Work Item: **WP1-7A: Removing the ICANN Board of Directors**
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                   (Version 3.1) Malcolm Hutty (malcolm@linx.net)
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Introduction

This paper sets out three alternative strawman proposals for a mechanism to remove the ICANN Board of Directors.

The three alternatives distinguished

	Strawman 1	Strawman 2	Strawman 3
Standing: who can *petition* **for Board spill?**	• Any 2 SOs; or • Any 2 ACs; or • 1 SO + 1AC	• 3 constituencies within gNSO; or • 3 regions within ccNSO; or • ASO	Per rules of each SO
Decision: who *decides* **to spill Board ?**	Community Council[1]	Community Council[2]	Consensus vote by any SO
Basis for decision	Loss of confidence	Loss of confidence	Loss of confidence
Intended effect	**Last resort mechanism** to remove Board if there is a very high level of consensus to do so within the community	Make Board more responsive by giving mechanism for **substantial components of the community** to press their case for spilling the Board before rest of the community	Board would have to **command the confidence of each SO** on an ongoing basis.
Likelihood of petition occurring	Least likely / highest bar	More likely / intermediate bar	Most likely / lowest bar
Likelihood of petition resulting in spill	Most likely (cross-community support already established by petition)	Least likely (cross-community support not yet established by petition)	Less likely than (1) (Cross-constituency/region support not established by petition)

WP1-7A Strawman 1 establishes a Community Council as a permanent body, and this Council would exclusively have the power to discharge the Board. Members of the Community Council would be appointed by constitute elements of ICANN (SOs and ACs); in order to ensure independence from the Board individuals who hold other leadership positions within ICANN would not be eligible for appointment to the Community Council. Crucially to this strawman proposal, the Community Council

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[1] The original paper proposed a Community Council, and this was envisaged to have multiple powers, not just spilling the Board. If it is decided instead to have some other structure (e.g. statutory members, permanent CCWG) then this power could be given to that body instead.
[2] As above.

would only be able to exercise this power after having been petitioned to do so by two SOs, two ACs, or one SO and one AC.

WP1-7A Strawman 2 follows the same format as Strawman 1, but grants a broader set of entities the right to petition the Community Council to discharge the Board.

WP1-7A Strawman 3 simply empowers each of the three SOs to discharge the Board, provided that a full consensus is found within the SO so to do.

Rationales for, and criticism of, each alternative proposal

Strawman 1 recognises that discharging the Board is a major step, that itself introduces risk to the organisation, and prioritises guarding against excessive use of that power by setting a high bar to exercising it.

In Strawman 1, discharging the Board is a two-step procedure: first there has to be a petition from two SOs or ACs, and second there has to be decision by the Community Council. In practice, the power to petition for discharge the Board is only ever likely to be exercised by gNSO, ccNSO or GAC[3]. Thus the Community Council would only be engaged once the Board had already lost the confidence of either the entire names community other than governments, or the entire stakeholder base for either generic or country code domains. This raises the question of what purpose the Community Council would then fulfil: why would it ever choose not to act upon such a petition? The view of an entire community would be clear by virtue of the petition; if the Community Council failed to act upon it, it would be presumed that this was because the Council believed the community had erred[4].

The existence of the Community Council would give the Board the opportunity to engage more directly with a small number of individuals to justify themselves and win the support and sympathy of the Council members. This could then result in a Board being retained that had lost the support of the broader community, simply by virtue of having persuaded a small group of individual representatives that the broader community is misguided. Whether one supports this model is therefore likely to depend substantially on whether one has greater faith in having sensitive decisions taken on as broad as base as possible (in order to prioritise community accountability) or by representatives who are able to engage deeply and apply special expertise.

Strawman 2 also recognises that actually discharging the Board is a major step, but distinguishes itself from Strawman 1 by suggesting that a considerably lower bar be set for raising the suggestion that the Board be discharged than for deciding to do so. Strawman 2 requires the same process for

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[3] SSAC and RSSAC see themselves as purely advisory bodies, whereas discharging the Board is a "command function"; they are therefore unlikely to feel it is appropriate for themselves to exercise a power to petition, even if they are themselves concerned by the action or inaction of the Board. ASO is unlikely to feel it is appropriate to exercise the power to petition unless the numbers community (which is itself relatively unlikely, given the different relationship and limited responsibility ICANN has in that area); in the event that ASO felt it was sufficiently impacted to justify initiating such a procedure, ASO would be more likely to look for a remedy to the MoU between ICANN and the RIRs, and other provisions of the CRISP proposal for post-transition IANA improvements for numbering, than to have recourse to this mechanism.

