

5.5 Power: Removing individual ICANN Directors

- 01 The Board is the governing body of ICANN, with main responsibilities that include employing the President and CEO, appointing the Officers, overseeing organizational policies, making decisions on key issues, defining the organization's strategic and operating plans and holding the staff to account for implementing them.
- 02 Directors are currently appointed for a fixed term and generally are in office for the whole term they are appointed - by their SO/AC, by the Nominating Committee. In addition the Board appoint the President and CEO (confirmed each year at the AGM). The power to remove individual directors of the ICANN Board is available only to the Board itself, and can be exercised through a 75% vote of the Board. There is no limitation¹ on the types of situation for which the Board can remove a director.
- 03 This power would clarify that each specific community organization that appoints a given director may end his or her service in office, prior to the expiration of the term, and trigger a reappointment process. The general approach, consistent with the law, is that the appointing body is the removing body.
- 04 For the seven directors appointed by the three Supporting Organizations or by the At-Large community (or by subdivisions within them e.g. within the GNSO), a process led by that organization or subdivision would lead to the director's removal.
- (For the directors appointed by the Nominating Committee, the CCWG-Accountability seeks the community's views about how to allow for removal. Following the principle of "the appointing body is the removing body", it does need to be the NomCom that takes the decision to remove one of these directors. Consistent with the ~~Reference Mechanism outlined Empowerment Process~~ above, ~~we expect that~~ the NomCom will need to obtain legal structure to be able to remove directors as well as to appoint directors. The actual removal process can be carried out by the sitting NomCom, or a sub-committee of the NomCom which is given the right to act on behalf of the NomCom
- ~~Our initial view is that such a~~The removal process should only be triggered on the petition of at least two of the SOs or ACs (or an SG from the GNSO). Such a petition would set out the reason/s removal was sought, and then the NomCom would consider the matter. ~~Legal counsel is also considering alternative approaches that would permit NomCom to act without itself becoming a legal entity.~~

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¹ There are escalation paths, up to and including removal from the Board, for Board member violations of the Code of Conduct and Conflict of Interest Policies, but the Bylaws do not currently require such a violation occur prior to Board removal.

p6 The CCWG-Accountability sees ~~two-three~~ options (~~either of which is legally viable~~) for the composition of the NomCom when considering removal of a director.

1. The NomCom could, through the Bylaws, have a standing Sub-committee composed of the members of the ICANN Community Council (or the individuals identified to cast votes on behalf of the SO/ACs).

2. The NomCom could have a special Sub-committee populated with community members explicitly selected for this task. One option would be to have former NomCom Members from the NomCom that selected the particular Director (implying several difference committees if removing Directors selected in different years).

1-3. It could simply be that the NomCom members at the time of a petition being lodged would decide.

2. ~~Alternatively, a special committee of the NomCom could be established to deal with removal petitions when they arise. This is likely to only rarely be used. The composition of such a special committee has not been determined, and input is welcome.~~

Option 1 was the methodology that attracted the most support within WP1. It is a pre-existing group of people and will require no effort to convene. The removal is effected by those who are empowered to act on behalf of the SO/AC community.

Option 2 is potentially awkward to create given that some of the people involved may still be on the NomCom and occupied and multiple groups may be required if there are multiple removals. If former NomCom members are not used, this will require a potentially complex process to select community members.

Option 3 requires that time be focused on removal might be at a point where the current NomCom may not be well organized or may be in the midst of its selection process and would not have the time to re-direct its efforts. Moreover, the NomCom is bound to carry out its deliberations in secret, and there was strong community support for ensuring that any Director removal be done in an open and transparent manner (presumably in option 1 and 2, the sub-committee would not be bound by the confidentiality and other constraints imposed on the NomCom proper). If the NomCom would act in the open, the discussions could jeopardize its impartiality, and it could be in the awkward position of considering a director for re-appointment that it is simultaneously removing.

p7 ~~The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters. The disadvantage is that it would require a new set of volunteers to populate it, as it would be preferable for the personnel of the two groups to be separate.~~

- Whether the decision-making body is the SO/AC or the NomCom, removal would require a **[75%]** level of support (or equivalent) to decide in favor of removal.
- The petitioning threshold to start the NomCom consideration of removing a director should be set at least at a majority of the SO/AC's governing body/council.**

p807 An additional mechanism to support the removal and recall of Directors is to have each person sign a letter of resignation when they accept the appointment. This pre-signed resignation letter

would be triggered by certain pre-defined criteria, such as the ones described in this Section or the following (“recalling the entire Board”).

~~99~~ **QUESTIONS AND OPEN ISSUES:**

~~10~~ *14a) Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability?*

~~11~~ *14b) Do you agree with the list of requirements for this recommendation?*

~~1208~~ *If not, please detail how you would recommend to amend these requirements.*