

CCWG-ACCOUNTABILITY – PROPOSED ICANN BYLAWS (DRAFT OF APRIL 2, 2016)

CCWG-Accountability Supplemental Final Proposal	Location in Bylaws
Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers	
<p>1. Summary</p> <p>(1-6) Under California law and the current Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the ICANN Board of Directors has the final responsibility for the activities and affairs of ICANN.</p> <p>With removal of the U.S. National Telecommunications and Information Administration (NTIA) as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the ICANN Board may object to the results.</p> <p>The CCWG-Accountability recommends creating a new entity that will act at the direction of the multistakeholder community to exercise and enforce Community Powers. The entity will take the form of a California unincorporated association and be given the role of “Sole Designator” of ICANN Board Directors and will have the ability to directly or indirectly the Community Powers. The entity will be referred to as the “Empowered Community.”</p> <p>As permitted under California law, the Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove ICANN Board Directors (whether an individual Director or the entire Board). Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.</p> <p>The CCWG-Accountability accepts that its statutory power will be limited as described above, and that this is sufficient given:</p> <ul style="list-style-type: none"> • The creation of “Fundamental Bylaws” that can only be modified jointly by the ICANN Board and Empowered Community. • All recommended Work Stream 1 accountability mechanisms are constituted as 	<p>Article 6, Section 6.1 & Article 7, Section 7.2(a)</p> <p>Article 7, Sections 7.2(a) & 7.11(a)</p> <p>See Article 6, Section 6.1(b)(c)(d) & (e) [limits]</p> <p>Article 25, Section 25.2 & Annex D [Fundamental Bylaws]</p>

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<p>Fundamental Bylaws.</p> <ul style="list-style-type: none"> The right of inspection is granted to “Decisional Participants” in the Empowered Community. The right of investigation is granted to the Decisional Participants in the Empowered Community. <p>The process for the Empowered Community to use a Community Power is outlined in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.</p>	<p>Article 25, Section 25.2 & Annex D</p> <p>Article 22, Section 22.7</p> <p>Article 22, Section 22.8</p> <p>Annex D</p>
<p>2. CCWG-Accountability Recommendations</p> <p>(7-8) The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce Community Powers:</p> <ul style="list-style-type: none"> This entity will take the form of a California unincorporated association and be given the role of Sole Designator of ICANN Board Directors and will have the ability to directly or indirectly enforce the Community Powers. This entity will be referred to as the Empowered Community. The Empowered Community will act as directed by participating Supporting Organizations (SOs) and Advisory Committees (ACs), which will be referred to as the Decisional Participants in the Empowered Community. The Empowered Community, and the rules by which it is governed, will be constituted in ICANN’s Fundamental Bylaws, along with provisions to ensure the Empowered Community cannot be changed or eliminated without its own consent (see Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation). The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process. 	<p>Article 6, Section 6.1</p> <p>Article 6, Section 6.1 Article 7, Section 7.2(a)</p> <p>Article 6, Sections 6.1(a) & (c) Article 7, Sections 7.2(a) & (e), 7.11(a) Annex D</p> <p>Article 25, Section 25.2</p> <p>[Articles of Incorporation]</p>

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<p>Additionally, the CCWG-Accountability recommends including in the ICANN Bylaws:</p> <ul style="list-style-type: none"> • The right for Decisional Participants in the Empowered Community to inspection as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws. • The right of investigation, which includes the adoption of the following audit process: upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report. • The following limitation associated with the Governmental Advisory Committee (GAC) acting as a Decisional Participant: If the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice (referred to as the “GAC carve-out”). • In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power. • The GAC carve-out preserves the ICANN Board’s unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus (as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)) while protecting the Empowered Community’s power to challenge such Board decisions. 	<p>Article 22, Section 22.7</p> <p>Article 22, Section 22.8</p> <p>Article 3, Section 3.6(d) Article 12, Section 12.2(a)(x) Annex D</p> <p>Annex D</p> <p>[See above]</p>

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<p>3. Detailed Explanation of Recommendations</p> <p>(9-10) Background</p> <p>With removal of NTIA as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the Board may object to the results.</p> <p>(11-12) Objectives</p> <p>In developing a mechanism to ensure the community can effectively enforce its decisions, the CCWG-Accountability agreed to:</p> <ul style="list-style-type: none"> • Minimize the degree of structural or organizational changes required in ICANN to create the mechanism for these powers. • Organize the mechanism in line and compatible with the current ICANN SO and AC structures (with flexibility to evolve these structures in the future). • Address the dependencies of the CWG-Stewardship. • Provide the following powers and rights that would be constituted in the Fundamental Bylaws and would also be legally enforceable: <ul style="list-style-type: none"> ○ The power to reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans (CWG-Stewardship dependency). ○ The power to reject changes to ICANN Standard Bylaws. ○ The power to approve changes to Fundamental Bylaws (CWG-Stewardship dependency) and changes to the Articles of Incorporation, and to approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets. ○ The power to remove individual ICANN Board Directors (along with appointment, 	<p>Article 4, Section 4.3, Article 7, Section 7.11(a), Article 16, Section 16.2, Articles 17, 18, 19, Article 22, Sections 22.4 & 22.5, Article 25, Section 25.2 & Annex D [CWG]</p> <p>Article 22, Sections 22.4 & 22.5</p> <p>Article 25, Section 25.1</p> <p>Article 25, Section 25.2, Article 26</p> <p>Article 7, Section 7.11(a) [Article 7,</p>

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<p>CWG-Stewardship dependency).</p> <ul style="list-style-type: none"> ○ The power to recall the entire ICANN Board (CWG-Stewardship dependency). ○ The power to launch a community Independent Review Process (along with an appeal mechanism for issues relating to the IANA functions, CWG-Stewardship dependency) or Request for Reconsideration. ○ The power to reject ICANN Board decisions relating to reviews of the IANA functions, including the procedure to implement a separation process relating to Post-Transition IANA (CWG-Stewardship dependency). ○ The rights of inspection and investigation. 	<p>Section 7.2(a) appointment]</p> <p>Article 7, Section 7.11(a)(ii) & Annex D</p> <p>Article 4, Section 4.3(a)(i), (b)(iii) & (d), Section 4.7(k) [community IRP], Section 4.2 [reconsideration] & Annex D</p> <p>Article 18, Sections 18.6(c) & 18.12(d), Article 19, Sections 19.1(c) & 19.4(c) & Annex D</p> <p>Article 22, Sections 22.7 & 22.8</p>
<p>(13-22) Why the Sole Designator Model?</p> <p>Concerns with Supporting Organization/Advisory Committee Membership Model</p> <p>The CCWG-Accountability’s “Initial Draft Proposal on Work Stream 1 Recommendations” proposed a Supporting Organization/Advisory Committee Membership Model as the reference model for the community enforcement mechanism. However, in the Public Comment Period, May – 3 June 2015, significant concerns were expressed and the CCWG-Accountability initiated work on alternative solutions.</p> <p>A core concern of the Supporting Organization/Advisory Committee Membership Model was the ability of the ICANN community to fully participate in the new accountability framework, and was integral to the work in devising a new approach.</p> <p>The CCWG-Accountability’s “Second Draft Proposal on Work Stream 1 Recommendations” proposed a “Sole Member” model instead of the Supporting Organization/Advisory Committee Membership Model.</p> <p>Concerns with a Sole Member Model</p> <p>In the Public Comment Period on the “Second Draft Proposal on Work Stream 1 Recommendations,” concerns were raised about the Sole Member model. Under California</p>	<p>[Addressed elsewhere in this map]</p>

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<p>law, Members have certain statutory powers that cannot be waived. Commenters expressed concern that these rights, such as the ability to dissolve the corporation, could not be adequately constrained and might have unintended and unanticipated consequences.</p> <p>The Sole Designator Model</p> <p>To address the concerns described above, the CCWG-Accountability now recommends implementing a “Sole Designator” model. The Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove individual ICANN Board Directors or the entire Board, which is a requirement of the CCWG-Accountability and the CWG Stewardship.</p> <p>This removes the concerns related to unintended and unanticipated consequences of the additional statutory powers associated with a Member. Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.</p> <ul style="list-style-type: none"> Given that the right to inspect, as outlined in California Corporations Code 6333, is not a statutory right of a Sole Designator, and that the community felt this was a critical requirement, the CCWG-Accountability recommends this right be granted to Decisional Participants in the Empowered Community in the Fundamental Bylaws. <p>The CCWG-Accountability’s external legal counsel informed the group that adopting a Sole Designator model could effectively be implemented while meeting the community’s requirements and having minimal impact on the corporate structure of ICANN.</p>	
<p>(23-27) Legal Advice on Implementing the Empowered Community</p> <p>To implement the Sole Designator model, ICANN’s SOs and ACs would create a unified entity to enforce their Community Powers. This unified entity will be referred to as the Empowered Community.</p> <p>The Empowered Community will have the right to appoint and remove ICANN Board</p>	<p>[Addressed elsewhere in this map]</p>

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<p>Directors, whether individually or in its entirety.</p> <p>If the ICANN Board refused to comply with a decision by the Empowered Community to use the statutory rights, the refusal could be petitioned in a court that has jurisdiction to force the ICANN Board to comply with that decision.</p> <p>The CCWG-Accountability accepts that its statutory power will be limited as described above and that this is sufficient given:</p> <ol style="list-style-type: none"> 1. All of the recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws and protected from any changes without Empowered Community approval. <ul style="list-style-type: none"> ○ This includes the Independent Review Process (IRP), which issues binding decisions. This also includes the Empowered Community’s power to launch a community IRP challenge if it believes the ICANN Board is in breach of its Articles of Incorporation or Bylaws. <i>[FN 1]</i> <i>[Footnote 1: For example, if the Board were not to accept the decision of the Empowered Community to use one of its Community Powers. Community Powers are documented in Recommendation #4...]</i> ○ The ICANN Board would be in breach of its own Bylaws if it refused to comply with a decision by the Empowered Community with respect to an accountability mechanism defined in the Fundamental Bylaws. ○ If a community IRP challenge with respect to such a decision is successful and the Board still refused to comply with the decision, the Empowered Community could petition a court that has jurisdiction to force the ICANN Board to comply with that decision. ○ Alternatively, the Empowered Community could remove the Board with the expectation that the new Board would respect the decision. 2. The Empowered Community has legal standing as a California unincorporated 	<p>[Addressed elsewhere in this map]</p> <p>Article 6, Sections 6.1 & 6.2</p>

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<p>association.</p> <ul style="list-style-type: none"> ○ The Empowered Community will act as directed by participating SOs and ACs (the Decisional Participants in the Empowered Community). <p>3. The Empowered Community and the rules by which it is governed will be constituted as a Fundamental Bylaw, along with provisions in the Articles of Incorporation and Bylaws to protect it from any changes without its own approval.</p> <p>4. The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.</p> <ul style="list-style-type: none"> ○ Note: Legal counsel indicated that the Articles of Incorporation could be amended to ensure that the ICANN Board must consider the community’s interpretation of the “global public interest” as ICANN pursues the charitable and public purposes set forth in Article III. The CCWG-Accountability recommends this change as part of the shift from a Sole Member to a Sole Designator model. The Articles will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process. 	
<p>(28-35) Additional Rights Granted by Inclusion in the ICANN Bylaws</p> <p>Right to inspect accounting books and records of ICANN</p> <p>In addition to the statutory rights that the Empowered Community will have and the new Community Powers described in Recommendation #4..., the CCWG-Accountability recommends including in the ICANN Fundamental Bylaws the right for Decisional Participants in the Empowered Community to inspect as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.</p> <p>This inspection right is distinct from the Document Information Disclosure Policy (DIDP). While any eligible party can file a request according to the DIDP, inspection rights are only accessible to Decisional Participants in the Empowered Community. The scopes are also different as explained below.</p>	<p>Article 22, Section 22.7</p>

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<p>This inspection right would include the accounting books and records of ICANN, and the minutes of proceedings of the Board of Directors and committees of the Board of Directors, on the conditions discussed below. Since ICANN will not have statutory “members,” the right to inspect “member” meeting minutes would not apply.</p> <p>Although the Corporations Code does not define “books and records of account,” the term is generally understood to refer to the journals and ledgers in which financial transactions are originally entered and recorded, and the statements compiled from them. The term generally does not extend to source documents on which books and records of account are based, such as canceled checks and invoices. Similarly, the term generally encompasses documents relevant to the operation of the corporation as a whole, and not to those relevant to only a small or isolated aspect of the corporation’s operations.</p> <p>Authority under Section 6333 is sparse, but it is nonetheless clear that a “purpose reasonably related to [a] person’s interests as a member” does not include a member’s commercial or political interests, harassment, or massive and repeated inspection demands probing the minutiae of financial records and details of management and administration. Similar limitations will be applied to rights of inspection provided by the Bylaws.</p> <p>Unlike the exercise of the other Community Powers, which require community engagement and escalation before initiating a request for action by the Empowered Community, the CCWG-Accountability recommends that a petition for inspection be brought directly by a single Decisional Participant in the Empowered Community or by multiple Decisional Participants in the Empowered Community through making a written demand on ICANN for the requested materials. If the Board refuses or ignores the request, the petitioning Decisional Participant(s) could enforce its inspection right directly through the IRP or by petitioning the Empowered Community to initiate the escalation processes for a community IRP or for removing the Board.</p>	

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<p>(36-39) Investigation right</p> <p>There could be events where the community might wish to have additional power of transparency into investigations of potential fraud or financial mismanagement in ICANN.</p> <p>To address these concerns, the CCWG-Accountability recommends the adoption of the following audit process: Upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.</p> <p>This right of investigation would be included in the ICANN Fundamental Bylaws.</p>	<p>Article 22, Section 22.8</p>
<p>(40-45) The Empowered Community</p> <p>Implementation of the Empowered Community currently anticipates that all of ICANN’s SOs, the At-Large Advisory Committee (ALAC), and the GAC (if the GAC chooses to participate) would participate in the Empowered Community—that is, they will be listed in the Bylaws as the five Decisional Participants.</p> <p>However, if the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice (referred to as the “GAC carve-out”). In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.</p>	<p>Article 6, Section 6.1 & Annex D</p>

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<p>The GAC carve-out preserves the ICANN Board’s unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus (as defined in Recommendation #11...) while protecting the Empowered Community’s power to challenge such Board decisions.</p> <p>Clarifications relating to the GAC carve-out:</p> <ul style="list-style-type: none"> • The GAC carve-out will only apply to Empowered Community challenges to ICANN Board actions that were based on GAC consensus advice, meaning the GAC advice was “approved by general agreement in the absence of any formal objection.” The GAC carve-out will not apply to Empowered Community challenges to Board decisions that were based on GAC advice that was not supported by consensus (i.e., not “approved by general agreement in the absence of any formal objection”). • Process for identifying GAC consensus advice, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, and applying the GAC carve-out: <ul style="list-style-type: none"> ○ GAC confirmation: When the GAC provides advice to the Board, the GAC will need to indicate whether the advice was approved by consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. ○ Board confirmation: When the Board takes action that is based on GAC consensus advice, the Board will need to state in its resolution that its decision was based on GAC consensus advice. ○ GAC carve-out identified in petition to use Community Power: When a Board action that is based on GAC consensus advice is challenged, the petitioning SO or AC will need to indicate in the initial petition that the matter meets the requirements for the GAC carve-out and clearly identify the applicable Board action and GAC consensus advice at issue. The decision thresholds (as revised when the GAC carve-out is invoked in accordance in Annex 2) required for the 	

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<p>escalation and enforcement processes will need to be met for the Community Power that is being exercised.</p> <ul style="list-style-type: none"> • Timing for invoking the GAC carve-out: The petitioning SO or AC will need to indicate in the initial petition to the Empowered Community that the matter meets the requirements for the GAC carve-out. Therefore, the timing restrictions for this aspect of the escalation process will apply (i.e., the petition must be brought within 21 days of a Board decision being published). While this addresses timing of the Board challenge, the Board decision that is being challenged could be based on standing GAC consensus advice that the GAC had provided at an earlier date. <p>The thresholds presented in this document were determined based on five Decisional Participants. If fewer than five of ICANN’s SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.</p>	

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<p>3. Detailed Explanation of Recommendations</p> <p>(17-21) Engagement</p> <p>Today, the ICANN Board voluntarily consults with the community on a variety of decisions, such as the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms, such as public consultations, to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an engagement process.</p> <p>The CCWG-Accountability is recommending that this engagement process be constituted in the Fundamental Bylaws. Although the ICANN Board already convenes this process, this recommendation would require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:</p> <ul style="list-style-type: none"> • Approving ICANN’s Five-Year Strategic Plan. • Approving ICANN’s Five-Year Operating Plan. • Approving ICANN’s Annual Operating Plan & Budget. • Approving the IANA Functions Budget. • Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets. • Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process. <p>If it is determined that there is divergence between the ICANN Board and the community during the engagement process, the Empowered Community may decide to use a Community Power after the appropriate escalation process is satisfied.</p>	<p>Section 25.2(a)</p> <p>Section 22.5(b)(iii)</p> <p>Section 22.5(a)(iii)</p> <p>Section 22.4(a)(iii)</p> <p>Section 22.4(b)(iii)</p> <p>Sections 25.1(b), 25.2(c) & Article 26(b)</p> <p>Sections 18.6(b)(ii), 18.12(c)(ii), 19.1(b)(iii) & 19.4(b)(ii)</p>

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<p>The Empowered Community may begin an escalation process to:</p> <ul style="list-style-type: none"> • Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget. • Reject a change to ICANN Standard Bylaws. • Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets. • Remove an individual ICANN Board Director. • Recall the entire ICANN Board. • Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN’s Board or staff). • Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process. 	<p>Sections 22.4(a)(v), 22.4(b)(v), 22.5(a)(v) & 22.5(b)(v)</p> <p>Section 25.1(e)</p> <p>Sections 25.2(f) & 26(e)</p> <p>Section 7.11(a)(i)</p> <p>Section 7.11(a)(ii)</p> <p>Sections 4.2(a) & 4.7(k)</p> <p>Sections 18.6(c), 18.12(d), 19.1(c) & 19.4(c)</p>
<p>(22-38) Escalation</p> <p>The escalation process can differ, sometimes significantly, from one Community Power to another. One of the most standardized versions of the escalation process is required for all Community Powers to “reject,” remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.</p> <ul style="list-style-type: none"> • Note: Certain exceptions apply to the power to reject changes to Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process, as described in Recommendation #4.... <p>The right to reject an ICANN Board decision relating to IANA Function Reviews</p>	<p>Sections 3.1 & 3.3, Annex D, Article 2</p> <p>Sections 25.1(e) & 25.3; Annex D, Sections 2.2(c)(i)(C), 2.2(d)(ii)(D) & 2.4(b)(iii)</p>

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<p>(including the triggering of any PTI separation process) may be exercised by the Empowered Community an unlimited number of times.</p> <ul style="list-style-type: none"> Note: The power to approve changes to Fundamental Bylaws and the Articles of Incorporation, and to approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets, and the power to remove individual Directors nominated by an SO or AC contain special features that are covered in Recommendation #4.... <p>Step 1. Triggering Review by Community Petition (21 days)</p> <ul style="list-style-type: none"> Note: To exercise any of the rejection powers, such as rejection of a budget, the 21-day period begins at the time the Board publishes its vote on the element that may be rejected. If the first step of the petition is not successful within 21 days of the Board publication of the vote, the rejection process cannot be used. A petition begins in an SO or AC that is a Decisional Participant in the Empowered Community. Any individual can begin a petition as the first step to using a Community Power. For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition. <p>Decision point:</p> <ul style="list-style-type: none"> If the SO or AC does not approve the petition within 21 days, the escalation process terminates. If the SO or AC approves the petition, it can proceed to the next step. <p>Step 2. Triggering Review by Community Petition, Part Two (7 days from the end of the previous step)</p> <ul style="list-style-type: none"> The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least one additional Decisional Participant must support the petition (for a minimum of two) for a Community Forum to be organized to discuss the issue. To petition for a Community 	<p>Sections 18.6(b), 18.12(c), 19.1(b) & 19.4(b)</p> <p>Annex D, Article 1</p> <p>Annex D, Section 3.2</p> <p>Annex D, Sections 2.2, 3.1 and 3.3</p> <p>Annex D, Sections 2.2, 3.1 and 3.3</p>

