

5.6 Power: Recalling the entire ICANN Board

240 There may be situations where removing individual ICANN directors is not viewed as a sufficient accountability remedy for the community: where a set of problems have become so entrenched that the community wishes to signal its lack of confidence in the Board by considering a recall of the entire ICANN Board in one decision.

241 Beyond the power set out above in Section 5.5 to remove individual directors, this power would allow the community to consider and cause the recall of the entire ICANN Board ~~with the exception of the President of ICANN, who serves on the Board ex officio~~. The community would initiate use of this power on the petition of two-thirds of the SOs and ACs participating in the Community Mechanism as Sole Member of ICANN, with at least one SO *and* one AC ~~petitioning~~. Implementation of this community power would be set out in Bylaws requiring petition and notice procedures along the following general lines:

- A petition (a) sponsored by at least one SO and one AC (indicated by signature), (b) setting forth the reasons for requesting that the CMSM consider recall of the entire Board, and (c) supported by signed statements by two-thirds of the SOs and ACs participating in the CMSM indicating their interest in considering the petition (a “Valid Petition”) is delivered to ICANN’s Board of Directors and ~~{Corporate Secretary/ or General Counsel};~~
- Upon receipt of the Valid Petition, within [7] calendar days the ~~{Corporate Secretary/ or General Counsel}~~ must either
 - provide notice to the sponsoring and supporting SOs and ACs of any issue identified with respect to the validity of the Valid Petition, with an unlimited period to cure; or
 - provide notice to all SOs and ACs participating in the CMSM that (a) a Valid Petition has been received, including a copy of the Valid Petition, (b) setting forth a Consultation Date within [30] days and a Voting Date [5] business days thereafter, and (c) calling for all SOs and ACs that have the right to require the CMSM to ~~select~~ one or more directors to notify the ~~{Corporate Secretary/ or General Counsel}~~ by the Consultation Date of the person[s] it has selected to serve on an Interim Board (for only so long as necessary until a replacement election could be held) should a vote ~~be held~~ in favor of recall of the entire Board occur, such notice to include a signed statement from the candidate(s) of their willingness to serve and any other information that the Bylaws require Board candidates to provide prior to election.
 - ~~A member of the Board~~ A director that is subject to the recall vote is not eligible to serve on the Interim Board.

Comment [1]: Lawyers’ comment: Consider how a recall would work if a petition is close in time to a scheduled election, given that one-third of the Board is elected each year (e.g., should the recall process be scheduled to coincide with an election that is scheduled to be held within three months?).

Comment [2]: Lawyers’ comment: Consider whether to require selection of person(s) to serve on the Interim Board as a condition of voting on recall.

242 After a Valid Petition is raised, the Consultation Date would provide a set period of time [30 calendar days] for SOs / ACs to individually and collectively deliberate and discuss whether

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the recall of the entire ICANN Board is warranted under the circumstances. On the Consultation Date, a formal opportunity for the SOs and ACs to discuss and collectively deliberate would be held [in person or through electronic means (telephone and Adobe ~~connect~~)-Connect]. Each SO and AC would then have [7] calendar days, to follow its own internal processes to decide how to vote on the matter, with its vote certified in writing by the Chair of the SO/AC to the ~~Corporate Secretary~~/or General Counsel] and copied to the ICANN Board and all participating SOs and ACs.

243 It would be preferable for a decision of this sort to be the result of cross-community consensus. Therefore, a suitably high threshold for the exercise of this power, [75%] of all the voting power available within the CMSM [insert reference to appropriate section/paragraph] would have to be cast in favor of recall of the entire Board for the recall to be effective. Requiring a majority of voting power rather than a majority of votes cast ensures that non-participation does not lower the threshold required to remove the Board. In this instance, abstention and non-participation have the same impact and effectively count as a vote against the action.

244 This threshold was chosen to stop any particular SO or AC from being able to prevent the recall of the Board, but to be as high as possible without allowing that to occur. [Note the need to reconsider precise threshold once the number of participating SOs/ACs in the CMSM and their voting power is decided.]

