GRAPHICAL SUPPLEMENT

CCWG-ACCOUNTABILITY DRAFT PROPOSAL FOR PUBLIC COMMENT

4 May 2015

These graphics are a supplement to the CCWG-Accountabilty proposal "Cross Community Working Group (CCWG) Accountability Initial Draft Proposal for Public Comment, 4 May 2015".

The graphics present the main recommendations of the CCWG-Accountabilty proposal, but do not display all the options presented. The graphics will be updated on a regular basis to reflect the evolving views of the CCWG Accountability as the group responds to public comment processes and advice of the community.

The Community Mechanism: SO/AC Membership Model

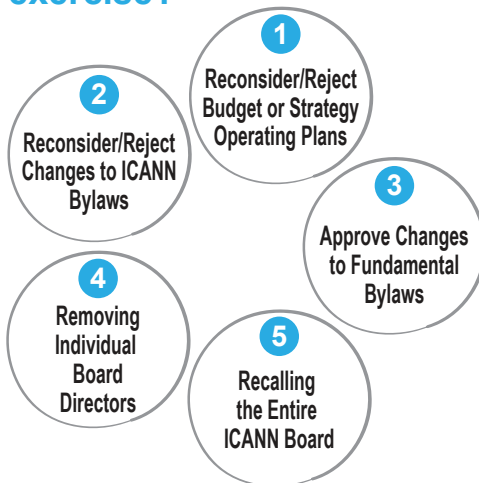## A mechanism to empower the community, as proposed by the CCWG-Accountability.

What is it?

The Community Mechanism describes the legal structure by which the ICANN Community can organize under California law to legally enforce the community powers recommended by the CCWG-Accountability.

In short, the Supporting Organizations (SOs) and certain Advisory Committees (ACs) would each form unincorporated associations to become Members* (or alternatively, "Designators") of ICANN, giving them a range of powers guaranteed under California law, and the tools to enforce their rights against ICANN.
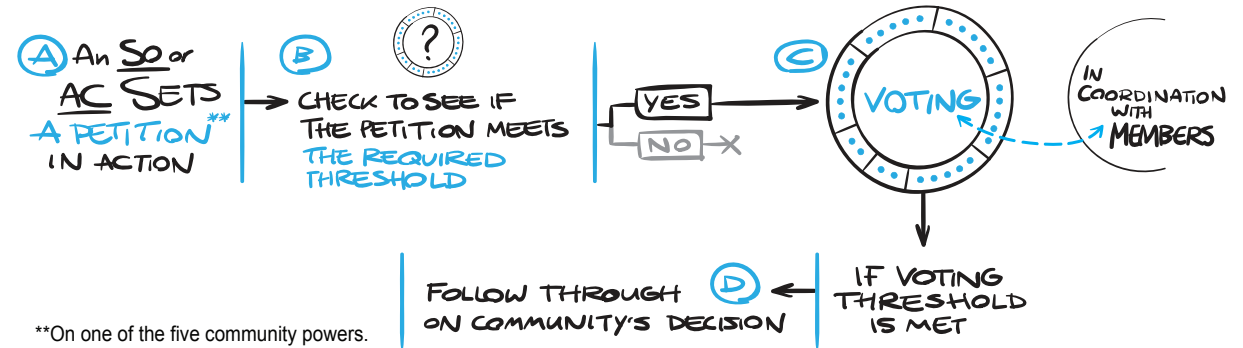
Making this change would not impact how participants of those groups operate, or introduce new risks to them.

Which powers can it exercise?

2 Reconsider/Reject Changes to ICANN Bylaws

1 Reconsider/Reject Budget or Strategy Operating Plans

3 Approve Changes to Fundamental Bylaws

4 Removing Individual Board Directors

5 Recalling the Entire ICANN Board

How does it work?

The bottom-up community process would be able to raise the question, with one Supporting Organization (SO) or one Advisory Committee (AC) initiating the petition process. This might look like:

A An SO or AC SETS A PETITION** IN ACTION

B CHECK TO SEE IF THE PETITION MEETS THE REQUIRED THRESHOLD

YES / NO

C VOTING — IN COORDINATION WITH MEMBERS

IF VOTING THRESHOLD IS MET

D FOLLOW THROUGH ON COMMUNITY'S DECISION

**On one of the five community powers. See 'Which powers can it exercise?'

Influence in the Community Mechanism

The votes come from ICANN's SOs, ACs Each SO and AC has a number of "votes" in the community mechanism, deciding on the powers established for the community.

ccNSO · ASO · GNSO · 29 VOTES · GAC · RSSAC · SSAC · At-Large
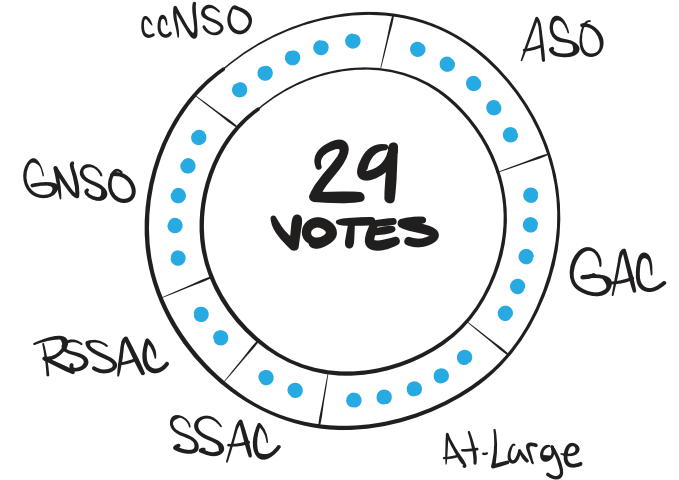
*The CCWG has decided to propose an SO/AC Membership Model as its reference mechanism. Variations of these mechanisms are also being considered, including having the SOs/ACs become "designators" instead of Members. It would also be possible to have all seven participants in the community mechanism become Members.