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<p>Forum to consider the recall of the entire ICANN Board requires three Decisional Participants to support the petition.</p> <p>Decision point:</p> <ul style="list-style-type: none"> • If the petition fails to gather the required level of support within seven days, the escalation process terminates. • If a minimum of two (or three, as applicable) Decisional Participants support the petition within seven days, a Community Forum is organized. • Note: For ICANN Board resolutions on changes to Standard Bylaws, Annual Budget, and Strategic or Operating Plans, the Board would be required to automatically provide a 28-day period before the resolution takes effect to allow for the escalation to be confirmed. If the petition is supported by a minimum of two Decisional Participants within the 28-day period, the Board is required to put implementation of the contested resolution on hold until the escalation and enforcement processes are completed. The purpose of this is to avoid requiring ICANN to undo things (if the rejection is approved), which could be potentially very difficult. <p>Step 3. Holding a Community Forum (21 days to organize and hold the event from the date of the petition causing it)</p> <ul style="list-style-type: none"> • The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing their preliminary views on the exercise of this Community Power, before or in the Community Forum. • The Forum is to be held within 21 days of the successful petition to hold a Community Forum. • Within 24 hours of a petition being approved, the petitioning Decisional Participant will: 	<p>Sections 22.4 & 22.5</p> <p>Annex D, Sections 2.2, 2.3, 3.1 and 3.3</p>

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<ul style="list-style-type: none"> ○ Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants. Any SO or AC may contribute preliminary thoughts or questions in writing via a specific publicly archived email list set up for this specific issue. ○ Designate a representative(s) to liaise with Decisional Participants to answer questions from the SOs/ACs. ○ If desired, optionally, request that ICANN organize a conference call for the community to discuss the issue. ● Community Forum format: <ul style="list-style-type: none"> ○ It is expected that for most powers, this will only involve remote participation methods such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face to face. The one exception to this is the power to recall the entire Board, which would require a face-to-face meeting. ○ The Decisional Participants who supported the petition would decide if holding the Community Forum can wait until the next regularly scheduled ICANN meeting or if a special meeting is required to bring participants together (only in the case of Board recall). In both these cases, the Decisional Participants who supported the petition leading to the Community Forum will publish the date for holding the event, which will not be subject to the 21-day limitation. In this case, the Community Forum would be considered completed at the end of the face-to-face meeting. Note: This extension is not available for exercise of the Community Power regarding the ICANN or IANA Budgets, due to the importance of maintaining a timely budget approval process. ○ Open to all interested participants. 	

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<ul style="list-style-type: none"> ○ Managed and moderated in a fair and neutral manner. ○ ICANN to provide support services. ICANN support staff will collect and publish a public record of the Forum(s), including all written submissions. ○ Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised. ○ Should the relevant Decisional Participants determine a need for further deliberation, a second and third session of the Community Forum could be held. ○ The Forum will not make decisions or seek consensus, and will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum, as discussed below. <p>Decision point:</p> <ul style="list-style-type: none"> ● If the Empowered Community and ICANN Board can resolve the issue before or in the Community Forum, the escalation process terminates. Resolving an issue will be confirmed by the Decisional Participants who supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted. ● If the Empowered Community and ICANN Board cannot resolve the issue, the Empowered Community must decide if it wishes to take further action. <p>Step 4. Decision to Use a Community Power as an Empowered Community (21 days from the conclusion of the Community Forum)</p> <p>Decision point:</p> <ul style="list-style-type: none"> ● If four or more (for some powers, three) Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons. 	<p>Annex D, Sections 2.4, 3.1 and 3.3</p>

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<p>Option 1: Initiate mediation and community IRP procedures.</p> <p>a) Representatives from ICANN Board and Empowered Community undertake a formal mediation phase.</p> <ul style="list-style-type: none"> • If the Empowered Community accepts the result from the mediation phase (as discussed below), the enforcement process would be terminated. • If the Empowered Community does not accept the result from the mediation phase, the Empowered Community will proceed with a community IRP. • Process specification (general guidelines for implementation): <ul style="list-style-type: none"> ○ The individuals selected by the Decisional Participants to represent them in the Empowered Community will be the Empowered Community representatives in the mediation process. ○ Once the mediator has determined that mediation efforts are completed, the Empowered Community will produce and publicly post a report with its recommendations within 14 days. ○ The Decisional Participants in the Empowered Community should use the standard escalation process to confirm whether to proceed with a community IRP challenge to the Board failing to comply with a decision of the Empowered Community to use a Community Power, using the above report as the basis for the petition. If the Empowered Community does not approve initiating a community IRP, the Empowered Community will be considered as having accepted the result of the mediation. <p>b) Representatives from the ICANN Board and Empowered Community undertake a formal and binding IRP.</p> <ul style="list-style-type: none"> • If the result of the community IRP is in favor of the ICANN Board, the enforcement 	<p>Sections 4.3 and 4.7; Annex D, Sections 4.1, 4.2</p>

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<p>process is terminated.</p> <ul style="list-style-type: none"> • If the result of the binding IRP is in favor of the Empowered Community, then the ICANN Board must comply within 30 days of the ruling. <p>c) If the ICANN Board does not comply with the decision of the IRP, the Empowered Community has two options:</p> <ul style="list-style-type: none"> • The Empowered Community can petition a court of valid jurisdiction to enforce the result of the IRP. • The Empowered Community can use its Community Power to recall the entire ICANN Board. <p>Option 2: Initiate an escalation process to recall the entire ICANN Board.</p> <ul style="list-style-type: none"> • If the requisite threshold of support of Decisional Participants is achieved, the Empowered Community will remove all of the members of the ICANN Board (except the CEO) and replace them with an Interim Board until a new Board can be seated. • The Empowered Community may legally enforce the power to recall the entire Board in court. 	<p>Sections 7.11 and 7.12 Annex D, Section 3.3</p>
<p>Table: Required Thresholds for the Various Escalation and Enforcement Processes (Based on a Minimum of Five Decisional Participants in the Empowered Community)</p> <p><i>[See table with thresholds in Recommendation #2, paragraphs 46-70]</i></p> <p>(71-74) Implementation of the Empowered Community currently anticipates that all of ICANN’s SOs, the ALAC and GAC (if the GAC chooses to participate) would participate in the Empowered Community – that is, they will be listed in the Bylaws as the five Decisional Participants.</p> <p>The thresholds presented in this document were determined based on this assessment. If</p>	<p>Annex D</p>

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<p>fewer than five of ICANN’s SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.</p> <p>In the event of the creation (or removal) of SOs/ACs, the corresponding percentage could be used as useful guidelines in refining the thresholds. There would, however, need to be a conscious decision, depending on the circumstances, regarding these adjustments. If such a change were to affect the list of Decisional Participants in the Empowered Community, the change would follow the Fundamental Bylaw change process, which enables such a conscious decision to be undertaken.</p> <p>The CCWG-Accountability also recommends that in a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board’s implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects, with the following exception:</p> <ul style="list-style-type: none"> • Where the power to be exercised is recalling the entire Board for implementing GAC advice, the reduced threshold would apply only after an IRP has found that, in implementing GAC advice, the Board acted inconsistently with the ICANN Bylaws. If the Empowered Community has brought such an IRP and does not prevail, the Empowered Community may not exercise its power to recall the entire the Board solely on the basis of the matter decided by the IRP. It may, however, exercise that power based on other grounds. 	<p>Section 6.1(b)</p> <p>Section 6.1(b)</p> <p>Annex D, Sections 2.4(b)(ii), (iii)(B), 3.1(g)(ii) and 3.3(f)(ii)</p> <p>Annex D, Sections 3.3(a) and 3.3(f)(ii)</p>

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Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation	
<p>2. CCWG-Accountability Recommendations</p> <p>(5) The CCWG-Accountability recommends:</p> <ul style="list-style-type: none"> • Classifying each ICANN Bylaw as either a Fundamental Bylaw or a Standard Bylaw. • Making the following CCWG-Accountability and CWG-Stewardship Recommendations Fundamental Bylaws: <ul style="list-style-type: none"> ○ The Empowered Community for enforcing Community Powers, including the role of Sole Designator of ICANN’s Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers. ○ The escalation and enforcement mechanisms as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement. ○ The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation. ○ The seven Community Powers as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers. ○ The Mission, Commitments and Core Values as described in Recommendation #5: Changing Aspects of ICANN’s Mission, Commitments and Core Values. 	<p>Sections 25.1 and 25.2</p> <p>Section 25.2(a)</p> <p>Article 6; Annex D</p> <p>Annex D</p> <p>Article 25; Article 26</p> <p>Annex D; Section 4.3</p> <p>Article 1</p>

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Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation	
<ul style="list-style-type: none"> ○ The framework for the Independent Review Process (IRP) as described in Recommendation #7: Strengthening ICANN’s Independent Review Process. ○ The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal. ○ The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal. ○ The rights of investigation and inspection as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers. ● Requiring ICANN to conduct public consultations on any proposed changes to Standard Bylaws, Fundamental Bylaws or the Articles of Incorporation. ● Requiring approval for any changes to Fundamental Bylaws and the Articles of Incorporation from both the ICANN Board and the Empowered Community as outlined in the Community Power as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers. ● Raising the threshold for ICANN Board approval for changing a Fundamental Bylaw or the Articles of Incorporation from 2/3 to 3/4 of all the Directors on the ICANN Board. 	<p>Section 4.3</p> <p>Articles 18 and 19</p> <p>Articles 16 and 17</p> <p>Section 22.7; Section 22.8</p> <p>Section 25.1(b); Section 25.2(c) and (d)</p> <p>Section 25.2(b)</p> <p>Section 25.2(b)</p>
<p>3. Detailed Explanation of Recommendations</p> <p>(6-12) What Is a Fundamental Bylaw?</p> <p>ICANN Bylaws describe how power is exercised in ICANN, including setting out the organization’s Mission, Commitments and Core Values. Together with</p>	

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<p>the Articles of Incorporation, the Bylaws are an essential part of ICANN because they set the scope of the organization’s corporate authority, determine its governance framework and define working practices.</p> <p>Today, ICANN Bylaws can be changed by a resolution of the Board upon a 2/3 vote of all the Directors. The CCWG-Accountability believes that the set of key Bylaws that are fundamental to ICANN’s stability and operational continuity and essential for the community’s decision-rights should be given additional protection from changes by requiring Empowered Community approval of any amendments.</p> <p>These key Bylaws will be identified as Fundamental Bylaws.</p> <p>As such, the CCWG-Accountability proposes making Fundamental Bylaws harder to change than Standard Bylaws in two ways:</p> <ul style="list-style-type: none"> • By sharing the authority to authorize changes between the ICANN Board and the Empowered Community, organized through participating Supporting Organizations (SOs) and Advisory Committees (ACs) as the “Decisional Participants” in the Empowered Community, as outlined in Recommendation #1.... • By requiring a higher threshold of ICANN Board support to authorize changes to Fundamental Bylaws than for Standard Bylaws. <p>The establishment of Fundamental Bylaws would indirectly enhance ICANN’s accountability to the global Internet community by sharing the authority of decision-making more widely and increasing the difficulty of amending these key aspects of ICANN.</p> <p>This recommendation is important in the context of the IANA Stewardship Transition because the historical contractual relationship with the U.S. Government provided assurance to the multistakeholder community that the fundamental nature of ICANN was unlikely to be changed without widespread</p>	

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<p>agreement. Without that relationship in place, procedural protections and more widely shared decision-rights on core components of ICANN’s scope and authority should help maintain the community’s confidence in ICANN.</p> <p>(13-14) Establishing Fundamental Bylaws</p> <p>To implement the establishment of Fundamental Bylaws, a new provision would be added to the Bylaws that sets out:</p> <ul style="list-style-type: none"> • Which sections of the Bylaws are Fundamental Bylaws (i.e., a list of the fundamental articles/sections/subsections). • How new Fundamental Bylaws can be defined, and how existing Fundamental Bylaws can be amended or removed. <p>(15-20) Adding New or Amending Existing Fundamental Bylaws</p> <p>While the CCWG-Accountability recommends fortifying certain aspects of the ICANN Bylaws, the global public interest would not be served if ICANN could not evolve in response to the changing Internet environment.</p> <p>Therefore, the CCWG-Accountability recognizes the importance of the ability to define new Fundamental Bylaws over time, or to amend or remove existing ones.</p> <p>The following steps would be required to establish a new Fundamental Bylaw, or to amend or remove an existing one, where the ICANN Board (or the staff through the ICANN Board) is proposing the addition, amendment or removal:</p> <ul style="list-style-type: none"> • The Board proposes a new Fundamental Bylaw, amendment of a Fundamental Bylaw, or removal of a Fundamental Bylaw. • The Board approves the addition, amendment, or removal of the Fundamental Bylaw with a 3/4 vote of all the Directors on the ICANN 	<p>Section 25.2(a)</p> <p>Section 25.2(b)</p>

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<p>Board.</p> <ul style="list-style-type: none"> The Empowered Community approves the addition, amendment or removal of the Fundamental Bylaw (as described in Recommendation #4...). <p>If the addition, amendment, or removal of the Fundamental Bylaw is agreed upon by both the ICANN Board and the Empowered Community:</p> <ul style="list-style-type: none"> The new/revised Fundamental Bylaw would be inserted into the ICANN Bylaws, and an appropriate reference to the text as a Fundamental Bylaw would be added (if needed) to the part of the Bylaws that lists them. In the case of an amendment to existing ICANN Bylaws text, the text would be updated. In the case of a removal, the text would be removed from the ICANN Bylaws. <p>The CCWG-Accountability does not propose that the community gain the power to directly propose changes to the Bylaws.</p> <p>(21-24) Which of the Current Bylaws Would Become Fundamental Bylaws?</p> <p>The CCWG-Accountability recommends that only critical aspects of the ICANN Bylaws be classified as Fundamental Bylaws to avoid introducing unnecessary rigidity into ICANN’s structures. The CCWG-Accountability concluded that recommending that all changes to ICANN Bylaws should face the same thresholds that are proposed for Fundamental Bylaws would harm, not help, ICANN’s overall accountability.</p> <p>The CCWG-Accountability views “critical aspects” as those that define ICANN’s Mission, Commitments and Core Values; the requirements of the CWG-Stewardship Proposal; and the core accountability tools the community requires.</p>	<p>Section 25.2(f)</p> <p>Section 25.4</p>

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<p>Accordingly, the CCWG-Accountability recommends that the following aspects be made Fundamental Bylaws as a part of Work Stream 1:</p> <ul style="list-style-type: none"> • The Empowered Community for enforcing Community Powers, including the role of sole designator of ICANN’s Directors, as described in Recommendation #1.... • The escalation and enforcement mechanisms, as described in Recommendation #2.... • The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets, as described in Recommendation #3.... • The seven Community Powers, as described in Recommendation #4.... • The Mission, Commitments and Core Values, as described in Recommendation #5.... • The framework for the Independent Review Process, as described in Recommendation #7.... • The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal. • The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal. • The rights of investigation and inspection, as described in Recommendation #1.... 	<p>Addressed above under Section 2 of Rec #3.</p>
(25-29) Articles of Incorporation	Section 25.2

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<p>The CCWG-Accountability legal counsel has advised the following when considering changes to the ICANN Articles of Incorporation:</p> <p><i>“The constituent documents of a California nonprofit public benefit corporation such as ICANN are its Articles of Incorporation and its Bylaws. There is a hierarchy between these documents—the articles prevail to the extent that there is any conflict between the Articles and the Bylaws. This hierarchical relationship holds even if the conflict is between the Articles and a “fundamental” Bylaw that requires the consent of a third-party (in the case of ICANN, the Empowered Community) to be amended.</i></p> <p><i>Under California nonprofit corporation law, if a corporation has no statutory members, amendments to the articles may be adopted by the Board. However, the amendment of articles may be made subject to the consent of a third party, just as the amendment of bylaws may be. In the case of ICANN, if the Empowered Community is not provided a right to approve amendments to the Articles, there is a risk that Fundamental Bylaw provisions could be undermined by amendment of the Articles by the ICANN Board, given the hierarchical relationship described above. Thus, we recommend including an approval right with respect to amendments to ICANN’s Articles in favor of the Empowered Community in the same way the Empowered Community has approval rights with respect to Fundamental Bylaws.”</i></p> <p>As such, the CCWG-Accountability is recommending that changes to the ICANN Articles of Incorporation follow the same approval process and thresholds described above for approving changes to Fundamental Bylaws.</p> <p>It is important to note ICANN’s current Articles of Incorporation state that: “9. <i>These Articles may be amended by the affirmative vote of at least two-thirds of the directors of the Corporation. When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment.</i>”</p>	

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<p>Therefore, the CCWG-Accountability recommends that the Articles of Incorporation be modified to remove the notion of members and reflect the need for a higher affirmative vote of at least ¾ of all the Directors on the ICANN Board, as well as approval by the Empowered Community using the same approval process and thresholds as for approving changes to Fundamental Bylaws.</p> <p>(30-35) Does the location of ICANN’s principal office need to be a Fundamental Bylaw?</p> <p>The ICANN Articles of Incorporation and Bylaws address both the state of incorporation (or corporate domicile) of ICANN and the location of its principal office:</p> <ul style="list-style-type: none"> • ICANN’s present Articles of Incorporation state: <i>“3. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes.”</i> • ICANN’s present Bylaws Article XVIII Section 1 state: <i>“OFFICES. The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.”</i> • The Affirmation of Commitments paragraph 8(b) states: <i>“ICANN affirms its commitments to: (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community...”</i> <p>As recommended by the CCWG-Accountability in the above section, the Articles of Incorporation would require that approval of any changes to the Articles of Incorporation use the same process and thresholds required for</p>	<p>Section 25.2(b)</p>

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<p>approving changes to Fundamental Bylaws.</p> <p>Thus, ICANN’s state of incorporation/corporate domicile could not be changed without the affirmative consent of the Empowered Community. However, to ensure that ICANN’s status as a California nonprofit public benefit corporation could not be changed by way of transfer of assets and/or dissolution without the affirmative consent of the Empowered Community, a provision will need to be added to the Articles of Incorporation requiring Empowered Community approval for a transfer of all or substantially all of the assets of ICANN.</p> <p>The ICANN Board could propose a change to the Bylaws provision requiring the location of ICANN’s “principal office” in California, but the Empowered Community could block the change.</p> <p>There was not consensus to support making this provision a Fundamental Bylaw requiring the affirmative consent of the Empowered Community.</p>	<p>Section 24.1; Section 25.1(e)</p>
<p>(36-42) Community Power: Approve Changes to Fundamental Bylaws and the Articles of Incorporation</p> <p>Establishing Fundamental Bylaws and requiring Empowered Community approval of amendments to the Articles of Incorporation would ensure that critical aspects of the powers and processes required to maintain ICANN’s accountability to the community, and the organization’s Mission, Commitments and Core Values, can only be changed as a result of broad consensus of both the ICANN Board and the community.</p> <p>The Empowered Community would have to affirmatively consent to any change proposed and adopted by the ICANN Board before the amendment could become legally effective, as part of a joint decision process between the ICANN Board and the Empowered Community. By creating this special joint decision process, authority to change fundamental aspects of ICANN’s governing</p>	

