

Power: Removing individual ICANN Directors

Question 11: Do you agree that the power for the community to remove individual Board Directors 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-five** comments in this section.

23 comments suggested **agreement**; 2 do not agree and 6 comments noted **concerns**.

There was no **confusion** rated comment.

There were 2 **divergent** rated comments.

There was **broad agreement** that this power would enhance ICANN accountability.

The **main issue/s or concerns**:

- The NomCom process/ procedure for removing a board member
- There is concern on having a similar transparent process across various SO/ACs vs allowing each SO/AC to have its own procedures

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

- Decision needs to be made on how the procedure will best work to enhance transparency and accountability and equal treatment of board members between various SOs and ACs and the NomCom

Proposed CCWG response/approach to resolution

#	Contributor	Comment	CCWG Response/Action
3 6 5	RH	Question: Yes. Membership should have full powers.	CCWG Response: Thank you for your input.
3 6 6	auDA	auDA agrees that empowerment of the community is a critical and 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.	CCWG Response: Thank you for your input.
3 6 7	CRG	Removing an individual Director: again this makes the difference between NomCom and SO/ AC directors so obvious, that I'm afraid it will necessarily put the present operating procedures of the Board under review.	CCWG Response: Thank you for your input. The CCWG has clarified in its Second Draft Proposal that any individual director can be removed, and specified the process for this to happen for directors nominated by the SOs or ACs, or by the NomCom. Please see section 7.3 of the second draft proposal.
3 6 8	DCA-I	- Recommendation: Add a clause to allow individuals to be able to lodge valid complaints about a particular board member (s), then this can be viewed by the petition of at least two of the SOs or ACs (or an SG from the GNSO). - The creation of a separate special committee of the NomCom to deal	CCWG Response: Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has developed a fresh proposal for how to deal with the removal of directors appointed by the

		<p>with removal petitions when they arise will be a viable proposition since it allows each special committee to be appointed on case by case then disbanded when a closure of a removal petition is finalized</p> <ul style="list-style-type: none"> - There should also be a provision that enables a Standing Community Group to investigate any Conflict of Interest allegations against Board members, and the Standing Community Group to determine whether or not such alleged Conflicted Board members should be made to recuse themselves on a pertinent (or particular) Board issue. Conflicted Board members who fail to recuse themselves should be voted out from the ICANN Board. 	<p>Nominating Committee. We look forward to your further feedback on the updated proposal. We have made no specific suggestions regarding how to deal with complaints by the public about a director, or about dealing with conflict of interest allegations.</p>
3 6 9	AFRALO	<p>Recalling one or more board members without reason is an aberration in itself; Its impact would be that the Board directors will act in the interest of the SOs or ACs that appointed them rather than acting in the interest of the entire community (ICANN as an organization). The AFRALO members believe that such a power shouldn't exist in the CCWG recommendations. It shouldn't exist also because the Board directors appointed by the NomCom would have a different recalling procedure that makes the whole members of ICANN board not having an equal treatment.</p>	<p>CCWG Response: Thank you for your input. The CCWG does not agree with the argument that this power should not exist, based on the strong public feedback in support of it in the public comments and on the CCWG's own analysis.</p> <p>The Second Draft Proposal introduces several changes to this power which help respond to the concerns you identify, including that no director could be removed without a public discussion in the ICANN community forum. See section 7.3 of the Second Draft Proposal for further details. We look forward to your comments.</p>
3 7 0	Afnic	<p>Afnic supports this proposal. Furthermore, Afnic wants to recall that mechanisms set by ACs and SOs for the removal of the board member they appointed should be transparent and aligned between constituencies.</p> <ul style="list-style-type: none"> - As for the nominating committee, the rationale behind point 234 seems contradictory. - "The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters [removing a NomCom appointed board member]. 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." - Afnic is of the opinion that it's not a burden but a duty of the NomCom to nominate and, therefore, to remove. 	<p>CCWG Response: Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has made substantial changes to this power, including using the new Community Mechanism as Sole Member to deal with the removal of individual directors appointed by the NomCom. We look forward to your comments on the revised proposal.</p>