246 It is expected that recall of the entire ICANN Board will rarely, if ever, occur. Should it occur, however, there must be a Board immediately in place to serve as a fiduciary caretaker for ICANN until an election can be held for a ~~Replacement Board~~ Directors. As previewed in Paragraph [241], in the event that the threshold vote is met for a recall of the entire Board, simultaneous with that vote, ~~members of directors to serve on~~ the Interim Board will be selected automatically as the group of candidates that each SO and AC was required to provide on the Consultation Date and the Interim Board would replace the ICANN Board upon the determination of the voting results. Since the President serves on the Board by virtue of his or her executive position and is not subject to election/selection by the CMSM, recall of the entire Board would not affect the President's position either as President or as a ~~member of director~~ servicing on the ICANN Board.

- The Bylaws shall provide that the Interim Board will be in place only so long as required for the selection/election process for the Replacement Board and in no event longer than [120 days]. [Consideration should be given as to how to expedite the selection of a Replacement Board.]
 - In selecting a Replacement Board, SOs and ACs and the Nom Com may, if they so choose, select ~~members of the Board that was subject to recall~~ directors who were called and/or ~~members of directors servicing on~~ the Interim Board. Service In other words, service on the recalled Board or the Interim Board does not disqualify service on the Replacement Board.
 - The directors selected for the Interim Board, and later those selected for the Replacement Board, will step into the terms that were vacated by the recalled

Comment [3]: Removed as it was repetitive.

Comment [4]: Lawyers' comment: Precise threshold to be reconsidered once the number of participating SOs and ACs in the CMSM and their voting power is decided.

Comment [5]: ACTION ITEM #2 – WP1 TO ENSURE PROPOSED PROCESS SYNCs WITH REFERENCE MODEL.

Comment [6]: This section was removed in light of strong support for 75% threshold and only a couple of comments supporting 80% threshold.

Comment [7]: Lawyers' comment: Given the short duration of the Interim Board, consider whether the Interim Board could be excused from complying with any of the current requirements in the Bylaws in relation to diversity (of geography, culture, skills, experience and/or perspective) and other qualifications (while being required to comply with the California requirement that executive officers who receive compensation from ICANN may not constitute more than 49% of the Board).

Comment [8]: Lawyers' comment: Need to establish who certifies/oversees the vote (e.g., Corporate Secretary/General Counsel, Inspector of Elections/Votes or someone else?) and the time frame (e.g., within 3 calendar days of the vote or sooner?). Further consideration is needed around how the Nom Com fits into the process. The period that the Interim Board will serve is short enough that it may be sufficient to have the Nom Com focus on the Replacement Board and let the SOs and ACs determine the Interim Board. The Nom Com could put forward candidates or not. The Interim Board could be smaller than the regular Board.

Comment [9]: Lawyers' comment: Consideration should be given as to how to expedite the selection of a Replacement Board.

directors. Each SO and AC and the Nom Com shall determine which of the terms the interim and replacement directors shall fill. In this way there will be no disruption to the staggered terms of the ICANN Board.

- The Interim Board will have the same powers and duties as the Board it replaces because it is critical to the stability of ICANN (and required by law) that at all times there is a fiduciary in place. However, the Bylaws may provide that absent compelling circumstances it is the expectation that the Interim Board will consult with the CMSM before taking any action that would be a material change in strategy, policies or management, including without limitation, replacement of the President.
- Under the CMSM ~~reference model~~, Model, the collective results of the vote of the SOs and ACs becomes the action of the CMSM without any further Board action; the Interim Board would be in place as of the time that it is determined that the community vote satisfied the threshold for recall, and both the CMSM and the Interim Board would have the power to assert their rights in relation to that vote.

Comment [10]: Do you mean "enforce" here?

Finally, the CCWG acknowledges the dependency between CCWG Community **Power 5.6** and the CWG Transition reference as follows:

1. **Community Empowerment Mechanisms.** The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:
 - (a) The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;