This document contains a summary of the public comments[1] received in response to the draft Work Stream 1 recommendations issued by the Cross Community Working on Enhancing ICANN Accountability (CCWG-Accountability). The comments are summarized in order of submission for each category as applicable. Even though this summary was drawn-up to reflect as accurately and objectively as possible the views expressed by participants, it does not substitute in any way the original contributions which are publicly available for full reference at: http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/

Note for WP1 volunteers:

You might want to structure your work by pasting the below into the cell beside the comment you are working on:

"Agreement" "Concerns" "Confusion" "Divergence"

Summary / Impression:

Actions suggested:

CCWG Response:

The meanings of each are defined here for help to drafters:

Summary / Impression:
Note key points or impressions from the submission, especially if it is a long contribution.

Actions suggested:
This could either be:

- Actions the submission itself proposes, or
- Actions you suggest for CCWG consideration arising from the submission content

CCWG Response:
The CCWG will publish a response document so these should simply be phrases like:

"the CCWG will consider the suggestion made", or
"the CCWG will attempt to clarify the matter," or
"the suggestion will be incorporated in the next report," or similar brief publication-suitable replies.

A general pleasant reply is:

"Thank you for your comment - the CCWG will consider this feedback as it develops the next version of the proposal."

Contributions provided by:

African Regional At-Large Organization (AFRALO)
Association française pour le nommage Internet en coopération (Afnic)
At-Large Advisory Committee (ALAC)
Australia's Domain Name Administrator (auDA)
Business Constituency (BC)
Canadian Internet Registration Authority (CIRA)
Carlos Raúl Gutierrez (CRG)
Center for Democracy & Technology (CDT)
Centre for Communication Governance (CCG)
Council for European National Top Level Domain Registries (CENTR)
CWG to Develop an IANA Stewardship Transition Proposal on Naming Related Functions Stewardship (CWG-St)
Danish Business Authority (DBA)
David Post – Danielle Kehl (DP-DK)
DotConnectAfrica Trust (DCA-T)
InternetNZ (.NZ)
Internet Services Provider and Connectivity Provider Constituency (ISPCP)
Jan Scholte (JS) comment 1
Jan Scholte (JS) comment 2
Japan Network Information Center (JPNIC)
Jiah He (JH)
Lee Andrew Bygrave (LAB)
London Internet Exchange (LINX)
Milton Mueller (MM)
Ministère des Affaires étrangères (Govt-FR)
Ministry of Foreign Affairs of Argentina (Govt-AR)
Motion Picture Association of America (MPAA)
Namibian Network Information Centre (.NA)
Nigeria Internet Registration Association (NIRA)

[1] The public comment period ran from 4 May 2015 to 3 June 2015. Due to the late availability of the translated versions of the proposal, those who were reliant on these translated versions to provide input will have the ability to submit their comments until 12 June at 23:59 UTC.versions to provide input will have the ability to submit their comments until 12 June at 23:59 UTC.

eco (eco)
Federal Ministry for Economic Affairs and Energy (Govt-DE)
Google (GG)
Government of Brazil (Govt-BR)
Government of India (Govt-IN)
Government of Italy (Govt-IT)
Government of Spain (Govt-ES)
gTLD Registries Stakeholder Group (RySG)
ICANN Board of Directors (ICANN)
Information Technology Industry Council (ITI)
Intellectual Property Constituency (IPC)
International Trademark Association (INTA)
Internet Architecture Board (IAB)
Internet Association (IA)
Internet Infrastructure Coalition (I2Coalition)
Nell Minow (NM)
Nominet (.UK)
Non Commercial Stakeholder Group (NCSG)
Representing the ecosystem of Internet Bahrat-Model (CCAOI)
Richard Hill (RH)
Roberto Bissio (RB)
Root Server System Advisory Committee (RSSAC)
Security and Stability Advisory Committee (SSAC)
Sue Randel (SR)
UNINETT Norid AS (NORID)
US Chamber of Commerce (USCC)
US Council for International Business (USCIB)
US Rep. Mike Kelly HR2251 (HR2251)
William Currie (WC) comment 1
William Currie (WC) comment 2

Comments on Specific Recommendations

Mechanism to empower the Community

Additional questions: Do you agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability?
What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.
Question 7: What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.

Mechanism Summary (incl Qu 7)

(The analysis of comments 223-267 that drives this summary is available to view/comment on at the following location: <https://docs.google.com/document/d/1XlXvyyIfkpl3Vrn7iAnDp0M5TZtBS1iLip4in7RP7Yo/edit?usp=sharing>)

This brief summary (draft 1) analyses the 45 comments in response to questions on the Mechanism to Empower the Community. It offers some high level observations from the Rapporteur; looks at the key issues and the community's view on these as evidenced in the comments; sets out some broader or more general themes that came through in the comments; and summarises the tags applied to the comments.

Rapporteur's observations:

- The lack of publication of the questions in this area has made the summary task very challenging
- There is broad support for the model the CCWG has proposed, with specific or fundamental alternative proposals not gaining traction
- The CCWG faces the need to make a clear decision regarding enforceability, which comments indicate should be in favour of an enforceable set of powers
- The CCWG faces the need to clarify the membership model and the role of UAs or other legal persons, and to tease this out constructively and openly with the community at BA.

KEY ISSUES - THE COMMUNITY'S VIEW AS SHOWN IN COMMENTS

On the membership model:

- Broad-based support for the CCWG's proposal to create a membership based around existing SOs and ACs (at least 19 comments)
- Membership model clearly preferred to a designator model, or to simply relying on ICANN bylaws reforms
- Concerns centred on implementation details:
    - Avoid creating new legal risks for ICANN participants
    - Avoid making participation more difficult for particular ICANN participants (particularly for governments)
    - Perceived complexity of the model
    - Whether legal persons or natural persons should exercise membership powers
    - The need to keep those exercising membership powers accountable to the whole community
    - Impact of different SOs / ACs choosing different forms of involvement
- Opposition to a membership model was limited to around 4-6 comments
- A general desire to see more detail on the model

On voting weights or influence in the community mechanism:

- Split opinion, with roughly ten comments in favour of the proposed allocation of support, and around 11 suggesting changes
- The changes proposed generally dealt with the following:
    - Some seeking more influence for the GNSO
    - Some seeking GAC, RSSAC, SSAC to remain advisory only, not members/with voting rights

On the need for enforceability of community powers:

- General understanding that the membership model delivers enforceability
- Clear preference for enforceable powers (10 comments)
- Opposition for enforceable powers (4 comments)

On the mechanism:

- General support for a community empowerment mechanism
- Need to clarify the nature of it - an assembly, or votes being cast

OVERALL / GENERAL THEMES
(that emerged besides the specific areas of focus):

- The need to ensure the system does not allow for insider capture of ICANN or its accountability
- Whether the SO/AC system is a broad enough linkage to the "global multistakeholder community"
- Promoting effective government involvement (esp on public policy matters) and ensuring reforms do not compromise it
- Mutual accountability and the "who watches the watchers" issue
- The desire to avoid any courts having influence over ICANN's work
- Improving and safeguarding diversity of participation

Tag count

Total comments:	45
Agreement:	29
Concern:	20
Confusion:	7
Divergence:	5

The Google Doc with the raw material also includes other specific suggestions and new suggestions for the CCWG to consider. Please review that document along with this summary at the following URL:

<https://docs.google.com/document/d/1XlXvyyIfkpl3Vrn7iAnDp0M5TZtBS1iLip4in7RP7Yo/edit?usp=sharing>

Readers are strongly urged to review the comments themselves, to cross-check this summary for fairness and accuracy.

First draft prepared by Jordan Carter, and circulated for review at 0850 UTC on Sunday 14 June 2015.