DESCRIPTION

This power would give the community the ability to consider strategic/operating plans and budgets after they are approved by the Board (but before they come into effect) and reject them.

WHO CAN INITIATE A PETITION?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating a petition process.

ON WHAT GROUNDS CAN THEY INITIATE?

The community can reject Board decisions on strategic/operating plans and budget where the Board has failed to appropriately consider community input.

THINGS REQUIRED TO INITIATE?

Timeframes would be included in the planning and budgeting process to ensure that a single rejection would not unduly disrupt the planning and budgeting process.

LIMITS SET TO PREVENT ABUSE?

A process of reconsideration, it does not allow the community to re-write the budget. To prevent a cycle of blocking, a plan or budget cannot be sent back again with new issues raised, but the community can reject a subsequent version when it does not accept the Board's revisions.

HOW DOES IT WORK?
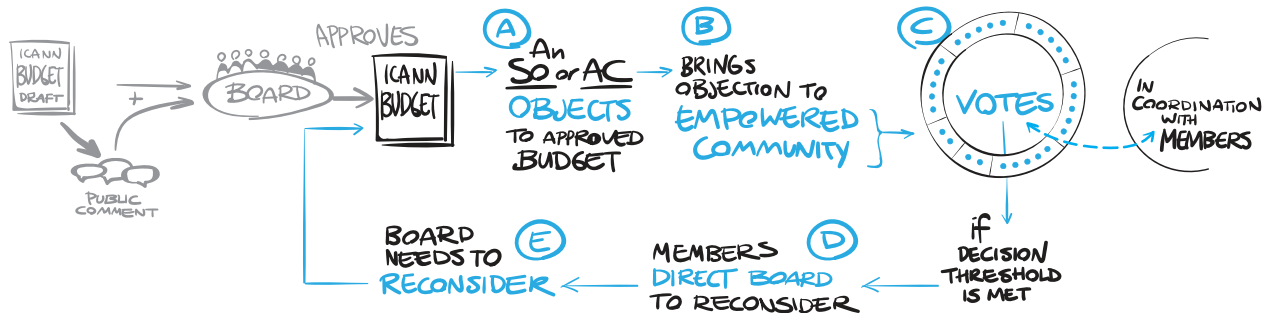
VOTING OF BROADER COMMUNITY IN COORDINATION WITH MEMBERS
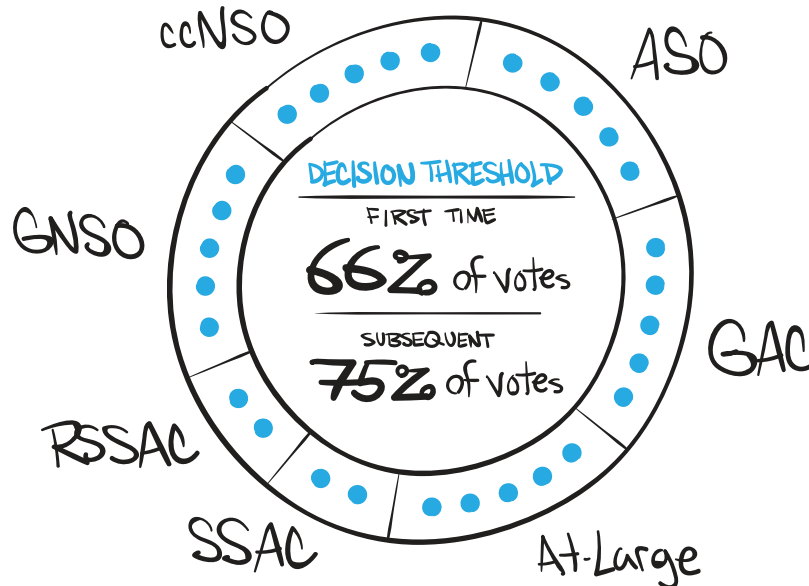
DESCRIPTION

This power would give the community the ability to reject proposed Bylaws changes after they are approved by the Board but before they come into effect.

WHO CAN INITIATE A PETITION?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating a petition process.

ON WHAT GROUNDS CAN THEY INITIATE?

This would most likely be where a proposed change altered the Mission, Commitments and Core Values, or had a negative impact on ICANN's ability to fulfill its purpose in the community's opinion, but would be available in response to any proposed bylaws change.

THINGS REQUIRED TO INITIATE?

Exercising the power would be included in the bylaws adoption process (probably a two-week window following Board approval). Board response should be to absorb the feedback, make adjustments, and propose a new set of amendments to the bylaws.

LIMITS SET TO PREVENT ABUSE?

This power does not allow the community to re-write a proposed bylaws change: it is a rejection process, signalling the community is not happy. No limit to the number of times a proposed change can be rejected, but the threshold is a supermajority to limit potential for abuse of this power.

