

Power: Approve changes to “Fundamental Bylaws”

Question 10: Do you agree that the power for the community to approve any fundamental Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

There were **twenty-two** comments in this section.

21 comments suggested **agreement**; 4 comments noted **concerns**.

There were 1 **confusion** rated comments.

There was one **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability**, but **moderate concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns**: Impact on ICANN's operational effectiveness arising from this power.

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:

- Emphasizes the need to empower the community when amending fundamental bylaws. (310)
- Cites the likelihood that enforcing this power will require a membership structure; calls on CCWG to further explore and explain membership.
- Cites concern regarding a potential trade-off between accountability enhancement and the ability for ICANN to complete its mission. Recommends further work in WS2 to amend or augment list of fundamental bylaws. (317)
- Supports consideration of new or amended fundamental bylaws in WS2. (318)
- Concern that the current proposal does not include a well-defined list of requirements in Sections 5.4 and 3.2.3. (319)
- Concern that insufficient detail is included in Sections 5.4 and 3.2.3. Calls for greater specificity. (322)
- Concern that adding a new approval layer may seriously hamper process flow. (325)

Proposed CCWG response/approach to resolution

- CCWG will continue to explore and explain member structure.
- CCWG will continue its work to augment and clarify Sections 5.4 and 3.2.3.
- CCWG will consider mechanisms for limiting procedural impasse and possible delays

Contributor	Comment	CCWG Response/Action
RH	Question: Yes. Membership should have full powers.	CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal.
auDA	auDA agrees that empowerment of the community is a critical and	CCWG Response: Thank you for your comment.

	appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal.
DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and <u>amending the Fundamental Bylaws</u> .	CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal.
Afnic	Afnic supports this proposal.	CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal.
RySG	<ul style="list-style-type: none"> - RySG agrees that an enforceable community power to approve any Fundamental Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community. - RySG agrees with the list of requirements for this recommendation, with the addition of ICANN's existing Bylaw XVIII Section 1 current bylaw establishing ICANN's principle office location . 	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>The CCWG has not agreed with the notion of entrenching Article XVIII in the same way as fundamental bylaws – see section 4.4 of the Second Draft Proposal for the explanation.</p>
BC	<ul style="list-style-type: none"> - BC supports the approval mechanism for Fundamental Bylaws. - BC notes the recommendation to include ICANN primary office location as a fundamental bylaw 	CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated

	<p>- BC notes that Article 18 should be a Fundamental Bylaw</p> <p>- BC hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law.</p> <p>- BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.</p>	<p>with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>The CCWG has not agreed with the notion of entrenching Article XVIII in the same way as fundamental bylaws – see section 4.4 of the Second Draft Proposal for the explanation.</p> <p>The CCWG’s Second Draft Proposal also sets out the Community Mechanism as Sole Member which provides the legal enforceability needed in a simpler and more pragmatic manner than the previous model. See section 6 of the Second Draft Proposal for details.</p>
.UK	<p>(part b) We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG’s proposals.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal.</p> <p>We note that the mission and commitments and core values are in fact proposed to become fundamental – see section 4.4 of the Second Draft Proposal. This is consistent with the First Draft Proposal, which cited some examples that confused the issue. We apologise for that confusion.</p>
USCIB	<p>Para 199: We strongly support the requirement that the community ratify new “Fundamental” by-laws by giving positive assent.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The “positive assent” remains in place.</p>
LINX	<p>We strongly support the existence of this power.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws</p>

		matters in section 4 – see section 4.5 in particular).
ISPCP	<p>- agrees that the introduction of Fundamental Bylaws in principle would enhance ICANN’s accountability. However by introducing specific Fundamental Bylaws a trade-off between the potential accountability enhancement and ICANN (board) limitation to accomplish the mission seems to be needed. This should be discussed in particular under Work Stream 2.</p> <p>- As part of Work Stream 1 we do not see the necessity to add further Fundamental Bylaws.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The list of proposed fundamental bylaws remains largely the same. We do not see the tradeoff you identify, and would welcome further comments on our Second Draft Proposal if you see this as an ongoing problem.</p>
JPNIC	<p>- This is a common mechanism for non-profit organization. It is good to have checks and balances on the Board decisions. We recognize this is again listed as a requirement by the CWG-Stewardship.</p> <p>- We do not see a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to proposal new Fundamental Bylaws or changes to existing ones. It is not clear how this enhances accountability and implications of adopting such system. This may be something for consideration in the long term, as a part of Work Steam 2, if such needs are identified.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>The Second Draft proposal does not suggest any additional ways to propose changes to Fundamental Bylaws – they would continue to come through staff or the community to the ICANN Board as is the case today.</p> <p>While the Community Mechanism as Sole Member would have rights under law to propose such fundamental bylaws, its ability to exercise this or any other right not already dealt with as a Community Power will be limited – see paras 317-318 of the Second Draft Proposal.</p>
IPC	<p>The IPC agrees that empowering the community to approve any change to a Fundamental Bylaw will enhance ICANN’s accountability to the community. However, at this time, there does not appear to be a well-defined list of requirements for this recommendation, either in Section 5.4 or in Section 3.2.3. It is critical that these requirements be expressed with clarity, and the IPC urges the CCWG to revisit these sections for purposes</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). We hope that the level of clarity you seek has now been achieved, but</p>