3 7 1	RySG	RySG Agrees that an enforceable power to remove individual Board Directors, under special circumstances, would help to enhance ICANN's accountability to the community. The RySG supports the CCWG proposal to enable the respective appointing organization (SO, AC, SG, NomCom or community members) to recall and replace their associated Board member. We also support allowing each appointing group to determine its own voting threshold for recall and replacement of the associated individual Board member.	CCWG Response: Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal. We look forward to your further comments.
3 7 2	BC	- BC supports the CCWG proposal to allow the appointing organization to vote to recall individual directors. This is far more effective accountability mechanism than simply waiting for the next election cycle. - BC supports the proposal to allow each SO/AC to determine its own voting threshold for removing its designated director(s) and appointing replacement(s).	CCWG Response: Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). We look forward to your further comments.
3 7 3	USCIB	99: We support the ability of the community to recall board members. However, because "spilling the board" should be considered a measure of last resort, we support an 80 percent threshold for this action.	CCWG Response: Thank you for your input. In its Second Draft Proposal, the CCWG has proposed a threshold vote of 75% for the removal of an individual director (see section 7.3). The same vote threshold would apply to recalling the entire ICANN Board (see section 7.4).
3 7 4	LINX	We strongly support the existence of this power.	CCWG Response: Thank you for your input.
3 7 5	ISPCP	Removal of Directors by the Nominating Committee. ISPCP do not see any justification to use a different NomCom or a different balance within the NomCom, than the NomCom seated at the time of a petition is made to remove Directors selected through this mean. ISPCP believes that using the NomCom is a more consistent and simple way to proceed. The potential "burden" over the NomCom is not seen as a valid argument as such petitions would only happen in exceptional occasions and the level of work required would not destabilize the functioning of the NomCom.	CCWG Response: Thank you for your input. In its Second Draft Proposal (section 7.3) the CCWG has proposed using the new Community Mechanism as Sole Member to decide on the removal of directors appointed by the NomCom. We look forward to your further comments.
3 7 6	JPNIC	Yes. While it should not be abused, and discourage a Board member to act according to its fiduciary duties to please a particular stakeholder, it would be reasonable for the community to have this ability.	CCWG Response: Thank you for your input.
3	Govt-IT	Considering Paragraph 5.5 "Power: Removing individual ICANN	

7 7		Directors” It’s our opinion that, taking into account the horizontal role of the GAC, it might be important that the GAC can propose the removal of a member of the Board. In that case, all the SO/ACs and the NomCom could participate in the voting process.	CCWG Response: Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. We look forward to your further comments.
3 7 8	CWG-St	We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove <u>individual Directors</u> (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed.	CCWG Response: The CCWG thanks the CWG for its comment.
3 7 9	IPC	Agree: yes. When considering the removal of a director appointed by the NomCom, the IPC believes a special committee of the NomCom should be established to deal with removal petitions when they arise.	CCWG Response: Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. We look forward to your further comments.
3 8 0	USCC	The Chamber supports the proposal to enable the appointing organization to recall and replace their Board member as a means to improve accountability. Each respective organization should be given the power to set their own voting threshold.	CCWG Response: Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). We look forward to your further comments.
3 8 1	INTA	strongly supports the ability for the removal of individual Board of Directors and believes that such a measure would certainly increase ICANN’s overall accountability. The current threshold proposed by the CCWG appears to be sufficient as well.	CCWG Response: Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). We look forward to your further comments.
3 8	.NZ	- supports this power as an enhancement to ICANN’s accountability. We are in support of the requirements set out.	CCWG Response: Thank you for your input. The

