

ACCOUNTABILITY MECHANISMS

	Name of Mechanism	Statutory Members
Description	Description	<p>The essence of this mechanism is the enhancement of ICANN’s accountability to its stakeholders by the creation of a membership structure internal to ICANN with ultimate authority to control the organization and thus ultimate authority over the ICANN Board.</p> <p>The California Corporation Code expressly authorizes non-profit organizations to have Members with ultimate authority to control the organization. Under Cal. Corp. Code § 5310 “A corporation may admit persons to Membership, as provided in its Articles or Bylaws”. Members are given various statutory rights and oversee the Board of Directors.</p>
	Category (check & balance, review, redress)	Review and redress
	Is the mechanism triggered or non triggered ?	<p>The mechanism itself is a permanent structure. Powers can be divided into two categories: statutory and non-statutory. Triggered statutory powers include a Members right to file a derivative lawsuit (§5420/§5710), to adopt, amend and repeal the Bylaws (§5150/5812), and remove any and all members of the Board of directors (§5222). If the Board member is selected by a particular grouping, only that grouping may recall that specific Board member (§5310(1)). Non-triggered statutory powers include a meetings requirement (§5150) and the election of the Board of Directors (§5220 et al). Non-statutory rights may be given to Members.</p> <p>Some of the powers members may be given and execute are predictable and repetitive (e.g. approving ICANN’s strategic plan and annual budget) and thus non-triggered, while others event driven, thus triggered (e.g. blocking board or management action that is in conflict with the bylaws)</p>
	Possible outcomes (approval, re-do, amendment of decision, etc.)	Approval, review, redress, redo, recalling the board
Standing	Conditions of standing (ie « last resort », type of decision being challenged, ...)	For the statutory members to overrule ICANN’s (executive) board’s decision on a matter, should be seen as a last resort option
	Who has standing (directly or indirectly affected party, thresholds...)	Those community representatives that classified as Members. Members may be natural or legal persons. Different classes of Members with different powers are permitted. Through Members all ICANN’s stakeholders have a form of standing.
Standard of	Which standards	Existing ICANN bylaws, public interests, stakeholders’

ACCOUNTABILITY MECHANISMS

review	is the decision examined against (process, principles, other standards...)	interests, applicable (California PBC law, Affirmation of Commitments, adopted PDP's, ...
	Which purpose(s) of accountability does the mechanism contribute to ?	All four: <ul style="list-style-type: none"> • Comply with its own rules and processes (“due process”) • Comply with applicable legislation, in jurisdictions where it operates • Achieve certain levels of performance as well as security • Ensure decisions are for benefit of the public, not just for a particular set of stakeholders
Composition	Required skillset	<ul style="list-style-type: none"> • Vision, strategy, leadership • Analytical, social skills, networking • C-level integral management in an international, multi-stakeholder, multi-cultural environment • Representation, sensitivity
	Diversity requirements (geography, stakeholder interests, gender, other...)	All stakeholders (direct and indirect) should be represented: SO's, AC's etc. This will probably already ensure gender and geographical diversity
	Number of persons (approximate or interval)	See above
	Independence requirements	The members involved in making or validating a decision, apart from the obvious interests as a member of the stakeholder group they represent, do not have any other material relationship, transaction or professional aspiration with ICANN itself which may affect their judgment.
	Election / appointment by whom ?	Members may be natural or legal persons. If natural, presumably each Member would be selected by his/her stakeholder group / constituency. The easiest method might be to appoint the (already elected) chairs of the stakeholder groups / constituencies
	Recall or other accountability mechanism	If a natural person, each member can –during his/her term– be recalled (by majority vote) or at the end of his/her term could not be reelected by his/her stakeholder group/constituency. A member cannot be recalled by the other members
Decision making	Is the decision mandated or based on personal assessment	There are two options: <ol style="list-style-type: none"> 1. The community representatives have to get back to their constituencies and get their (consensus or rough consensus) approval to use the specific power; 2. The community representatives have the mandate

ACCOUNTABILITY MECHANISMS

		<p>from their respective constituencies to take a position based on their personal assessment of the bylaw amendment on the public interests/stakeholders' interests (NOT their personal interests)</p> <p>In most situations, for most powers that the members have, option 1 will not be workable: it will take too long with the risk of failing altogether.</p> <p>However, for the decision to recall the (whole) board, option 1 should be the one. For the "nuclear option" (if we are having one), transitioning the IANA function away from ICANN, option 1 is an obligation.</p>
	Decision made by consensus or vote ?	Vote. In statutory matters voting is required and certain thresholds are established that can not be changed in the Bylaws (e.g. for removal of Board members). Consensus introduces (or reinforces) the risk of capture: if a particular stakeholder group has convinced the ICANN board to e.g. make an amendment to the bylaws, this same stakeholder group's representative member can then prevent the community from blocking that amendment
	Majority threshold (if applicable)	For statutory powers, specified in the statutes. A simple majority can remove board members, if the number of members is less than 50 (§5033). The same voting threshold applies to bylaws changes (§5150). For non-statutory powers it would depend upon the decision to take/power to execute as we specify in the Bylaws: simple majority or supermajority.
Accessibility	Cost requirements	<p>The members are volunteers from their respective constituencies. They receive no remuneration, but travel and lodging costs for meeting purposes are covered by ICANN.</p> <p>Derivative lawsuits cost. The individual filing may be required to place a bond of up to \$50,000. Losing party may be required to pay expenses.</p> <p>Members may incur insurance costs if they wish to protect against potential legal liability (i.e. SLAPP suits).</p>
	Timeframe requirements	To be implemented before IANA stewardship transition
	Language requirements	As general
Implementation	Potential means to implement	<ul style="list-style-type: none"> • Amendments to ICANN's bylaws that incorporates a membership structure in ICANN's corporate governance structure and provides it with the required powers; • If natural persons, elected representatives from stakeholder groups to serve as members. If legal persons, formal establishment of same.

ACCOUNTABILITY MECHANISMS

Notes from the authors:

- This template is completed for a membership construction. Large parts of the text inserted in the template will also be relevant for a supervisory board, a delegates structure, a permanent CCWG or any other stakeholders' representing structure that can overrule the ICANN board on certain matters.
- Recalling the board or part thereof: recalling individual board members or a group is probably not a good idea. Individual members might feel themselves a target and be afraid to take a position that differs from the majority, one risks stimulating the board members to be risk averse. Recalling the whole board and reappointing members that are not to blame for the recall, is probably better
- The "nuclear option": more and more I doubt if this is necessary and if it is workable. If the board can be recalled and is, the impact of that is comparable with transferring IANA: it is now possible to change everything that is not working. Transferring only IANA functions might have (very) limited impact if the policy role remains with ICANN and the output of that policy role is still inputted in the IANA function. Moreover, if ever ICANN performs so badly that even replacing the board doesn't help, it is extremely likely that it is not the IANA that is not working well, but the policy function. So, the "nuclear option" might very well be exactly that and leave no winners, but only losers. When considering this, we should bear in mind that presently, the NTIA can transfer the IANA functions. It cannot recall the board. If it could choose between the two, I suspect it would choose for the power to recall the board as it is both executable and effective. Transferring the IANA functions is neither. It took 16 years to build ICANN into what it presently is, how long would it take us to build a trusted, better, more accountable, more transparent alternative?