HOW DOES IT WORK?
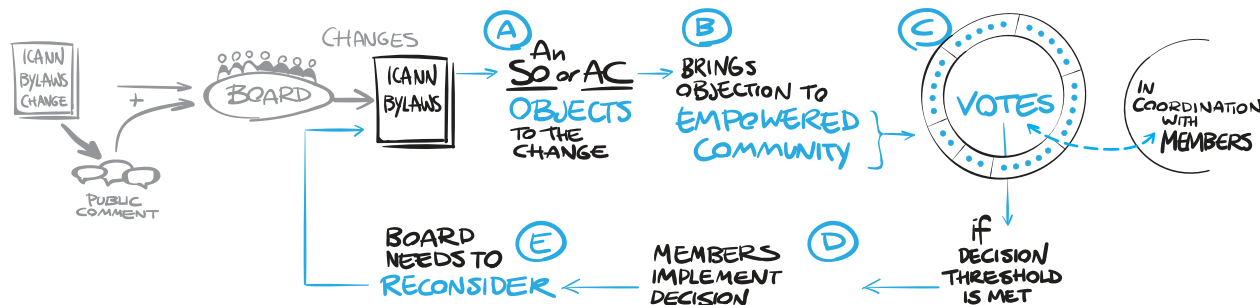
VOTING OF BROADER COMMUNITY IN COORDINATION WITH MEMBERS
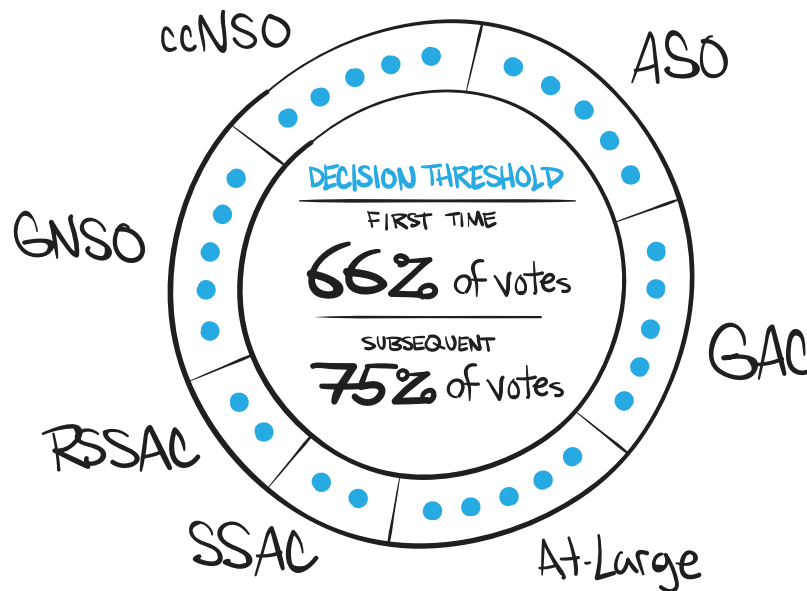
DESCRIPTION

This power would form part of the process set out for agreeing any changes of the "fundamental" bylaws. It requires that the community would have to give positive assent to any change, a co-decision process between the Board and the community.

WHO CAN INITIATE A PETITION?

No petition, a process of the Board and community. The Board may propose adding or removing a fundamental bylaw.
This process requires a high degree of community support.

ON WHAT GROUNDS CAN THEY INITIATE?

To protect bylaws provisions the community considers to be essential, and automatic process is triggered whenever the process of adding or removing a fundamental bylaw is proposed.
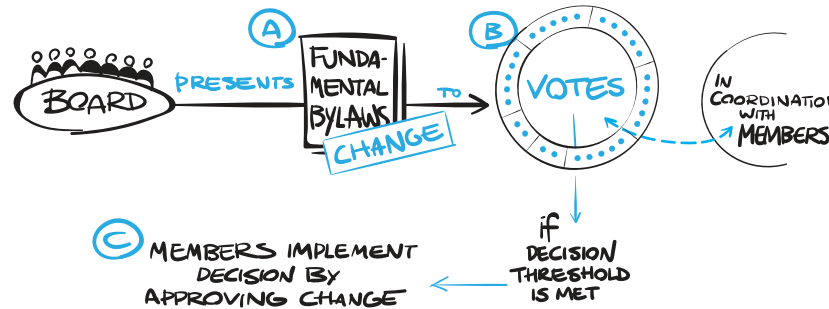
THINGS REQUIRED TO INITIATE?

Such changes would require a very high degree of community assent, changing items in such bylaws should only be possible with a very wide support from the community. The Board must cast three quarters of votes in favor of any change.

LIMITS SET TO PREVENT ABUSE?

N/A

HOW DOES IT WORK?