#	Contributor	Comment	CCWG Response/Action
223	RH	- I agree that turning ICANN into a membership organization is the way forward: if the membership is sufficiently broad, and ICANN is accountable to its membership, then adequate accountability will be ensured. In some countries (in particular in Switzerland), non-profit associations are, by law, accountable to their membership, in the sense that the membership has full powers to amend the bylaws (called statues in Switzerland), elect and revoke the Board, approve and review the budget, etc. See articles 60 ff. of the Swiss Civil Code. If we accept the principle that accountability is ensured by the members, then I don't understand why the members of ICANN should not have full powers. The membership should have full powers, not just some powers.	"Agreement" **Summary / Impression:** Generally supportive of membership. Prefers individual membership (as in members of SO's and AC's) are the members of ICANN; Swiss jurisdiction; membership preferred to designator. **Actions suggested:** **CCWG Response:**

		- Membership should consist of the members of the SO and AC, not the SO and AC themselves; i.e. direct entities. ICANN will be subject to the laws of the countries in which it operates, unless it is granted immunity of jurisdiction. - But ICANN will primarily be subject to the laws of the country in which it is incorporated. If California law does not allow the membership to exercise full powers, then it might be better to incorporate ICANN elsewhere. Why should the directly concerned entities elect representatives that elect the ICANN Board, when the directly concerned entities can elect the Board themselves? - Question: Agrees. The membership model is better than a "designator" model.	The CCWG thanks you for your comment and has considered it in its discussions. Comments from counsel on the Swiss framework indicates there are no significant advantages to such a model - both Swiss and California law require members of corporations / non-profits to be legal persons (and so individuals could be members), and provide ability for members to exert broad oversight. Sidley: The problem posed by the lack of legal recognition of the SOs and ACS is not unique to California law. Swiss law has the same requirement that members in a corporation/nonprofit association be legal persons. Legal personhood is required under both California and Swiss law to participate as a member, and therefore in either jurisdiction in order for the SOs and ACs to participate as members of ICANN they would need to be formed into legally recognized entities (such as an unincorporated association). Both jurisdictions provide the ability for members to exert broad oversight over the corporation/association. .
224	Jan Scholte (JS) comment 1	- Presumably 'SO/AC Membership Model' would not be comprehensible to, or resonate with, wider audiences. Something like ´Multistakeholder Assembly/Chamber/Council', which would name the multistakeholder principle that NTIA has required and ICANN embraces? - The proposal could address more directly the issue of maximizing correlation between 'the ICANN community' and the (continually evolving) wider world of global Internet stakeholders. Indeed, at para 45 there is a (somewhat complacent?) equation of 'the community' with 'the people'. This correspondence is not automatic and requires proactive cultivation. The proposal is still thin on concrete measures in this regard. How can one ensure that the multistakeholder mechanism will adequately encompass all affected circles? Would any adjustments in the AC and SO constructions be advisable at this juncture to obtain a better congruence? The current draft persuasively argues for 'participation reflecting the functional, geographic, and cultural diversity of the Internet' (para 97); and specifies that review groups 'must be as diverse as possible' (para 273). However, the proposal suggests few concrete measures for putting these principles into practice. - Could the formula which constitutes 'the Community' in the empowerment mechanism (set out at 2.6.1.2) be adjusted in future, as and when the prevailing arrangement is found inadequately to reflect the constellation of ICANN stakeholders at that future time? The world of 2045 is likely to be quite different from that of 2015 – will ICANN's constitution allow it readily to change with the times? - How will participants in the empowerment mechanism be held accountable to wider stakeholder circles, both within ICANN (i.e. the ACs and SOs) *and beyond*? Legislators in democratic nation-states are subject to election by the general population, but delegates in the ICANN 'parliament' would only be elected by ACs and SOs, whose connections to wider constituencies – and that so-called 'global public interest' – can be quite thin? How does one ensure that the community empowerment mechanism does not become a vehicle for capture of ICANN by insider activists? Is this a weak point that opponents of the transition could target?	"Concerns" **Summary / Impression:** Issue of connecting ICANN with relevant stakeholders (is SO/AC model adequate?) Is ability to change preserved? How are mechanism participants held accountable to their appointing circles? How to avoid insider capture? **Actions suggested:** **- submission suggest something like "**Multistakeholder Assembly/Chamber/Council' as a title for the community mechanism - further discussion on accountability for mechanism participants - need to clarify whether mechanism is a group of people meeting, or just "votes cast" - stress testing insider capture point? [note ST12 - does deal with capture, but not insider capture - will be expanded by ST-WP, and a new ST will be created to deal with rogue voting of SO/AC reps.] **CCWG Response:**
225	auDA	- auDA does not agree with the CCWG's assumption about the 'degree of enforceability' expectations of the global multi-stakeholder community. The CCWG appears to have focussed primarily upon the current inability of the community to enforce its rights through a formal legal process, to address circumstances where the ICANN Board ignores the input of the community. auDA observes that the CCWG has seemingly identified this need for legal enforceability as a fundamental tenet of the accountability review, despite the costs,	"Divergence / Confusion" **Summary / Impression:** Sees membership model as incompatible with ICANN multistakeholder approach. Sees a drive for enforceability as driving the choice of model. Does not agree that legal enforceability of powers is needed.

		complexities and instabilities associated with delivering this goal. auDA disagrees with the CCWG that the benefits of legal enforceability outweigh these negative side effects. - auDA believes that the multi-stakeholder model (that ICANN is a core part of) should be allowed to perform the functions it was established for and operate with collaboration, negotiation and consensus-building. Mechanisms for escalation and arbitration should underpin the future of this model. auDA believes that, in the extremely unlikely event that the community would to move sue ICANN, the entire system of multi-stakeholderism and the very structure of ICANN would be irreparably and irreversibly broken, rendering the ability to initiate legal action and the prospect of the community "winning" its case a moot point. - In addition to our general cost vs benefit concerns about the value of enforcing accountability upon ICANN through legal means, auDA holds specific concerns about the implications this solution will have on sections of the ICANN community. In order to deliver legal enforceability, ICANN would either need to be radically remodelled into a membership-based organisation or SOs and ACs would need to appoint formal designators as holders of the community's powers over ICANN. In either case, the SOs and ACs would need to become legal entities in their own right. - Some SOs and ACs would, due to their structures, struggle to become an "unincorporated association", as would be required to ensure legal status. As such, "shadow entities" would be required to assume this role and act upon the instructions of their responsible SO or AC. This adds a new, untested level of complexity to ICANN structures. The shadow entities would require mechanisms to ensure their ongoing funding and support and would likely require contracts between them, ICANN and each other, resulting in very significant and complex changes. Further, a great number of accountability and operational mechanisms would need to be built in to ensure these shadow entities always adhered to their "parent" community's instructions. Communities would also need to enshrine systems for voting and selecting people to participate in their shadow entity. It is unclear whether all SOs and ACs could, given their structures, develop such voting mechanisms. In all these ways, an additional operational layer adds the need for a great number of new governance mechanisms. Additionally, bodies such as the ccNSO Council would need to appoint designees to participate in the shadow entity. This may not be appropriate or feasible for a number of ccTLD managers whose domestic arrangements prevent them from assuming a role that involves jurisdiction in the United States. - The CCWG states that:". . .community participants would have the choice of opting in and participating in this new accountability system or to simply keep on doing what they do today in an ICANN that is more accountable than it is today". auDA disagrees with this statement. The CCWG is proposing a model that is purporting to empower the community, but is actually disempowering some stakeholders and decreasing their ability to effectively and directly affect the operations of ICANN. - A further negative effect of adopting a legal / membership structure is the ability for the unincorporated association or its members to be sued themselves. For example, Vox Populi Registry, which operates ".sucks" has recently threatened legal action22 against ICANN and "its constituent bodies" for defamation and other alleged breaches of US law. While ICANN can currently be held to account in US courts, ICANN's constituent bodies (which are not legal entities) cannot. Should the proposal of the CCWG proceed, it would be possible for aggrieved parties to initiate action directly against SOs and ACs (or	Sees practical or political difficulties in SOs/ACs becoming legal persons to enforce member or designator powers. Concerned re keeping legal persons accountable to the SOs/ACs they represent in membership model. Concerned re legal risk for SOs/ACs through making them legal persons or creating UAs as legal envelopes for community powers In overall comments, asks the CCWG to restart the implementation thinking. Confusion re non-necessity for ICANN participants to “join” UAs to participate in powers **Actions suggested:** Clarification of no need to join a UA under any scenario to fully exercise rights (same concern came thru in CENTR draft BoD statement) Further CCWG discussion on enforceability point, as a fundamental decision to be made Does further work need to be done on legal risk arising or is this adequately covered in the legal material prepared? **CCWG Response:**

