rights regarding the ability to appoint/remove Directors of the ICANN Board, and recall the entire Board
- The Power to Approve Changes to Fundamental Bylaws is directly related to the following CWG- Stewardship requirement - **Fundamental Bylaws**: All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws

## 6. How does this address NTIA Criteria?

### Support and enhance the multistakeholder model

- Decentralizing power within ICANN through an “empowered” community
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a community power Recommending a process where all are welcome to participate in the consultation processes prior to designing the document that will be put for discussion.
- Retaining a decision-making based on consensus rather than voting

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

- Elaborating Community Powers associated with a defined escalation process
- The multi-step escalation process associated with the escalation process prevents single step actions and encourages a conciliatory approach.
- The escalation process includes high thresholds for using accountability actions that based on consensus of the entire community. This process provides safeguards to prevent a situation where an SO/AC might initiate a petition to reject with the intention of negatively impacting another SO/AC’s budget by ensuring that no single AC/SO can use a power singlehandedly and no single AC/SO can singlehandedly block the use of a power.

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

- Including limited timeframes, transparent processes and associated thresholds to maintain operational viability

### Maintain the openness of the Internet

- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a community power
- Preserving policies of open participation in ICANN’s Supporting Organizations and Advisory Committees
- The escalation process includes the convening of a Community Forum where all would be welcome to participate as a potential step. In addition, all are welcome to participate in the consultation process that organized to elaborate these key documents.

### NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution

- Retaining a decision-making based on consensus rather than voting
- Maintaining the advisory role of governments in the Supporting Organization and Advisory Committee structure

