

**Draft**

# Trends in CCWG-Accountability 2<sup>nd</sup> Draft Proposal public comment input

15 September 2015

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# Comments by Region



# Stakeholder Distribution of Comments Received



13 Governments



6 ccTLDs



4 Advisors to the CCWG-Accountability



Jan Scholte, Willie Currie,  
Nell Minnow, Lee Andrew Bygrave



**Chartering Organizations:** GAC, ALAC (and AFRALO), NRO (for ASO),  
and parts of GNSO (RySG, NCSG, ISPCP, BC, IPC)



**CWG-Stewardship**



**Technical Community:** CENTR, ICANN Board, IAB Board, NRO, JPNIC

# Overall Assessment

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**Our overall assessment at this stage is that there is significant support and appreciation for the CCWG's work and its goals.**

## **There was broad support for:**

- Request for Reconsideration
- Fundamental Bylaws
- Power to approve and reject Standard Bylaws
- Power to remove individual Board Directors
- Diversity
- Items identified as part of WS2

## **Further details or clarifications required on:**

- Independent Review Process
- Sole Member Model
- Power to veto the Budget, Operating and Strategic Plans
- Power to recall the entire Board
- Human Rights

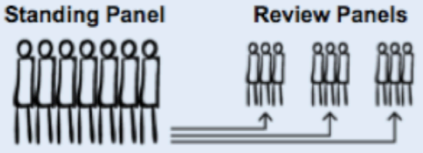
# On Independent Review Process

The CCWG-Accountability recommends significantly enhancing ICANN's existing Independent Review Process (IRP), whereby any person or entity materially affected by an action (or inaction) in breach of ICANN's Bylaws by ICANN's Board may request an independent third-party review of that action.

The core of the recommendation is to institute a **Standing Panel** to serve as a fully independent dispute resolution function for the ICANN Community. For each dispute, a smaller, 3-member **Review Panel** will be drawn from the Standing Panel.

### The Role & Scope of the IRP

- Determine whether ICANN has acted (or has failed to act) in violation of its Bylaws
- Reconcile conflicting decisions in process specific "expert panels"
- Hear claims involving rights of the Sole Member



### Standing Panel

**Composition:** 7 members (minimum).

**Selection:** ICANN to organize a community effort to identify and propose candidate members, Board to confirm.

**Expertise:** Significant legal expertise; expertise in the workings of ICANN and the DNS; access to other experts upon request.