		their shadow entities). auDA believes this is a significant and unacceptable risk.	
226	DBA	- DBA emphasizes empowering the community with regard to i.e., spilling the Board, re- viewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws. - The new structure (community mechanism) would be composed of ICANN's SO's and AC's as either members or designators with voting power. With regard to the role of governments, we believe that the Governmental Advisory Committee (GAC) should continue to be an advisory body. - Governments have a legitimate responsibility with regard to public policy concerns, which should be duly taken into account. As such it is important that governments are given appropriate weight in the proposed multi- stakeholder reviews, including the ATRT Reviews. Moreover, as the organization will change, new ways for GAC engagement should be explored. - It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safeguards against capture from any specific stakeholder group in any way, including in ICANN's policy development processes and decision making functions.	"Agreement" **Summary / Impression:** Generally supports the powers and the mechanisms Believes GAC should remain advisory Need govt input on pub pol matters and into e.g. ATRT reviews Need to avoid capture from any particular stakeholder group **Actions suggested:** Further conversations with GAC and test against GAC feedback **CCWG Response:**
227	WC comment 1	- The question of who will guard the guardians has arisen in the CCWG-Accountability's discussion space – put forward most clearly by Jan Aart Scholte (see above comment #). - Michael Goodhart has addressed the issue in this way: *In thinking about how to translate models and modalities of democratic accountability to the transnational context, scholars have naturally focused on the question of who is entitled to hold power-wielders to account. That is, they have emphasized the process of democratic accountability. This approach has not been terribly fruitful, because in world politics, the logic of democratic accountability breaks down. The familiar democratic mechanisms don't and can't work because their legitimacy turns out to have less to do with the mechanisms themselves than with certain distinctive features of the Westphalian state: First, the symmetry and congruence between citizens and rulers and between the laws and policies rulers make and their constituents; second, the peculiar status of the people, whose standing as a source of democratic legitimacy is a function of its taken-for-grantedness. Identifying democratic standards of accountability independently from the mechanisms with which they are commonly associated, advances the debate on accountable international relations.* In other words, Goodhart argues that in global governance at present the solution to the issue of representation is to identify democratic standards and values and use those as the template against which to measure an international organisation's accountability. - Frank Vibert argues that we need to recognise that we are living in an era which has seen the rise of unelected bodies or `non-majoritarian institutions' at national and global level. He has identified a number of features of such unelected bodies: 1 Most operate in technically sophisticated areas; 2 Almost all rely on sources outside the government for information and knowledge; 3 With this specialised information and knowledge they form their own communities. As such, non-majoritarian institutions like ICANN are epistemic communities which are bound by a set of values, knowledge and standards rather than elected representatives of the billions of Internet users or netizens. At this stage of human development it is simply not possible for ICANN to hold global elections as it tried to do in 2000. That may be possible as technology changes in the future. Nor is there a fully representative system of world government at this point in history. What ICANN does have in its system of governance is a strong set of	"Agreement / concerns" or generally supportive, with suggestions: **Summary / Impression:** Can't have endless watchers watching the watchers - linear accountability chains have no logical end point Mutual accountability must be involved as well as principal/agent accountability Cautions that avoiding insider problem is very important Supports Public Accountability Forum suggestion made elsewhere **Actions suggested:** Consider a Public Accountability Forum or Mutual Accountability RoundTable of all SOs/ACs and Board and CE, alongside the principal/agent style of membership model **CCWG Response:**

		stakeholders from governments, business, civil society and the technical community. If the current proposal of the CCWG-Accountability is substantially accepted, this form of multi-stakeholder governance will constitute the ICANN community formally as one that has not simply a supportive or advisory role but one that has powers to hold the Board to account against a set of values and standards. This lays new ground in global governance. - As Richard Mulgan has pointed out, the danger of posing the question of who guards the guardians in a non-majoritarian representative context is that it leads to the problem of infinite regress: *If the only way of making one body accountable for how it holds others accountable is to establish a further agent of accountability to watch how this body holds others accountable, then this further agent itself will need to be held accountable by someone else and so on ad infinitum. The problem of how to guard existing guardians thus leads to a search for further guardians to guard existing guardians, a search that must be ultimately fruitless in the absence of a final guardian who does not need guarding*. Mulgan's solution to this problem is to propose a form of reciprocated, mutual accountability: *In such a structure, two or more parties are accountable to each other, rather than each being accountable to a different party, as in a linear chain of accountability. The legislature and the judiciary as well as holding the executive to account, are also accountable to each other. Courts can hold legislatures accountable for adherence to the law, including the basic rules of the constitution, while legislatures can hold the judiciary accountable for reasonable interpretation of existing law*. - The question this raises is whether there is a space for mutual accountability within ICANN's systems of accountability and governance that can go some way to addressing the question of who guards the guardians. The question that Jan Aart Scholte raises - `How does one ensure that the community empowerment mechanism does not become a vehicle for capture of ICANN by insider activists?' needs to be answered. Perhaps in addition to the community powers and the suggestion of a Public Accountability Forum, consideration could be given to establishing a 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 and possibly a Public Accountability Forum 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 once a year at the ICANN meeting that constitutes the annual general meeting. The form would be a roundtable of the Board, CEO and all supporting organisations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year at the end of each AGM who would be responsible for the next Mutual Accountability Roundtable. There could be a round of each structure giving an account of what worked and didn't work in the year under review, following 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. It could be argued that this form of mutual accountability would contradict and undermine the `linear chain of accountability' established in the new community powers and cause confusion. The answer to this is that ICANN needs a combination of accountabilities to manage its complexity as an organisation. In the IANA transition, it is critically important for ICANN to have a strong principal-agent	

		relationship at the centre of its accountability system to replace that of the NTIA. However, that system is vulnerable to charges that the community assuming the role of accountability holder or forum is itself not representatively accountable to the global public of Internet users. To address this requires a way of introducing a system of mutual accountability as well as a recognition that ICANN is accountable as a whole ecosystem to a set of democratic standards and values captured in its Bylaws.	
228	WC comment 2	The second point that I don't quite follow in the discussion is where some people are arguing for unincorporated associations as a form of membership which seems to be the overall position of the group. But there's also an argument that individual chairs of SOs and ACs could assume that membership. I was just wondering if there's any clarity on that issue.	**Action suggested:** Need to resolve UA/whole SO/AC versus individuals exercising membership.
229	JS comment 2	- One is to maximize the correlation between the ICANN community as represented in the community empowerment mechanism and the evolving wider world of global Internet stakeholders. Already one sees that the functional, regional and social distribution of participation in the IANA transition deliberations does not always correspond to the map of current Internet stakeholders. To be concrete, suppliers are much more present than users, the North Atlantic and Anglophones are much more present than their share of actual and prospective Internet engagement, and there is disproportionately low participation of young persons and women. The CCWG draft proposal acknowledges the issue of 'diversity', but no concrete steps are advanced to address the situation. In particular what, if anything, is going to be done - immediately and/or in the longer term - regarding the composition and workings of the community empowerment mechanism? Otherwise the purported 'empowerment' mechanism might in practice actually marginalize some important stakeholders. For example, would one do nothing if the SOs and ACs delivered a 'community empowerment mechanism' composed entirely of middle-aged white Anglophone businessmen from urban Euro-America-Australia? - A second key point is the accountability of those who hold ICANN to account, particularly through the new community empowerment mechanism. This can be a major challenge for private global governance institutions, as the current scandal around FIFA strikingly illustrates. How does one ensure that appointments to the 'community empowerment mechanism' do not become the object of cosy insider deals, where a small group of well-connected veterans control the show and become divorced from the wider world of constituents to whom they are meant to answer? Where membership of the community empowerment mechanism becomes a stepping-stone to membership of the board? One could imagine steps like a term limit, a prohibition on subsequent board membership, and intensified efforts by ICANN to attract new blood. The CCWG report could at a very minimum explicitly identify the issue of community accountability. Otherwise a skeptic can worry that the activist community has a blind spot and/or complacency on its own accountabilities.	"Concerns" or suggestions. **Summary / Impression:** Call for diversity which is mentioned but not actioned in CCWG draft - as part of ensuring global MS community is holding icann to account, not insiders. Suggests ways to help prevent insider capture (term limits, no mechanism / board crossovers, efforts to attract new blood). **Actions suggested:** Further CCWG discussion on these points **CCWG Response:**
230	NM	I share Jan Aart Scholte's concerns about the accountability of the groups and how they're selected. If we are not more specific, we can find ourselves in an infinite regression of groups that oversee the groups that oversee the groups that oversee the groups. It is important that we be more specific that in order to participate, the groups have to be able to demonstrate that their own mechanisms for internal governance and for keeping their membership fresh and independent are sufficient. If we do not set minimum requirements for what qualifies as a "community" with oversight authority, this will not have any meaning.	"Concerns" **Summary / Impression:** Accountability of the groups selecting mechanism participants - put obligations on these to be open and accountable. **Actions suggested:** WS2 review of SO/AC accountability? **CCWG Response:**