Ⓐ BOARD PRESENTS FUNDA-MENTAL BYLAWS CHANGE TO Ⓑ VOTES IN COORDINATION WITH MEMBERS

if DECISION THRESHOLD IS MET

Ⓒ MEMBERS IMPLEMENT DECISION BY APPROVING CHANGE

VOTING OF BROADER COMMUNITY IN COORDINATION WITH MEMBERS

ccNSO ASO GNSO GAC RSSAC SSAC At-Large

DECISION THRESHOLD
75% OF VOTES IN FAVOR
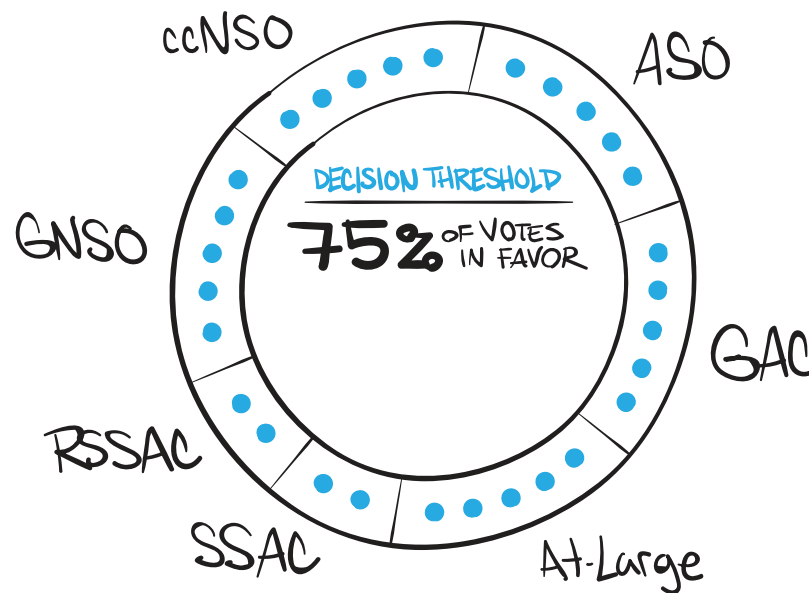
DESCRIPTION

The community organization that appointed a given director could end their term and trigger a reappointment process. The general approach, consistent with the law, is that the appointing body is the removing body.

WHO CAN INITIATE A PETITION?

Each 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.

For the seven directors appointed by the three SOs or by the At-Large community (or by subdivisions within them e.g. within the GNSO), a process led by the appointing organization or subdivision would lead to the director's removal.

ON WHAT GROUNDS CAN THEY INITIATE?

The grounds to initiate a removal process lies within the organization that appointed the director; voting thresholds to be determined by the respective groups.
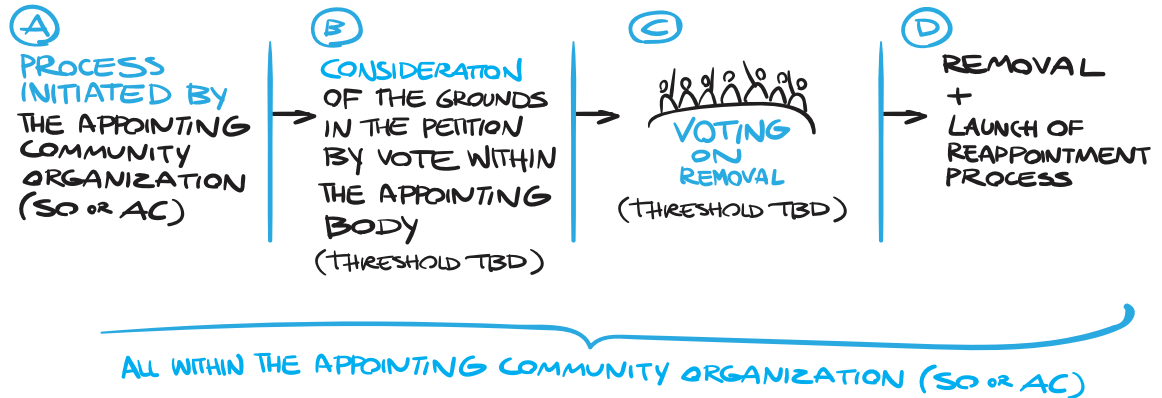
THINGS REQUIRED TO INITIATE?

The appointing organizations would establish their own processes and establish voting thresholds to cause removal.

LIMITS SET TO PREVENT ABUSE?

SO/AC members who elect directors would be the removing body. Removal would trigger a pre-defined appointment process

HOW DOES IT WORK?

A PROCESS INITIATED BY THE APPOINTING COMMUNITY ORGANIZATION (SO OR AC)

B CONSIDERATION OF THE GROUNDS IN THE PETITION BY VOTE WITHIN THE APPOINTING BODY (THRESHOLD TBD)

C VOTING ON REMOVAL (THRESHOLD TBD)

D REMOVAL + LAUNCH OF REAPPOINTMENT PROCESS

ALL WITHIN THE APPOINTING COMMUNITY ORGANIZATION (SO OR AC)

WHO GETS TO VOTE: SO/AC MODEL

Appointing body voting only on the removal of their own director(s)

ccNSO VOTING

ASO VOTING

GNSO VOTING

At-Large VOTING

LAUNCH OF REAPPOINTMENT PROCESS
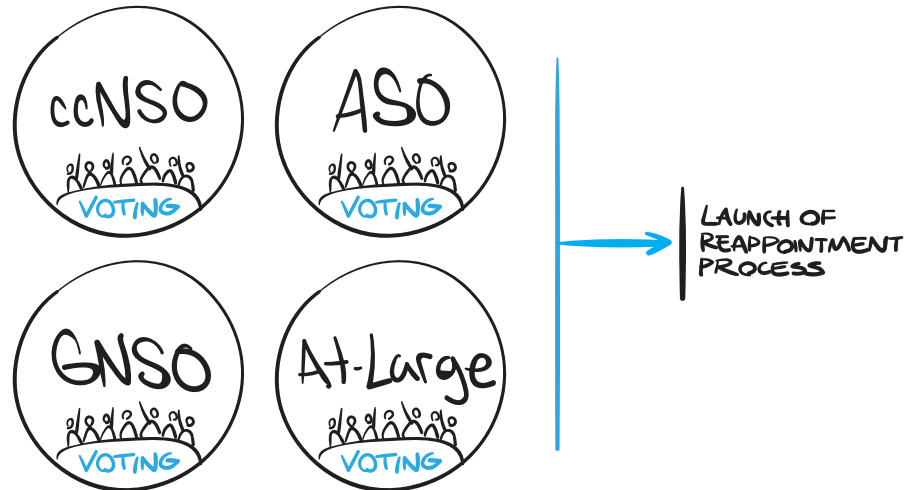
DESCRIPTION

The general approach, consistent with the law, is that the appointing body is the removing body. This also applies to the NomCom.