**Diversity:** Reasonable efforts to achieve diversity, including no more than 2 panelists from an ICANN region.

### Review Panels

**Composition:** 3 decision makers.

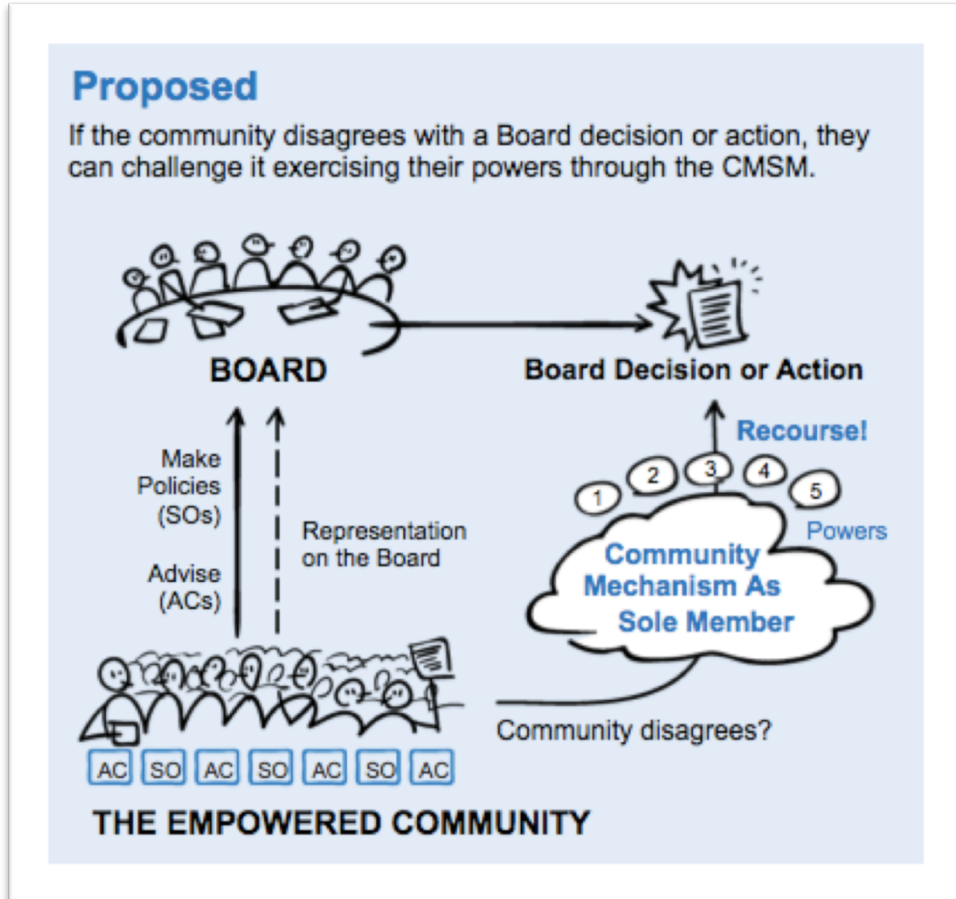
**Selection:** Selected from Standing Panel. 1 panel member chosen by each party, and those 2 members choose the 3<sup>rd</sup> member.

**Expertise:** Relevant to the dispute in question; access to other experts upon request.

**Decisions:** Are to be binding on ICANN (subject to appeal to full panel) to the extent permitted by law. Possible decisions are:  
1) Action/inaction is/is not consistent with Bylaws  
2) Substantive decision on Sole Member rights

- Support for IRP enhancements
- Need for further detail on process elements such as scope, timing, and standard of review

# On Sole Member Model



- Support and appreciation for the community enforceability
- Comments reinforced preference for simplicity
- Lack of consensus on the voting allocations, and composition of the community within the Model (e.g. role of Advisory Committees)
- Comments expressed concern over the possible duality of the governmental role in the Model
- Further detail needed of the process surrounding the Community Forum
- Indications from commenters that full support and, in some cases determining a position, would not be achievable until further detail and clarification were provided.

# On Human Rights Language

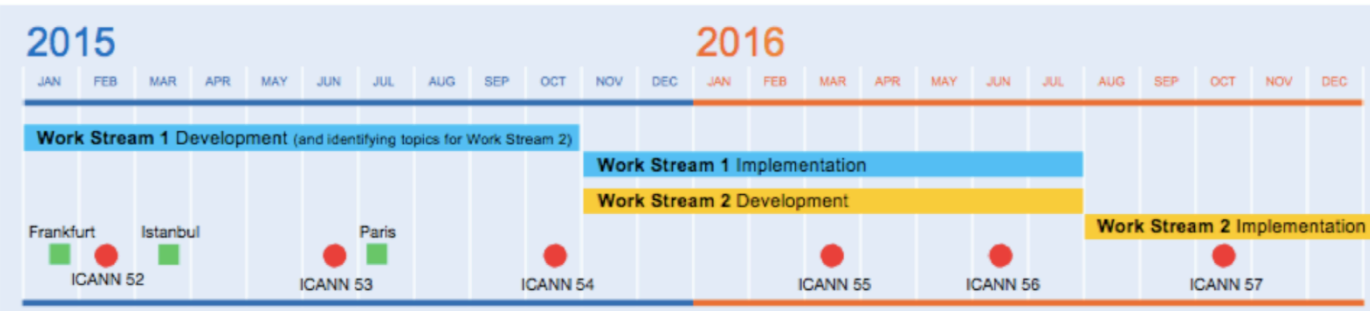
The CCWG-Accountability's work is organized in two Work Streams. Work Stream 1 changes must be implemented or committed to before any transition of IANA Stewardship from NTIA can occur.