231	CRG	B. YES, but in my view at this stage of the draft that it would also make the internal difference between SO/AC delegates to the Board and NomCom delegates within the BOARD more obvious C. If the voting Members are not going to meet in a separate council, and delegates to the Board will have to follow the instructions of the community mechanism, leaving us factually with a two-tier Board, new operating principles may be necessary at the highest level (By laws). In my view and in the stated interest of minimum changes, WS1 should re-consider an earlier suggestion of the Northern European two tier Board.	"Agreement" and Suggestion **Summary / Impression:** Generally favourable. If no actual body of people in mechanism, reconsider the North European two-tier board approach. **Actions suggested:** None - two-tier board divergent from central approach. **CCWG Response:**
232	AFRALO	- They do not see the unincorporated associations as a good means for SOs and ACs to exercise the powers included in the report because the practical application of the UA setup seem to be problematic and complicated. One of the problems is the fact that some of the community stakeholders may be unable and/or unwilling to become a UA, which means that they will not contribute to the community decision making process while exercising the proposed community powers. Also creating the UA may expose the SO/AC to legal issue as they may be sued within the California jurisdiction, which may harm the community members. - Any other form of legal entity to represent the SOs and ACs wouldn't be acceptable if it leads to suing those entities in courts. - All the accountability mechanisms should avoid leading to courts as much as possible. In fact, the AFRALO members do not accept that ICANN affairs be managed by courts in whatever the jurisdiction is. - The community group that will act on behalf of the respective community stakeholders to exercise the powers mentioned in the report should be as inclusive as possible. AFRALO members prefer equal footing for all SOs and ACs, but can live with the composition proposed in the report.	"Concerns" / "Confusion" / "Divergence" **Summary / Impression:** Does not accept UAs for reason of complexity / practical grounds and risk of legal risk arising. Same concern with other legal entities. Does not accept the risk that ICANN affairs be managed by courts. Equal footing for all SOs/ACs suggested, but can accept current proposal. **Actions suggested:** Clarity and group exploration of nature and role of UAs remains necessary. **CCWG Response:**
233	Govt-AR	Governments have a relevant role at the national level; this must be considered in any new structure. Governments must have a role in multistakeholder reviews, with equal participation among other stakeholders.	"Agreement" **Summary / Impression:** CCWG proposal does provide these roles for government. **Actions suggested:** **CCWG Response:**
234	Govt-IN	- Community empowerment is a quintessential part of ICANN Accountability, and it is appreciated that the CCWG Accountability's current proposal has identified community empowerment as an essential building block. - There must be robust oversight mechanisms, under which ICANN should be accountable to the global multistakeholder community, with adequate representation of geographical and linguistic diversity. - ICANN's accountability to various stakeholders may be calibrated in the context of the different roles played by stakeholders on various issues. In particular, a higher level of accountability towards Governments is required in areas where Governments have primary responsibility, such as security and similar public policy concerns. - In addition, ICANN must make efforts to broaden participation in the Government Advisory Committee (GAC), to take into account the views and concerns of Governments currently not having representatives on the GAC.	"Agreement" "Concerns" **Summary / Impression:** Accountability through community empowerment supported Geographic and linguistic diversity in accountability mechanisms is important Greater accountability to governments for areas of government responsibility e.g. security, public policy matters. **Actions suggested:** WS2 to investigate GAC participation (or ask GAC to investigate the same)? **CCWG Response:**

235	DCA-T	- The recommendation that ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) would each form unincorporated associations, and through these associations would exercise the rights they would gain as a "Member" of ICANN. - It is important to formulate the membership criterions of the SO's and AC's so that there is accountability within them and this can translate into a better ICANN.	"Agreement" **Summary / Impression:** Need to ensure the accountability of the SOs and ACs themselves in the membership model. **Actions suggested:** **CCWG Response:**
236	Afnic	B - Provided that the legal advice states that the establishment of an "empowered community" assembly, being the assembly of members, will not change the liability and risks for all ICANN participants, this proposal only brings added value to the current situation (ref : 180. 5) - Afnic welcomes this proposal that applies the accountability principles to the multistakeholder nature of ICANN. As the current organization of SOs and ACs is supposed to represent all the stakeholders, it's essential that these stakeholders should be fully empowered to undertake the checks, balance, review and redress process that come with accountability. - As for the reference model, Afnic is of the opinion that 5 seats per SOs/ACs (except for RSSAC and SSAC) is a good number. Afnic notes the rationale for it, which is to allow geographical diversity, but advise that this geographical diversity should be included in the bylaws, along with the provisions for the empowered community. It should therefore be stated that each SOs/ACs should designate no more than two representatives from the same region. - Finally, Afnic feels that the designation rules for each SOs/ACs, if they should be set by the constituency themselves, should be aligned between constituencies, and fully transparent. Furthermore, the designation mechanism itself should be, either organized by a third party to the constituency (for instance, an ICANN election office) or reviewed by external observers.	"Agreement" **Summary / Impression:** Clarity that no new legal risks created for participants important Support empowering the SO/AC structure through membership approach Importance of diversity in community mechanism Consistent and transparent rules across SOs and ACs in designation role [Check: does this refer to appointment of directors or something else?] Designation organised external to the SO/AC (e.g. an ICANN election office) **Actions suggested:** Mandate geographic diversity in the community mechanism. **CCWG Response:**
237	Govt-DE	- The envisaged membership structure (or similar constructs) would enable the SO/ACs to directly influence ICANN's work and exert greater oversight, ensuring adequate regard to all community interests. Germany would like to suggest that any choice of form of organisation for ICANN as a public benefit corporation should not preclude stakeholder groups from deciding if and how they want to partake as members. - ICANN's new organisational structure needs to meet the requirements of governments in a multistakeholder environment. In our view governments have an important role to play, particularly on global public policy issues. To this end, Germany sees no need to change the status of the GAC as an advisory body. It is necessary that governments continue to participate in decision-making processes via the multistakeholder model. To ensure ICANN's strong commitment to the public interest GAC advice will need to be duly taken into account in any future form of organisation. We are of the opinion that matters of public interest can be addressed best in this manner. Any legal or political assessment of the specifics of GAC's future engagement with and within an empowered ICANN community should not be precluded. With regard to the multistakeholder approach in general it should be ensured that no singular interest can outweigh those of the community as a whole or the public in general.	"Agreement" / Suggestions **Summary / Impression:** General support of the model with choice of participation by stakeholders as members important to preserve/include Governments should remain advisory through GAC **Actions suggested:** GAC discussion, as mentioned in response to other comments **CCWG Response:**
238	DP-DK	- We have alternative proposals that can distribute the power to enforce the Bylaws more broadly to representatives of the ICANN community.	"Agreement" / suggestion **Summary / Impression:**