WHO CAN INITIATE A PETITION?

The bottom-up community process would be able to raise the question. A removal process should be triggered by petition of at least two SOs or ACs (or a Stakeholder Group from the GNSO). Such a petition would set out the reasons removal was sought.

ON WHAT GROUNDS CAN THEY INITIATE?

The grounds for removal presented in the petition would be discussed within the organizations of the community mechanism. The CCWG seeks the community's input on this and offers two options for consideration:
1. NomCom members at the time of a petition being lodged would decide.
2. A special committee of the NomCom could be established to deal with removal petitions.
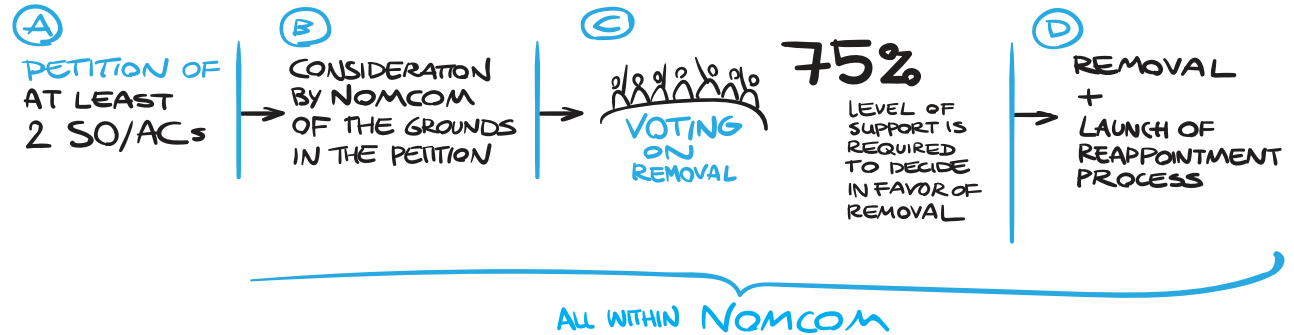
THINGS REQUIRED TO INITIATE?

Whether the decision-making body is the SOs, ACs or the Nominating Committee, removal would require a [75%] level of support (or equivalent) to decide in favor of removal.
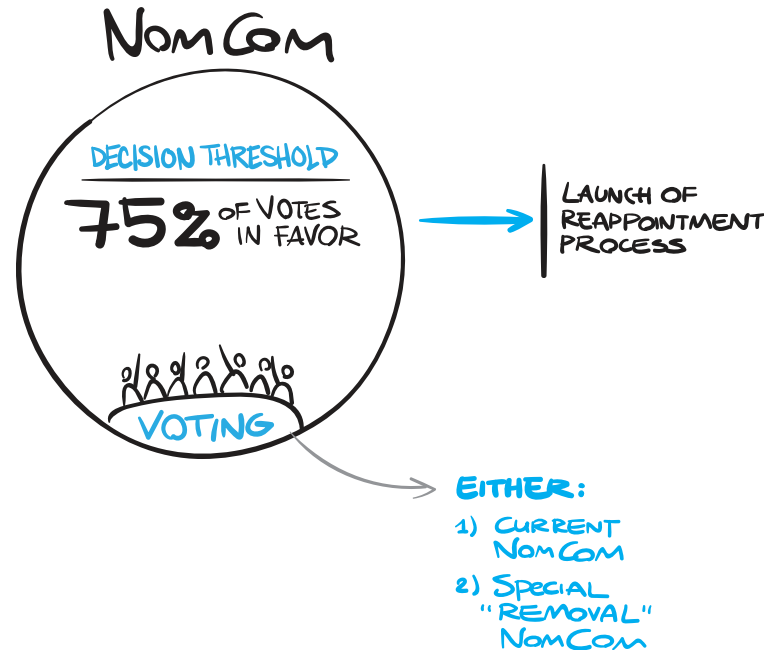
LIMITS SET TO PREVENT ABUSE?

The voting thresholds for any removal process need to be set high to prevent a frivolous use of the process and to ensure a mechanism of last resort.

HOW DOES IT WORK?

A — PETITION OF AT LEAST 2 SO/ACs

B — CONSIDERATION BY NOMCOM OF THE GROUNDS IN THE PETITION

C — VOTING ON REMOVAL — 75% LEVEL OF SUPPORT IS REQUIRED TO DECIDE IN FAVOR OF REMOVAL

D — REMOVAL + LAUNCH OF REAPPOINTMENT PROCESS

ALL WITHIN NOMCOM

WHO GETS TO VOTE: NOMINATING COMMITTEE MODEL

NomCom

DECISION THRESHOLD
75% OF VOTES IN FAVOR → LAUNCH OF REAPPOINTMENT PROCESS

VOTING

EITHER:
1) CURRENT NomCom
2) SPECIAL "REMOVAL" NomCom

DESCRIPTION

This power would allow the community to cause the removal of the entire ICANN Board.

WHO CAN INITIATE A PETITION?

The community would initiate use of this power on the petition of two thirds of the SOs or ACs in ICANN, with at least one SO and one AC petitioning.

ON WHAT GROUNDS CAN THEY INITIATE?