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<p>framework is shared more broadly than it is today.</p> <p>The CCWG-Accountability is working under the assumption that the Articles of Incorporation and the ICANN Bylaws provisions that are recommended to become Fundamental Bylaws are not likely to change frequently. Where changes are made, they are unlikely to arise on short notice or be needed to deal with short-term operational situations.</p> <p>The CCWG-Accountability therefore does not believe that this Community Power, as proposed, poses any challenges to ICANN’s ongoing operational viability, stability or efficiency.</p> <p>Such changes require a high degree of support from the Decisional Participants in the Empowered Community, as the purpose of this power is to make changing Fundamental Bylaws or the Articles of Incorporation possible only with very wide support from the community.</p> <p>For further information about the other Community Powers recommended by the CCWG-Accountability, see Recommendation #4....</p>	

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Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers	
<p>3. Detailed Explanation of Recommendations</p> <p>(5-8) The CCWG-Accountability has proposed a set of seven Community Powers designed to empower the community to hold ICANN accountable for the organization’s Principles (the Mission, Commitments and Core Values).</p> <p>The proposed Community Powers are:</p> <ul style="list-style-type: none"> • The Power to Reject ICANN’s Budget, IANA Functions Budget or Strategic/Operating Plans • The Power to Reject Changes to ICANN Standard Bylaws • The Power to Remove Individual ICANN Board Directors • The Power to Recall the Entire ICANN Board • The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN’s Sale or Other Disposition of All or Substantially All of ICANN’s Assets • The Power to Initiate a Binding IRP or a Non-Binding Request for Reconsideration • The Power to Reject ICANN Board Decisions Relating to Reviews of IANA Functions, including the Triggering of Any PTI Separation Process <p>It is important to note that the above powers, as well as the launch of a Separation Cross Community Working Group [FN 1] (as required by the CWG-Stewardship dependencies), can be enforced by using the community IRP or the Community Power to recall the entire Board.</p> <p><i>[Footnote 1: 1 If the CWG-Stewardship’s IANA Function Review determines that a Separation Process for the IANA naming functions is necessary, it will recommend the creation of a Separation Cross Community Working Group. This recommendation will need to be approved by a supermajority of each of the Generic Names Supporting Organization and the Country-Code Names Supporting Organization Councils, according to their normal</i></p>	

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<p><i>procedures for determining supermajority, and will need to be approved by the ICANN Board after a Public Comment Period, as well as by the Empowered Community.]</i></p> <p>If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community’s appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.</p>	
<p>(9-18) The Power to Reject ICANN’s Budget or Strategic/Operating Plans</p> <p>The right to set budgets and strategic direction is a critical governance power for any organization. By allocating resources and defining the goals to which these resources are directed, strategic plans, operating plans, and budgets have a significant impact on what ICANN does and how effectively it fulfills its role. The ICANN community already plays an active role in giving input into these key documents through participation in the existing consultation processes ICANN organizes.</p> <p>To provide additional accountability safeguards, the CCWG-Accountability has proposed that the Empowered Community be given the power to reject:</p> <ul style="list-style-type: none"> • ICANN’s Five-Year Strategic Plan • ICANN’s Five-Year Operating Plan • ICANN’s Annual Operating Plan & Budget • IANA Functions Budget <p>The CCWG-Accountability has determined that a separate petition would be required for each budget or strategic/operating plan being challenged. A budget or strategic/operating plan could only be challenged if there are significant issue(s) brought up in the engagement process that were not addressed prior to approval.</p>	<p>Section 22.5(b)</p> <p>Section 22.5(a)</p> <p>Section 22.4(a)</p> <p>Section 22.4(b)</p>

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<p>To reinforce the bottom-up, transparent and collaborative approach that ICANN currently uses to enable the community to give input into ICANN’s budget documents, the CCWG-Accountability recommends adding a similar consultation process into the ICANN Bylaws for both the ICANN Budget and the IANA Functions Budget. The Bylaws must assure that sufficient budget detail is available, in a timely way, for the community to carefully consider budget matters and provide informed and constructive input (and for this input to be thoroughly considered) prior to the Board making decisions on budget matters.</p> <p>A community decision to reject a budget or a plan after it has been approved by the ICANN Board will be based on perceived inconsistency with the purpose, Mission and role set out in ICANN’s Articles and Bylaws; the global public interest; the needs of ICANN stakeholders; financial stability, or other matters of concern to the community. The veto could only concern issues that had been raised in the public consultations conducted before the Board approved the budget or plan.</p> <p>An SO or AC that is a Decisional Participant in the Empowered Community petitioning to reject a budget or strategic/operating plan would be required to circulate a rationale and obtain support for its petition from at least one other Decisional Participant according to the escalation process.</p> <p>The escalation and enforcement processes for rejecting any strategic/operating plan or budget is detailed in Recommendation #2....</p> <p>If the Community Power to reject the Annual Budget is used, a caretaker budget would be implemented. A caretaker budget is one that provides ongoing funding for crucial ICANN functions, while the issue/s that caused the Empowered Community’s use of the Community Power are resolved. It will be based on current ICANN operations, according to rules developed in the implementation process (which will form a public and transparent “defined approach” to the caretaker budget).</p> <p>The CCWG-Accountability also recommends that the caretaker budget concept be embedded in the Fundamental Bylaws, including the responsibility of ICANN’s Chief</p>	<p>Sections 22.4(a) and 22.4(b)</p> <p>Annex D, Article 2</p> <p>Section 22.4(a)(viii); Annex E</p>

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<p>Financial Officer to establish the caretaker budget in accordance with the defined approach.</p> <p>(19-29) The IANA Functions Budget</p> <p>Under this power, the community will be able to consider the IANA Functions Budget as a separate budget. The IANA Functions Budget is currently part of ICANN’s Annual Operating Plan & Budget.</p> <p>Under the CWG-Stewardship Final Proposal, an itemization of IANA costs as set forth in the IANA Functions Budget would include “direct costs for the IANA Department”, “direct costs for shared resources” and “support functions allocation.” Furthermore, the CWG-Stewardship Final Proposal states that these costs should be itemized into more specific costs related to each specific function to the project level and below as needed.</p> <p>The IANA Functions Budget requires protection, as recommended by the CWG-Stewardship’s Final Proposal. The IANA Functions Budget must be managed carefully and not decreased (without public input) regardless of the status of the other portions of the budget.</p> <p>The CCWG-Accountability recommends that there be two distinct processes with respect to the Community Power to reject the IANA Functions Budget and the Community Power to reject the ICANN Budget, meeting the requirements of the CWG-Stewardship. The use of the Community Power to reject the ICANN Budget would have no impact on the IANA Functions Budget, and a rejection of the IANA Functions Budget would have no impact on the ICANN Budget.</p> <p>The escalation and enforcement processes for rejecting an IANA Functions Budget is detailed in Recommendation #2....</p> <p>Should the power be used to reject the annual IANA Functions Budget, a caretaker budget would be implemented (details regarding the caretaker budget are currently under development as noted above).</p> <p>The CCWG-Accountability recommends that the caretaker budget approach be embedded</p>	<p>Section 22.4(b)</p> <p>Sections 22.4(a) and (b)</p> <p>Section 22.4(b)(viii); Annex F</p>

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<p>in the Fundamental Bylaws, including the responsibility of ICANN’s Chief Financial Officer to establish the caretaker budget in accordance with the defined approach.</p> <p>The CCWG-Accountability acknowledges that the CWG-Stewardship (or a successor implementation group) is required to develop a proposed process for the IANA Functions Operations-specific Budget establishment and review. This process will be a key input for the implementation of this specific power.</p> <p>The CWG-Stewardship may wish to detail the planning process by which the IANA Functions Budget is established as part of its implementation program of work, including the level of detail required to be provided for community input and the timeframes for consultations and approvals. The CCWG-Accountability limits its requirements to those set out in this Recommendation.</p> <p>In implementation, any process through which a portion or the whole of the IANA Functions Budget is subject to rejection should include the voice of the operational communities served by the IANA functions (i.e., Domain Names, Numbering Resources and Protocol Parameters). The process must also be implemented in such a way as to ensure the stable and continuous delivery of the IANA functions, and the proper delivery of contractual service levels to the respective operational communities.</p>	
<p>(30-35) The Power to Reject Changes to ICANN Standard Bylaws</p> <p>In addition to the safeguard against the possibility of the ICANN Board unilaterally amending Fundamental Bylaws without consulting the community, the CCWG-Accountability recommends that the Empowered Community be given the power to reject changes to Standard ICANN Bylaws after the Board approves them, but before the changes go into effect.</p> <p>Any changes approved by the Board would take 30 days to go into effect to enable the Empowered Community to decide whether a petition to reject the change should be initiated.</p>	<p>Sections 25.1(e) and 25.3; Annex D, Article 2</p>

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<p>This power, with respect to Standard Bylaws, is a rejection process that is used to tell the ICANN Board that the Empowered Community does not support a Board-approved change. It does not enable the Empowered Community to rewrite a Standard Bylaw change that has been proposed by the Board.</p> <p>It is important to note that the CCWG-Accountability has been careful to try not to change ICANN's core policy-making processes. The tools it has proposed to improve accountability are generally aimed at ICANN-wide issues, not policy development in the SOs. However, the power to reject a Standard Bylaw change could interfere with the implementation of a Policy Development Process that requires such a change.</p> <ul style="list-style-type: none"> • To ensure this power does not interfere with ICANN’s bottom-up Policy Development Processes, the CCWG-Accountability has added an exception to the Standard Bylaws rejection power to ensure that a Bylaw change that is the result of a Policy Development Process cannot be rejected after it is approved by the ICANN Board without the approval of the SO that led the Policy Development Process. <p>The escalation and enforcement processes for this power are described in Recommendation #2..., with the following exception:</p> <ul style="list-style-type: none"> • The CCWG-Accountability proposes that there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows: <ul style="list-style-type: none"> ○ Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes. ○ Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it. ○ Fundamental Bylaws dealing with rejection of an ICANN Bylaw change would require, if the Bylaws change is the result of a Policy Development Process, that 	

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<p>the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change. If the SO that led the Policy Development Process that requires the ICANN Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.</p>	
<p>(36-40) The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN’s Sale or Other Disposition of All or Substantially All of ICANN’s Assets</p> <p>To safeguard against the possibility that the ICANN Board could unilaterally amend ICANN Bylaws and/or the Articles of Incorporation without consulting the community, the CCWG-Accountability determined that the community consultation process should be reinforced in Fundamental Bylaws.</p> <p>The proposed set of Fundamental Bylaws would be harder to change than the Standard Bylaws for two reasons:</p> <ul style="list-style-type: none"> • The authority to change Fundamental Bylaws and/or the Articles of Incorporation would be shared between the ICANN Board and the Empowered Community. • The required threshold of ICANN Board support to change a Fundamental Bylaw would be significantly higher than the threshold to change a Standard Bylaw. <p>The CCWG-Accountability emphasizes the importance for the ICANN Board and Empowered Community to be able to define new Fundamental Bylaws and/or Articles of Incorporation over time, or to change or remove existing ones to ensure that ICANN can adapt to the changing Internet environment.</p> <p>The same escalation process applies to ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.</p> <p>(41-48) The escalation process for this power is as follows:</p>	<p>Sections 25.2(f)</p> <p>Section 25.2(b)</p> <p>Article 26</p> <p>Annex D, Article 1</p>

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<p>Step 1. The ICANN Board publishes its approval of a change to the Fundamental Bylaws and/or Articles of Incorporation and/or sale or other disposition of all or substantially all of ICANN’s assets</p> <p>Step 2. Holding a Community Forum (30 days to organize and hold the event from the date of the publication by the Board)</p> <ul style="list-style-type: none"> • It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face-to-face. • The Community Forum would be open to all interested participants and ICANN will provide support services, including the publishing of recordings and transcripts. • Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised. • The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate their preliminary views in writing on the exercise of this Community Power. • The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage; although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted. • The Community Forum should be managed/moderated in a fair and neutral manner. • Should the relevant Decisional Participants determine a need for further deliberation, a second and third session of the Community Forum could be held. 	

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<ul style="list-style-type: none"> • ICANN staff will collect and publish a public record of the Forum(s), including all written submissions. <p>Step 3. Decision to use a Community Power as an Empowered Community (21 days from the conclusion of the Community Forum)</p> <ul style="list-style-type: none"> • If three or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power to approve the change to the Fundamental Bylaws or Articles of Incorporation. • If the required thresholds during the 21-day period are not met, the escalation end without the change to the Fundamental Bylaws or Articles of Incorporation being approved. <p>Step 4. Advising the ICANN Board (1 day)</p> <ul style="list-style-type: none"> • The Empowered Community will advise the Board of its decision. 	
<p>(49-54) The Power to Remove Individual ICANN Board Directors</p> <p>The power to remove individual ICANN Board Directors would allow for the removal of an ICANN Board Director before the Director’s current term comes to an end. This was a formal requirement from the CWG-Stewardship. Note that this power applies only to voting members of the ICANN Board, and not to liaisons (who, as non-voting members of the Board are not treated as Directors under California law).</p> <p>Given that ICANN Board Directors can be nominated in two significantly different ways, (1) Specific SO or AC nomination or (2) Nomination Committee nomination, the processes for removing each type of Director will be different.</p> <p>In cases where the nominating SO or AC perceives that there is a significant issue with its appointed Director, it can use the following escalation process to determine if removal of the Director is recommended.</p> <ul style="list-style-type: none"> • It is important to note that this power can only be used once during a Director’s term if 	Annex D, Article 3

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<p>the escalation process reaches the step of holding a Community Forum, as described above, and then fails to remove the Director.</p> <p>As a condition to being nominated by an SO, AC or the Nominating Committee and seated on the Board, each Director-nominee shall be required to sign an irrevocable letter agreement that:</p> <ul style="list-style-type: none"> • Expresses a contractual commitment that: (1) Acknowledges that the nominating AC or SO, or, for Directors nominated by the Nominating Committee, the Empowered Community, has the right to remove the Director from service at any time and for any reason through the processes set out in the ICANN Bylaws (as described below); and (2) Confirms that service as an ICANN Board Director does not establish any employment or other relationship to ICANN, the Empowered Community, the SOs, the ACs, the Nominating Committee, or the agents of any of them, that provides any due process rights related to termination of service as a Director other than those specified in the Bylaws. • Provides a conditional irrevocable resignation from the ICANN Board that is automatically effective upon a final determination of removal through the individual Director removal process or the full Board recall process upon communication of such decision to the Board (as set forth below). <p>Indemnification associated with the removal of individual ICANN Board Directors:</p> <ul style="list-style-type: none"> • If a Director initiates a lawsuit in connection with his or her removal or recall (for example, a Director claims that he was libeled in the written rationale calling for his removal), ICANN will provide indemnification and advance expenses as provided below. • Indemnification will be available (1) to a member of an SO, an AC, the Nominating Committee, or the Empowered Community (2) who is acting as a representative of such organization or committee (3) for actions taken by such representative in such capacity pursuant to processes and procedures set forth in the Bylaws (for example, the 	<p>Section 20.2</p>

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<p>chair of an SO submitting a written rationale for the removal of a Director).</p> <ul style="list-style-type: none"> • As required by California law and consistent with ICANN's current Bylaws, indemnification will only be available if the actions were taken (1) in good faith and (2) in a manner that the indemnified person reasonably believed to be in the best interests of ICANN. • Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2. • Indemnification will cover amounts actually and reasonably incurred in connection with the lawsuit, such as reasonable attorneys' fees of no more than one firm, judgments, and settlements approved by the Board in its reasonable discretion. • ICANN will advance funds to cover defense expenses where the person meeting the requirements set forth above undertakes to repay to ICANN amounts received for expenses for which the requirements for indemnification are ultimately determined not to have been met. <p>(55-65) Directors Nominated by the Nominating Committee (and Appointed by the Empowered Community)</p> <p>Step 1. Triggering Individual ICANN Board Director Removal by Community Petition (21 days from the official posting of the original petition)</p> <ul style="list-style-type: none"> • Begin a petition in an SO or AC that is a Decisional Participant in the Empowered Community. • Any individual can begin a petition as the first step to using a Community Power. A petition must be supported by a written rationale stating the reasons why removal is sought. • For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, 	<p>Annex D, Section 3.1</p>

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<p>must accept the petition.</p> <ul style="list-style-type: none"> • Prior to completion of the petition phase, the affected Director and the Chair of the Board (or Vice Chair if appropriate) are invited to a dialogue, which also includes the individual(s) bringing the petition and the chair of the SO/AC where the petition is under consideration. The purpose of the dialogue is to gain a full understanding of the issues leading to the petition and consider if there are other ways to address the concerns. • If the SO or AC does not approve the petition within 21 days, the escalation process terminates. • If the SO or AC approves the petition, it can proceed to the next step. <p>Step 2. Triggering Review by Community Petition, Part Two (7 days from the end of the previous step)</p> <ul style="list-style-type: none"> • The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least one additional Decisional Participant must support the petition (for a minimum of two) for a Community Forum to be organized to discuss the issue. • If the petition fails to gather the required level of support within seven days, the escalation process terminates. • If a minimum of two Decisional Participants support the petition within seven days, a Community Forum is organized. <p>Step 3. Holding a Community Forum (21 days to organize and hold the event from the date of the decision to hold it)</p> <ul style="list-style-type: none"> • It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN 	

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<p>meeting, there is no expectation that participants will meet face-to-face.</p> <ul style="list-style-type: none"> • The Community Forum would be open to all interested participants and ICANN will provide support services. The ICANN Board Director who is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised. • The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing their preliminary views on the exercise of this Community Power. • The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage; although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted. • The Community Forum should be managed/moderated in a fair and neutral manner. • Should the relevant SOs or ACs determine a need for further deliberation, a second and third session of the Community Forum could be held. • Staff will collect and publish a public record of the Forum(s), including all written submissions. • If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point, this process cannot be used again by the Empowered Community to remove this specific ICANN Board Director during his or her current term. • If the Empowered Community and the ICANN Board Director cannot resolve the issue, the Empowered Community must decide if it wishes to take further action. <p>Step 4. Decision to Use a Community Power as an Empowered Community (21 days</p>	

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<p>from the conclusion of the Community Forum)</p> <ul style="list-style-type: none"> • If three or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons. • If the proposal for the Empowered Community to use a Community Power does not meet the required thresholds during the 21-day period, the escalation process terminates. <p>Step 5. Advising the ICANN Board (1 day)</p> <ul style="list-style-type: none"> • If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct him or her to comply with the decision. • Naming a replacement: <ul style="list-style-type: none"> ○ The Nominating Committee may instruct the Empowered Community to appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several “reserve” candidates in place. ○ Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end. <p>(66-76) Directors Nominated by a Supporting Organization or Advisory Committee (and Appointed by the Empowered Community)</p> <p>Step 1. Triggering Individual ICANN Board Director Removal by Community Petition (21 days from the official posting of the original petition)</p> <ul style="list-style-type: none"> • The petition can only be started in the SO or AC that nominated the Director and that is a Decisional Participant in the Empowered Community. • Any individual can begin a petition as the first step to using a Community Power. 	<p style="text-align: center;">Section 7.12(a)</p> <p style="text-align: center;">Annex D, Section 3.2</p>

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<ul style="list-style-type: none"> • For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition. • If the SO or AC does not approve the petition within 21 days, the escalation process terminates. • If the SO or AC approves the petition, it can proceed to the next step. <p>Step 2. Holding a Community Forum (21 days to organize and hold the event from the date of the decision to hold it)</p> <ul style="list-style-type: none"> • It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face to face. The Community Forum would be open to all interested participants, and ICANN will provide support services. The ICANN Board Director that is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised. • The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing its preliminary views on the exercise of this Community Power. • The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the nominating SO/AC that supported the petition formally agreeing, in accordance with its own mechanisms, that the escalation process should be halted. • The Community Forum should be managed/moderated in a fair and neutral manner and cannot involve a representative of the nominating SO or AC. • Should the relevant SO or AC determine a need for further deliberation, a second and 	

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<p>third session of the Community Forum could be held.</p> <ul style="list-style-type: none"> • Staff will collect and publish a public record of the Forum(s), including all written submissions. • If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point, this process cannot be used again by the Empowered Community to remove this specific ICANN Board Director during his or her current term. • If the Empowered Community and the ICANN Board Director cannot resolve the issue, the Empowered Community must decide if it wishes to take further action. • At the end of the Community Forum, the Community Forum Chair will issue a formal call for comments and recommendations from the community within seven days, and input received will be sent to the relevant SO or AC and posted publicly. <p>Step 3. Supporting Organizations and/or Advisory Committees Publish Their Comments and Recommendations (7 Days)</p> <p>Step 4. Decision to Use a Community Power as a Decisional Participant (21 days from the conclusion of the period for Supporting Organization and Advisory Committee comments)</p> <ul style="list-style-type: none"> • If a three-quarters majority within the nominating SO or AC supports using the power within the 21-day period, the Empowered Community will use its power. The SO or AC will also publish an explanation of why it has chosen to do so. • If the nominating SO or AC does not adequately support using the power within the 21-day period, the escalation process terminates. <p>Step 5. Advising the ICANN Board (1 Day)</p> <ul style="list-style-type: none"> • If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct him or her to comply with the decision. 	