		- One of the most serious accountability anomalies in ICANN's current configuration is that, as a California non-profit corporation without members, any action that it takes in violation of its Bylaws can *only* be remedied in court by means of a lawsuit initiated by the California Attorney General; no other person has legal standing to bring such an action. This is, in our view, a crucial accountability problem. Enforcement of the ICANN Bylaws – whatever they may ultimately say, with whatever important limitations and representations they may contain as a result of this accountability process – should not be in the hands of a single person, whoever that person may be. To put it plainly, the entire accountability Proposal rests on the notion that the ICANN Bylaws bind the corporation in meaningful ways, and that the Bylaws – including the important new provisions to be added as part of this accountability process itself – will be adhered to. Seeing to it that that occurs is a critical part – perhaps *the* critical part – of any effective accountability scheme. The Bylaws are not self-executing; distributing the power to legally compel compliance with their terms to a broader category of community representatives, while it will not guarantee that the corporation's future actions are all within the limits set forth in the Bylaws, is a most important part of the overall enforcement arsenal. Like the US government oversight it is designed, in part, to replace, it is a power that may never need to be overtly exercised, but its existence will help to give weight and substance to the Bylaws and to shore them up as a means of insuring proper and appropriate corporate behavior. We therefore strongly support the creation of a membership structure for ICANN as a means of distributing that enforcement power more broadly to representatives of the ICANN community. - The CCWG Draft Proposal suggests that the membership body would consist of 29 members, chosen in a weighted manner as follows: each of the three Supporting Organizations (the Address Supporting Organization, the Country Code Supporting Organization, and the Generic Names Supporting Organization) would have the right to appoint *five* members; two of the four Advisory Committees (the At Large Advisory Committee and the Government Advisory Committee) would also have the right to appoint *five* members; and the remaining two Advisory Committees (the Root Server System AC and the Security and Stability AC) each would appoint *two* members. We understand the rationale for weighting the various groups in this manner, and for the discrepancy in treatment accorded to the different Advisory Committees. The goal was to give ". . . the bulk of influence on an equal basis between the three SOs with which ICANN deals with policy development and the two ACs that are structurally designed to represent stakeholders (Governments and Internet users, respectively) within ICANN . . . while giving the other ACs a more limited role because they are primarily concerned with specific technical and operational matters and have not been constituted as "representative" of any particular stakeholder community. We prefer alternative A – in which each of the SOs receives four votes and each AC receives 2 votes – because it is both simpler and, as the Draft notes, "more closely aligned with ICANN's existing structure," giving "the bulk of influence to the SOs, while guaranteeing a say for the ACs on an equal basis among them." A final decision on these alternative voting models should, however, await final decision on the powers that are granted to members in the Bylaws, and the manner in which those powers are to be exercised. In particular, given the requirement (see below) that the powers to be exercised by the members will in all cases require supermajorities, the two alternatives will have different consequences for coalition-formation (depending on what those supermajority provisions entail).	Current structure only allows California AG to deal with breaches of bylaws Accountability requires the bylaws to be able to be enforced by a broad category of community representatives - and on this basis strongly support the membership model Prefer Alternative A (4 votes for SOs, 2 votes for ACs) for votes in the community mechanism, but don't finalise until powers finalised (esp their supermajority thresholds) Do not support supermajority to veto bylaws changes as this in effect means that a majority of the community could be against but changes would still be able to happen **Actions suggested:** Consider a simple majority threshold to veto ordinary bylaws changes **CCWG Response:**

		- The CCWG Draft Proposal sets forth five specific powers to be exercised by the corporation's members. While we support this general plan, we do not fully understand the rationale for requiring a supermajority of members to veto any changes in the ICANN Bylaws (other than Fundamental Bylaws). It would allow the Board to amend the (ordinary) Bylaws not merely in the absence of any consensus among the members that it do so, but even if a majority of the members disapproved of the amendment, and we fail to see a good reason why that should be permitted.	
239	IA	- The SO/AC membership model in the Draft Proposal is still in its preliminary stages. - IA anticipates that this topic will remain subject to future rounds of comments and, reserves the right to submit further comments on this proposal when more details are provided. - With that understanding, Internet Association believes that this model is sound. - The membership model, coupled with having the SOs/ACs form unincorporated associations, gives the community the most power and enables SOs/ACs to enforce IRP awards against ICANN. It is, thus, the strongest of the proposed models for ICANN accountability. We also believe that the membership model is valid even if some SOs/ACs fail to form unincorporated associations. The Internet Association believes the Designator Model could be a sufficient alternative if the SO/AC Membership model is not accepted by the community.	"Agreement" **Summary / Impression:** Support membership model, with caveat that it is still under development Model provides most power to the community Allows IRP findings to be enforced **Actions suggested:** **CCWG Response:** Thank you for your comment - the CCWG will consider this feedback as it develops the next version of the proposal.
240	eco	Proposed powers are an essential part of a proposal to replace the historic relationship between ICANN/IANA and the USG. - Based on the legal advice received, the membership model appears to be the best proposition to operationalize the requirements established by the CCWG. eco fully supports the working method used by the CCWG based on requirements. - The most appropriate implementation model to translate established requirements into working structures and processes should be used. This includes that the established powers and mechanisms are sufficiently robust and cannot be ignored or easily be overturned. As a matter of last resort, enforcement of community powers must be possible. Question 7. The CCWG has suggested a relative influence of the various groups based on an analysis of their composition and based on assumptions that a certain number of votes could facilitate geographic diversity. These suggestions are supported. However, the relative powers might need to be revisited based on feedback received from the groups in question. As long as the general idea of the suggested model is preserved, there should be flexibility in determining the final relative influence.	"Agreement" **Summary / Impression:** Support model and the way it arose from specifying requirements Enforcement must be possible Relative powers in mechanism should be tested based on feedback **Actions suggested:** **CCWG Response:** Thank you for your comment - the CCWG will consider this feedback as it develops the next version of the proposal.
241	Govt-FR	- Govt-FR await further details on how the principle of cultural diversity and a strict conflict of interest policy will be implemented in order to mitigate the risk of capture of the new institutional framework of ICANN by individuals or groups of individuals. - The proposed internal checks and balances mechanisms insufficiently address the risk of capture by individuals or groups of individuals of the new empowered entities within ICANN: "SO/AC Membership Model" and IRP, in addition to the Board. In order to mitigate the risk of capture of the new "SO/AC Membership Model", or even that of the Board, by a group of individuals, we would therefore expect all stakeholders within SOs and ACs to respect the principle of cultural diversity as identified in the NETmundial "Roadmap for the future evolution of internet governance" "There should be meaningful participation by all interested parties in Internet governance	"Concerns" "Confusion" **Summary / Impression:** Cultural diversity, strict conflicts of interest policy need to be assured Risk of capture insufficiently guarded against. To help with both concerns, refers to NetMundial statement on cultural diversity Concern re subjecting GAC as an UA to California law - need to have treaty to be subject to law, and proposed model needs to allow states to participate on an equal basis