There may be situations where removing individual ICANN directors is not seen as a sufficient remedy for the community -- where a set of problems have become so entrenched that the community wishes to remove the entire ICANN Board in one decision.
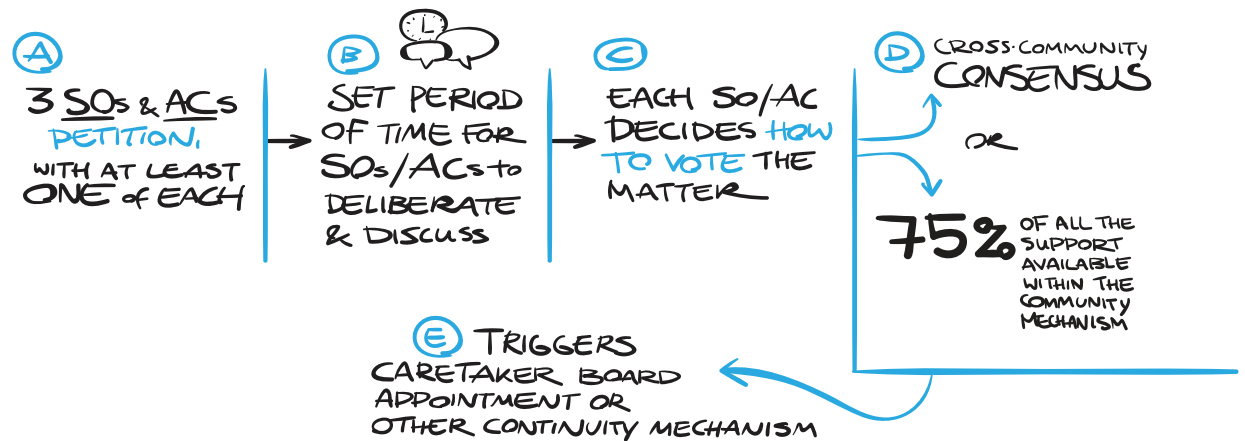
THINGS REQUIRED TO INITIATE?

It would be preferable for a decision of this sort to be the result of cross-community consensus. Where this consensus is not apparent, a suitably high threshold for the exercise of this power, [75%] of all the support available within the community mechanism would have to be cast in favor to implement it.
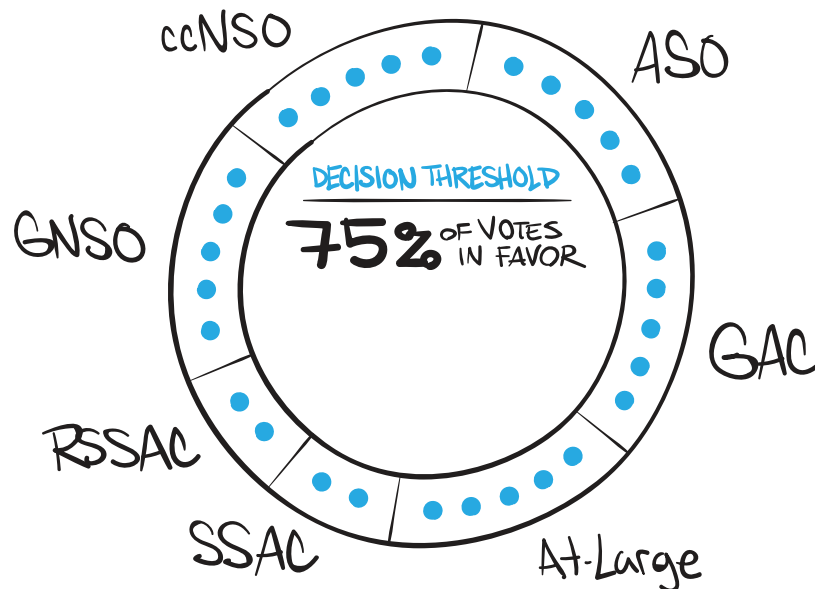
LIMITS SET TO PREVENT ABUSE?

The high threshold for initiation was chosen to prevent any particular SOs or ACs from being able to prevent the recall of the Board, but also as high as possible without making it impossible to occur. The requirement on all recordable support/opposition to be counted is to avoid non-participation reducing the effective threshold for decision.

HOW DOES IT WORK?