[4] The other possibility was that there was substantial objection to the petition from one of the other communities not party to the petition. However, this should not be presumed likely: there is big difference between a community not themselves feeling a requirement to spill the Board and actively opposing it. For example, ASO might not choose to join in a petition motivated by a failure to follow DNS PDP, as it doesn't affect the numbering community; that doesn't mean ASO would actively oppose discharging the Board for such a reason.

taking the decision to discharge the Board as Strawman 1, with the same high threshold within the Community Council. However the right to petition the Community Council to exercise this power is extended more broadly: to any three constituencies within gNSO or regions within ccNSO, as well as ASO.

This difference in Strawman 2 would make the Community Council a more deliberative body. In Strawman 1 the position of an entire community is clear; in Strawman 2, only the concern of a subset of the community is established, and the Community Council becomes the venue for hearing their grievance and establishing whether the community as a whole upholds it and wishes to discharge the Board on its account. This would itself act as a check and balance to the Board, as it would be the only ICANN structure representing the whole community, other than the Board, and the only venue for addressing the community, other than Open Mic sessions.

Strawman 3 is much simpler. It avoids the additional complexity of creating yet another new structure, the Community Council. Strawman 3 stands for the proposition that any ICANN Board must command the confidence of each of the three main communities it serves, the three SOs. If there is a critical loss of confidence by any of the three SOs, a new Board should be selected that can command their confidence.

It might be challenged that it is unjust that one SO alone could unseat a Board that is supported by the other two. Strawman 3's answer to this is that any Board should be able to command the confidence of all three, and that this is an achievable goal. Moreover, if it is felt too difficult to achieve, that does not justify imposing a Board on an unwilling community, but would instead indicate a need to divide ICANN.

This proposal prioritises ensuring that the Board is responsive to and answerable to the community. It is more likely that the Board will in fact be spilled under this model than the other two alternatives. Accordingly, it would be especially important if this proposal is accepted to ensure appropriate mechanisms are in place to accommodate that, such as an "Emergency Caretaker Director" and a mechanism to appoint new directors rapidly.

Strawman 3 does not grant the power discharge the Board to Advisory Committees. The reason for this is simple: Advisory Committees are *advisory*, not responsible executive functions. By contrast, the SOs are the embodiment of the community the Board is intended to serve (and therefore the closest available analogue to membership); as such giving the SOs the ultimate oversight over the Board implements the bottom-up multistakeholder model, whereas giving it to ACs would not.

ACCOUNTABILITY
MECHANISMS

Template for WP1-7A Strawman 1

<table>
<tr>
<td rowspan="5">Description</td>
<td>Name of Mechanism</td>
<td style="text-align:center"><u>WP1-7A Strawman 1:</u>
Removing the ICANN Board of Directors</td>
</tr>
<tr>
<td>Description</td>
<td>This would be a new power for the community to bring about the removal of the ICANN Board of Directors ("the Board"). All directors would be removed and processes would be commenced to replace appointment directors.</td>
</tr>
<tr>
<td>Category (check & balance, review, redress)</td>
<td>Check and balance: it <u>provides the community with an ultimate recourse, to remove the Board from office, ensuring that, in the final analysis, the community retains ultimate control of the organisation.</u> <s>increases the focus of the Board on meeting the community's needs, as in the ultimate case it would know it could be removed from office if it failed to do so.</s>

Redress: the community could ultimately redress a grievance about ICANN's behaviour by causing the election/appointment of a new Board of Directors.</td>
</tr>
<tr>
<td>Is the mechanism triggered or non triggered ?</td>
<td>Triggered.
In the normal course of events Board members serve the term they are appointed for. The community would need significant reason to remove the Board.</td>
</tr>
<tr>
<td>Possible outcomes (approval, re-do, amendment of decision, etc.)</td>
<td>Process to remove the Board succeeds or fails.
If <u>succeeds</u>, new election/appointment of the Board begins.
If <u>fails</u>, nothing happens.</td>
</tr>
<tr>
<td rowspan="2">Standing</td>
<td>Conditions of standing (ie « last resort », type of decision being challenged, …)</td>
<td>The <<<mark>Community Council</mark>>> would have the power to trigger this mechanism – it would be the sole body able to implement it.</td>
</tr>
<tr>
<td>Who has standing (directly or indirectly affected party, thresholds…)</td>
<td>Triggering this mechanism would require a petition to the <<<mark>Community Council</mark>>> from any of the following:
Two SOs
Two ACs
One SO and one AC
The petitioning SOs/ACs would have to demonstrate that they had followed their usual internal processes to arrive at the decision to formally trigger this mechanism.</td>
</tr>
</table>