		discussions and decision-making, with attention to geographic, stakeholder and gender balance in order to avoid asymmetries" - The new institutional framework of ICANN also remains exposed to the risk of capture by individuals who could take advantage of a weak conflict of interest policy. - It is necessary to have an ex-ante thorough conflict of interest policy providing some oversight over the selection of individual Board members, and leading to the exclusion of one or several of them. - Govt-FR call for the strictest conflict of interest policy to be implemented at Board, IRP and "SO/AC Membership Model" levels. - We are concerned that governments are expected to willingly consent to subject the GAC to California Law. In light of the above, we expect that the "SO/AC Membership Model" will need a legal vehicle for initial implementation. We understand, that flexible as it may seem, California Law offers only but a few options for implementation of the "SO/AC Membership Model". Moreover, it appears that all of them require stakeholders to give SOs and ACs legal status under California Law (Draft prop., section 5.1.1, §180, item 1). - Legal recognition of the GAC is an issue for France because States are subjects of international law only. This is why France does not recognize the GAC as a legal entity today. Like most States, only on the basis of an international treaty has France legally recognized – under international law – organisations that it has participated in. - Requiring France, or any other State, to legally recognize – under foreign law and in the absence of an international treaty – an intergovernmental body that it participates in like the GAC, is in fact unprecedented. Those are very serious concerns that currently under investigation in by our legal Department. - Has the CCWG-accountability considered that requiring legal recognition of the GAC by individual States could lead to a situation where one single State might, willingly or unwillingly, prevent the GAC to be empowered in the "SO/AC Membership Model"? Or worse: where some States might not even be able to be GAC members (anymore or in the future) if the GAC was empowered in the "SO/AC Membership Model"? Not only might the proposed implementation of the "SO/AC Membership Model" under US Law give lower chances to empowerment of the GAC, it also might leave governments lower chances to respect their international agreements through an empowered GAC. - Are we correct in understanding that the "SO/AC Membership Model" would nonetheless give members of other SOs and ACs the opportunity to vote and defeat an empowered GAC, in spite of governments' "rights and responsibilities for international Internet-related public policy issues" (as stated in Paragraph 35 of the Tunis Agenda and recalled in NETmundial Multi-stakeholder Statement, 2.I.1)? - Only governments, not ICANN stakeholders, can tell what public policy advice is and how to provide such advice. With regard to future Bylaws changes, are we correct in considering that the proposed "SO/AC Membership Model" will always expose the GAC to attempts by members of other SOs and ACs to change Bylaws art. XI.2 in order to not even duly take into account GAC advice in the future? Has the CCWG- accountability also considered that the new Core Value 11 might in fact create paradoxical situations by recognising that GAC advice is always public policy advice which the Board or the empowered community could nonetheless disregard as non- public policy advice?	Concern empowered community could override GAC advice on public policy issues Concern empowered community could change bylaws to end requirement for ICANN to duly take GAC advice into account **Actions suggested:** Strict and enforceable CoI policy at Board, IRP and Mechanism levels **CCWG Response:** The CCWG will consider the suggestion made regarding the Conflicts of Interest policy, and will attempt to clarify matters and address the other concerns raised as it develops the next version of the proposal.

242	RySG	- Clarify how bodies that do not elect directors will participate in the Community Empowerment Mechanisms The proposal however is silent on procedures for the Advisory Committees, namely the GAC, that do not elect directors. We ask that that further details be provided about whether these groups will also be expected to (or allowed to) for an unincorporated association and, if not, how they will participate in the revised community empowerment mechanisms. - Review the role and structure of the NomCom under the revised community structure. The proposal seems to imply that the NomCom would be included as a member in the ICANN membership structure. We request that further details be provided about whether the NomCom would participate in the Community Empowerment mechanisms as a standalone body. We generally prefer that these mechanisms be deployed by a balance of the other community "members," particularly given imbalances in the existing NomCom composition. - Include procedures for handling Supporting Organization Advice that is supported by Consensus We believe that the Bylaw Clarifications regarding Advisory Committee Advice that is supported by consensus should apply equally to that from ICANN Supporting Organizations, which provide advice in addition to developing Consensus Policy. We believe it is important for the community to be able to force the Board's hand if they are unresponsive to advice from SOs as well as ACs (387). - RySG generally supports the proposed membership structure, without which the community powers might be unenforceable - RySG generally supports the proposed allocation of member votes outlined on Page 44 (para 191) of the interim proposal - Reference Mechanism seems to be a reasonable approach to vote distribution, but there may have to be distinctions depending on the category of issue. It should distribute votes across the five organizations that are involved in policy development and it also provides the possibility of providing representation across the five ICANN regions or to balance representation across internal groups, such as the Stakeholder Groups in the case of the GNSO	"Agreement" / clarifications **Summary / Impression:** Clarify how community mechanism works for SOs/ACs that do not select directors [Drafter's note: proposal does deal with this, as GAC is empowered in the proposal, and other ICANN groups are not] Query as to whether NomCom will participate in the community mechanism [Drafter's note: it will not, but dealing with its ability to remove directors.] - preference from RySG is that it does not participate Generally support membership model which provides enforceable powers Generally support the influence suggested in the reference mechanism **Actions suggested:** Procedures for handling SO consensus advice should be incorporated in the bylaws **CCWG Response:**
243	CCG	- As for the voting structure for the Empowered Community, the proposal states that the same has not been decided and will up for public comment after the second draft proposal. Does the voting structure have any bearing on the viability of this proposal? We know that 5 of the SOs and ACs in EC (Empowered Community) will have 5 votes each, however we do not know if these 5 votes reflect consensus within the communities. - SOs will have 5 votes to ensure that diversity of views (geographical diversity) can be implemented. How will the same be ensured, what voting procedure will be followed by these SOs, can ICANN Bylaws provide for voting/consensus procedure within the SOs?	"Confusion" / queries **Summary / Impression:** Query as to how SO/ACs cast votes - will this need to be by consensus? Query as to whether no decisions about these matters put the overall proposal at risk. **Actions suggested:** **CCWG Response:**
244	JH	Even if the IRP determined that ICANN is wrong, how to deal with the wrong decision? The existing proposal did not clarify this part. There are two options to solve this problem: First option is to develop a set of punishment measures and be written into Bylaws by the communities. Second, do not develop a set of punishment measures. ICANN Bylaws only includes the ground of the two extreme cases. For specific cases, communities propose specific solutions and then vote. [Comment to IRP sections?]	**Note this comment does not appear to be dealing with the Community Mechanism matters, but rather IRP?** **Remark Roelof: that's correct, but IRP is all about accountability** **Summary / Impression:** **Actions suggested:**

			CCWG Response:
245	BC	- BC supports the proposed allocation of votes among SO/ACs in the ICANN community. - With 5 distinct votes, the GNSO could adequately reflect the diversity of interests between registries, registrars, commercial stakeholders, and non-commercial stakeholders.	"Agreement" **Summary / Impression:** General support: powers, members mechanism, allocation of voting **Actions suggested:** **CCWG Response:**
246	.UK	The discussion on "membership", "designator" and "unincorporated associations" under Californian law is not something we feel comfortable offering an opinion on. The argument is complex and it is not easy to see the real benefits of the different models through the detail provided. We would, however, question the need to build complex legal structures within an organisation to allow the community to hold the Board it appointed to account. This seems to underline a lack of trust that needs to be addressed urgently: building new structures without developing trust in the organisation is not going to address the underlying issues. There does need to be some thought about how often processes can be triggered. The mechanisms will be seriously disruptive to the organisation if and when they are used and we would be concerned if there were to be a continued process that distracted the organisation – stakeholders and the Board – from oversight of the organisation or from developing a clear vision and strategy for the challenges and opportunities that we will confront. We would like to see there being clear cooling-off periods – in particular aimed at rebuilding trust in the organisation – before allowing another process to be launched. There is a delicate balance between thresholds introduced to prevent frivolous use of serious – and potentially damaging – actions on the one hand and making mechanisms useless because it is nearly impossible to trigger those mechanisms. We recognise that the CCWG has attempted to reconcile this. To some extent, the balance is stark because there is no clear escalation process leading to the "nuclear" options of sacking individual Board members or the entire Board, or to vetoing the budget. We recognise that it should not be possible easily to put aside mechanisms that are in place to assure accountability. There is a downside to this: while the processes might be relevant and appropriate now, this might not be the case in the future. It might be possible for a small minority to prevent necessary institutional change in the future, thresholds locking ICANN into process that are no longer appropriate. This is, of course, a difficult issue and we are aware that the CCWG has given it some thought.	"Agreement" "Concerns" [Drafter's note: Re-assess "tag" after reading whole of .UK comment] **Summary / Impression:** Not comfortable giving opinion on mechanism, question the need to build complex legal structures Concern that model (membership) is driven by an underpinning lack of trust that needs to be addressed urgently Frequency of use of community powers needs to be structured to avoid instability/distractions Delicate balancing in thresholds Need to ensure a small minority cannot prevent necessary future structural changes **Actions suggested:** Incorporating "cooling off" periods (before?) community can use powers or escalate matters to other powers **CCWG Response:**
247	USCIB	Overall, USCIB supports the proposal that Supporting Organizations (SO) and Advisory Committees (AC) establish themselves as legal entities by forming unincorporated associations. We agree that this approach would provide an effective means for SOs/ACs to exercise the powers and rights of Members of a non-profit organization incorporated in California on a number of critical governance issues. We further agree with the rationale used in assigning voting weights for the SOs and ACs as prescribed by the Reference Mechanism, in which the ASO, ccNSO, GNSO, At Large, and GAC communities each receive 5 votes, with the SSAC and RSSAC each receiving 2 votes.	"Agreement" **Summary / Impression:** Agreement with approach: power through membership mechanism Support voting rights as proposed Looks forward to details. **Actions suggested:**

