

CCWG-Accountability (WP1): Draft Content for the Second Public Comment Report

5.5 Power: Removing ~~individual~~Individual ICANN Directors

~~Item/s for CCWG discussion/decision on 23 July:~~

- ~~1. Paragraph 11 on the development of community standards — WP1 meeting #20 discussed this on 22 July and some members did not support any development of such standards or mention of them. The CCWG needs to resolve this matter.~~

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- 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 Of ICANN's sixteen Directors, fifteen are appointed for a fixed term (3 years) and generally are in office for the whole term that they are appointed ~~-for~~ by their SO/AC, or by the Nominating Committee. In addition the Board ~~appoint~~appoints the President and CEO (confirmed each year at the AGM), who serves on the Board ex officio (by reason of his or her position as President and CEO). The power to remove individual directors of the ICANN Board is currently available only to the Board itself, and can be exercised through a 75% vote of the Board. There is no limitation¹ on the Board's power to remove a director specified in the Bylaws.
- 03 This power would allow for the removal of a director before ~~their~~his or her fixed term comes to an end, with no rules set as ~~limit or require~~to limitations on such removal or requirements for a particular cause for such removal. It is expected ~~#that this power~~ would only be exercised in cases of serious difficulty with a particular director.
- 04 For the seven directors appointed by one of 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 decide on the director's removal. Only the SO or AC that appointed the director ~~can petition for their~~could decide on that director's removal.

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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 to occur prior to Board removal.

05 For directors appointed by the Nominating Committee, a process of the SOs and ACs
organized participating in the ~~community mechanism~~ Community Mechanism as Sole Member
would make a decision on the director's removal. ~~by voting as detailed below.~~ Any SO or AC
~~can~~ would be able to petition for the removal of a director appointed by the Nominating
Committee.

06 The following common elements apply ~~regardless of whether if~~ the director ~~is~~ was appointed by an
SO/AC or by the Nominating Committee:

- a. A petition to start consideration of a director's removal requires a **simple majority** in
~~an~~ one SO or AC.
- b. Where a petition to remove a director meets the required threshold, a meeting of the
ICANN Community Assembly (ICA) will be convened. At that meeting:
 - i. the Chair of the ICA must not be associated with the petitioning SO/AC or with the
director involved;
 - ii. representatives of the petitioning SO/AC must explain why they seek the director's
removal;
 - iii. the director has the opportunity to reply and set out ~~their~~ his or her views; and
 - iv. questions and answers can be asked of the petitioning SO/AC and of the director
involved by all the other participants in the ICA
- c. Between ~~seven~~ 7 and ~~fourteen~~ 14 days after the meeting of the ICA, the ~~decision-making
body (the SO/AC's governing body or the~~ Community Mechanism) ~~as Sole Member,
through votes of participating SOs and ACs,~~ makes a decision as to whether the director
is removed or not.
- d. ~~The threshold to cause the removal of the director is 3/4 of the votes cast, with a minimum
participation of 3/5 of eligible votes.~~

07 The decision to remove the director, where made by the ~~appointing~~ SO and AC, is ~~legally
validated implemented~~ by the CMSM in a procedure to be set out in the ~~bylaws~~ Bylaws that
~~involves~~ a similar pass-through to that which will occur to ~~validate implement~~ the appointment of
directors. Where the decision is made by ~~votes through~~ the CMSM, ~~it is binding already process,
the Sole Member will be bound by the vote outcome.~~

08 Where a director who had been appointed by ~~an~~ SO/AC is removed, that SO/AC is responsible
for filling the vacancy through the usual process. SOs or ACs may choose to develop expedited
processes for use in such a situation, and suggest these to the ICANN Board for consideration of
the relevant ~~bylaws~~ Bylaw changes.

09 Where a director who has been appointed by the Nominating Committee is removed, the
Nominating Committee may appoint a new director. It is expected that the Nominating Committee
will amend its procedures so as to have two or three "reserve" candidates in place, should any or
all of ~~their~~ its directors be removed under this power ~~(or as part of the recall of the entire ICANN
Board- described in 5.6).~~

Comment [1]: Lawyers' comment:
A petition need not be required or
any voting of the Community
Mechanism where the director
being removed is being removed at
the decision of the SO or AC
appointing that director. That is our
recollection of the decision in the
last call.

Comment [2]: 01 In discussion on
22 July WP1, there was an
unclear discussion about the
simple majority applying for the
petition.

Comment [3]: Lawyers' comment:
Need to consider whether these
thresholds make sense if there are
only 4 participating SOs and ACs in
the CMSM initially. Also need to
consider whether standard should
be percentage of votes cast or
percentage of votes outstanding.

Comment [4]: Lawyers' comment:
Note that the Bylaws already
provide for filling vacancies in seats
appointed by SOs/ACs with only a
written notice by the appointing
SO/AC under Article VI, Section
12.1.

10 In all cases, directors appointed to replace directors removed by this power fill the same “seat” and their term will come to an end when the term of the director they are replacing would have done.

11 As part of Work Stream 2, the CCWG-Accountability is recommending the development of community standards that will guide Board members, SOs, and ACs regarding expected behavior ~~in their role of directors~~, and the expectations which if not met could be expected to lead to a petition for their removal. Such standards would help establish common expectations across the community – they would **not** be criteria for, nor limitations on, the exercise of this power, or give any grounds for a director subject to removal to appeal or challenge the decision. The development of such standards should be a matter of priority in Work Stream 2.

Votes Cast	>66%	75%	>75%
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15	10	12	12
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17	12	13	13
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19	13	15	15
20	14	15	16

Comment [5]: Lawyers' comment: Recommend deleting chart. If not deleted, then at least need to explain its purpose.