

The Business Constituency (BC) recommends use of scenarios, or ‘stress tests’ to help design and evaluate ICANN accountability structures and mechanisms. Today, ICANN is an effective organization that generally performs its core functions. Although it can be uncomfortable to imagine a scenario where a future ICANN fails dramatically or is confronted with a serious threat, we should consider challenging scenarios that could arise, such as those described below:

1. Scenario: ICANN unilaterally cancels the [Affirmation of Commitments](#), which it may do with just 120 days notice. And if not outright cancellation, ICANN could refuse to implement recommendations of an *Affirmation* review. Presently, the discipline imposed by needing to win the IANA contract forces ICANN to adhere to the only external accountability it has today: the *Affirmation of Commitments*. If the *Affirmation* is to remain part of the new ICANN accountability framework, it is essential that the leverage formerly conveyed by the IANA contract be replaced with a new mechanism, which may or may not include parties external to ICANN.
2. Scenario: ICANN takes steps to eliminate its legal presence in a nation where Internet users and domain registrants are planning to seek legal remedies for ICANN’s failure to enforce contracts. This scenario is not about ICANN opening new offices around the world as part of its global outreach. Rather, it is about ICANN creating a new legal entity distinct from its present status as a California non-profit corporation, and eventually relocating its legal presence. ICANN’s current corporate presence in California creates legal certainty for businesses; presence in a new jurisdiction might not.
3. Scenario: ICANN becomes financially insolvent, due to lawsuits or gross mismanagement. However unlikely, this scenario should explore the orderly continuation of IANA functions and ICANN contract enforcement in the event ICANN could not maintain the necessary qualified technical resources.
4. Scenario: ICANN expands scope beyond its limited technical mission by using domain registration fees to fund grants for developing nations or other worthy causes. ICANN has the power to determine fees charged to TLD applicants, registry operators, registrars, and registrants, so it presents a big target for any Internet-related cause seeking funding sources. This scenario should examine how a fully independent ICANN could be held to its limited technical mission, and whether its fees and spending are subject to external accountability.
5. Scenario: ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by technical community leaders. This scenario actually came close to occurring when ICANN management did not respond to recommendations of its own Security and Stability Advisory Committee (SSAC) regarding risks of new TLDs interacting with security certificates and internal domains already in use. SSAC recommendations from prior years were not acted upon until late 2013, after significant pressure from a root server operator, Internet service providers, and system integrators. In the actual event, ICANN responded with a collision mitigation plan. This scenario should assess how proposed new accountability mechanisms could respond to similar technical risks expressed before a TLD delegation, as well as reactive responses to problems reported after a delegation.
6. Scenario: Governments in ICANN’s Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting. Today GAC adopts formal advice according to its Operating Principle 47: “*consensus is understood to mean the practice of adopting*

decisions by general agreement in the absence of any formal objection."¹ But the GAC may at any time change its procedures to use majority voting, where each government has equal voting power, such as in the UN and ITU. (Notably, only 61 governments were present at the GAC meeting in Singapore during March 2014, where several GAC members expressed dissatisfaction with the multistakeholder process and consensus threshold for new gTLD program advice.) While ICANN's board is not strictly obligated to follow GAC advice, this scenario should assess how ICANN could respond to GAC advice with strong majority support but less than consensus. This scenario might also indicate need to amend ICANN bylaws regarding deference to GAC advice that is not supported by consensus.

7. Scenario: As described in scenario 6, the GAC might issue majority-supported advice instructing ICANN to suspend a TLD that refuses to remove domains with content critical of governments (e.g., .corrupt). Today, this kind of censorship routinely occurs at the edge of the Internet when governments block domestic access to websites, such as Turkey blocking Twitter. This scenario envisions censorship moving from the edge *to the core of the internet* – the root table of TLDs used by the entire world. The stress test would ask how a proposed accountability mechanism could respond if a future ICANN board bowed to GAC advice for censorship at the root of the DNS.
8. Scenario: ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract. The registry operator challenges the breach determination and obtains an injunction from a national court. What procedures or appeal mechanisms would be used by the entity charged with maintenance and publication of the root zone?
9. Scenario: A court grants an injunction against delegation of a new gTLD that's a plural version of another TLD that has already been delegated. (for example, .hotels following after .hotel, or .coms following after .com) The court may have ruled on infringement of rights or on arbitrary and capricious behavior by ICANN, but that's beside the point. The point of this scenario is to ask how a post-transition ICANN and IANA would be empowered to respond to a court injunction granted by a jurisdiction where ICANN has a legal presence. Would ICANN/IANA be able to defer a delegation until court proceedings were concluded? How would ICANN/IANA be accountable for its decision if it ignored the court injunction?
10. Scenario: A government telecom minister instructs ICANN to re-delegate a country-code top-level domain (ccTLD), despite objections from many current registrants and user communities in the country concerned. Faced with this re-delegation request, what response options and measures could be available to ICANN and the entity charged with maintenance of the root zone?

¹ ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>