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<ul style="list-style-type: none"> • Naming a replacement: <ul style="list-style-type: none"> ○ The nominating SO or AC is responsible for nominating an individual to fill the vacancy on the ICANN Board through its usual process (as set out in Article VI, Section 12.1 of the Bylaws). ○ Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end. Directors appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject. 	Section 7.12(a)
<p>(77-93) The Power to Recall the Entire ICANN Board</p> <p>The CCWG-Accountability believes there may be situations where removing individual Directors from the ICANN Board may not be a sufficient accountability remedy for the community.</p> <p>In cases where the community perceives that a set of problems has become impossible to resolve, the community may wish to signal its lack of confidence in the ICANN Board by petitioning for a recall (i.e., the removal) of the entire Board (except the CEO, who is appointed by the Board).</p> <p>The power to recall a Board is a critical enforcement mechanism for the Empowered Community because it can be used to support the other Community Powers and provide a final and binding accountability mechanism.</p> <p>By exercising this power, the entire ICANN Board (except the CEO and liaisons who, as nonvoting members of the Board are not treated as Directors under California law) could be removed by the Empowered Community. However, it is unlikely that the Empowered Community would use this power lightly, and the engagement and escalation processes are designed to encourage agreement between the ICANN Board and the Empowered</p>	

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<p>Community.</p> <p>If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.</p> <p>The CCWG-Accountability expects that this power would only be exercised as a last resort after all other attempts at resolution have failed. As a recall of the Board would be extremely disruptive for the entire organization, the CCWG-Accountability has included several safeguards in the proposed escalation process to ensure that this decision reaches the maturity and level of support needed before it can be used</p> <p>Note: Special conditions may apply if the “carve out” is invoked for recalling the entire Board. Please consult Annex 2... for further details.</p> <p>Step 1. Triggering Recalling the ICANN Board Directors by Community Petition (21 days from the official posting of the original petition)</p> <ul style="list-style-type: none"> • Begin a petition in an SO or AC that is a Decisional Participant in the Empowered Community. • Any individual can begin a petition as the first step in using a Community Power. • For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition. • If the SO or AC does not approve the petition within 21 days, the escalation process terminates. • If the SO or AC does approve the petition within the 21-day period, it proceeds to the next step. <p>Step 2. Triggering Removal of ICANN Board by Community Petition, Part Two (7 days from the end of the 21-day period of the previous step)</p> <ul style="list-style-type: none"> • The SO or AC that approved the petition contacts the other Decisional Participants in 	<p>Annex D, Section 3.3</p>

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<p>the Empowered Community to ask them to support the petition. At least two additional Decisional Participants must support the petition (for a minimum total of three) for a Community Forum to be organized to discuss the issue.</p> <ul style="list-style-type: none"> • If the petition fails to gather the required level of support within seven days, the escalation process terminates. • If a minimum of three Decisional Participants support the petition within seven days, a Community Forum is organized. <p>Step 3. Holding a Community Forum (21 days to organize and hold the event from the date of the decision to hold it)</p> <ul style="list-style-type: none"> • The power to recall the entire Board would require a face-to-face meeting. The three or more SOs or ACs that approved holding the Community Forum would decide if holding the Community Forum can wait until the next regularly scheduled ICANN meeting or if a special meeting is required to bring participants together. In both of these cases, the three or more SO or ACs that have requested the Community Forum will publish the date for holding the event which will not be subject to the 21-day limitation. In this case, the Community Forum would be considered completed at the end of the face-to-face meeting. • The Community Forum would be open to all interested participants, and ICANN will provide support services. The ICANN Board would be invited and expected to attend and be prepared to address the issues raised. • The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing its preliminary views on the exercise of this Community Power. • The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage, although the issue may be 	

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<p>resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.</p> <ul style="list-style-type: none"> • The Community Forum should be managed/moderated in a fair and neutral manner. • Should the relevant SOs or ACs determine a need for further deliberation, a second and third session of the Community Forum could be held. • Staff will collect and publish a public record of the Forum(s), including all written submissions. • If the Empowered Community and the ICANN Board can resolve the issue in the Community Forum, the escalation process terminates. • If the Empowered Community and the ICANN Board cannot resolve the issue, the Empowered Community must decide if it wishes to take further action. <p>Step 4. Decision to Use a Community Power as an Empowered Community (21 days from the conclusion of the Community Forum)</p> <ul style="list-style-type: none"> • If four or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons. In a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board’s implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects. • If the proposal to use a Community Power as the Empowered Community does not meet the required thresholds during the 21-day period, the escalation process terminates. 	

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<p>Step 5. Advising the ICANN Board (1 day)</p> <ul style="list-style-type: none"> If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct it to comply with the decision. <p>(94-98) Interim Board</p> <p>The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed, the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place.</p> <p>SOs, ACs and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days.</p> <p>The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.</p> <p>The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN’s strategy, policies or management, including replacement of the serving President and CEO.</p>	<p>Sections 7.11 and 7.12</p>
<p>(99-103) The Power to Initiate a Community Independent Review Process or Request for Reconsideration</p> <p>A community IRP or Request for Reconsideration may be launched as described in Recommendation #2.... One example could be to require ICANN to provide documents as required under the right of inspection requirement.</p> <p>A community IRP may be launched for any of the following reasons:</p>	<p>Addressed above under Rec #2.</p>

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<ul style="list-style-type: none"> • To hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Articles of Incorporation or Bylaws resulting from action taken in response to advice/input from any AC or SO). • To hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions. • To hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws. • To hear and resolve issues relating to Documentary Information Disclosure Policy (DIDP) decisions by ICANN, which are inconsistent with the ICANN Bylaws. • To hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or ICANN Bylaws. <p>A Request for Reconsideration can be initiated, to require the Board of Directors to reconsider a recent decision or action/inaction by the ICANN Board or staff.</p> <p>The escalation and enforcement processes for initiating a community IRP or a Request for Reconsideration are detailed in Recommendation #2....</p>	
<p>(104-108) The Power to Reject ICANN Board Decisions Relating to Reviews of IANA Functions, Including the Triggering of any Post-Transition IANA Separation Process for the IANA Naming Functions</p> <p>The IANA Functions Review, Special IANA Function Review, and the Separation Cross Community Working Group are all accountability mechanisms for the IANA naming functions that the CWG-Stewardship has requested the CCWG-Accountability constitute in the Fundamental Bylaws.</p>	<p>Sections 18.6(b), 18.12(c), 19.1(b) and 19.4(b)</p>

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<p>As such, these structures will exist within ICANN and many of their recommendations will require ICANN Board approval before implementation (i.e., change in the Statement of Work for the IANA Functions Operator). The CWG-Stewardship determined it was critical that the recommendations of these various bodies be respected by the ICANN Board, and so further required that the CCWG-Accountability provide mechanisms to ensure that the recommendations from these bodies could be enforced.</p> <p>The escalation and enforcement processes for rejecting an ICANN Board decision relating to IANA Function Review, Special IANA Function Review and Separation Cross Community Working Group recommendations are detailed in Recommendation #2....</p> <p>The right to reject ICANN Board decisions relating to reviews of IANA naming functions, including ICANN Board decisions relating to Special IANA Function Review and Separation Cross Community Working Group recommendations, can be exercised by the Empowered Community an unlimited number of times.</p>	

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<p>1. Summary</p> <p>(1-9) The CCWG-Accountability is recommending changes to the ICANN Bylaws to assure that the Bylaws reflect the CCWG-Accountability recommendations.</p> <ul style="list-style-type: none"> • Note: The language proposed in this recommendation for ICANN Bylaw revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws. <p>Mission Statement</p> <p>The CCWG-Accountability recommends the following changes to ICANN’s “Mission Statement,” (Bylaws, Article I, Section 1):</p> <ul style="list-style-type: none"> • Clarify that ICANN’s Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability. • Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide. • Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority. <ul style="list-style-type: none"> ○ Note: This does not mean ICANN’s powers can never evolve. However, it ensures that any changes will be deliberate and supported by the community. <p>Core Values</p> <p>The CCWG-Accountability recommends the following changes to ICANN’s “Core Values” (Bylaws, Article I, Section 2 and Article II, Section 3):</p> <ul style="list-style-type: none"> • Divide ICANN’s existing Core Values provisions into “Commitments” and “Core 	<p style="text-align: center;">Sections 1.2(a) and 1.2(b)</p>

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<p>Values”.</p> <ul style="list-style-type: none"> ○ Incorporate ICANN’s obligation to “operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition” into the Bylaws. ○ Note: These obligations are currently contained in ICANN’s Articles of Incorporation. ● Designate certain Core Values as “Commitments.” ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively. ● Commitments will include ICANN’s obligations to: <ul style="list-style-type: none"> ○ Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet. ○ Limit its activities to those within ICANN’s Mission that require, or significantly benefit from, global coordination. ○ Employ open, transparent, bottom-up, multistakeholder processes. ○ Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment. ● Slightly modify the remaining Core Values to: <ul style="list-style-type: none"> ○ Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility. ○ Add an obligation to avoid capture. ○ Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 (“Where feasible and appropriate, depending on market 	<p>Section 1.2(a)</p> <p>Section 1.2(a)(i)</p> <p>Section 1.2(a)(iii)</p> <p>Section 1.2(a)(iv)</p> <p>Section 1.2(a)(v)</p> <p>Section 1.2(b)(iii)</p>

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<p>mechanisms to promote and sustain a competitive environment”) to drop the phrase “where feasible and appropriate,” the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference).</p> <p>Balancing or Reconciliation Test</p> <p>The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:</p> <p><i>These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.</i></p> <p>Fundamental Bylaws Provisions</p> <p>The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.</p>	<p>Section 1.2(c)</p>

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<p>2. CCWG-Accountability Recommendations</p> <p>(10) Modify ICANN’s Fundamental Bylaws to implement the following:</p> <p>(11-16) Mission</p> <p>The Mission of the Internet Corporation for Assigned Names and Numbers (“ICANN”) is to ensure the stable and secure operation of the Internet’s unique identifier systems as described below. Specifically, ICANN:</p> <ol style="list-style-type: none"> 1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”). In this role, ICANN’s scope is to coordinate the development and implementation of policies: <ul style="list-style-type: none"> ○ For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and ○ That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems. 2. Facilitates coordination of the operation and evolution of the DNS root name server system. 3. Coordinates the allocation and assignment of the top-most level of Internet Protocol (“IP”) and Autonomous System (“AS”) numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs. 4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN’s scope is to provide registration services and open access for registries in the 	<p>Section 1.1(a)(i)</p> <p>Section 1.1(a)(i)</p> <p>Section 1.1(a)(i)</p> <p>Section 1.1(a)(ii)</p> <p>Section 1.1(a)(iii)</p> <p>Section 1.1(a)(iv)</p>

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<p>public domain requested by Internet protocol development organizations.</p> <p>ICANN shall act strictly in accordance with, and only as reasonably appropriate, to achieve its Mission.</p> <p>ICANN shall not impose regulations on services that use the Internet’s unique identifiers, or the content that such services carry or provide.</p> <p>ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (“PICs”), with contracted parties in service of its Mission.</p> <p>Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:</p> <ol style="list-style-type: none"> 1. The prohibition on the regulation of “content” is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages. 2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called “Picket Fence”) are intended and understood to be within the scope of ICANN’s Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex. 3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN’s Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN’s approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, 	<p>Section 1.1(b)</p> <p>Section 1.1(c)</p> <p>Section 1.1(d)(iv)</p> <p>Section 1.1(d)(i)</p> <p>Section 1.1(d)(ii)</p> <p>Section 1.1(d)(ii)-(iii)</p>

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<p>however, modify any contracting party’s right to challenge the other party’s interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN’s Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN’s Mission.</p> <p>4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.</p> <p>(17-26) Section 2. Commitments & Core Values</p> <p>In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.</p> <p>Commitments</p> <p>In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:</p> <ol style="list-style-type: none"> 1. Preserve and enhance its neutral and judgment-free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet. 2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet. 3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination. 4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public 	<p>Section 1.2</p> <p>Section 1.2(a)</p> <p>Section 1.2(a)(i)</p> <p>Section 1.2(a)(ii)</p> <p>Section 1.2(a)(iii)</p> <p>Section 1.2(a)(iv)</p>

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<p>policy advice of governments and public authorities that (1) seek input from the public, for whose benefit ICANN shall in all events act, (2) promote well-informed decisions based on expert advice, and (3) ensure that those entities most affected can assist in the policy development process.</p> <p>5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.</p> <p>6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN’s effectiveness.</p> <p>Core Values</p> <p>In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:</p> <p>1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN’s internal bodies and external expert bodies.</p> <p>2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.</p> <p>3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.</p> <p>4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.</p> <p>a. Operating with efficiency and excellence, in a fiscally responsible and accountable</p>	<p>Section 1.2(a)(v)</p> <p>Section 1.2(a)(vi)</p> <p>Section 1.2(b)</p> <p>Section 1.2(b)(i)</p> <p>Section 1.2(b)(ii)</p> <p>Section 1.2(b)(iii)</p> <p>Section 1.2(b)(iv)</p> <p>Section 1.2(b)(v)</p>

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<p>manner and at a speed that is responsive to the needs of the global Internet community.</p> <p>5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.</p> <p>6. Striving to achieve a reasonable balance between the interests of different stakeholders.</p> <p>These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities.</p> <p>The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.</p> <p>Note: Specific recommendations on how to implement these modifications can be found at the end of the next section.</p>	<p>Section 1.2(b)(vi)</p> <p>Section 1.2(b)(vii)</p> <p>Section 1.2(c)</p> <p>Section 1.2(c)</p> <p>Section 1.2(c)</p>
<p>3. Detailed Explanation of Recommendations</p> <p>(27-28) Background</p> <p>To whom is ICANN accountable? For what is it accountable? Those questions were a necessary starting point for the work of the CCWG-Accountability, and the answers inform all of our recommendations. The Bylaws changes recommended here are designed to answer these questions. Most important, ICANN has a limited Mission, and it must be</p>	

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<p>accountable for actions that exceed the scope of its Mission. In undertaking its Mission, ICANN is also obligated to adhere to policy supported by community consensus and an agreed-upon standard of behavior, articulated through its Commitments and Core Values. Taken together, the proposed Mission, Commitments, and Core Values articulate the standard against which ICANN’s behavior can be measured and to which it can be held accountable. Because these Bylaws provisions are fundamental to ICANN’s accountability, we propose that they be adopted as Fundamental Bylaws that can only be changed with the approval of the Empowered Community subject to procedural and substantive safeguards.</p> <p>(29-34) Mission and Core Values</p> <p>ICANN’s current Bylaws contain a:</p> <ul style="list-style-type: none"> • Mission statement. • Statement of Core Values. • Provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment. <p>These three sections are at the heart of ICANN’s accountability because they obligate ICANN to act only within the scope of its limited Mission, and to conduct its activities in accordance with certain fundamental principles. As such, these three sections also provide a standard against which ICANN’s conduct can be measured and held accountable through existing and enhanced mechanisms such as the Request for Reconsideration process and the Independent Review Process.<i>[FN 1]</i></p> <p><i>[Footnote 1: The current relevant language on this in the ICANN Bylaws was adopted in 2003.]</i></p> <p>Based on community input and CCWG-Accountability discussions, it was concluded that these ICANN Bylaws provisions, which were originally adopted in 2003, should be strengthened and enhanced to provide greater assurances that ICANN is accountable to its stakeholders and the global Internet community.</p>	

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<p>In particular, the CCWG-Accountability found that:</p> <ul style="list-style-type: none"> • ICANN’s Mission statement needed clarification with respect to the scope of ICANN’s policy authority. • The language in the Bylaws describing how ICANN should apply its Core Values was weak and could permit ICANN decision-makers to exercise excessive discretion. • The current Bylaws did not reflect key elements of the Affirmation of Commitments. • The Board should have only a limited ability to change these key accountability provisions of ICANN’s Bylaws. <p>The CCWG-Accountability recommendations to change aspects of ICANN’s Mission, Commitments and Core Values are to address the deficiencies described above. The CCWG-Accountability discussed how to balance the needs of limiting ICANN’s Mission and the necessary ability of the organization to adjust to a changing environment.</p> <p>(35-36) Mission Statement</p> <p>The CCWG-Accountability recommends the following changes to ICANN’s “Mission Statement,” (Bylaws, Article I, Section 1):</p> <ul style="list-style-type: none"> • Clarify that ICANN’s Mission with respect to naming is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability. • Clarify ICANN’s Mission with respect to numbering, protocol ports and parameters, and the DNS root name server system. • Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide. • Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that 	<p>Paragraphs 35-56 of Rec #5 are addressed above in Section 2 of Rec #5.</p>

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<p>is not articulated in the Bylaws is outside the scope of ICANN’s authority. Note: This does not mean ICANN’s powers can never evolve, however it ensures that any changes will be deliberate and supported by the community.</p> <p>(37-38) Core Values</p> <p>The CCWG-Accountability recommends the following changes to ICANN’s Core Values (Bylaws, Article I, Section 2 and Article II, Section 3):</p> <ul style="list-style-type: none"> • Divide ICANN’s existing Core Values provisions into Commitments and Core Values. <ul style="list-style-type: none"> ○ Incorporate ICANN’s obligation to “operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition” into the Bylaws. ○ Note: These obligations are currently contained in ICANN’s Articles of Incorporation. • Designate certain Core Values as Commitments. ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively. • Commitments will include ICANN’s obligations to: <ul style="list-style-type: none"> ○ Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet. ○ Limit its activities to those within ICANN’s Mission that require or significantly benefit from global coordination. ○ Employ open, transparent, bottom-up, multistakeholder processes. ○ Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment. 	