## Possible tracks for implementation of Work Stream 1:

- Revising Mission, Commitments and Core Values
- Establishing Fundamental Bylaws
- Completing the IRP enhancements
- Establishing Community empowerment mechanism and incorporation of the community Powers into the Bylaws
- Incorporating the AoC reviews into the Bylaws
- Completing the Reconsideration Process enhancements

## Elements considered for Work Stream 2:

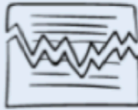
- Refining the operational details of WS1 proposals
- Further assessing enhancements to government participation in ICANN
- Considering the issue of jurisdiction
- Enhancing SO/AC accountability
- Instituting a culture of transparency within the ICANN organization
- Considering improvements to diversity in all its aspects at all levels of the organization
- Defining the modalities of how ICANN integrates human rights impact analyses, within its mission



- Support for inclusion of language on Human Rights
- Lack of consensus on what version and source of the language to include
- Questions on whether to include in WS1 or WS2

# On Stress Tests

An essential part of the CCWG-Accountability Charter requires **stress testing of the recommended accountability enhancements**. The purpose of these stress tests is to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.

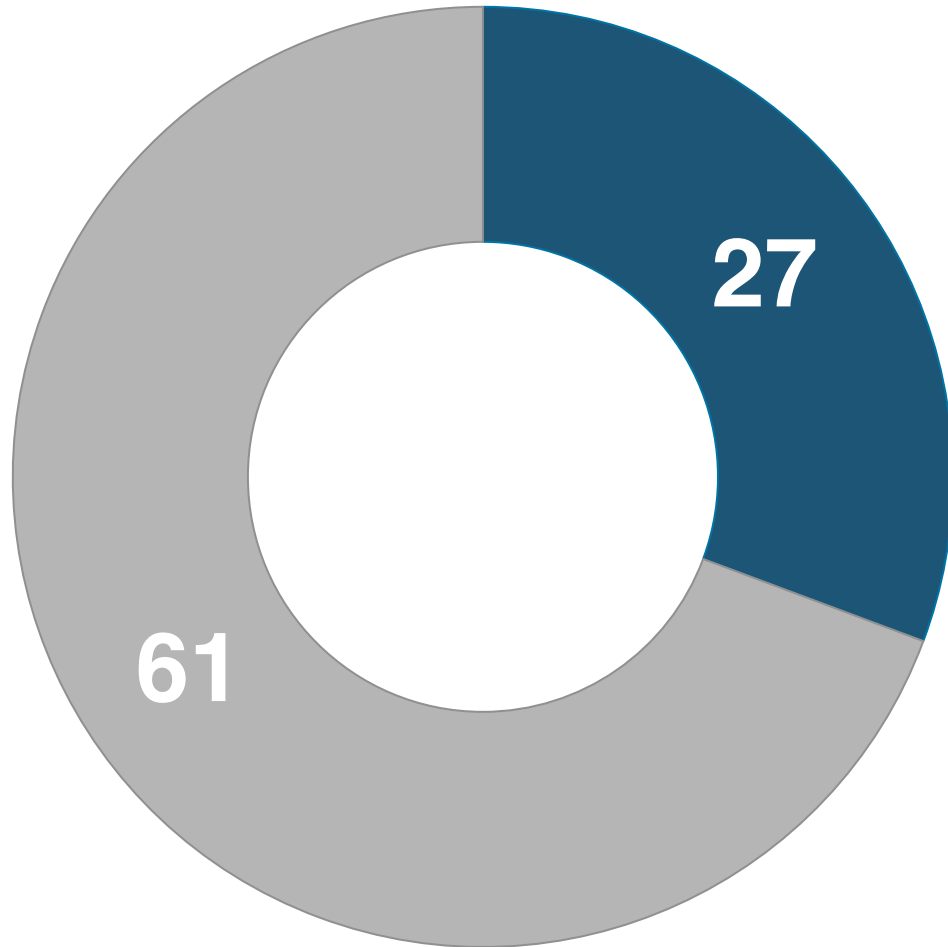
<b>I</b>  <b>Financial Crisis or Insolvency</b>	<b>II</b>  <b>Failure to Meet Operational Obligations</b>	<b>III</b>  <b>Legal/ Legislative Action</b>	<b>IV</b>  <b>Failure of Accountability</b>	<b>V</b>  <b>Failure of Accountability to External Stakeholders</b>
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The exercise of applying stress tests identified changes to ICANN Bylaws that might be necessary to allow the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