ACCOUNTABILITY
MECHANISMS

Standard of review	Which standards is the decision examined against (process, principles, other standards…)	It is proposed that there is a subjective standard to be assessed and demonstrated for this mechanism to be available to the <<Community Council>>: *The actions of ICANN, through action or inaction by the Board, were inconsistent with the obligations set out in the Community Compact.* Aside from this, the standard is the community's opinion. There cannot be an objective test for this mechanism.
	Which purpose(s) of accountability does the mechanism contribute to ?	It contributes to all four purposes of accountability as defined by the CCWG: Ensuring that ICANN will – • 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) It contributes to these purposes by giving the Board knowledge that if they do not collectively live up to the community's expectations in respect of being accountable, they can be removed.
Composition	Required skillset	The <<Community Council>> will be a standing body in ICANN, established under the Articles / Bylaws with the general purpose of being the way the Community exercises its reserve powers over ICANN. One of these reserve powers is "Removing the ICANN Board of Directors" as specified in this Template. Appointees to the <<Community Council>> should be members of the ICANN Community in good standing and able to make decisions that relate to the various powers granted to the <<Community Council>>. In particular for this power, they will need: • advanced knowledge of ICANN's Compact; • understanding of expectations of the ICANN community; and • understanding of ICANN's environment and context

	Diversity requirements (geography, stakeholder interests, gender, other…)	**Option 1** The <<Community Council>> will achieve diversity of stakeholder and gender representation, due to the requirements set out in the next box. **Option 2** The <<Community Council>> will achieve diversity of stakeholder, gender and regional representation, due to the requirements set out in the next box.

	Number of persons (approximate or interval)	**Option 1:**
		The <<Community Council>> will consist of **twelve** members, comprised as follows:
		• Two representatives of each of the following community bodies:
		   ○ ccNSO
		   ○ GNSO
		   ○ ASO
		   ○ ALAC
		   ○ GAC
		• One representative of each of the following bodies:
		   ○ SSAC
		   ○ RSSAC
		In selecting their representatives, the community bodies electing two representatives must elect two people of different genders.
		
		Option 2:
		The <<Community Council>> will consist of **twenty nine members**, comprised as follows:
		• Five representatives of each of the following community bodies:
		   ○ ccNSO
		   ○ GNSO
		   ○ ASO
		   ○ ALAC
		   ○ GAC
		• Two representatives of each of the following bodies:
		   ○ SSAC
		   ○ RSSAC
		
		In selecting their representatives, the community bodies electing five representatives must:
		• ensure equitable representation across the five ICANN regions; and
		• elect at least two men and at least two women.
		
		The community bodies electing two representatives must:
		• elect two people from different ICANN regions; and
		• elect two people of different genders.

	Independence requirements	Members of the <<Community Council>> may not be from any of the following categories of people: • ICANN Directors or Board Liaisons • ICANN Staff • ICANN's Nominating Committee • Members of any Review or Redress institutions • Current office-holder (Chair or Vice Chair) in an SO or AC • Staff of entities that are commercially dependent on ICANN No more than **two** members of the Community Council may be from any single company or group of related companies, or from one national government or other governmental organisation.
	Election / appointment by whom ?	Members of the <<Community Council>> are appointed by their SOs and ACs according to their usual documented processes. Members are appointed for a term of one year, commencing on 1 January. If the appointing body has not appointed member/s in time for 1 January, the current member/s continue/s in office until the new one/s is/are appointed (and the term limit does not apply). Members are eligible for re-election for a maximum of three consecutive terms, and for five terms in total. The <<Community Council>> will elect its own Chair from among its members, who will have a deliberative but not a casting vote. *(note: this ensures that the Council cannot be sabotaged by appointing bodies failing to appoint members.)*