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<ul style="list-style-type: none"> • Slightly modify the remaining Core Values to: <ul style="list-style-type: none"> ○ Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility. ○ Add an obligation to avoid capture. ○ Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 (“Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment”) to drop the phrase “where feasible and appropriate,” the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference). <p>(39-40) Balancing or Reconciliation Test</p> <p>The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:</p> <p><i>These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up,</i></p>	

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<p><i>multistakeholder process.</i></p> <p>(41-42) Fundamental Bylaws Provisions</p> <p>The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3....</p> <p>(43-48) Proposed Mission, Commitments and Core Values</p> <p>Mission</p> <p>The Mission of the Internet Corporation for Assigned Names and Numbers (ICANN) is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:</p> <ol style="list-style-type: none"> 1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System (DNS). In this role, ICANN’s scope is to coordinate the development and implementation of policies: <ol style="list-style-type: none"> a. For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and b. That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems. 2. Facilitates coordination of the operation and evolution of the DNS root name server system. 3. Coordinates the allocation and assignment of the top-most level of Internet Protocol (IP) and Autonomous System (AS) numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs. 4. Collaborates with other bodies as appropriate to publish core registries needed for the 	

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<p>functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.</p> <p>ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>ICANN shall not impose regulations on services that use the Internet’s unique identifiers, or the content that such services carry or provide.</p> <p>ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (PICs), with contracted parties in service of its Mission.</p> <p>Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:</p> <ol style="list-style-type: none"> 1. The prohibition on the regulation of “content” is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages. 2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called “Picket Fence”) are intended and understood to be within the scope of ICANN’s Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex. 3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN’s Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN’s approval of a new/substitute form of Registry Agreement or Registrar Accreditation 	

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<p>Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party’s right to challenge the other party’s interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN’s Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN’s Mission.</p> <p>4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.</p> <p>(49-51) Commitments & Core Values</p> <p>In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.</p> <p>Commitments</p> <ol style="list-style-type: none"> 1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must: 2. Preserve and enhance its neutral and judgment free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet; 3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet; 4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination; 5. Employ open, transparent and bottom-up, multistakeholder policy development 	

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<p>processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;</p> <p>6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;</p> <p>7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN’s effectiveness.</p> <p>(52-56) Core Values</p> <p>In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:</p> <ol style="list-style-type: none"> 1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN’s internal bodies and external expert bodies. 2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent. 3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market. 4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process. 	

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<p>a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.</p> <p>5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.</p> <p>6. Striving to achieve a reasonable balance between the interests of different stakeholders.</p> <p>These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities.</p> <p>The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.</p>	

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<p>4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”</p> <p>[“Final Proposal” columns from tables are pasted below]</p>	

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<p>Mission Statement</p> <p>(65) The Mission of The Internet Corporation for Assigned Names and Numbers (“ICANN”) is to ensure the stable and secure operation of the Internet’s unique identifier systems as described below. Specifically, ICANN:</p> <p>(72) 1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”). In this role, ICANN’s Mission scope is to coordinate the development and implementation of policies:</p> <p>(73) For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and</p> <p>(74) That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems.</p> <p>(77) 2. Facilitates coordination of the operation and evolution of the DNS root name server system. In this role, ICANN’s Mission is to [to be provided by RSSAC].</p> <p>(80) 3. Coordinates the allocation and assignment at the top-most level of Internet Protocol (“IP”) and Autonomous System (“AS”) numbers. ICANN’s Mission is described in the ASO MoU between ICANN and RIRs. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.</p>	<p>Section 1.1(a); Section 1.1(b); Section 1.1(c); Section 1.1(d)(iii), (iv)</p>

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<p>(83) Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's Mission scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, such as the Internet Engineering Task Force.</p> <p>(90) ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>(91) ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet’s unique identifiers, or the content that such services carry or provide.</p> <p>(92) ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (“PICs”), with contracted parties in service of its Mission.</p> <p>Commitments and Core Values</p> <p>(104) Section 2. COMMITMENTS & CORE VALUES</p> <p>(105) In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.</p> <p>(108) COMMITMENTS</p> <p>(109) In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant</p>	<p>Section 1.2(a)-(c)</p>

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<p>principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:</p> <p>(112) 1. Preserve and enhance its neutral and judgment free operation administration of the technical-DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;</p> <p>(115) 2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;</p> <p>(118) 3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination;</p> <p>(121) 4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;</p> <p>(126) 5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;</p>	

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<p>(129) 6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN’s effectiveness.</p> <p>(131) CORE VALUES</p> <p>(133) In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p> <p>(136) 1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN’s internal bodies and external expert bodies;</p> <p>(139) 2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;</p> <p>(142) 3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market;</p> <p>(145) 4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.</p> <p>(148) 5. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is</p>	

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<p>responsive to the needs of the global Internet community;</p> <p>(151) 6. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.</p> <p>(153) 7. Striving to achieve a reasonable balance between the interests of different stakeholders.</p> <p>(161) These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities.</p> <p>(162) The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>(163) In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.</p>	

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Recommendation #6: Reaffirming ICANN’s Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission	
<p>3. Detailed Explanation of Recommendations</p> <p>(8-20) As part of the discussion of the inclusion of a draft Bylaw on Human Rights, the CCWG-Accountability requested analysis from its legal counsel about whether, upon the termination of the IANA Functions Contract between ICANN and the NTIA, ICANN’s specific Human Rights obligations could be called into question. The key aspects are as follows:</p> <ul style="list-style-type: none"> • Only nation states have direct Human Rights obligations under international law. However, private sector organizations are required to comply with all applicable laws, including those related to Human Rights. • Upon termination of the Contract, there would be no significant impact on ICANN’s Human Rights obligations. [FN 1] <p>[Footnote 1: See the 29 July 2015 memorandum here: https://community.icann.org/download/attachments/53783718/Memo_%20%20%20ICANN%20%20Human%20Rights%20Obligations.pdf?version=1&modificationDate=1438504619000&api=v2. All other legal documents provided are available at https://community.icann.org/x/OiQnAw.]</p> <p>However, the CCWG-Accountability reasoned that a commitment to respect Human Rights should be included in ICANN’s Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet. These criteria include free expression and the free flow of information.</p> <p>Further, the CCWG-Accountability emphasized that adding a</p>	

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<p>commitment to respect Human Rights to the ICANN Bylaws should not lead to an expansion of ICANN’s Mission or scope. While there was general agreement that ICANN should commit to respect Human Rights within the limited scope of its Core Values, any type of external enforcement or regulatory activity would be wholly out of scope.</p> <p>The CCWG-Accountability also disagreed with any attempt to single out any specific Human Right (such as “freedom of expression”) in the proposed draft Bylaw text on the basis that Human Rights cannot be selectively mentioned, emphasized, or applied since they are universal, indivisible, interdependent, and interrelated.</p> <p>The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language. There remained a few not in favor of the inclusion, including the ICANN Board.</p> <p>The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN’s legal team and CCWG-Accountability’s legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.</p> <p>The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these</p>	

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<p>concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.</p> <p>The Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN’s Core Values, which was accepted by the CCWG-Accountability.</p> <p>This proposed draft Bylaw on Human Rights reaffirms ICANN’s existing obligations within its Core Values and clarifies ICANN’s commitment to respect Human Rights.</p> <p>Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or “Mission creep”, and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights “within its Core Values.”</p> <p>The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.</p> <p>The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until an FOI-HR is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).</p> <p>Additionally, the CCWG-Accountability has identified several</p>	

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<p>work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN’s commitment to respect Human Rights, including the development of an FOI-HR.</p> <p>(21-23) Draft Bylaw on Human Rights</p> <p>Responding to public comments received on the Third Draft Proposal, the CCWG-Accountability presents the following proposed draft Bylaw for consideration:</p> <p>“Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.”</p>	<p>Section 27.3</p>

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<p>(24-28) Operationalizing the Commitment to Respect Human Rights</p> <p>To ensure that these Work Stream 2 activities are implemented, the CCWG-Accountability requires that a Bylaw be adopted as part of Work Stream 1. The Bylaw proposed for adoption as part of Work Stream 1 will not enter into force until the FOI-HR is approved.</p> <p>The CCWG-Accountability has identified several activities that it recommends be undertaken as part of Work Stream 2 that will fully operationalize ICANN’s commitment to respect Human Rights. Work Stream 2 focuses on accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.</p> <p>The Human Rights-related activities to be addressed in Work Stream 2 are:</p> <ul style="list-style-type: none"> • Developing an FOI-HR for the Bylaw. • Considering which specific Human Rights conventions or other instruments should be used by ICANN in interpreting and implementing the Bylaw. • Considering the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights. • Considering how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process, consistent with ICANN’s existing processes and protocols. 	<p>Section 27.3(b)</p>

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<ul style="list-style-type: none"> • Considering what effect, if any, this Bylaw will have on ICANN’s consideration of advice given by the GAC. • Considering how, if at all, this Bylaw will affect how ICANN’s operations are carried out once an FOI-HR is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. • Considering how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures. 	

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Recommendation #7: Strengthening ICANN's Independent Review Process	
<p>3. Detailed Explanation of Recommendations</p> <p>(5) A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN's existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith. Commenters called for an IRP that was binding rather than merely advisory, and also strongly urged that the process be:</p> <ul style="list-style-type: none"> • Transparent, efficient and accessible (both financially and from a standing perspective). • Designed to produce consistent and coherent results that will serve as a guide for future actions. <p>(6-7) Purpose of the Independent Review Process</p> <p>The purpose of the IRP is to ensure that ICANN does not exceed the scope of its limited technical Mission, and otherwise complies with its Articles of Incorporation and Bylaws. The IRP should:</p> <ul style="list-style-type: none"> • Empower the community and affected individuals/entities to prevent “Mission creep,” and enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable, accessible expert review of ICANN actions or inaction. • Ensure that ICANN is accountable to the community and individuals/entities for actions or inaction outside its Mission or that otherwise violate its Articles of Incorporation or Bylaws. • Reduce disputes going forward by creating precedent to guide and inform the ICANN Board, staff, Supporting Organizations (SOs) and Advisory Committees (ACs), and the community in connection with policy development and implementation. • Hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship 	
	Section 4.3(a)(vii)
	Section 4.3(a)(i)
	Section 4.3(a)(ii)
	Section 4.3(a)(iii)
	Section 4.3(a)(vi)
	Section 4.3(a)(v)

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<p>requirements for issues related to the IANA naming functions.</p> <p>(8-9) Role of the Independent Review Process</p> <p>The role of the IRP will be to:</p> <ul style="list-style-type: none"> • Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO). • Hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions. <ul style="list-style-type: none"> ○ Per the CWG-Stewardship Final Proposal, ICANN will enter into a contract with PTI that grants PTI the rights and obligations to serve as the IANA Functions Operator for the IANA naming functions, sets forth the rights and obligations of ICANN and PTI, and includes service level agreements for the IANA naming functions. ○ The ICANN Bylaws will require ICANN to enforce its rights under the ICANN-PTI Contract/Statement of Work, to ensure that PTI complies with its contractual obligations. ICANN’s failure to enforce material obligations will constitute a Bylaws violation and be grounds for an IRP by the Empowered Community. ○ The ICANN Bylaws will provide that PTI service complaints of direct customers of the IANA naming functions that are not resolved through mediation may be appealed by way of the IRP, in both cases as provided for in the CWG Stewardship Final Proposal Annex I, Phase 2. <ul style="list-style-type: none"> • Note that CWG-Stewardship Final Proposal Annex I, Phase 2 also permits PTI Direct Customers to pursue “other applicable legal recourses that may be available.” ICANN must modify Registry Agreements with gTLD Operators 	<p>Section 4.3(a); Section 4.3(b)(iii); Section 4.3(b)(iii)(A)</p> <p>Section 4.3(b)(iii)(C)</p>

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<p>to expand the scope of arbitration available thereunder to cover PTI service complaints and potential inclusion of optional arbitration under agreements with ccTLD registries if developed through the appropriate processes or the development of another alternative dispute resolution mechanism.</p> <ul style="list-style-type: none"> • The standard of review for PTI cases will be an independent assessment of whether there was a material breach of PTI obligations under the contract with ICANN, whether through action or inaction, where the alleged breach has resulted in material harm to the complainant. • Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws. • Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws. • Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws. <p>(10-11) Standing Panel</p> <p>The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought forward by individuals, entities, and/or the community who have been materially affected by ICANN’s action or inaction in violation of the Articles of Incorporation and/or Bylaws.</p> <p>(12-14) Initiation of the Independent Review Process</p> <p>An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN’s Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in ICANN’s Articles of Incorporation or Bylaws.</p>	<p>Section 4.3(i)(v)</p> <p>Section 4.3(i)(iv)</p> <p>Section 4.3(b)(iii)(A)(3)</p> <p>Section 4.3(b)(iii)(A)(4)</p> <p>Section 4.3(d)</p> <p>Section 4.3(j)</p> <p>Section 4.3(d)</p>

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<p>When the Empowered Community has decided to pursue an IRP, the decision would be implemented by the chairs of the SOs and ACs who supported the proposal. The chairs of the SOs and ACs who supported the decision to file a community IRP would constitute a “Chairs Council” that would act subject to the direction of those SOs and ACs of the Empowered Community that supported the proposal. The Chairs Council would, by majority vote, act on behalf of the Empowered Community in taking any reasonably necessary ministerial steps to implement the decision to pursue the community IRP, and to delegate and oversee tasks related to the community IRP, including but not limited to, engagement of legal counsel to represent the Empowered Community in the community IRP, approval of court filings, or enforcement of a community IRP award in court if ultimately necessary.</p> <p>(15-16) Possible Outcomes of the Independent Review Process</p> <p>An IRP would result in a declaration that an action/failure to act complied or did not comply with ICANN’s Articles of Incorporation and/or Bylaws. To the extent permitted by law, IRP decisions shall be binding on ICANN.</p> <ul style="list-style-type: none"> • Decisions of a three-member Decisional Panel will be appealable to the full IRP Panel sitting en banc, based on a clear error of judgment or the application of an incorrect legal standard. The standard may be revised or supplemented by way of the IRP Subgroup process, which will be developed. • This balance between the limited right of appeal and the limitation to the type of decision made is intended to mitigate the potential effect that one key decision of the panel might have on several third parties, and to avoid an outcome that would force the Board to violate its fiduciary duties. • The limited right to appeal is further balanced by the seven Community Powers, relevant policy development processes, and advice from ACs, each as set forth in the Bylaws. 	<p>Sections 4.3(d) and 6.4(c)</p> <p>Section 4.3(x)</p> <p>Section 4.3(w)</p>

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<ul style="list-style-type: none"> • IRP panelists shall consider and give precedential effect to prior decisions of other Independent Review Processes that address similar issues. • Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff actions where a complainant can demonstrate each of the following factors: <ul style="list-style-type: none"> ○ Harm that cannot be cured once a decision has been taken or for which there is no adequate remedy once a decision has been taken. ○ Whichever: <ul style="list-style-type: none"> • A likelihood of success on the merits. • Sufficiently serious questions going to the merits. • A balance of hardships tipping decidedly toward the party seeking the relief. <p>(17-20) Standing</p> <p>Any person, group or entity “materially affected” by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress.</p> <p>They must do so within a certain number of days (to be determined by the IRP Subgroup) after becoming aware of the alleged violation and how it allegedly affects them. The Empowered Community has standing to bring claims involving its rights under the Articles of Incorporation and ICANN Bylaws.</p> <p>The ICANN Board’s failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected. Issues relating to joinder and intervention will be determined by the IRP Subgroup, assisted by experts and the initial Standing Panel, based on consultation with the community.</p> <p>(21-22) Community Independent Review Process</p>	<p>Section 4.3(g); Section 4.3(i)(ii); Section 4.3(v)</p> <p>Section 4.3(p)</p> <p>Section 4.3(b)(i)</p> <p>Section 4.3(r)</p>

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<p>Internet number resources should be out of scope for the IRP, since an existing dispute settlement mechanism already exists as part of the ICANN Address Supporting Organization Memorandum of Understanding. As requested by the ASO, decisions regarding numbering resources would be excluded from standing.</p> <p>Protocol Parameters</p> <p>The Internet Architecture Board (IAB) has likewise indicated that disputes related to protocol parameters should be out of scope for the IRP, since an existing dispute settlement mechanism already exists as part of the ICANN / IANA - IETF MoU. As requested, decisions regarding resources for protocol parameters would be excluded from standing.</p>	<p>Section 4.3(c)(iii)</p> <p>Section 4.3(c)(iv)</p>
<p>(33-35) Standard of Review</p> <p>The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of ICANN's Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions. The standard of review shall be an objective examination as to whether the complained-of action exceeds the scope of ICANN's Mission and/or violates ICANN's Articles of Incorporation and/or Bylaws and prior IRP decisions. Decisions will be based on each IRP panelist's assessment of the merits of the claimant's case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts.</p> <p>With respect to PTI cases, the standard of review will be an independent assessment of whether there was a material breach of PTI obligations under the contract with ICANN, whether through action or inaction, where the alleged breach has resulted in material harm to the complainant.</p> <p>(36-37) Composition of Panel and Expertise</p> <p>Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration, is necessary. Panelists should either already possess</p>	<p>Section 4.3(g); Section 4.3(i)</p> <p>Section 4.3(i)(v)</p>

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<p>expertise about the DNS and ICANN’s policies, practices, and procedures, or commit to develop an expertise through training, at a minimum, on the workings and management of the DNS. Panelists must have access to skilled technical experts upon request. In addition to legal expertise and a strong understanding of the DNS, panelists may confront issues where highly technical, civil society, business, diplomatic, and regulatory skills are needed. To the extent that individual Panelists have one or more of these areas of expertise, the process must ensure that this expertise is available upon request.</p> <p>(38-39) Diversity</p> <p>English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).</p> <p>(40) Size of Panel</p> <ul style="list-style-type: none"> • Standing Panel: Minimum of seven panelists. • Decisional Panel: Three panelists. <p>(41-42) Independence</p> <p>Panel members must be independent of ICANN, including ICANN SOs and ACs. Members should be compensated at a rate that cannot decline during their fixed term. To ensure independence, term limits should apply (five years, no renewal), and post-term appointment to the ICANN Board, Nominating Committee, or other positions within ICANN will be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs, ACs, or any other party in an IRP. Panelists will be supported by a clerk’s office that is separate from ICANN.</p> <p>(43-44) Selection and Appointment</p> <p>The selection of panelists would follow a four-step process:</p>	<p>Section 4.3(j)(i)</p> <p>Section 4.3(j)(iii)</p> <p>Section 4.3(j)(i)</p> <p>Section 4.3(k)(i)</p> <p>Section 4.3(q)</p> <p>Section 4.3(m)(ii);Section 4.3(j)(ii)</p>

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<ol style="list-style-type: none"> 1. ICANN, in consultation with the community, will initiate a tender process for an organization to provide administrative support for the IRP, beginning by consulting the community on a draft tender document. 2. ICANN will then issue a call for expressions of interest from potential panelists, work with the community and Board to identify and solicit applications from well-qualified candidates with the goal of securing diversity, conduct an initial review and vetting of applications, and work with ICANN and community to develop operational rules for IRP. 3. The community would nominate a slate of proposed panel members. 4. Final selection is subject to ICANN Board confirmation. <p>(45-46) Recall</p> <p>Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by the IRP subgroup.</p>	
<p>(47-50) Settlement Efforts</p> <p>Reasonable efforts, as specified in a published policy, must be made to resolve disputes informally prior to/in connection with filing an IRP case.</p> <p>Parties may cooperatively engage informally, but either party may inject an independent dispute resolution facilitator (mediator) after an initial Cooperative Engagement Process (CEP) meeting. Either party can terminate informal dispute resolution efforts (CEP or mediation) if, after a specified period, that party concludes in good faith that further efforts are unlikely to produce agreement.</p> <p>The process must be governed by clearly understood and prepublished rules applicable to both parties and be subject to strict time limits. In particular, the CCWG-Accountability</p>	Section 4.3(e)