2		<p>- We suggest that there be common requirements on all appointing bodies as to the thresholds that must be met (75% in the proposal) to remove a director.</p> <p>- We do not take a stance in this comment regarding the best method of allowing the Nominating Committee to remove directors it has appointed, but we do support such directors being able to be removed when the community petitions for this to occur.</p>	<p>CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). The CCWG has also proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. We look forward to your further comments.</p>
3 8 3	<p>NCSG</p>	<p>Yes, we agree.</p>	<p>CCWG Response: Thank you for your input.</p>
3 8 4	<p>Board</p>	<p>We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.</p> <p>- With regards to removing an individual board director, what is the threshold that triggers this? How will the process not be capturable? What will be the basis for removing a board member? Is it worth considering a threshold that requires more than one SO or AC to support the removal of a board member – thus ensuring that individual Board members are accountable to the whole community for their performance as a director, not just the SO or AC that originally selected them.</p>	<p>CCWG Response: Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). The CCWG has also proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom.</p> <p>Objective standards are not proposed for the removal of a director, but the CCWG has suggested that the community elaborate standards that would help set clear expectations for Board members (see para 413).</p> <p>We look forward to your further comments.</p>
3 8 5	<p>CENTR</p>	<p>We support the introduction of mechanisms that would allow the community – not necessarily the “membership body” – to eventually remove individual directors. We would recommend a cautious approach when expanding the role of the NomCom be followed (which should undergo a major review process to refine certain procedures, like the Board members selection and interview phases). We are against asking each Director to sign a resignation letter when accepting their appointment as it could trigger any Board member's accountability profile. A Board member cannot be held legally/administratively</p>	<p>CCWG Response: Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). In it, the CCWG has proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. Those SOs and ACs that appoint an individual director would be able to remove them. The threshold is the same –</p>

		<p>accountable with a dated and signed resignation letter because they can always say that the letter was signed and filed before the wrong action they might be held liable.</p>	<p>75%. With the new Community Mechanism as Sole Member model (see section 6 of the Second Draft Proposal), there is no need for the concept of signed & dated resignation letters.</p> <p>We look forward to your further comments.</p>
3 8 6	NIRA	<p>Yes. NIRA seeks clarification as to the standing of direction. Would they all become voting members of the Board?</p>	<p>CCWG Response: Thank you for your input – but we are not clear on the point made. We suggest you review our Second Draft Proposal on this power (section 7.3) and offer any other comments you may have.</p>
3 8 7	ALAC	<ul style="list-style-type: none"> - If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235). - Some members of At-Large believe that AC/SO-appointed Directors should not be removable: by the community in general; or solely by the AC/SO that appointed them; or under any circumstances. However, many believe that if a group has the ability to appoint a Director, they should also be able to withdraw that appointment. Specifically, a Director is appointed not to “represent” the appointing group, but because the members of the group believe that the person shares common values with the group. If that belief ceases to be correct, then it is reasonable to no longer support that person as a Director. - The ability to remove individual Board members, either by the appointing AC/SO or by a supermajority of the community, is viewed as crucial by most ALAC Members. Without it, the only alternative is to 	<p>CCWG Response: Thank you for your input. The CCWG’s Second Draft Proposal has revised and changed this proposed Power (see section 7.3) so that it clearly specifies the different processes for dealing with removal of directors appointed by the NomCom or by an SO or AC. It makes use of the Community Mechanism as Sole Member (see section 6 of the Second Draft Proposal) to deal with NomCom directors. We believe that the changes in the Second Draft Proposal deal with the concerns you have raised, but welcome further comments and suggestions.</p>