	Recall or other accountability mechanism	The appointing bodies can hold their members to account as per the following rules, which will be set out in the section/s of the Articles / Bylaws constituting this <<Community Council>>: • Where an appointing body has concerns about the actions of a member they have appointed, they may by whatever process they choose issue the member with a Formal Warning. • Not sooner than thirty days after the issue of a Formal Warning, if the appointing body's concerns have not been resolved, they may appoint a new member to replace the specified member (using the same process they used to appoint that member in the first place). The new member takes over seamlessly from the old member. *(note: this ensures that the Council cannot be sabotaged by appointing bodies removing their members and failing to appoint new ones.)*

ACCOUNTABILITY MECHANISMS

Decision making	Is the decision mandated or based on personal assessment	**Option A:** Members of the <<Community Council>> make decisions on personal assessment, but for the use of this power must attend and participate in a meeting of their appointing body's peak body which is solely convened to discuss the use of this mechanism no more than fourteen days and no fewer than seven days before the decision is to be made by the Council. *(note: this option is my proposed compromise position between mandated and individual – individual (because how can SOs or ACs make split decisions?) but requiring attendance at and participation in a discussion.)* **Option B:** Members of the <<Community Council>> make decisions on a mandated basis for the exercise of this power. Appointing bodies may direct their members in any way they see fit that meets the following criteria: • The decision must be made by the peak body of that SO/AC, at a meeting convened for the purpose and not more than 14 and not fewer than 7 days before the date of the Council meeting that will trigger this mechanism; • The meeting of that SO/AC's body should follow its usual processes particularly in respect of the degree of openness it allows to its part of the ICANN community; • The decision must be to direct the votes of all of the SO/AC's members of the Council; • The decision must be agreed supermajority of at least 2/3 of the voting members of the peak body; • The decision must be communicated to the members of the Council representing that SO/AC in writing – and such communication may be public or private. Members of the Council have no discretion but must cast their votes according to the directions they have received.
	Decision made by consensus or vote ?	Decision is by vote of the <<Community Council>> members.
	Majority threshold (if applicable)	**Where membership is Option 1:** Ten members (83.3%) of the <<Community Council>> must vote in favour of the resolution to dismiss the Board. **Where membership is Option 2:** Twenty four members (82.8%) of the <<Community Council>> must vote in favour of the resolution to dismiss the Board. *(note: this is designed to ensure that one single SO or AC cannot block the removal of the Board.)*

ACCOUNTABILITY MECHANISMS

	Cost requirements	There are costs involved, as follows: • The general costs of the <<Community Council>>'s existence and operation, including whatever staffing or contracted secretariat support it requires. • The costs of a meeting that implements this particular mechanism to remove the Board. • The costs across the ICANN community of conducting the election/appointment process for a fresh Board.
Accessibility	Timeframe requirements	To be implemented before IANA stewardship transition (i.e. WS1). In terms of implementing this power, I envision that: • Within two working days of the Council receiving an appropriate petition as set out in this template, it must convene a meeting scheduled between fourteen and twenty one days into the future. • SOs and ACs must convene meetings as noted above. • If the Board is removed, various election and appointment processes must be able to appoint a new Board as soon as practicable. Timeframe currently unknown.
	Language requirements	As general in ICANN – translated into the usual language.
Implementation	Potential means to implement	Amendments to Articles and/or Bylaws that create the <<Community Council>> and its powers, including this power. These amendments would need to be created in a way which left them unable to be changed except by community consent (perhaps by approval of the <<Community Council>> itself – to be determined).

Other considerations if this mechanism was implemented:

- The President and CEO is a member of the Board. The CEO's employment arrangements must provide for them continuing in the role of CEO notwithstanding their removal from the Board.
- The issue of "who governs ICANN after the Board is dismissed" should be handled like this:
  - o A "Caretaker Mode" convention is developed limiting the authority of the Board and the Chief Executive Officer to only continuing the organisation's existence and making routine low-level decisions.
  - o The removed Board formally remains in office but in this "Caretaker Mode" for a defined period of time. At that time all of the previous Directors are deemed to have resigned, and new or reappointed Board members – however many or few are in place – form the Board. This is designed to ensure that no part of the appointment process can be used to hold the organisation hostage.
- Should an SO/AC that is happy to retain its elected Directors be able to trigger a quick reappointment process? Or should full re-elections be required in every instance? Or should

> **Commented [MSAH1]:** This is one possibility. Another alternative is the Emergency Director model, see Strawman 3.