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<p>will review the CEP as part of Work Stream 2.</p> <p>(51-53) Decision-Making</p> <p>In each case, a three-member panel will be drawn from the Standing Panel. Each party will select one panelist, and those panelists will select the third. The CCWG-Accountability anticipates that the Standing Panel would draft, issue for comment, and revise procedural rules. The Standing Panel should focus on streamlined, simplified processes with rules that conform with international arbitration norms and are easy to understand and follow.</p> <p>Panel decisions will be based on each IRP Panelist’s assessment of the merits of the claimant’s case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts. All decisions will be documented and made public, and will reflect a well-reasoned application of the standard to be applied.</p> <p>(54-58) Decisions</p> <p>Panel decisions would be determined by a simple majority. Alternatively, this could be included in the category of procedures that the IRP Panel itself should be empowered to set.</p> <p>The CCWG-Accountability recommends that IRP decisions be precedential, meaning that IRP Panelists shall consider and give precedential effect to prior IRP decisions. By conferring precedential weight on panel decisions, the IRP can provide valuable guidance for future actions and inaction by ICANN decision-makers. It also reduces the chances of inconsistent treatment of one claimant over another, based on the specific individuals making up the Decisional Panel in particular cases.</p> <p>The CCWG-Accountability intends that if the panel determines that an action or inaction by the Board or staff is in violation of ICANN’s Articles of Incorporation or Bylaws, then that decision is binding and the ICANN Board and staff shall be directed to take appropriate action to remedy the breach. However, the Panel shall not replace the Board’s fiduciary judgment with its own judgment.</p> <p>It is intended that judgments of a Decisional Panel or the Standing Panel would be</p>	<p>Section 4.3(k)</p> <p>Section 4.3(k)(v)</p> <p>Section 4.3(g); Section 4.3(i)(ii); Section 4.3(v)</p> <p>Section 4.3(x) ; Section 4.3(i)(iii)</p>

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<p>enforceable in the court of the United States and other countries that accept international arbitration results.</p> <p>(59-61) Accessibility and Cost</p> <p>The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries and the costs of technical experts), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example access to pro bono representation for community, non-profit complainants, and other complainants that would otherwise be excluded from utilizing the process.</p> <p>The panel should complete work expeditiously, issuing a scheduling order early in the process and in the ordinary course, and should issue decisions within a standard time frame (six months). The panel will issue an update and estimated completion schedule in the event it is unable to complete its work within that period.</p> <p>(62-63) Implementation</p> <p>The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, the CCWG-Accountability proposes to subject the IRP to periodic community review.</p>	<p>Section 4.3(x)(i)</p> <p>Section 4.3(r)</p> <p>Section 4.3(a)</p>

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<p>(64-66) Transparency</p> <p>The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing the ICANN Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.</p> <p>All IRP proceedings will be conducted on the record, in public, except for settlement negotiations or other proceedings which could materially and unduly harm participants if conducted in public, such as by exposing trade secrets or violating rights of personal privacy.</p>	<p>Sections 4.3(u) and (v)</p>

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<p>3. Detailed Explanation of Recommendations</p> <p>(6-7) The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, whereby the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff, and which is provided for in Article IV, Section 2 of ICANN's Bylaws.</p> <p>The key reforms proposed include:</p> <ul style="list-style-type: none"> • The scope of permissible requests should be expanded to include Board/staff actions or inactions that contradict ICANN's Mission, Commitments, and/or Core Values and for reconciling conflicting/inconsistent “expert opinions.” • The time for filing a Request for Reconsideration should be extended from 15 to 30 days. • The grounds for summary dismissal should be narrowed and the ICANN Board of Directors must make determinations on all requests (rather than a committee handling staff issues). • ICANN's Ombudsman should make the initial substantive evaluation of the requests to aid the BGC in its recommendation. • Requestors should be provided an opportunity to rebut the BGC's recommendation before a final decision by the entire ICANN Board. • More transparency requirements and firm deadlines should be added for issuing of determinations. 	<p>Section 4.2</p> <p>Section 4.2(b)(i)</p> <p>Section 4.2(f)</p> <p>Section 4.2(j); Sections 4.2(p) and (q)</p> <p>Section 4.2(k)</p> <p>Section 4.2(p)</p> <p>Throughout Section 4.2</p>

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<p>(8-13) Standing</p> <p>The CCWG-Accountability recommends amending "who" has proper standing to file a Request for Reconsideration to widen its scope by including Board/staff actions/inactions that contradict ICANN's Mission, Commitments, and/or Core Values (was only policies before). It is noted that under the existing ICANN Bylaws, paragraph 2 significantly reduces the rights purportedly granted in paragraph 1 of the Request for Reconsideration.</p> <p>ICANN's Bylaws could be revised (added text in red below, text to be removed is in strikethrough):</p> <ol style="list-style-type: none"> 1. ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or staff may request the review or reconsideration of that action or inaction by the Board. 2. Any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction to the extent that he, she, or it has been adversely affected by: <ol style="list-style-type: none"> a. One or more ICANN Board or staff actions or inactions that contradict established ICANN policy/policies, its Mission, Commitments, and/or Core Values; or b. One or more actions or inactions of the ICANN Board/staff that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or 	<p>Section 4.2(a); Section 4.2(b)</p>

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<p>conflicting/inconsistent expert panel opinions.</p> <ul style="list-style-type: none"> • Provide more transparency in the dismissal and reconsideration processes. • Provide the Board Governance Committee (BGC) with the reasonable right to dismiss frivolous requests, but not solely on the grounds that the complainant failed to participate in a relevant policy development or Public Comment Period or that the request is vexatious or querulous. • Propose to amend paragraph nine on BGC summary dismissal as follows: <ul style="list-style-type: none"> ○ The Board Governance Committee shall review each Request for Reconsideration upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Request for Reconsideration if: <ul style="list-style-type: none"> (i) The requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) It is frivolous, querulous or vexatious(iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. <p>The Board Governance Committee's summary dismissal of a Request for Reconsideration shall be documented and promptly posted on the website.</p> <p>(16-21) Composition</p> <p>The CCWG-Accountability determined there is a need to rely less on the ICANN legal department (which holds a strong legal</p> 	<p>Throughout Section 4.2</p> <p>Section 4.2(j)</p> <p>Section 4.2(j)</p>

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<p>obligation to protect the corporation) to guide the BGC on its recommendations. More ICANN Board Director engagement is needed in the overall decision-making process.</p> <p>Requests should no longer go to ICANN’s lawyers (in-house or external legal counsel) for the first substantive evaluation. Instead, the Requests for Reconsideration should go to ICANN’s Ombudsman, who will make the initial recommendation to the BGC because the CCWG-Accountability believes that the Ombudsman may have more of an eye for fairness to the community in reviewing requests. Note that the ICANN Bylaws charge the BGC with these duties, which means the BGC would utilize the Ombudsman instead of its current practice of using ICANN’s lawyers to aid the BGC in its initial evaluation.</p> <p>All final determinations of Requests for Reconsideration (other than requests that have been summarily dismissed by the BGC as discussed above) are to be made by the ICANN Board (not only requests about Board actions as is the current practice).</p> <p>Amend paragraph 3:</p> <p>3. The Board has designated the BGC to review and consider any such Request for Reconsideration. The BGC shall have the authority to:</p> <ul style="list-style-type: none"> • Evaluate requests for review or reconsideration. • Summarily dismiss insufficient or frivolous requests. • Evaluate requests for urgent consideration. • Conduct whatever factual investigation is deemed appropriate. 	<p>Section 4.2(k)</p> <p>Sections 4.2(p) and (q); Section 4.2(d); Section 4.2(j)</p> <p>Section 4.2(d)</p>

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<ul style="list-style-type: none"> • Request additional written submissions from the affected party or from other parties. • Make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; • Make a recommendation to the Board of Directors on the merits of the request, as necessary. <p>Delete paragraph 15, because the Board will make all final decisions regarding requests related to staff action/inaction.</p> <p>(22-26) Decision-Making</p> <p>Transparency improvements are needed regarding the information that goes into the ICANN Board's decision-making process and the rationale for why decisions are ultimately taken. Recordings and transcripts should be posted of the substantive Board discussions at the option of the requestor.</p> <p>A rebuttal opportunity to the BGC's final recommendation (although requestors cannot raise new issues in a rebuttal) needs to be provided before the full Board finally decides.</p> <p>Hard deadlines to the process are to be added, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.</p> <p>It is proposed that the rules for a Request for Reconsideration be amended as follows:</p> <p><i>The Board Governance Committee (BGC) shall make a final recommendation to the Board with respect to a Request for</i></p>	<p>Section 4.2(o)</p> <p>Section 4.2(p)</p> <p>Section 4.2(q)</p> <p>Sections 4.2(p) and 4.2(q)</p>

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<p><i>Reconsideration within 30 days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the BGC’s final recommendation to the Board shall be made within 90 days of receipt of the request. The final recommendation shall be promptly posted on ICANN’s website and shall address each of the arguments raised in the request. The requestor may file a rebuttal to the recommendation of the BGC within 15 days of receipt of it, which shall also be promptly posted to ICANN’s website and provided to the Board for its evaluation.</i></p> <p><i>The Board shall not be bound to follow the recommendations of the BGC. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the BGC within 45 days of receipt of the recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN’s website. In any event, the Board’s final decision shall be made within 135 days of receipt of the request. The final decision shall be promptly posted on ICANN’s website.</i></p> <p>(27-29) Accessibility</p> <p>The CCWG-Accountability recommends that the time deadline for filing a Request for Reconsideration be extended from 15 to 30 days from when requestor learns of the decision/inaction, except as otherwise described below.</p>	<p>Section 4.2(f)</p>

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<p>Amend paragraph 5 so that it reads:</p> <p>5. All Requests for Reconsideration must be submitted to an email address designated by the BGC within 30 days after:</p> <ul style="list-style-type: none"> a) For requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale; or b) For requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or c) For requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner. <p>(30-35) Due Process</p> <p>ICANN's DIDP is an important issue to be addressed in Work Stream 2 and should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.</p> <p>All briefing materials supplied to the Board should be provided to the requestor so that they may know the arguments against them and have an opportunity to respond (subject to legitimate and documented confidentiality and privilege requirements).</p>	<p>Section 27.2(b)(iv)</p> <p>Sections 4.2(l) and 4.2(n)</p>

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Recommendation #9: Incorporating the Affirmation of Commitments in ICANN’s Bylaws	
<p>2. CCWG-Accountability Recommendations</p> <p>(4-7) The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments (see information about Stress Test #14 in the “Detailed Explanation of Recommendations” section, below).</p> <p>To ensure continuity of these key commitments, the CCWG-Accountability proposes the following two accountability measures:</p> <ul style="list-style-type: none"> • Preserve in the ICANN Bylaws any Relevant ICANN commitments from the Affirmation of Commitments [<i>FN 1</i>] <p><i>[Footnote 1: Sections 3, 4, 7, and 8 of the Affirmation of Commitments contain relevant ICANN commitments. The remaining sections in the Affirmation of Commitments are preamble text and commitments of the U.S. Government. As such, they do not contain commitments by ICANN, and cannot usefully be incorporated in the Bylaws.]</i></p> <ul style="list-style-type: none"> ○ This includes Sections 3, 4, 7, and 8 of the Affirmation of Commitments. Sections 3, 4, 8a, and 8c would be included in the Core Values section of the ICANN Bylaws. ○ Part of the content of Section 8b of the Affirmation of Commitments (the part relating to the location of ICANN’s principal office), is already covered by ICANN Bylaws Article XVIII. Article XVIII is to be classified as a Standard Bylaw and is not to be moved into the Core Values section with material derived from Affirmation of Commitments Sections 8a and 8c. ○ Section 7 of the Affirmation of Commitments would be inserted as a new Section 8 in Article III, Transparency, of the ICANN Bylaws. <ul style="list-style-type: none"> • Bring the Four Affirmation of Commitments Review Processes into the ICANN Bylaws <ul style="list-style-type: none"> ○ The following four reviews will be preserved in the reviews section of the Bylaws: 	

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<ul style="list-style-type: none"> • Ensuring accountability, transparency, and the interests of global Internet users. • Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws. • Preserving security, stability, and resiliency of the DNS. • Promoting competition, consumer trust, and consumer choice. <p>After these elements of the Affirmation of Commitments are adopted in the ICANN Bylaws, the following should take place:</p> <ul style="list-style-type: none"> • ICANN and NTIA should mutually agree to terminate the Affirmation of Commitments. • New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned Affirmation of Commitments review should not be deferred simply because the new rules allow up to five years between review cycles. If the community prefers to do a review sooner than five years from the previous review, that is allowed under the new rules. • Through its Work Party IRP Implementation Oversight Team (WP-IRP IOT), the CCWG-Accountability will examine the suggestion to include a mid-term review of the Independent Review Process (IRP). • To support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff, and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community’s needs. 	

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<ul style="list-style-type: none"> • These operational standards should include issues such as: composition of Review Teams, Review Team working methods (meeting protocol, document access, role of observers, budgets, decision making methods, etc.), and methods of access to experts. These standards should be developed with the community and should require community input and review to be changed. The standards are expected to reflect levels of detail that are generally not appropriate for governance documents, and should not require a change to the Bylaws to modify. This is an implementation issue aligned with the need for review of the proposed Bylaws text developed by the CCWG-Accountability that has been provided as guidance to legal counsel. <p>A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws and will be classified as Fundamental Bylaws. Specifications will be based on the requirements detailed by the CWG-Stewardship. It is anticipated that the Bylaw drafting process will include the CWG-Stewardship.</p>	
<p>3. Detailed Explanation of Recommendations</p> <p>Background</p> <p>The Affirmation of Commitments is a 2009 bilateral agreement between the U.S. Government and ICANN. After the IANA agreement is terminated, the Affirmation of Commitments will become the next target for termination since it would be the last remaining aspect of a unique U.S. Government role with ICANN.</p> <p>Termination of the Affirmation of Commitments as a separate agreement would be a simple matter for a post-transition ICANN, since the Affirmation of Commitments can be terminated by either party with a 120-day notice. The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments in Stress Test #14, as described below.</p> <p><i>[See table with stress test in Recommendation #9, paragraphs 8-19]</i></p> <p>(20) If the Affirmation of Commitments were to be terminated without a replacement,</p>	

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<p>ICANN would no longer be held to these important affirmative commitments, including the related requirement to conduct community reviews. If this were allowed to occur, it would significantly diminish ICANN’s accountability to the global multistakeholder community. This consequence is avoided by adding the Affirmation of Commitments reviews and commitments to ICANN’s Bylaws.</p> <p>(21-23) Objectives of the Recommendations</p> <p>Suggestions gathered during comment periods in 2014 on ICANN accountability and the IANA Stewardship Transition suggested several ways the Affirmation of Commitments reviews should be adjusted as part of incorporating them into the ICANN Bylaws:</p> <ul style="list-style-type: none"> • Ability to sunset reviews, amend reviews, and create new reviews. • Community stakeholder groups should appoint their own representatives to Review Teams. Regarding composition and size of Review Teams, based on composition of prior Review Teams, 21 Review Team members from Supporting Organizations (SOs) and Advisory Committees (ACs) would be more than needed. • Give Review Teams access to ICANN internal documents. • Require the ICANN Board to consider approval and begin implementation of Review Team recommendations, including from previous reviews. <p>The CCWG-Accountability concluded that some Review Team recommendations could be rejected or modified by ICANN, for reasons such as feasibility, time, or cost. If the community disagreed with the Board’s decision on implementation, it could invoke a Request for Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP. In addition, the CCWG-Accountability independent legal counsel advised that the ICANN Bylaws could not require the Board to implement all Review Team recommendations because some could conflict with the Board’s fiduciary duties or other Bylaws obligations.</p> <p>In Bylaws Article IV, a new section will be added for periodic review of ICANN Execution</p>	

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<p>of Key Commitments, with an overarching framework for the way these reviews are conducted and then one subsection for each of the four current Affirmation of Commitments reviews.</p>	
<p>(24-26) Recommended Changes to the ICANN Bylaws</p> <p><i>Note: Legal counsel has not reviewed the proposed Bylaw revisions at this stage. The proposed language for Bylaw revisions is conceptual in nature; once there is consensus about direction, legal counsel will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.</i></p> <p>There are four areas of change required to the ICANN Bylaws to enshrine the Affirmation of Commitments reviews, as described below.</p> <p>Principle language to be added to Bylaws:</p> <p>[“As Expressed in the ICANN Bylaws” column from the table is pasted below]</p> <p>(32) Proposed revision to ICANN Core Values:</p> <p>(33) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;</p> <p>(34) Proposed Bylaw requiring Affirmation of Commitments review of Promoting Competition, Consumer Trust, and Consumer Choice:</p> <p>(35) ICANN will ensure that as it expands the Top- Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.</p> <p>(37) Proposed new Section 8 in Bylaws Article III Transparency:</p>	<p>Section 1.2(b)(ii)</p> <p>Section 4.6(d)(i)</p> <p>Section 3.6(c)</p>

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<p>(38) ICANN shall perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial or non-financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.</p> <p>(40) Proposed revision to ICANN Commitments:</p> <p>(41) In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets.</p> <p>(42) Proposed revision to ICANN Core Values:</p> <p>(43) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;</p> <p>(44) Proposed requirement for annual report, to be included in Bylaws section on required reviews:</p> <p>(45) ICANN will produce an annual report on the state of improvements to Accountability and Transparency. ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the Review Teams defined in this section.</p> <p>(46) Proposed new Section 9 in Bylaws Article III Transparency:</p> <p>(47) ICANN shall adhere to transparent and accountable budgeting processes, providing</p>	<p>Section 1.2(a)</p> <p>Section 1.2(b)(ii)</p> <p>Section 4.5</p> <p>Section 3.1</p>

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<p>advance notice to facilitate stakeholder engagement in policy decision-making, fact-based policy development, cross community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and Strategic and Operating Plans.</p> <p>(49) See next section for proposed Bylaws to preserve ICANN commitments to perform the Affirmation of Commitments regular reviews.</p>	

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<p>(50-51) The Bylaws will provide a framework for all periodic reviews.</p> <p>The left-hand column of the following chart shows proposed Bylaws language for periodic reviews (subject to revision by legal counsel during actual drafting), with comments on the right:</p> <p>[“Proposed Bylaws Text” column from the table is pasted below]</p> <p>(52) ICANN will produce an annual report on the state of improvements to Accountability and Transparency.</p> <p>(53) ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of</p>	<p>Section 4.5; Section 4.6(a)(i), (iii)-(vii)</p>

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<p>implementing the recommendations from the Review Teams defined in this section.</p> <p>(55) Review Teams are established to include both a limited number of members and an open number of observers. Each SO and AC participating in the review may suggest up to seven prospective members for the Review Team. The group of chairs of the participating SOs and ACs will select a group of up to 21 Review Team members, balanced for diversity and skills, allocating at least three members from each participating SO and AC that suggests three or more prospective members. In addition, the ICANN Board may designate one Director as a member of the Review Team.</p> <p>(58) In the event a consensus cannot be found among the members, a majority vote of the members may be taken. In this case, both a majority recommendation and a minority response should be provided in the final report of the Review Team.</p> <p>(60) Review Teams may also solicit and select independent experts to render advice as requested by the Review Team, and the Review Team may choose to accept or reject all or part of this advice.</p> <p>(62) Each Review Team may recommend termination or amendment of its respective review.</p> <p>(64) Confidential Disclosure to Review Teams:</p> <p>(65) To facilitate transparency and openness regarding ICANN’s deliberations and operations, the Review Teams, or a subset thereof, shall have access to ICANN internal information and documents. If ICANN refuses to reveal documents or information requested by the Review Team, ICANN must provide a justification to the Review Team. If the Review Team is not satisfied with ICANN’s</p>	