- Of the Stress Tests, ST18 received the most comments.



## Q: Do you agree that the CCWG-Accountability proposal enhances ICANN's accountability?



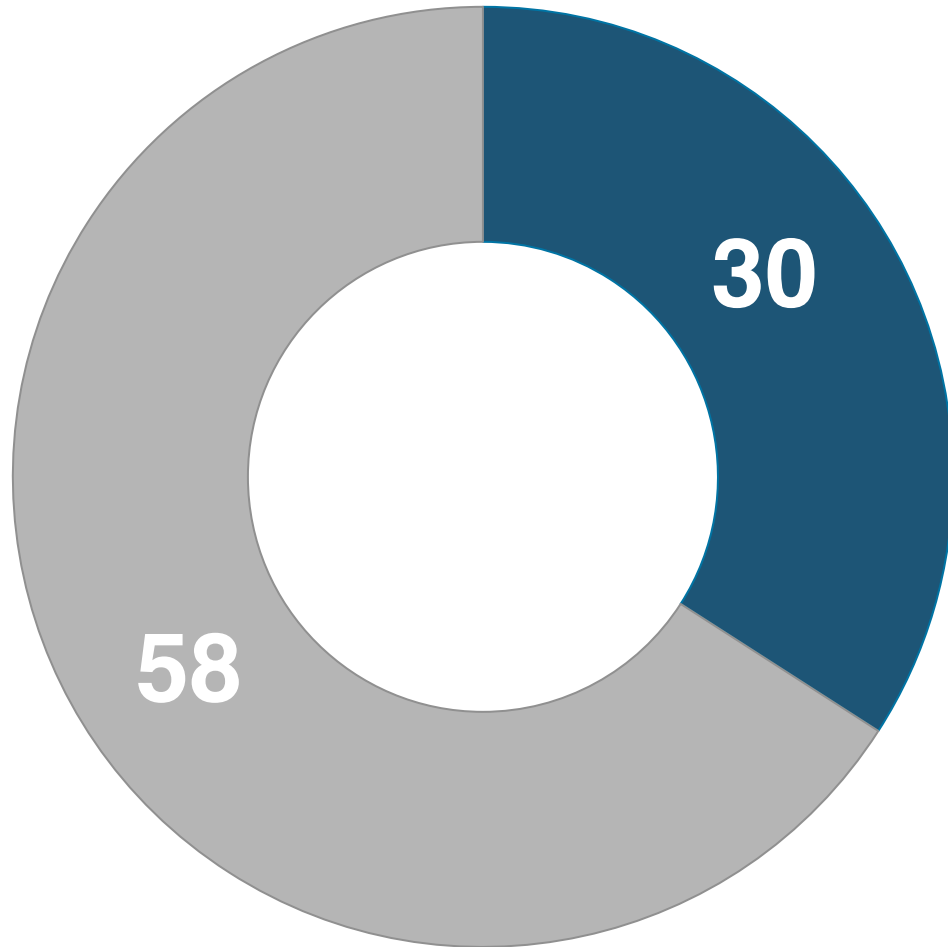
■ Responded   ■ Did Not Provide Answer

### Conclusion:

Of the responses, there was agreement that the CCWG-Accountability Proposal enhances ICANN's accountability.