Directors who have been part of a Board that has been discharged thereby become ineligible for reappointment?

Template for WP1-7A Strawman 2

	Name of Mechanism	**WP1-7A Strawman 2:** **Removing the ICANN Board of Directors**
Description	Description	This would be a new power for the community **to bring about the removal of the ICANN Board of Directors** ("the Board"). All directors would be removed and processes would be commenced to replace appointment directors.
	Category (check & balance, review, redress)	**Check and balance**: 1) It provides substantial subsets of the community with a venue to address the ICANN community as a whole – a venue that is capable of acting (unlike Open Mic) 2) it provides the community with an ultimate recourse, to remove the Board from office, ensuring that, in the final analysis, the community retains ultimate control of the organisation. ~~it increases the focus of the Board on meeting the community's needs, as in the ultimate case it would know it could be removed from office if it failed to do so.~~ **Redress:** the community could ultimately redress a grievance about ICANN's behaviour by causing the election/appointment of a new Board of Directors.
	Is the mechanism triggered or non triggered ?	**Triggered.** In the normal course of events Board members serve the term they are appointed for. The community would need significant reason to remove the Board.
	Possible outcomes (approval, re-do, amendment of decision, etc.)	Process to remove the Board succeeds or fails. • If <u>succeeds</u>, new election/appointment of the Board begins. • If <u>fails</u>, nothing happens.
Standing	Conditions of standing (ie « last resort », type of decision being challenged, …)	The <<Community Council>> would have the power to trigger this mechanism – it would be the sole body able to implement it.

ACCOUNTABILITY
MECHANISMS

	Who has standing (directly or indirectly affected party, thresholds…)	Triggering this mechanism would require a petition to the <<Community Council>> from any of the following: • ~~Two SOs~~ • ~~Two ACs~~ • ~~One SO and one AC~~ • Three constituencies within gNSO • Three regions within ccNSO • ~~ASO~~ The petitioning parties ~~SOs/ACs~~ would have to demonstrate that they had followed their usual internal processes to arrive at the decision to formally trigger this mechanism.
Standard of review	Which standards is the decision examined against (process, principles, other standards…)	It is proposed that there is a subjective standard to be assessed and demonstrated for this mechanism to be available to the <<Community Council>>: *The actions of ICANN, through action or inaction by the Board, were inconsistent with the obligations set out in the Community Compact.* Aside from this, the standard is the community's opinion. There cannot be an objective test for this mechanism.
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Composition	Required skillset	The <<Community Council>> will be a standing body in ICANN, established under the Articles / Bylaws with the general purpose of being the way the Community exercises its reserve powers over ICANN. One of these reserve powers is "Removing the ICANN Board of Directors" as specified in this Template. Appointees to the <<Community Council>> should be members of the ICANN Community in good standing and able to make decisions that relate to the various powers granted to the <<Community Council>>. In particular for this power, they will need: • advanced knowledge of ICANN's Compact; • understanding of expectations of the ICANN community; and • understanding of ICANN's environment and context
	Diversity requirements (geography, stakeholder interests, gender, other…)	**Option 1** The <<Community Council>> will achieve diversity of stakeholder and gender representation, due to the requirements set out in the next box. **Option 2** The <<Community Council>> will achieve diversity of stakeholder, gender and regional representation, due to the requirements set out in the next box.

ACCOUNTABILITY MECHANISMS

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	In selecting their representatives, the community bodies electing two representatives must elect two people of different genders.
	
	Option 2:
	The <<Community Council>> will consist of **twenty nine members**, comprised as follows:
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Decision making	Decision made by consensus or vote ?	Decision is by vote of the <<Community Council>> members.
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Accessibility	Cost requirements	There are costs involved, as follows: • The general costs of the <<Community Council>>'s existence and operation, including whatever staffing or contracted secretariat support it requires. • The costs of a meeting that implements this particular mechanism to remove the Board. • The costs across the ICANN community of conducting the election/appointment process for a fresh Board.
	Timeframe requirements	To be implemented before IANA stewardship transition (i.e. WS1). In terms of implementing this power, I envision that: • Within two working days of the Council receiving an appropriate petition as set out in this template, it must convene a meeting scheduled between fourteen and twenty one days into the future. • SOs and ACs must convene meetings as noted above. • If the Board is removed, various election and appointment processes must be able to appoint a new Board as soon as practicable. Timeframe currently unknown.
	Language requirements	As general in ICANN – translated into the usual language.
Implementation	Potential means to implement	Amendments to Articles and/or Bylaws that create the <<Community Council>> and its powers, including this power. These amendments would need to be created in a way which left them unable to be changed except by community consent (perhaps by approval of the <<Community Council>> itself – to be determined).