		Para186: We note that all the implementation details, (such as how the communities will cast votes) will not be developed until the second draft, and we look forward to reviewing such details.	**CCWG Response:**
248	LINX	- LINX support the creation of new accountability powers for the community, and there needs to be some mechanism to utilise them. - It seems likely that the community powers could be more simply and transparently exercised by the SOACs directly than via the Reference Model, which seems unnecessarily complicated. - However, it appears the creation of "Membership" is necessary and unavoidable in order for the Bylaws to be binding on ICANN and enforceable, which is absolutely essential; concerns about complexity in some areas must not cloud the absolute requirement for ultimate enforceability. - We recommend that the CCWG consider granting the community powers to be exercised by SOACs directly, leaving only the power of enforcement to members (and putting in place whatever is needed to limit the powers of membership to enforcement of the Bylaws / of key bylaws). If this were done, we suggest that membership of ICANN could be offered to any person (natural or legal) who chose to apply for it. We are aware that this idea has had no traction within the CCWG so far, but it would appear to solve a difficult problem, and we are unaware of any convincing (or even reasoned) argument being made that it would cause any harm itself. - Community Powers: The proposed changes to the IRP would achieve the goal of creating a credible and enforceable mechanism to limit ICANN's activities to its intended scope, provided that the Board abides by IRP decisions. This gives rise to a requirement for two things, both of which are essential: - A mechanism by which the Board becomes legally obliged to abide by IRP decisions, as opposed to having a fiduciary duty to prefer its own opinions of what is best for ICANN over IRP rulings; and - A mechanism whereby a Board that failed to abide by IRP rulings (or other specifically enumerated community powers, such as a Board spill), for any reason, could be challenged in court and a decision enforced upon it CCWG proposes four powers for the community: (i) Reconsider/Reject Budget or Strategic/Operating Plans; (ii) Reconsider/Reject Changes to ICANN Bylaws; (iii) Approve Changes to Fundamental Bylaws; (iv) Remove Individual Directors; (v) Recall Entire ICANN Board.	"Agreement" / "Divergence" **Summary / Impression:** Supports creation of new accountability powers to be exercised by the community Considers reference model likely to be unnecessarily complicated, but membership is unavoidable in order to have enforceable powers Suggest consider granting only power of enforcement to members, leaving other powers with SOACs directly Supports individual membership role to provide the "enforcement" aspect of the compliance with bylaws Enforceability a critical concern (see p6 of actual comment) IRP discussion out of scope for WP1: why is that? **Actions suggested:** **CCWG Response:**
249	ISPCP	- ISPCP believes a Membership model, allowing ICANN components (SOs/ACs) to enforce accountability through legal means, would carry a level of complexity and side effects. Some SO/ACs or constituencies would be in an extreme difficulty to become legal entities. This would carry jurisdictional and legal issues, funding issues and representativeness issues. It would not allow existing stakeholders to fully participate in the Multistakeholder process as of today. - ISPCP believes that enforcement of accountability mechanisms would be better achieved by much simpler mechanisms. - The weights given to the various parts of the community in the community mechanisms is very important question and is key to the accountability mechanisms proposed by the report. Yet, this issue is very briefly covered in the document without analysis of the rationale behind the approaches presented. The proposals do not take into account the work of the CCWG – "problem definition document". This document comprises an analysis on which stakeholders can affect ICANN or be affected by ICANN, either directly or indirectly. - The weight proposed for the GNSO do not take into account the specifics of this supporting organization. All policies related to the gTLds are made within ICANN, whereas policies related to the number	"Divergence" **Summary / Impression:** Complexity of membership model, would not allow existing stakeholders to fully participate as of today. and supports simpler mechanisms (but not specified - are they elsewhere?) Rationale for weights of influence in mechanism not established and not related to problem definition document GNSO deserves higher representation as all gTLD policy is made in GNSO - contrasts with ASO and ccNSO where most policy is made and implemented outside ICANN framework **Actions suggested:** **CCWG Response:**

		part are developed at regional level and most of it are regional policies. In a similar way policies related to the ccTLDs are only related to delegation/re-delegation at top level. - As a consequence of the above, the GNSO is a large and complex organization comprising a large diversity of players (Registrars, Registries, Business, IPC, NPOC, NCUC, ISPCP) each of them needing to be directly represented. - ISPCP suggests that 7 seats being allocated to GNSO (1 Registries, 1 registrars, 1BC, 1 IPC, 1 ISPCP, 1 NCUC, 1 NPOC) in the community mechanisms decision body described in the document.	
250	JPNIC	- We agree with the proposal to enhance community empowerment based on existing SOs/AC mechanisms, based on long tested experience, rather than basing it on a completely new mechanism. We have no objections to the composition currently suggested by the CCWG on representations from SOs and ACs. - Yes, we agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability. It is a common practice for stakeholders who appoint Board members within an non-profit organization, to have such mechanism. At the same time, we should seek for a balance of such powers, not to destabilize the system with too many challenges to move forward in key decisions needed to keep the organization running. - Regarding the proposed options, for the community empowerment in general, we would like to see its implementation to be simple, while ensuring that it gives the community the powers it needs. Too much overhead should be avoided, and preference should be given to simplicity in its adoption. - We are not sure whether it is essential for the SOs and ACs to have a legal standing while we note it is considered preferable by some members of the community. We would like to understand the reason that the legal standing is considered necessary, in balance with the possible cost implications and instability for ICANN. We would like to confirm whether there is a way to prevent abuse of this standing by the community, for stability of ICANN as an organization.	"Agreement" / "Concerns" **Summary / Impression:** Broadly supportive of the granting of powers and a mechanism to do this Concerned to avoid destabilising ICANN Simplest possible implementation Not certain of need for legal standing for SOs and ACs **Actions suggested:** **CCWG Response:**
251	IPC	- The proposed "membership model" appears to be the most straightforward means to achieve enforceability of the proposed framework and is therefore supported by the IPC. The IPC is generally supportive of using a community mechanism to give the community certain powers regarding certain Board decisions. - The IPC generally supports the use of a "membership model" to ensure accountability to and oversight by the community. The role of members in a non-profit corporation (such as ICANN) is naturally suited for this role. The IPC also notes that the accountability structure proposed by the CCWG was designed with California law in mind, which underlines the need to keep ICANN domiciled and incorporated in California. - The IPC believes that each SO and AC should be given fairly broad leeway to determine if and how it forms or otherwise provides a "legal person" to act as an ICANN member. The IPC does not find the concept of the "unincorporated association" ("UA") complex, and notes with approval that it is lightweight and easy to form and manage (indeed, the IPC notes that many of the SO/ACs strongly resemble UAs already). However, it is possible that some SO/ACs may wish to form non-profit corporations rather than UAs, or may even wish to designate a natural person as the member, serving in an official capacity. - The IPC does not believe that the creation of UAs or other legal persons will diminish ICANN's functioning as a multistakeholder	"Agreement" **Summary / Impression:** Overalll supportive, considers UA's not complex, but lightweight and easy to form Choice for SOs and ACs whether they should exercise membership rights through UAs, non profit corporations, or by appointing individuals as members Designator mechanism insufficient Larger priority for GNSO proposed or "flexibility" in voting structure - different votes based on the issue being debated. Concerns about IPC being made "non-existent" Clarify whether the mechanism is a group of people or a homogenous vote weighting **Actions suggested:** **CCWG Response:**