	of clarification.	welcome any further comments on how we can improve the proposal.
Board	We recognize that the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community.	CCWG Response: Thank you for your comment.
USCC	Yes, the community approval of any fundamental bylaws would enhance ICANN's accountability and we believe is the list of requirements for this recommendation is sufficient.	CCWG Response: Thank you for your comment.
INTA	<p>- generally supports the idea of requiring some form of assent or involvement of SO/ACs as outlined in §5.4. However, INTA may later object to this requirement depending upon the details of the assent process and we respectfully note that there are flaws in the current proposal since the SO/AC structure is not truly representative of the entire Community and its various constituencies.</p> <p>- supports mechanisms to make it more difficult to change ICANN's purpose and core values and processes and powers critical to its accountability. However, the process for distinguishing between standard and fundamental Bylaws and for objecting to each, will have to be very clear and this standard is not clear enough in its proposed form. For example, at the present time, there is not a list of requirements for this recommendation either in Section 5.4 or Section 3.2.3. We recommend that ICANN develop a list of recommendations and submit them to the Community for public comment.</p> <p>- supports the concept that changes to such Bylaws should require Community consent before changes are implemented, rather than the rejection mechanism available for standard bylaws.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>We would welcome your feedback as to whether the clarity regarding requirements and process you seek has been achieved in this revised proposal; and any specific suggestions as to how it could be further improved are also very welcome.</p>
.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out: we support the "co- decision" model that this represents, with the Board and the community mechanism together having to approve changes to Fundamental Bylaws.	CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).
NCSG	Yes, we agree.	CCWG Response: Thank you for your comment.
CENTR	We believe that the power of the membership body to reject proposed Bylaw changes after their approval by the ICANN Board before they come	CCWG Response: Thank you for your comment.

	<p>into effect and to give positive assent to any change to the Fundamental Bylaws before completion might seriously hamper the process flow and therefore, introduce unnecessary approval layers. Accountability mechanism refinements might be better introduced at the Board representativeness level rather than via new approval layers. The fact the Board does not represent the community that elects it indicates one of the intrinsic accountability issues discernible in the current ICANN structure.</p>	<p>This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>The CCWG does not agree with CENTR’s argument that the incorporation of this power will seriously hamper the process of bylaws adoption. The requirement for co-decision on changing such important and critical aspects of ICANN’s bylaws framework will in our view help to improve ICANN’s accountability. This is not to suggest that further improvements to accountability cannot be made at the Board level – and we welcome further feedback from CENTR as to whether our Second Draft Proposal includes more improvements in this regard.</p>
NIRA	NIRA agrees.	CCWG Response: Thank you for your comment.
SB	<p>a. The sections composing ICANN's bylaws should be divided into 3 categories:</p> <ul style="list-style-type: none"> i. The fundamental bylaws; ii. The basic bylaws; iii. The sections that should belong in an operating document. <p>b. Should we follow the distinctions made by the International Olympic Committee:</p> <ul style="list-style-type: none"> i. The fundamental principles; ii. The bylaws; iii. The rules. <p>c. The means of validation would be:</p> <ul style="list-style-type: none"> i. For the fundamental principles: a priori by the community; ii. For the bylaws: a posteriori by the community; iii. For the rules: direct agreement between the Board of Directors, staff and the AC or SO concerned. 	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>The CCWG is not proposing to significantly change the general order of priority in ICANN’s constitutional documents – the Articles will maintain their current status, then Fundamental Bylaws, then the general bylaws (which will maintain their current status). Operating policies and procedures subordinate to all these rules will remain as they are today.</p> <p>We welcome your feedback on the Second Draft Proposal and the extent to which it meets what you suggest. We believe that in spirit, if not precisely in words, it does so.</p>
RIR	There are no objections to the introduction of this power, nor to the requirements of this recommendation.	CCWG Response: Thank you for your comment.

<p>DotMusic</p>	<p>DotMusic agrees that empowering the community to approve any change to a Fundamental Bylaw will enhance ICANN's accountability to the community. However, more clarity is required on how the community will be empowered to do so.</p>	<p>CCWG Response: Thank you for your comment.</p>
<p>Siva</p>	<p>The community needs to have the powers to propose / approve / reject a change to the fundamental bylaws. Subject to the cautions and observations expressed as above.</p>	<p>CCWG Response: Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).</p> <p>The Second Draft proposal does not suggest any additional ways to propose changes to Fundamental Bylaws – they would continue to come through staff or the community to the ICANN Board as is the case today.</p> <p>While the Community Mechanism as Sole Member would have rights under law to propose such fundamental bylaws, its ability to exercise this or any other right not already dealt with as a Community Power will be limited – see paras 317-318 of the Second Draft Proposal.</p>