Other considerations if this mechanism was implemented:

- The President and CEO is a member of the Board. The CEO's employment arrangements must provide for them continuing in the role of CEO notwithstanding their removal from the Board.
- The issue of "who governs ICANN after the Board is dismissed" should be handled like this:
  - A "Caretaker Mode" convention is developed limiting the authority of the Board and the Chief Executive Officer to only continuing the organisation's existence and making routine low-level decisions.
  - The removed Board formally remains in office but in this "Caretaker Mode" for a defined period of time. At that time all of the previous Directors are deemed to have resigned, and new or reappointed Board members – however many or few are in place – form the Board. This is designed to ensure that no part of the appointment process can be used to hold the organisation hostage.
- Should an SO/AC that is happy to retain its elected Directors be able to trigger a quick reappointment process? Or should full re-elections be required in every instance?

Template for WP1-7A Strawman 3

	Name of Mechanism	**WP1-7A Strawman 3:** **Removing the ICANN Board of Directors**
Description	Description	This would be a new power for the community **to bring about the removal of the ICANN Board of Directors** ("the Board"). All directors would be removed and processes would be commenced to replace appointment directors.
	Category (check & balance, review, redress)	**Check and balance**: it increases the focus of the Board on meeting the community's needs, as in the ultimate case it would know it could be removed from office if it failed to do so. **Redress:** the community could ultimately redress a grievance about ICANN's behaviour by causing the election/appointment of a new Board of Directors.
	Is the mechanism triggered or non triggered ?	**Triggered.** In the normal course of events Board members serve the term they are appointed for. The community would need significant reason to remove the Board.
	Possible outcomes (approval, re-do, amendment of decision, etc.)	Process to remove the Board succeeds or fails. • If <u>succeeds</u>, new election/appointment of the Board begins. • If <u>fails</u>, nothing happens.
Standing	Conditions of standing (ie « last resort », type of decision being challenged, …)	~~The <<Community Council>> would have the power to trigger this mechanism – it would be the sole body able to implement it.~~ Any SO could trigger this mechanism.

ACCOUNTABILITY MECHANISMS

	Who has standing (directly or indirectly affected party, thresholds…)	A resolution to discharge the Board would have to be carried by any one of: • gNSO Council • ccNSO Council • ASO This resolution would have to be supported by a full consensus within the relevant Council. This would be a bylaws condition; the SO would not have the power to move to (for example) a majority vote for this resolution. Triggering this mechanism would require a petition to the <<Community Council>> from any of the following: • Two SOs • Two ACs • One SO and one AC The petitioning SOs/ACs would have to demonstrate that they had followed their usual internal processes to arrive at the decision to formally trigger this mechanism.
Standard of review	Which standards is the decision examined against (process, principles, other standards…)	This is a confidence motion: there is no objective standard. Any SO could discharge the Board for any reason, or without formally expressing a collective reason, if they lose confidence in the Board. The check on this power is that there needs to be a full consensus within the SO. It is proposed that there is a subjective standard to be assessed and demonstrated for this mechanism to be available to the <<Community Council>>: *The actions of ICANN, through action or inaction by the Board, were inconsistent with the obligations set out in the Community Compact.* Aside from this, the standard is the community's opinion. There cannot be an objective test for this mechanism.