## Q: Are there elements of this proposal that would prevent you from approving it transmission to Chartering Organizations?

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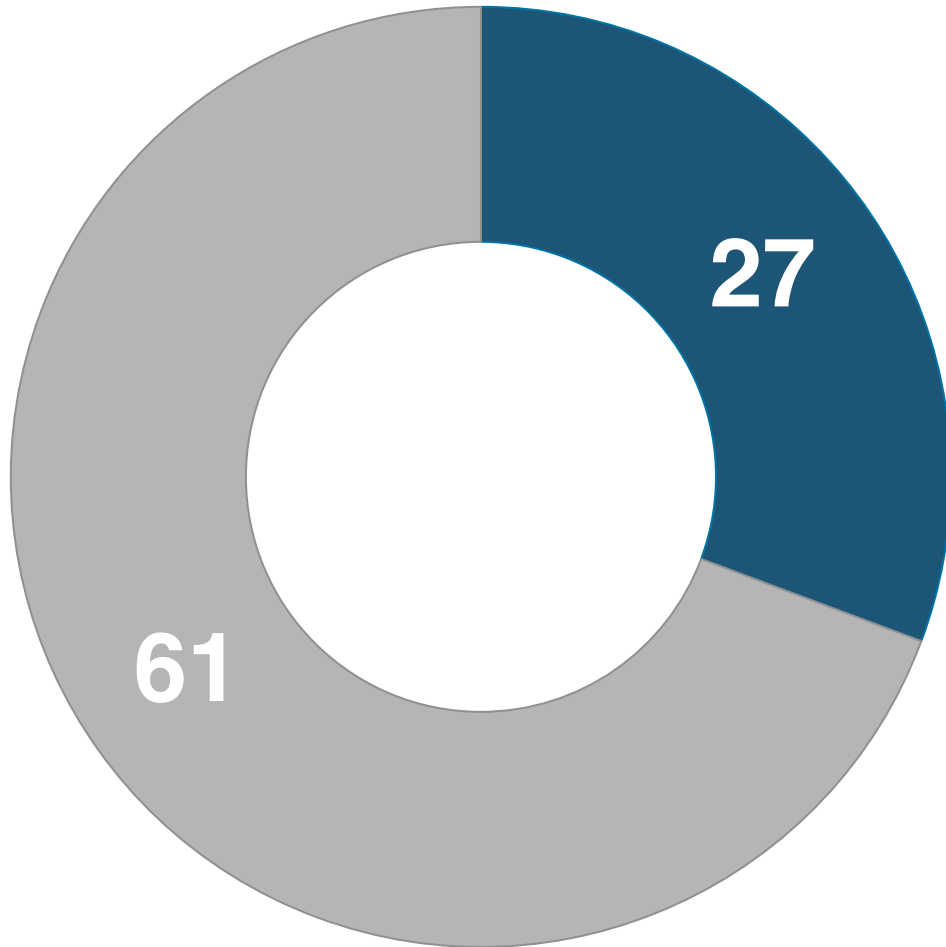


■ Responded   ■ Did Not Provide Answer

### Conclusion:

Of the responses, it seems that the CCWG-Accountability proposal could be forwarded to the Chartering Organizations should some outstanding issues and details be addressed.

## Q: Does this proposal meet the requirements set forward by the CWG-Stewardship?



■ Responded   ■ Did Not Provide Answer

### Conclusion:

Of the responses, including that of the CWG-Stewardship, there was consensus that the CCWG-Accountability report meets the CWG-Stewardship requirements.