	<p>remove the entire Board and this is a cataclysmic alternative as described under the comment to section 5.6.</p> <ul style="list-style-type: none">- Regarding removal by the AC/SO that made the appointment, it has been argued that being able to withdraw such an appointment will “politicize” the appointment, that the Director will alter their behaviour because of it, or that the group might withdraw the appointment as punishment for not voting the way they would have wished on a specific issue. The ALAC believes that all of these reasons have little merit.- <u>Politicizing</u>: This a curious comment given the fact that the selection of Board Members by some AC/SOs is already an extremely political process.- <u>Altered behavior</u>: Although the Director does not “represent” the group, surely the Director should remain in regular contact with the group and understand where the group stands on specific issues. When a vote is approaching that may go against the group, it is reasonable for the Director to approach the group and explain why there are other considerations. Such a dialogue should allow the occasional divergence of opinion. If this becomes a regular occurrence, perhaps the person DOES need to be replaced. Moreover, it has been said that some Directors already vote differently near the end of their term, hoping to encourage renewal – a characteristic which one would hopefully encourage non- renewal.- <u>Punishment</u>: This rationale is interesting. We endow a group with the very serious responsibility of appointing Directors to ICANN’s Board, and we trust them to do it with care and consideration of the needs of the organization. But we then presume that they may act capriciously if they don’t get their way in a particular vote. If we really believe that an AC or SO would act in that way, then ICANN needs to rethink whether constituent bodies should be allowed to appoint Directors at all. Either we have some level of trust that the groups will behave in a serious and thoughtful way on behalf of the organization as a whole, or we don’t. We cannot have it both ways.- The process used by an AC/SO to approve removals of one or more Board members must be formally documented in that entity’s operating procedures and approved by that AC/SO. <p>On the issue of removing NomCom appointees to the Board, the ALAC</p>	
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		<p>believes that this should be a community decision, just as it is to remove the entire Board. The ALAC does not support having the regular NomCom remove Directors (and specifically those appointed by previous NomComs). The work of the NomCom is sufficiently difficult that this additional task would either come at a time when they are already overwhelmed with the task of identifying and narrowing down new potential appointees, or could come at a time when the NomCom is not even fully organized. Moreover this responsibility would taint what should be a group that is focussing purely on finding the best candidates for the Board as well as other ICANN bodies. Lastly, since the NomCom must operate in complete secrecy (regarding candidates), it would be a bad plan to alter that rule for this particular task allowing full consultation with the community. It would be equally bad to shroud the removal process in secrecy and NOT allow consultation.</p> <p>- The original intent of the CCWG was that the community (ie the Members or Designators) would remove NomCom appointees. Legal advice indicated that since these people were appointed by the NomCom, they must be removed by the NomCom. There is a simple way to effect this. There should be a sub-committee of the NomCom appointed to carry out NomCom-appointed Director removals. This committee should be composed of the representatives of the SO/AC (or their Unincorporated Associations) empowered to act on behalf of the SO/ACs for all of the other empowerment mechanisms (ie the Members or Designators). We therefore have the removal of NomCom appointees carried out by the very community that desires these removals, without having to create an artificial and perhaps distorting intermediary mechanism. The Bylaws restricting who can sit on a NomCom or what NomCom members can do after their term may need to be reviewed for the members of this sub-committee, particularly in the expected typical case where the sub-committee may technically exist in a given year, but may never actually be convened to take any action.</p>	
3 8 8	SB	<p>a. Five members of the Board of Directors are elected annually for 3 years. I honestly fail to understand why they would be replaced before the end of this term of 3 years. This would allow the seizure of power by a small group.</p> <p>i. So before seeking a solution to replace members of the Board of</p>	<p>CCWG Response: Thank you for your comment. While the CCWG has revised and changed its proposal for this power (see section 7.3 of the Second Draft Proposal), it has respected the strong support this power received in</p>

		<p>Directors before the regular elections, might it not be possible to establish an open, transparent framework which is understandable to all... for all elections to the Board of Directors?</p> <p>ii. The establishment of an elections office (for all ICANN elections) would be a first step.</p> <p>b. I therefore oppose to the current proposals regarding the possibility of recalling members of the Board of Directors.</p> <p>i. The recalling of a member of the Board of directors by his or her electoral constituency due to a disagreement is contradictory to his or her independence.</p>	<p>the first public comment period. As such it remains an integral part of the proposed accountability improvements the CCWG is proposing.</p>
3 8 9	RIR	<p>There are no objections to the formalization of this power which may already exist for organizations which designate directors to the Board), nor to the requirements of this recommendation.</p>	<p>CCWG Response: Thank you for your input.</p>
3 9 0	Siva	<p>It is good to empower the Community with these powers. Subject to the cautions and observations expressed as above.</p>	<p>CCWG Response: Thank you for your input.</p>