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ACCOUNTABILITY MECHANISMS

		Which purpose(s) of accountability does the mechanism contribute to ?	Primarily, it contributes to ensuring that ICANN remains a bottom-up multistakeholder organisation in fact as well as name. As a consequence, the community will be able to enforce all the other purposes of accountability through this mechanism, as a last resort. It contributes to all four purposes of accountability as defined by the CCWG: Ensuring that ICANN will – • 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) It contributes to these purposes by giving the Board knowledge that if they do not collectively live up to the community's expectations in respect of being accountable, they can be removed.
	Composition	Required skillset	N/A ~~The <<Community Council>> will be a standing body in ICANN, established under the Articles / Bylaws with the general purpose of being the way the Community exercises its reserve powers over ICANN. One of these reserve powers is "Removing the ICANN Board of Directors" as specified in this Template.~~ ~~Appointees to the <<Community Council>> should be members of the ICANN Community in good standing and able to make decisions that relate to the various powers granted to the <<Community Council>>.~~ ~~In particular for this power, they will need:~~ ~~• advanced knowledge of ICANN's Compact;~~ ~~• understanding of expectations of the ICANN community; and~~ ~~• understanding of ICANN's environment and context~~

	Diversity requirements (geography, stakeholder interests, gender, other…)	SOs are themselves a mechanism for achieving diversity.
		Option 1 The <<Community Council>> will achieve diversity of stakeholder and gender representation, due to the requirements set out in the next box.
		Option 2 The <<Community Council>> will achieve diversity of stakeholder, gender and regional representation, due to the requirements set out in the next box.

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	Number of persons (approximate or interval)	**Option 1:**
		The <<Community Council>> will consist of **twelve** members, comprised as follows:
		• Two representatives of each of the following community bodies:
		o ccNSO
		o GNSO
		o ASO
		o ALAC
		o GAC
		• One representative of each of the following bodies:
		o SSAC
		o RSSAC
		In selecting their representatives, the community bodies electing two representatives must elect two people of different genders.
		Option 2:
		The <<Community Council>> will consist of **twenty nine members**, comprised as follows:
		• Five representatives of each of the following community bodies:
		o ccNSO
		o GNSO
		o ASO
		o ALAC
		o GAC
		• Two representatives of each of the following bodies:
		o SSAC
		o RSSAC
		In selecting their representatives, the community bodies electing five representatives must:
		• ensure equitable representation across the five ICANN regions; and
		• elect at least two men and at least two women.
		The community bodies electing two representatives must:
		• elect two people from different ICANN regions; and
		• elect two people of different genders.

ACCOUNTABILITY
MECHANISMS

		Independence requirements	~~Members of the <<Community Council>> may not be from any of the following categories of people:~~
			~~ICANN Directors or Board Liaisons~~ ~~ICANN Staff~~ ~~ICANN's Nominating Committee~~ ~~Members of any Review or Redress institutions~~ ~~Current office-holder (Chair or Vice Chair) in an SO or AC~~ ~~Staff of entities that are commercially dependent on ICANN~~ ~~No more than **two** members of the Community Council may be from any single company or group of related companies, or from one national government or other governmental organisation.~~
		Election / appointment by whom ?	~~Members of the <<Community Council>> are appointed by their SOs and ACs according to their usual documented processes.~~ ~~Members are appointed for a term of one year, commencing on 1 January.~~ ~~If the appointing body has not appointed member/s in time for 1 January, the current member/s continue/s in office until the new one/s is/are appointed (and the term limit does not apply).~~ ~~Members are eligible for re-election for a maximum of three consecutive terms, and for five terms in total.~~ ~~The <<Community Council>> will elect its own Chair from among its members, who will have a deliberative but not a casting vote.~~ ~~(note: this ensures that the Council cannot be sabotaged by appointing bodies failing to appoint members.)~~

ACCOUNTABILITY
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	Recall or other accountability mechanism	The appointing bodies can hold their members to account as per the following rules, which will be set out in the section/s of the Articles / Bylaws constituting this <<Community Council>>: • Where an appointing body has concerns about the actions of a member they have appointed, they may by whatever process they choose issue the member with a Formal Warning. • Not sooner than thirty days after the issue of a Formal Warning, if the appointing body's concerns have not been resolved, they may appoint a new member to replace the specified member (using the same process they used to appoint that member in the first place). The new member takes over seamlessly from the old member. (note: this ensures that the Council cannot be sabotaged by appointing bodies removing their members and failing to appoint new ones.)