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<p>justification, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request.</p> <p>(66) For documents and information that ICANN does disclose to the Review Team, ICANN may designate certain documents and information as not for disclosure by the Review Team, either in its report or otherwise. If the Review Team is not satisfied with ICANN’s designation of nondisclosable documents or information, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the nondisclosure designation.</p> <p>(67) A confidential disclosure framework shall be published by ICANN. The confidential disclosure framework shall describe the process by which documents and information are classified, including a description of the levels of classification that documents or information may be subject to, and the classes of persons who may access such documents and information.</p> <p>(68) The confidential disclosure framework shall describe the process by which a Review Team may request access to documents and information that are designated as classified or restricted access.</p> <p>(69) The confidential disclosure framework shall also describe the provisions of any nondisclosure agreement that members of a Review Team may be asked to sign.</p> <p>(70) The confidential disclosure framework must provide a mechanism to escalate and/or appeal the refusal to release documents and information to duly recognized Review Teams.</p> <p>(72) The draft report of the Review Team should describe the degree of consensus reached by the Review Team.</p> <p>(74) The Review Team should attempt to assign priorities to its</p>	

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<p>recommendations.</p> <p>(76) The draft report of the review will be published for public comment. The Review Team will consider such public comment and amend the review, as it deems appropriate before issuing its final report and forwarding the recommendations to the Board.</p> <p>(77) The final output of all reviews will be published for public comment. The final report should include an explanation of how public comments were considered. Within six months of receipt of a recommendation, the Board shall consider approval and promptly either begin implementation or publish a written explanation for why the recommendation was not approved</p>	
<p>(79) Proposed Bylaws text for [the] Affirmation of Commitments review[s]:</p> <p><i>[“Proposed Bylaws Text for this Affirmation of Commitments Review” column from the tables is pasted below]</i></p> <p>(80) 1. Accountability & Transparency Review.</p> <p>(81) The Board shall cause a periodic review of ICANN’s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders.</p> <p>(84) Issues that may merit attention in this review include:</p> <p>(85) (a) assessing and improving ICANN Board governance, which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition</p>	<p>Section 4.6(b)</p>

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<p>meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;</p> <p>(87) (b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;</p> <p>(88) (c) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);</p> <p>(89) (d) assessing the extent to which ICANN's decisions are embraced, supported, and accepted by the public and the Internet community;</p> <p>(90) (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and</p> <p>(91) (f) assessing and improving the Independent Review Process.</p> <p>(93) The Review Team shall assess the extent to which prior Accountability and Transparency review recommendations have been implemented.</p> <p>(95) The Review Team may recommend termination or amendment of other periodic reviews required by this section, and may recommend additional periodic reviews.</p> <p>(97) This Review Team should complete its review within one year of convening its first meeting.</p> <p>(99) This periodic review shall be convened no less frequently than</p>	

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<p>every five years, measured from the date the previous review was convened.</p>	
<p>(101) 2. Preserving Security, Stability, and Resiliency.</p> <p>(102) The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS.</p> <p>(103) In this review, particular attention will be paid to:</p> <p>(104) (a) security, stability, and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS;</p> <p>(105) (b) ensuring appropriate contingency planning; and</p> <p>(106) (c) maintaining clear processes.</p> <p>(107) Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability, and resiliency of the Internet DNS, consistent with ICANN's limited technical Mission.</p> <p>(111) The Review Team shall assess the extent to which prior review recommendations have been implemented.</p> <p>(113) This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.</p>	<p>Section 4.6(c)</p>

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<p>and promotes consumer trust.</p> <p>(131) ICANN commits to enforcing its policy relating to the current WHOIS and any future Generic Top Level Domain (gTLD) Directory Service, subject to applicable laws, and working with the community to explore structural changes to improve accuracy and access to gTLD registration data, as well as consider safeguards for protecting data.</p> <p>(132) This review includes a commitment that becomes part of the ICANN Bylaws, regarding enforcement of the current WHOIS and any future gTLD Directory Service policy requirements.</p> <p>(134) The Board shall cause a periodic review to assess the extent to which WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement, promotes consumer trust, and safeguards data.</p> <p>(136) This review will consider the Organization for Economic Co-operation and Development (OECD) guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013.</p> <p>(138) The Review Team shall assess the extent to which prior review recommendations have been completed, and the extent to which implementation has had the intended effect.</p> <p>(140) This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.</p>	
<p>(142-147) Bylaws to add an IANA Function Review and Special IANA Function Review:</p> <p>The CWG-Stewardship recommends that Post-Transition IANA’s</p>	Article 18

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<p>(PTI's) performance against the ICANN-PTI contract and the Statement of Work (SOW) be reviewed as part of the IANA Function Review (IFR). The IFR would be obliged to take into account multiple input sources including community comments, IANA Customer Standing Committee (CSC) evaluations, reports submitted by the PTI, and recommendations for technical or process improvements. The outcomes of reports submitted to the CSC, reviews, and comments received on these reports during the relevant time period will be included as input to the IFR. The IFR will also review the SOW to determine if any amendments should be recommended. The IFR mandate is strictly limited to evaluation of PTI performance against the SOW and does not include any evaluation relating to policy or contracting issues that are not part of the IANA Functions Contract between ICANN and PTI or the SOW. In particular, it does not include issues related to policy development and adoption processes, or contract enforcement measures between contracted registries and ICANN.</p> <p>The first IFR is recommended to take place no more than two years after the transition is completed. After the initial review, the periodic IFR should occur at intervals of no more than five years.</p> <p>The IFR should be outlined in the ICANN Bylaws and included as a Fundamental Bylaw as part of the work of the CCWG-Accountability and would operate in a manner analogous to an Affirmation of Commitments review. The members of the IANA Function Review Team (IFRT) would be selected by the SOs and ACs and would include several liaisons from other communities. While the IFRT is intended to be a smaller group, it will be open to participants in much the same way as the CWG-Stewardship is.</p>	

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<p>While the IFR will normally be scheduled based on a regular cycle of no more than five years in line with other ICANN reviews, a Special IANA Function Review (Special IFR) may also be initiated when CSC Remedial Action Procedures (as described in the CWG-Stewardship Proposal) are followed and fail to correct the identified deficiency and the IANA Problem Resolution Process (as described in the CWG-Stewardship Proposal) is followed and fails to correct the identified deficiency. Following the exhaustion of these escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process, and the IANA Problem Resolution Process and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SOs and ACs, the Special IFR could be triggered. In order to trigger a Special IFR, it would require a vote of both of the ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority).</p> <p>The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IFR. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of the IANA Functions operation, including the CSC, but should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs. The results of the IFR or Special IFR will not be prescribed or restricted and could include recommendations to</p>	

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initiate a separation process, which could result in termination or non-renewal of the IANA Functions Contract between ICANN and PTI among other actions.	

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<p align="center">Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees</p>	
<p>2. CCWG-Accountability Recommendations</p> <p>(2-3) Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.</p> <p>The CCWG-Accountability recommends the following.</p> <p>(4-5) Work Stream 1:</p> <p>Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.</p> <ul style="list-style-type: none"> • These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc. • This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as: <p><i>The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.</i></p> • The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN’s Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review: <p><i>assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the</i></p> 	<p>Section 4.4(a)</p> <p>Section 4.6(b)(ii)(B)</p>

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Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees	
<p><i>technical coordination of the DNS</i></p> <p>(6-7) Work Stream 2:</p> <p>Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.</p> <ul style="list-style-type: none"> • Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it. <i>[FN 1]</i> <p><i>[Footnote 1: CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new Community Powers construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO, and all Supporting Organizations and Advisory Committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how his or her constituency addressed the issue, indicating what worked and didn't work. This could be followed by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement.]</i></p> <ul style="list-style-type: none"> • Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal. 	<p>Section 27.2(b)(iii)</p>

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Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees	
<ul style="list-style-type: none"> Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities. 	
<p>3. Detailed Explanation of Recommendations</p> <p>(8-17) As the community’s power is enhanced, legitimate concerns have arisen regarding the accountability of the community (organized as SOs and ACs) in using those powers. In other words, “Who watches the watchers?”</p> <p>In response to these concerns, the CCWG-Accountability:</p> <ul style="list-style-type: none"> Identified the existing accountability mechanisms in place for SOs and ACs. Reviewed existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the First Public Comment Period. Built a list of steps to enhance SO and AC accountability that should be addressed in Work Stream 1 and Work Stream 2. <p>A review of existing ICANN documentation shows that the provisions that oblige SOs and ACs to be held accountable to their Constituents or the larger Internet community with regard to their actions, decisions, or advice, are limited in number and scope.</p> <p>The reviewed documents were:</p> <p>1. <u>ICANN Bylaws</u></p> <p>ICANN Bylaws state that each SO and AC shall establish its own charter and procedural documents. Further research needs to be done at the SO and AC level to verify existing accountability mechanisms put in place for each SO and AC.</p> <p>It is also important to review whether SOs and ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example, it should be reviewed and discussed if Core Values should be applicable not only to the corporation’s actions, but also to SO and AC activities.</p>	<p>Addressed under Section 2 of Rec #10, above.</p>

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Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees	
<p>2. <u>The Affirmation of Commitments</u></p> <p>The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, should also apply to the SOs and ACs that form the wider ICANN organizational structure as defined in ICANN's Bylaws.</p> <p>The identified mechanisms or criteria in the Affirmation of Commitments by which SOs and ACs should conduct their work in relation to the DNS are: paragraph 3 and paragraph 9.</p> <p>3. <u>ATRT 1 Recommendations and ATRT 2 Recommendations</u></p> <p>The Accountability and Transparency Reviews have made no direct recommendations with regard to SO and AC transparency or accountability.</p> <p>4. <u>Operational Rules and Procedures of the Various Supporting Organizations and Advisory Committees</u></p> <p>Having inventoried the existing mechanisms related to SO and AC accountability in light of the new responsibilities associated with the Work Stream 1 Proposals, it became clear that the current framework for SO and AC accountability needed to be enhanced.</p> <p>The aim of the enhancements is to ensure that SOs and ACs are accountable not only to their current members but also to the wider communities that these bodies are designed to represent.</p> <p>Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.</p> <p>The CCWG-Accountability recommends the following.</p> <p>Work Stream 1:</p> <p>Include the review of SO and AC accountability mechanisms in the independent periodic structural reviews that are performed on a regular basis.</p>	

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<ul style="list-style-type: none"> • These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc. • This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as: <ul style="list-style-type: none"> <i>The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.</i> • The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9..., the Accountability and Transparency Review will include the following among the issues that merit attention in the review: <ul style="list-style-type: none"> <i>assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS</i> <p>Work Stream 2:</p> <p>Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.</p> <ul style="list-style-type: none"> • Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it. [FN 2] • Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal. 	

CCWG-Accountability Supplemental Final Proposal	Location in Bylaws
Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees	
<ul style="list-style-type: none"> Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities. <p><i>[Footnote 2: See the short description of the mutual accountability roundtable provided by CCWG-Accountability Advisor Willie Currie in footnote 1, above]</i></p>	

CCWG-Accountability Supplemental Final Proposal	Location in Bylaws
Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test #18)	
<p>2. CCWG-Accountability Recommendations</p> <p>(5-11) The CCWG-Accountability recommends that the following changes be made to the ICANN Bylaws Article XI, Section 2 (emphasis added):</p> <p>j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. <u>Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of 60% of the Board,</u> and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.</p> <p>This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must “try to find a mutually acceptable solution,” as required in ICANN’s current Bylaws. This recommendation shall not create any new obligations for the ICANN Board to consider, vote upon, or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC advice.</p> <p>The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection). When transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection.</p> <p>The CCWG-Accountability recommends inserting a requirement that all ACs provide a rationale for their advice. A rationale must be provided for formal advice provided by an Advisory Committee to the ICANN Board. The Board shall have the responsibility to</p>	<p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p>Section 3.1; Section 12.3</p>

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<p>determine whether the rationale provided is adequate to enable determination of whether following that advice would be consistent with ICANN’s Bylaws.</p> <p>To address concerns regarding GAC advice that is inconsistent with the ICANN Bylaws, the CCWG-Accountability recommends adding this clarification for legal counsel to consider when drafting Bylaws language:</p> <p style="padding-left: 40px;"><i>ICANN cannot take action - based on advice or otherwise – that is inconsistent with its Bylaws. While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. Any aggrieved party or the Empowered Community will have standing to bring claims through the IRP that the Board acted (or failed to act) in a manner inconsistent with the ICANN Articles of Incorporation or Bylaws, even if the Board acted on GAC advice.</i></p> <p>Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability’s external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.</p>	
<p>3. Detailed Explanation of Recommendations</p> <p>(12-14) Background</p> <p>Stress Test #18 is related to a scenario where ICANN’s GAC would amend its operating procedures to change from consensus decisions to majority voting for advice to the ICANN Board. Since the ICANN Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice. In addition, if the GAC lowered its decision threshold while also participating in the Empowered Community (if the GAC chooses to so participate), some stakeholders believe this could inappropriately</p>	

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<p>increase government influence over ICANN.</p> <p>The goal of the recommendation is also to reflect the principles, derived from the GAC Dublin Communiqué, and agreed upon by the CCWG-Accountability when investigating further on Stress Test #18:</p> <ul style="list-style-type: none"> • The GAC may define its own rules. • The GAC is committed to working by consensus. • The GAC will not work on the basis of a simple majority for GAC advice. • The Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution. • GAC advice needs to provide clear direction and provide a rationale. <p>(15-18) Process and Considerations Leading Up to the Recommendation</p> <p>The Second Draft Proposal drew a significant number of comments, with a majority in support of the proposed Bylaws change and with objections from several governments. After the close of the second round of public comments, other governments expressed their concerns regarding the proposed Bylaws change.</p> <p>The CCWG-Accountability also received communication from the GAC after its Dublin meeting, as part of its communiqué, which stated:</p> <p><i>“The discussions on Stress Test #18 have helped the Governmental Advisory Committee to have a better understanding of the different views on the issue. In assessing the different rationales presented so far related to Stress Test #18, the Governmental Advisory Committee considered:</i></p> <ul style="list-style-type: none"> • The need that each and every AC ensures that the advice provided is clear and reflects the consensus view of the Committee. • The need that each and every AC should preserve its own autonomy in its definition of 	

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<p>consensus.</p> <ul style="list-style-type: none"> • The value the Board attributes to receiving consensus advice. • The recommendation of the Board-GAC Recommendation Implementation Working Group, as reiterated by the Accountability and Transparency Review Team 2 (ATRT2), to set the threshold for the ICANN Board to reject GAC advice to a 2/3 majority voting, consistent with the threshold established for rejection of Country Code Names Supporting Organization and Generic Names Supporting Organization Policy Development Process recommendations.” <p>Following the Second Public Comment Period, and the input received from the GAC Communiqué in Dublin, the CCWG-Accountability organized a specific Subgroup to:</p> <ul style="list-style-type: none"> • Assess existing options, and areas of agreement/disagreement. • Provide the full CCWG-Accountability with a brief summary of views and options. • Report to the CCWG-Accountability so that consensus can be assessed around how to respond to Stress Test #18, which identified the risk that GAC could change its decision-making rule and thereby require the ICANN Board to arbitrate among sovereign governments. <p>Within this Subgroup, the following conclusions were agreed upon:</p> <ul style="list-style-type: none"> • The GAC may define its own rules. • The GAC is committed to working by consensus. • The GAC will not work on the basis of a simple majority for GAC advice. • The Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution. • GAC advice needs to provide clear direction and provide a rationale. 	

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<p>(19-27) Alternative options considered and rejected</p> <p>Within this group, several options were introduced and considered.</p> <p>Brazil introduced a proposal with the following Bylaw changes:</p> <p><i>[...] Where the ICANN Board is obliged to pay due deference to advice from Advisory Committees and where that advice, if not followed, requires finding mutually agreed solutions for implementation of that advice, the Advisory Committee will make every effort to ensure that the advice provided is clear and reflects the consensus view of the committee. In this context, each Advisory Committee has the right to determine its particular definition of consensus.” [...]</i></p> <p><i>[...] Any Governmental Advisory Committee Advice approved by a Governmental Advisory Committee consensus may only be rejected by a vote of more than two-thirds (2/3) of the Board. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. [...]</i></p> <p>After discussions within the Subgroup, and concerns raised by some stakeholders that the Brazil proposal would create stronger obligations for the ICANN Board while not providing enough guarantees that the GAC decision-making would remain strongly focused on consensus, a proposal based on initial drafting by Denmark and enhanced by a group of European GAC members, was considered (emphasis added):</p> <p><i>“The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.</i></p> <p><i>In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.</i></p> <p>Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of two-</p>	

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<p><i>thirds of the Board.</i></p> <p><i>Any advice approved by the Governmental Advisory Committee by consensus with objections only from a very small minority of Governmental Advisory Committee members, may be rejected by a majority vote of the Board.</i></p> <p><i>In both instances, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”</i></p> <p>Several stakeholders supported an amendment to this proposal to remove the words “Any advice approved by the Governmental Advisory Committee by consensus with objections only from a very small minority of Governmental Advisory Committee members, may be rejected by a majority vote of the ICANN Board.” It was met with support as well as resistance, with the argument that this would not address the concerns expressed during the Second Public Comment Period about the lack of flexibility regarding GAC decision-making procedures.</p> <p>As some participants remained concerned about the introduction of the 2/3 decision-making threshold for the ICANN Board, a compromise proposal was introduced as such (emphasis added):</p> <p><i>“j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.</i></p> <p><i>In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.</i></p> <p><i>Governmental Advisory Committee advice which enjoys broad support of Governmental Advisory Committee members in the absence of significant objection may be rejected by a majority vote of the Board.</i></p> <p><i>In this case, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution”.</i></p>	

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<p>This compromise proposal was submitted to the CCWG-Accountability on 24 November 2015. After thorough discussion, while some stakeholders expressed their willingness to accept the proposal as a compromise, significant objections remained. The co-Chairs assessed that the level of support was insufficient to call rough consensus on this proposal.</p> <p>When discussing the way forward within the CCWG-Accountability on 26 November 2015, the group took stock of the past discussions and noted the statement by Larry Strickling of NTIA from 25 November about Stress Test #18. A proposal was introduced jointly by Denmark and Keith Drazek (ICG Liaison).</p> <p>After being unable to reach consensus on the two-thirds proposal, in January 2016 the CCWG-Accountability re-launched the discussions to identify a consensus position for Recommendation #11. In early February, the CCWG-Accountability concluded that the consensus position should include the clarifications made to the version of Recommendation #11 in the Third Draft Proposal (no new obligations, rationale and conformity with ICANN Bylaws) and change the 2/3 threshold to 60%. Additionally, as part of the compromise, an exception was added in Recommendations #1 and #2 that the GAC, should it decide to be a Decisional Participant in the Empowered Community, would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice; however, the GAC would be able to participate in an advisory capacity in all other aspects of the escalation process.</p>	
<p>(28) The Stress Test which encompasses this is now: <i>[Table with stress test, paragraphs 29-38, is pasted below]</i></p> <p>(29) Stress Test #18: Governments in ICANN’s Governmental Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board</p> <p>(30) Consequence(s): Under current Bylaws, ICANN must consider and respond to Governmental Advisory Committee advice, even if that advice were not supported by</p>	

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<p>consensus. A majority of governments could thereby approve Governmental Advisory Committee advice.</p> <p>EXISTING ACCOUNTABILITY MEASURES</p> <p>(31) Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for Governmental Advisory Committee advice.</p> <p>(32) Today, Governmental Advisory Committee adopts formal advice according to its Operating Principle 47: “<i>consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</i>”</p> <p>(33) The Governmental Advisory Committee may at any time change its procedures instead of its present consensus rule.</p> <p>(34) The requirement to try to find a mutually acceptable solution in the current Bylaws would then apply, not just for Governmental Advisory Committee consensus advice.</p> <p>PROPOSED ACCOUNTABILITY MEASURES</p> <p>(35) The proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where Governmental Advisory Committee advice was supported by full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</p> <p>(36) The proposed accountability measure recognizes that the decision not to follow GAC consensus advice would require a 60% majority of the ICANN Board.</p> <p>(37) The Governmental Advisory Committee can still give ICANN advice at any time, with or without full consensus.</p> <p>(38) Recognizing the general principle that an AC should have the autonomy to refine its Operating Procedures, the Governmental Advisory Committee could specify how objections are raised and considered.</p>	<p></p> <p></p> <p></p> <p></p> <p></p> <p></p> <p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p></p>