Ⓐ 3 SOs & ACs PETITION, WITH AT LEAST ONE of EACH

Ⓑ SET PERIOD OF TIME FOR SOs/ACs to DELIBERATE & DISCUSS

Ⓒ EACH SO/AC DECIDES HOW TO VOTE THE MATTER

Ⓓ CROSS-COMMUNITY CONSENSUS or 75% OF ALL THE SUPPORT AVAILABLE WITHIN THE COMMUNITY MECHANISM

Ⓔ TRIGGERS CARETAKER BOARD APPOINTMENT OR OTHER CONTINUITY MECHANISM

VOTING OF BROADER COMMUNITY IN COORDINATION WITH MEMBERS

ccNSO · ASO · GNSO · GAC · RSSAC · SSAC · At-Large

DECISION THRESHOLD 75% OF VOTES IN FAVOR

The new IRP

- has decisions that are <u>binding</u>

- <u>allows for review</u> for both substantive and procedural compliance

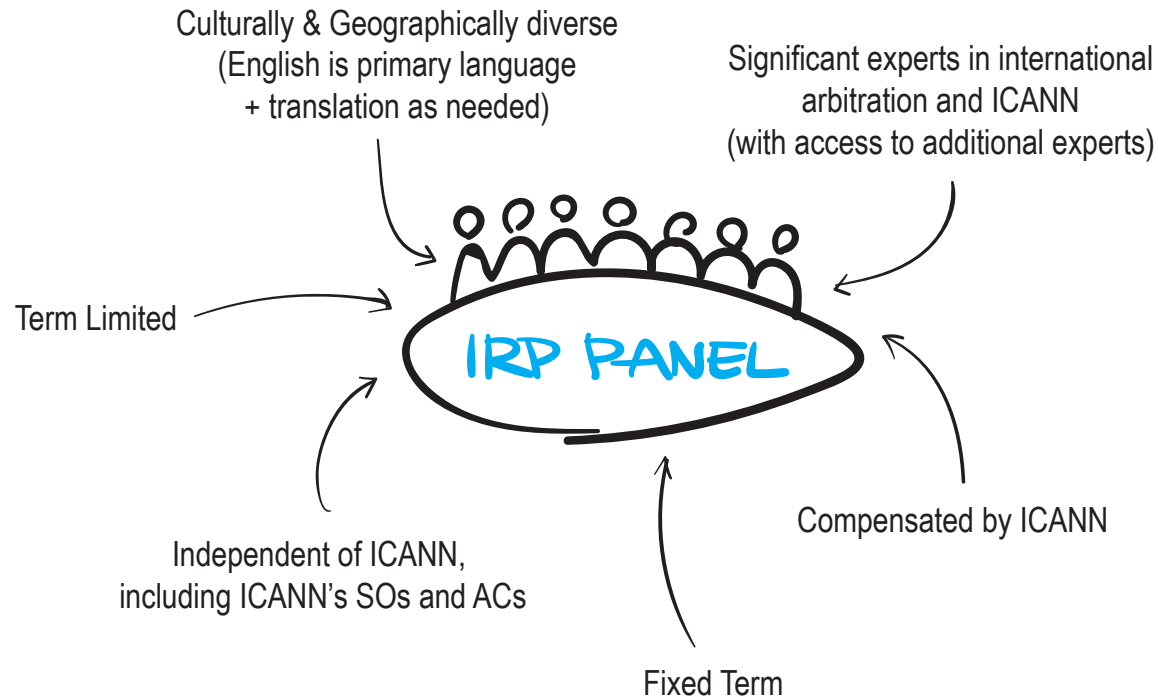- <u>is more accessible</u> in terms of who has standing to initiate an IRP

- ha<u>s lower cost</u>

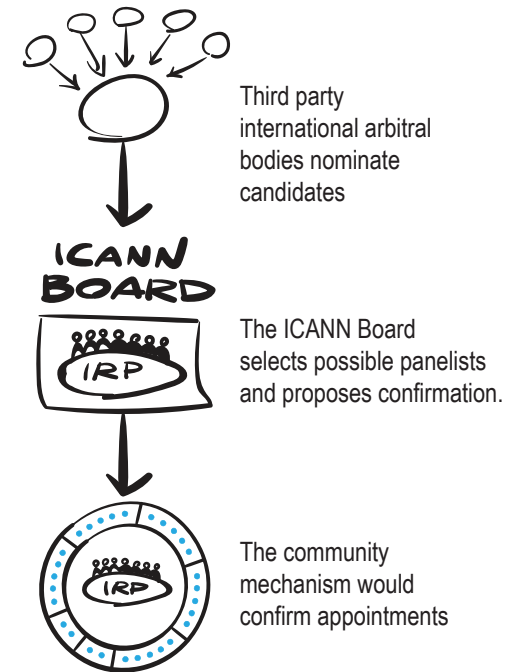- has <u>a new standing Panel</u> of seven
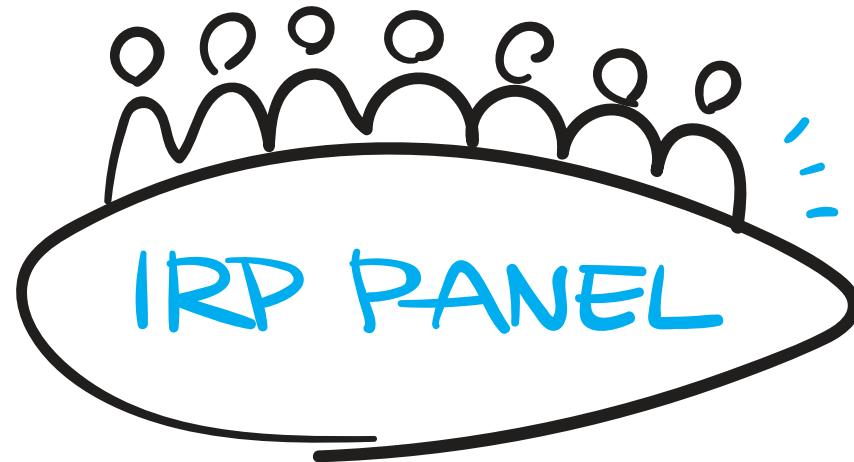
IRP Recommended Enhanced ICANN Independent Review Process
The New IRP Panel

The core of the recommendation is a standing, 7-member panel to serve as a fully independent judicial/arbitral function for the ICANN Community.

Panel characteristics

Culturally & Geographically diverse
(English is primary language
+ translation as needed)

Significant experts in international
arbitration and ICANN
(with access to additional experts)

Term Limited

Independent of ICANN,
including ICANN's SOs and ACs

Compensated by ICANN

Fixed Term

Panel member selection process

Third party international arbitral bodies nominate candidates

ICANN BOARD

The ICANN Board selects possible panelists and proposes confirmation.