ACCOUNTABILITY MECHANISMS

Decision making	Is the decision mandated or based on personal assessment	~~Option A:~~
		~~Members of the <<Community Council>> make decisions on personal assessment, but for the use of this power must attend and participate in a meeting of their appointing body's peak body which is solely convened to discuss the use of this mechanism no more than fourteen days and no fewer than seven days before the decision is to be made by the Council.~~
		
		~~(note: this option is my proposed compromise position between mandated and individual – individual (because how can SOs or ACs make split decisions?) but requiring attendance at and participation in a discussion.)~~
		
		~~Option B:~~
		~~Members of the <<Community Council>> make decisions on a mandated basis for the exercise of this power. Appointing bodies may direct their members in any way they see fit that meets the following criteria:~~
		  • ~~The decision must be made by the peak body of that SO/AC, at a meeting convened for the purpose and not more than 14 and not fewer than 7 days before the date of the Council meeting that will trigger this mechanism;~~
		  • ~~The meeting of that SO/AC's body should follow its usual processes particularly in respect of the degree of openness it allows to its part of the ICANN community;~~
		  • ~~The decision must be to direct the votes of all of the SO/AC's members of the Council;~~
		  • ~~The decision must be agreed supermajority of at least 2/3 of the voting members of the peak body;~~
		  • ~~The decision must be communicated to the members of the Council representing that SO/AC in writing – and such communication may be public or private.~~
		
		~~Members of the Council have no discretion but must cast their votes according to the directions they have received.~~

	Decision made by consensus or vote ?	~~Decision is by vote of the <<Community Council>> members.~~
	Majority threshold (if applicable)	~~**Where membership is Option 1:**~~ ~~Ten members (83.3%) of the <<Community Council>> must vote in favour of the resolution to dismiss the Board.~~ ~~**Where membership is Option 2:**~~ ~~Twenty four members (82.8%) of the <<Community Council>> must vote in favour of the resolution to dismiss the Board.~~ ~~(note: this is designed to ensure that one single SO or AC cannot block the removal of the Board.)~~

	Cost requirements	~~There are costs involved, as follows:~~ - ~~The general costs of the <<Community Council>>'s existence and operation, including whatever staffing or contracted secretariat support it requires.~~ - ~~The costs of a meeting that implements this particular mechanism to remove the Board.~~ - ~~The costs across the ICANN community of conducting the election/appointment process for a fresh Board.~~
Accessibility	Timeframe requirements	~~To be implemented before IANA stewardship transition (i.e. WS1).~~ ~~In terms of implementing this power, I envision that:~~ - ~~Within two working days of the Council receiving an appropriate petition as set out in this template, it must convene a meeting scheduled between fourteen and twenty one days into the future.~~ - ~~SOs and ACs must convene meetings as noted above.~~ - ~~If the Board is removed, various election and appointment processes must be able to appoint a new Board as soon as practicable. Timeframe currently unknown.~~
	Language requirements	~~As general in ICANN – translated into the usual language.~~
Implementation	Potential means to implement	Amendments to Articles and/or Bylaws <u>to grant this power to SOs, and to ensure it can only be exercised by full consensus.</u> <u>Amendments to Articles and/or Bylaws to create a corporate officer, not being a member of the Board, who automatically becomes the sole Emergency Director in the event that this power is exercised, with a specific duty to institute proceedings to appoint a new Board as soon as practicable, and who is automatically removed from office as a Board member upon appointment of a new Board.</u> ~~that create the <<Community Council>> and its powers, including this power.~~ These amendments would need to be created in a way which left them unable to be changed except by community consent ~~(perhaps by approval of the <<Community Council>> itself – to be determined).~~

Other considerations if this mechanism was implemented:

- The President and CEO is a member of the Board. The CEO's employment arrangements must provide for them continuing in the role of CEO notwithstanding their removal from the Board.
- ~~The issue of "who governs ICANN after the Board is dismissed" should be handled like this:~~

ACCOUNTABILITY MECHANISMS

CCWG Accountability   Template

- o A "Caretaker Mode" convention is developed limiting the authority of the Board and the Chief Executive Officer to only continuing the organisation's existence and making routine low-level decisions.
  - o The removed Board formally remains in office but in this "Caretaker Mode" for a defined period of time. At that time all of the previous Directors are deemed to have resigned, and new or reappointed Board members – however many or few are in place – form the Board. This is designed to ensure that no part of the appointment process can be used to hold the organisation hostage.
- Should an SO/AC that is happy to retain its elected Directors be able to trigger a quick reappointment process? Or should full re-elections be required in every instance?