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<p>(39-52) Why is the CCWG-Accountability Recommending This?</p> <p>Stress Test #18 was among the plausible scenarios that could test how and whether the ICANN community could challenge actions taken by the ICANN Board. The rationale to develop this stress test involves two factors:</p> <ol style="list-style-type: none"> 1. ICANN community members were aware that some GAC members had expressed a desire to change the GAC’s historical method of using consensus for its decision-making, where “consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.” Moreover, it would take only a simple majority of GAC members to change its decision-making methods to a lesser standard. 2. The CCWG-Accountability realized that ICANN’s present Bylaws obligate the ICANN Board to try to find “a mutually acceptable solution” if it decided not to follow GAC advice. That level of required deference is unique to the GAC and not required for advice from other SOs and ACs. Importantly, the ICANN Board’s obligation to seek a mutually acceptable solution applies to all GAC advice, even if that advice was not supported by GAC consensus or was opposed by a significant minority of GAC members. <p>For these reasons, the CCWG-Accountability added Stress Test #18 to the First Draft Proposal, and the Stress Test Working Party concluded that existing accountability measures were not adequate to let the community hold the ICANN Board accountable for its actions if the Board were obliged to seek a negotiated solution with the GAC.</p> <p>In order to address Stress Test #18, the CCWG-Accountability proposed an amendment to the ICANN Bylaws regarding the ICANN Board’s obligations with respect to GAC advice. The amendment would preserve the requirement for the ICANN Board to seek a mutually acceptable solution, but only for GAC advice that was supported by consensus among GAC members.</p> <p>The GAC advice that is opposed by a significant minority of governments should not</p>	<p>Section 12.2(a)(x)</p>

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<p>trigger the ICANN Board’s obligation to enter bi-lateral negotiations with the GAC on a matter that affects the global Internet community. A negotiation between the ICANN Board and the GAC should be mandatory only for resolving differences between ICANN and governments, not to resolve differences among governments themselves.</p> <p>As a corollary to the importance of consensus GAC advice, the proposal includes a requirement that the Board would need a 60% majority to decide not to follow consensus GAC advice.</p> <p>To avoid any ambiguity, when transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection among GAC members.</p> <p>The proposed Bylaws change is aligned with the practice presently used by the GAC, which uses the following consensus rule for its decisions:</p> <p><i>“Consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.”</i></p> <p>The proposed Bylaws change recognizes that the GAC may, at its discretion, amend its <u>Operating Principle 47</u> regarding “Provision of Advice to the ICANN Board.” Similar rules for consensus policy and advice are already present in the ICANN Bylaws, which require supermajority support for policy recommendations coming from GNSO and ccNSO.</p> <p>The proposed Bylaws change for Stress Test #18 does not interfere with the GAC’s method of decision-making. The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection).</p> <p>If the GAC decided to adopt advice by methods other than a consensus process, ICANN would still be obligated to give GAC advice due consideration: “advice shall be duly taken into account, both in the formulation and adoption of policies.”</p> <p>Moreover, ICANN would still have to explain why it chose not to follow GAC advice: “In</p>	<p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p> <p>Section 12.2(a)(x)</p>

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<p>the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice”.</p> <p>The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to “try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.” That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus among GAC members.</p> <p>It is important to note that although this was the only proposal that would allow the CCWG-Accountability to achieve consensus on this topic, it was not unanimously supported. A number of dissenters amongst members and participants thought this proposal was overly restrictive and discriminatory toward the GAC, while others thought that if the GAC wanted to keep its privileged AC status, then it should not be allowed to be a Decisional Participant.</p>	

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<p>1. Summary</p> <p>(1) The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.</p> <p>(2) As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:</p> <ul style="list-style-type: none"> • Considering improvements to ICANN’s standards for diversity at all levels. • Staff accountability. • Supporting Organizations and Advisory Committee accountability. • Improving ICANN’s transparency with a focus on: <ul style="list-style-type: none"> ○ Enhancements to ICANN’s existing Documentary Information Disclosure Policy (DIDP). ○ Transparency of ICANN’s interactions with governments. ○ Improvements to the existing whistleblower policy. ○ Transparency of Board deliberations. ○ Developing and clarifying a Framework of Interpretation for ICANN’s Human Rights commitment and proposed Draft Bylaw. • Addressing jurisdiction-related questions, namely: “Can ICANN’s accountability be enhanced depending on the laws applicable to its actions?” The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements. • Considering enhancements to the Ombudsman’s role and function. <p>(3) The CCWG-Accountability expects to begin refining the scope of Work Stream 2</p>	<p>Section 27.2(b)</p>

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<p>during the upcoming ICANN55 Meeting in March 2016. It is intended that Work Stream 2 recommendations will be published for comments by the end of 2016.</p> <p>(4) The community raised concerns that after the IANA Stewardship Transition, there may be a lack of incentive for ICANN to implement the proposal arising out of Work Stream 2. To prevent this scenario, the CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability Work Stream 2 recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. In a letter dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.</p>	
<p>2. CCWG-Accountability Recommendations</p> <p>(5) The CCWG-Accountability recommends that the Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. The Bylaw would task the group with creating further enhancements to ICANN’s accountability limited to the Work Stream 2 list of issues:</p> <ul style="list-style-type: none"> • Considering improvements to ICANN’s standards for diversity at all levels. • Staff accountability. • Supporting Organizations and Advisory Committee accountability. <ul style="list-style-type: none"> ○ Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process. ○ Evaluate the proposed “Mutual Accountability roundtable” to assess viability. ○ Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2. 	<p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p>

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<ul style="list-style-type: none"> ○ Assess whether the IRP would also be applicable to SO and AC activities. ● Improving ICANN’s transparency with a focus on: <ul style="list-style-type: none"> ○ Enhancements to ICANN’s existing DIDP. ○ Transparency of ICANN’s interactions with governments. ○ Improvements to the existing whistleblower policy. ○ Transparency of Board deliberations. ● Developing and clarifying a Framework of Interpretation for ICANN’s Human Rights commitment and proposed Draft Bylaw. ● Addressing jurisdiction-related questions, namely: “Can ICANN’s accountability be enhanced depending on the laws applicable to its actions?” The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements. ● Considering enhancements to the Ombudsman’s role and function. <p>The CCWG-Accountability notes that further enhancements to ICANN accountability can be accommodated through the accountability review process (see Recommendation #10...) or through specific, ad hoc, cross community working group initiatives.</p>	<p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p> <p>Section 27.2(b)</p>
<p>3. Detailed Explanation of Recommendations</p> <p>(6) Commenters made the observation that general accountability requirements, such as diversity and Supporting Organization (SO) and Advisory Committee (AC) accountability, were not fully addressed. Specific criteria were developed for these two key parameters, as described below.</p>	

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<p>(7-12) Diversity</p> <p>Comments received on prior drafts asked that concrete steps to ensure the diversity of the views, origins, and interests of the global Internet community be adequately represented through a multidimensional approach, specifically as the community becomes more empowered. While acknowledging the importance of diversity in the accountability mechanisms, commenters have also expressed the view that any diversity requirement should not prevail over skills or experience requirements.</p> <p>The CCWG-Accountability acknowledges the specific advice received from the Public Expert Group Advisors which stresses the importance of such diversity enhancements. Maximum participation and transparent deliberations by all affected stakeholders are necessary in order to capture the diversity of views that constitute the (global) public interest in a given instance.</p> <p>In assessing diversity, the CCWG-Accountability identified that existing mechanisms were in place for entities constituting the ICANN ecosystem. Requirements stemming from the following initiatives and governance documents were evaluated:</p> <ul style="list-style-type: none"> • ICANN Bylaws. • The Affirmation of Commitments. • ATRT 1 Recommendations. • ATRT 2 Recommendations. • Documents from each of ICANN’s SOs and ACs. <p>Analysis of the above documents determined that improvements are needed. During its discussions, the CCWG-Accountability considered a non-exhaustive list of criteria and sought input on the following suggestions:</p> <ul style="list-style-type: none"> • Expanding ATRT reviews into Accountability, Transparency, and Diversity reviews. 	<p>Section 27.2(b)(i)</p>

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<ul style="list-style-type: none"> • Establishing threshold regarding composition of each body. • Incorporating the Structural Reviews into Structural Accountability, Transparency, and Diversity Reviews of SOs and ACs, under the Board’s supervision. <p>Comments received on the Second Draft Proposal revealed that incorporating the diversity component into Accountability and Transparency Reviews may overburden Review Teams. Therefore, the CCWG-Accountability recommends the following actions with the view to further enhancing ICANN’s effectiveness in promoting diversity:</p> <ul style="list-style-type: none"> • Including diversity as an important element for the creation of any new structure, such as the Independent Review Process (IRP) – for diversity requirements for the panel – and the ICANN Community Forum. • Adding Accountability, Transparency, and Diversity reviews of SOs and ACs to structural reviews as part of Work Stream 2. • Performing, as part of Work Stream 2, a more detailed review to establish a full inventory of the existing mechanisms related to diversity for each and every ICANN group (including Stakeholder Groups, Constituencies, Regional At-Large Organizations, the Fellowship program, and other ICANN outreach programs). After an initial review of the current documents, it became clear that they do not address the full concerns raised by the wider community on the issue of diversity. • Identifying the possible structures that could follow, promote and support the strengthening of diversity within ICANN. • Carrying out a detailed working plan on enhancing ICANN diversity as part of Work Stream 2. • Strengthening commitments to outreach and engagement in order to create a more diverse pool of ICANN participants, so that diversity is better reflected in the overall community and thus more naturally reflected in ICANN structures and leadership 	

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<p>positions.</p> <p>(13-15) Staff Accountability</p> <p>In general, management and staff work for the benefit of the community and in line with ICANN’s purpose and Mission. While it is obvious that they report to and are held accountable by the ICANN Board and the President and CEO, the purpose of their accountability is the same as that of the organization:</p> <ul style="list-style-type: none"> • Complying with ICANN’s rules and processes. • Complying with applicable Bylaws. • Achieving certain levels of performance, as well as security. • Making their decisions for the benefit of the community and not in the interest of a particular stakeholder or set of stakeholders or ICANN the organization alone. <p>Having reviewed and inventoried the existing mechanisms related to staff accountability, areas for improvement include clarifying expectations from staff, as well as establishing appropriate redress mechanisms. The CCWG-Accountability recommends as part of its Work Stream 2:</p> <ul style="list-style-type: none"> • The CCWG-Accountability work with ICANN to develop a document that clearly describes the role of ICANN staff vis-à-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors. • The CCWG-Accountability work with ICANN to consider a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by staff in relation to their interactions with all stakeholders, establish regular independent (internal and community) surveys and audits to track progress and identify areas that need improvement, and establish appropriate processes to escalate issues that enable 	<p>Section 27.2(b)(ii)</p>

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<p>Accountability and Transparency Review process.</p> <ul style="list-style-type: none"> • Evaluate the proposed “Mutual Accountability Roundtable” to assess viability and, if viable, undertake the necessary actions to implement it. • Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2. • Assess whether the IRP would also be applicable to SO and AC activities. <p>(22-23) Transparency</p> <p>Transparency is considered quintessential to the viability of community empowerment and its associated legal framework. As such, the CCWG-Accountability recommends reviewing the following to ensure appropriate safeguards are in place:</p> <ul style="list-style-type: none"> • Improving ICANN’s transparency with a focus on: <ul style="list-style-type: none"> ○ Enhancements to ICANN’s existing DIDP: The CCWG-Accountability sets an objective to review and update ICANN’s DIDP within two years, with the goal of justifying denials with a specific harm and limiting the scope of non-disclosure. ○ ICANN’s interactions with governments: The CCWG-Accountability is considering if ICANN should be required to compile and publicly post a quarterly report providing: the names of individuals acting on ICANN’s behalf who have been in contact with a government official; the names and titles of such government officials; and the date, nature, and purpose of those government contacts. In addition, it considers that a line item accounting of the amount ICANN spent on government engagement activities should be reported. ○ Improvements to the existing whistleblower policy. ○ Transparency of Board deliberations. 	<p>Section 27.2(b)(iv)</p>

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<p>(24) Human Rights</p> <p>To ensure that adding the proposed Human Rights Bylaw provision into the ICANN Bylaws does not lead to an expansion of ICANN’s Mission or scope, the CCWG-Accountability will develop a Framework of Interpretation for Human Rights (FOI-HR) as a consensus recommendation in Work Stream 2 to be approved by the ICANN Board using the same process and criteria as for Work Stream 1 recommendations, and the Bylaw provision will not enter into force before the FOI-HR is in place. The CCWG-Accountability will consider the following as it develops the FOI-HR:</p> <ul style="list-style-type: none"> • Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw. • Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights. • Consistent with ICANN’s existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process. • Consider what effect, if any, this Bylaw would have on ICANN’s consideration of advice given by the Governmental Advisory Committee (GAC). • Consider how, if at all, this Bylaw will affect how ICANN’s operations are carried out. • Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures. 	Section 27.2(b)(v)
<p>(25-31) Jurisdiction</p> <p>Jurisdiction directly influences the way ICANN’s accountability processes are structured and operationalized. The fact that ICANN is incorporated under the laws of the U.S. State of California grants the corporation certain rights and implies the existence of certain accountability mechanisms. It also imposes some limits with respect to the accountability</p>	Section 27.2(b)(vi)

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<p>mechanisms it can adopt.</p> <p>The topic of jurisdiction is, as a consequence, very relevant for the CCWG-Accountability. ICANN is a nonprofit public benefit corporation incorporated in California and subject to applicable California state laws, applicable U.S. federal laws and both state and federal court jurisdiction. ICANN is subject to a provision in paragraph eight [FN 1] of the Affirmation of Commitments, signed in 2009 between ICANN and the U.S. Government.</p> <p><i>[Footnote 1: 8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.]</i></p> <p>ICANN’s Bylaws (Article XVIII) also state that its principal offices shall be in California.</p> <p>The CCWG-Accountability has acknowledged that jurisdiction is a multi-layered issue and has identified the following “layers”:</p> <ul style="list-style-type: none"> • Place and jurisdiction of incorporation and operations, including governance of internal affairs, tax system, human resources, etc. • Jurisdiction of places of physical presence. • Governing law for contracts with registrars and registries and the ability to sue and be sued in a specific jurisdiction about contractual relationships. • Ability to sue and be sued in a specific jurisdiction for action or inaction of staff and for redress and review of Board action or inaction, including as relates to IRP outcomes and other accountability and transparency issues, including the Affirmation of Commitments. • Relationships with the national jurisdictions for particular domestic issues (ccTLDs managers, protected names either for international institutions or country and other 	

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<p>geographic names, national security, etc.), privacy, freedom of expression.</p> <ul style="list-style-type: none"> • Meeting NTIA requirements. <p>At this point in the CCWG-Accountability’s work, the main issues that need to be investigated within Work Stream 2 relate to the influence that ICANN’s existing jurisdiction may have on the actual operation of policies and accountability mechanisms. This refers primarily to the process for the settlement of disputes within ICANN, involving the choice of jurisdiction and of the applicable laws, but not necessarily the location where ICANN is incorporated:</p> <ul style="list-style-type: none"> • Consideration of jurisdiction in Work Stream 2 will focus on the settlement of dispute jurisdiction issues and include: <ul style="list-style-type: none"> ○ Confirming and assessing the gap analysis, clarifying all concerns regarding the multi-layer jurisdiction issue. ○ Identifying potential alternatives and benchmarking their ability to match all CCWG-Accountability requirements using the current framework. ○ Consider potential Work Stream 2 recommendations based on the conclusions of this analysis. <p>A specific Subgroup of the CCWG-Accountability will be formed to undertake this work.</p> <p>(32-34) Considering Enhancements to the Ombudsman’s Role and Function</p> <p>Through the enhanced Request for Reconsideration process (see Recommendation #8...), the CCWG-Accountability has given increased responsibility to the Ombudsman.</p> <p>The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN’s Office of Ombudsman must have a clear charter that reflects, supports, and respects ICANN’s Mission, Commitments and Core Values, and must have sufficient authority and</p>	<p>Section 27.2(b)(vii)</p>

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<p>independence to ensure that it can perform these important roles effectively.</p> <p>As part of Work Stream 2, the CCWG-Accountability will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.</p> <p>(35-41) Interim Bylaw</p> <p>The CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. The Interim Bylaw would task the group with creating further enhancements to ICANN’s accountability related to the Work Stream 2 list of issues, according to process and procedures similar to those of Work Stream 1: openness to all participants, transparency of deliberations, public comment inputs.</p> <p>This Interim Bylaw must be incorporated in the ICANN Bylaws as part of Work Stream 1, prior to the IANA Stewardship Transition. This Interim Bylaw has been proposed to address concerns that after the IANA Stewardship Transition, an absence of incentives may lead to the ICANN Board dismissing the CCWG-Accountability’s proposed Work Stream 2 recommendations. However, in a letter dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.</p> <p>Enshrining the commitment to Work Stream 2 as an Interim (transitional) Bylaw provides stronger guarantees compared to an approach that would rely on a Board resolution. A Board resolution could indeed be changed by the Board itself at any time, and the composition of the Board changes over time. Also, enshrining the process and conditions within a Bylaw (even if it is a transitional provision) triggers the ability for IRP challenge if the CCWG-Accountability or the Board did not comply with the process or conditions described in the Bylaw.</p>	

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<p>The language of this Interim Bylaw provision should provide that the CCWG-Accountability Work Stream 2 recommendations, when supported by full consensus or consensus as described in the CCWG-Accountability Charter, and endorsed by the Chartering Organizations, be considered in a similar status to Work Stream 1 recommendations. The ICANN Board’s actions or inaction would be subject to challenge through enhanced Request for Reconsideration and Independent Review Processes.</p> <p>The Interim Bylaw would be consistent with the language described in the CCWG-Accountability Charter, and explicitly mention the NTIA criteria as a reference for the recommendations, as well as the requirement that recommendations are based on consensus.</p> <p>The Bylaw would also describe the process outlined in the ICANN Board’s resolution of 16 October 2014 (see https://www.ICANN.org/resources/board-material/resolutions-2014-10-16-en#2.d), such as:</p> <ul style="list-style-type: none"> • The requirement for Work Stream 2 recommendations to be consensus recommendations, endorsed by the Chartering Organizations. • The requirement to initiate a specific dialogue in case the Board believes it is not in the global public interest to implement a recommendation, as well as the description of the steps of this dialogue. • The requirement of a 2/3 majority of the Board to determine that implementing a recommendation is not in the global public interest. <p>(42-43) Timeline</p> <p>The initial plan includes the following key milestones:</p> <ul style="list-style-type: none"> • March 2016 (ICANN55): Definition of scope of work and organization into subgroups. • March 2016 to end of June 2016: Drafting of Proposals by Subgroup, under supervision by CCWG-Accountability. 	<p>Section 27.2(c)</p> <p>Section 27.2(c)</p> <p>Section 27.2(c)</p> <p>Section 27.2(c)</p>

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<ul style="list-style-type: none"> • June 2016 till early October 2016: 40-day Public Comment Period, including discussions during ICANN56 and/or ICANN57. • October – mid-January 2017: Refinement of Proposals by Subgroups, under supervision of the CCWG-Accountability or other CCWG as appropriate. • Mid-January – March 2017: Second 40-day Public Comment Period, including discussions during ICANN58. • By end of June 2017: Finalize Proposals and deliver to Chartering Organizations. • Obtain approval and deliver Proposals to ICANN Board at ICANN59. 	