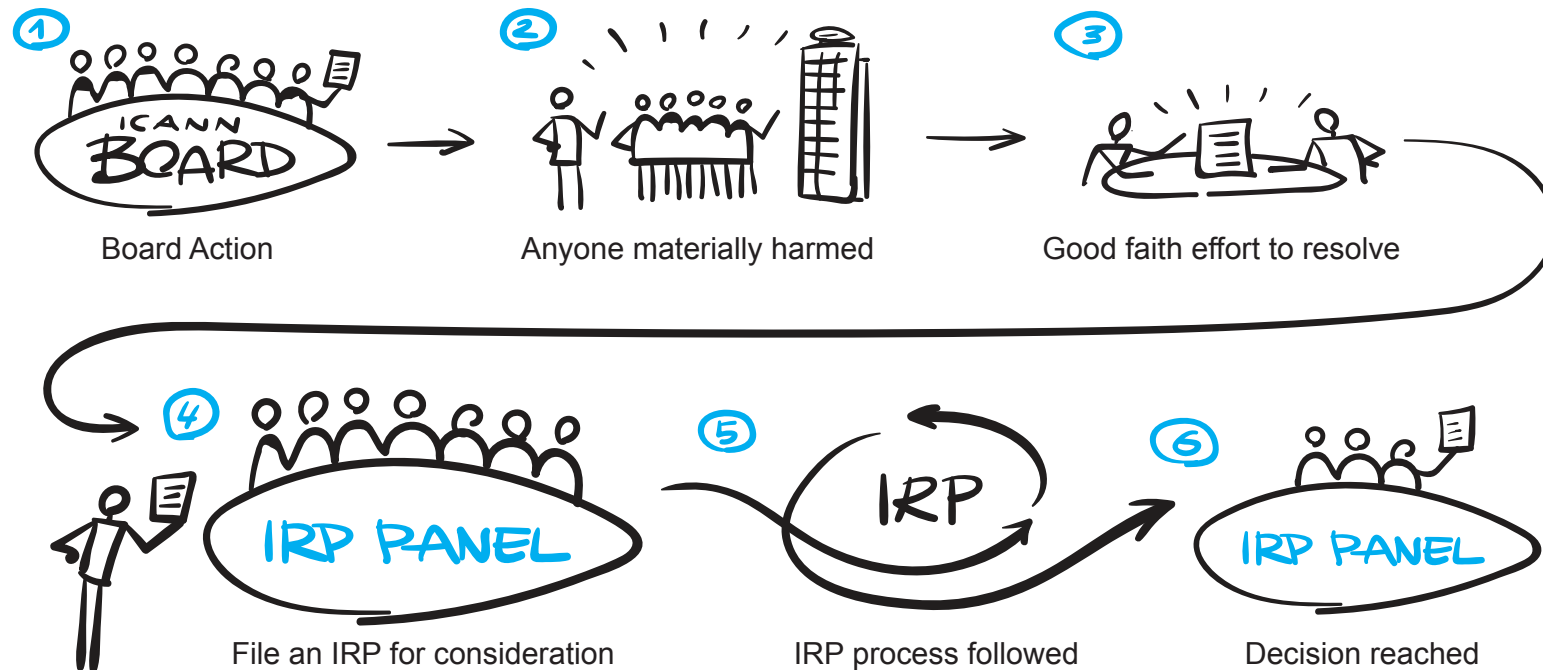The community mechanism would confirm appointments

IRP
Recommended Enhanced ICANN <u>Independent Review Process</u>
Filing an IRP

Who can request an IRP?

Anyone can initiate an IRP if they are materially affected by ICANN actions or inactions in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values, and ICANN Policies.
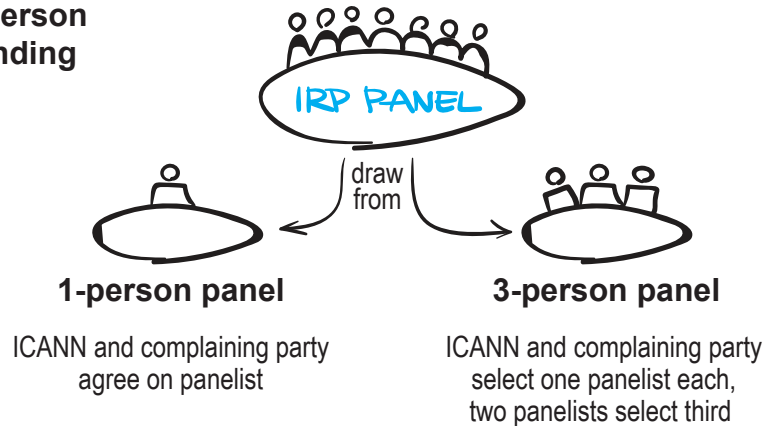
IRP Process

1 Board Action

2 Anyone materially harmed

3 Good faith effort to resolve

4 File an IRP for consideration

5 IRP process followed

6 Decision reached

IRP Recommended Enhanced ICANN Independent Review Process
IRP Decisions

Reaching Decisions

IRPs reach a decision by creating a 1- or 3-person panel from the standing 7-person panel.

IRP PANEL

draw from

1-person panel

ICANN and complaining party agree on panelist

3-person panel

ICANN and complaining party select one panelist each, two panelists select third

Possible decisions

Possible decisions are that an action (or inaction) was in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values.

Decision characteristics

Binding on ICANN and not subject to appeal (except on a very limit basis)

Documented and well reasoned based on applicable standards

DECISION

Members should strongly consider existing precedent in decision making to help enable consistency in treatment over time

Reached in a timely fashion