		organization focused on building consensus. Similarly, the IPC does not believe that a rash of litigation will ensue merely because the ICANN community now has legal vehicles to use for litigation. - The IPC agrees that the use of “designators,” on the other hand, would not be sufficient to support the accountability measures proposed by the CCWG. - There are issues in implementation that must be dealt with before the IPC can fully endorse the membership model. Advice on the influence of the various groups in the community mechanism: - The IPC has several concerns with the proposed composition and weighting of the membership as discussed in this section – 5 “votes” for each SO, At Large and GAC, and 2 “votes” for the RSSAC and SSAC. First, this bears little resemblance to the way directors are currently appointed to the board, and we assume that the CCWG is not proposing any change to the composition of the board. - This tends to diminish the influence of the GNSO, which represents the most significant portion of ICANN’s work and revenues. Consideration should be given to a more flexible weighted voting structure, to avoid the situation in which SO’s and AC’s with no real involvement in the policy development, implementation or utilization of the matter under decision could effectively wield veto power over it. - this composition is yet another ICANN structure where the IPC is essentially made non- existent. If the 5 GNSO votes are translated into 5 representatives, that leaves one representative per stakeholder group, along with one wild card. Again, the IPC is expected to homogenize its concerns with those of the ISPs and the general business community, and hope that a member of one of these groups can somehow represent all 3. However, it is far from clear whether the CCWG envisions a 29-member council of some sort, or whether there will just be 7 members, with weighted votes. Our concern regarding the latter is that it truly flattens and wipes out diverse voices, and practically speaking puts the RSSAC and SSAC on an equal footing with the other organizations, except when votes are taken. This must be clarified.	
252	Govt-BR	- Brazil supports accountability mechanisms that provide a clear separation of powers within the ICANN structure. In this regard, the 4 building blocks proposed by the CCWG-Accountability – 'Principles', 'Empowered Community', 'Board' and 'Independent Review Mechanisms' – might address, in principle, this concern. - welcomes the proposal to create a "mechanism to empower the community". The implementation of the "empowered community" concept as one of the building blocks of ICANN's accountability would contribute to increase the perception of legitimacy, on the part of all stakeholders, of the corporation s decisions. - while working out the details of the specific mechanism, it will be important to ensure the participation of all relevant stakeholders independently of their status under the current ICANN structure, as the corporation's oversight should be transitioned to the global multistakeholder community and not to a limited number of stakeholder groups. - while evaluating the proper legal status of the stakeholder representatives in the new empowerment mechanism, the CCWG-Accountability final proposal should ensure that effective decision power be granted to the community. It would defeat the purpose of accountability if decisions made by the community could be overruled by the ICANN Board or by national courts (which, again, refers to the issue regarding the corporation s existing "legal status").	“Agreement” / “Divergence” **Summary / Impression:** Generally supportive of the approach of a community empowerment mechanism but with caveats/different directions Participation broader than current limited stakeholder groups It should not be possible that decisions of community be overruled by board or by national courts (jurisdiction issues) GAC should be included, with participation for all governments, but tricky in current legal situation - and involvement to be decided by governments Diversity (geog, cultural and gender) should be critical. **Actions suggested:** **CCWG Response:**

		- With respect to the involvement of governments, Brazil considers that the GAC is a legitimate stakeholder group with specific concerns and should, therefore, be part of the proposed community empowerment mechanism. Appropriate arrangements should be adopted in order to ensure that the different groups of stakeholders could participate in such mechanism on an equal footing. However, given the corporation's present "legal status", Brazil considers that unsurmountable difficulties may prevent governments to participate, in a representative manner, in such body. The final decision as to whether government representatives shall have seats in the new mechanism should, in any case, result from the deliberations among governments themselves. - geographic, cultural and gender balance should constitute key principles in the formation of the community empowerment mechanism. Gender balance is another important element that should guide the selection of stakeholder representatives.	
253	MPAA	- strongly supports the membership model as proposed. The membership model is the most effective way to cement these accountability reforms into the DNA of ICANN and to ensure true accountability of ICANN to the global multi- stakeholder community.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
254	CDT	- a community empowerment mechanism is essential to realizing the levels of accountability and responsiveness to the community that will be required for ICANN and its multistakeholder community to thrive in the future. - We commend the CCWG and its advisors for identifying models that would allow for the community to exercise the proposed powers. We do not subscribe to the view that expansion of community powers through the bylaws without the enforcement capability of a community mechanism would be adequate. Not only would this lessen and inhibit the community's empowerment, it could imperil the IANA transition model proposed by the CWG Stewardship – the lack of enforcement would remove the checks and balances needed to ensure that ICANN heeds the community when it acts as the IANA steward, contracting party and operator. - we agree that the proposed membership model – including "legal personality" through unincorporated associations (UA) – could offer the greatest opportunity for the new community powers to be fully and most effectively realized. - supports the powers that are outlined in the CCWG proposal, sections 5.2 – 5.6.	"Agreement" **Summary / Impression:** Generally supportive of membership model Supports enforceability as essential to IANA stewardship transition **Actions suggested:** **CCWG Response:**
255	CIRA	The CCWG has identified four building blocks that would form the accountability mechanisms required to enhance ICANN's accountability. I believe this is the right approach to structure the work of the CCWG, however, I would like to highlight a few specific concerns regarding the draft proposal. - Central to the mechanisms identified by the CCWG's proposal is an empowered community. While I agree that the specific community powers identified (the ability to recall individual board members, 'spill' the entire Board of Directors, review and revoke ICANN budgets and strategic/operating plans, and amend the fundamental bylaws) are important, I would like to share a few concerns about the proposed new structure that would see the SO/ACs as ICANN members (referred to as the Reference Mechanism). - As I understand it, the Reference Mechanism involves the SO/ACs forming parallel unincorporated associations (UA), in order to have the power under California law to enforce the accountability mechanisms as identified in the CCWG proposal. Otherwise, the structure and functioning of the SO/AC's could remain unchanged.	"Agreement" "Concerns" **Summary / Impression:** Agreement with empowered community and specific community powers identified Concerns about the risk that the formation of UA's would reduce the participation of government owned ccTLD registries in the ccNSO and thus reduce openness **Actions suggested:** Examine the impact of a member-based structure on the global ccTLD community to ensure it is inclusive of all voices in the ccTLD community. Ensure that important voices of non-SO/AC aligned participants,will not be diminished should a membership-based model be adopted. accountability should not come at the expense of expertise.

		- A considerable number of ccTLD registries are operated by government bodies, and many of those are members of the ccNSO. As the ccNSO is a committee organized and recognized by the ICANN bylaws, its members are not required to enter into an agreement outside the parameters of the bylaws, thereby enabling their full participation in the ccNSO's activities. I am concerned that the creation of a formal legal association could result in some governments to pause before joining. I appreciate that it would be possible for such governmental agencies not to join the UA, but could this potentially create an organization which might be seen to be less open then the current ccNSO? I encourage the CCWG to examine the impact of a member-based structure on the global ccTLD community to ensure it is inclusive of all voices in the ccTLD community. - The executive summary of the proposal explicitly states, "No third party and no individuals would become members of ICANN." While I agree that neither third parties nor individuals should be granted 'membership' status, I do believe that ICANN has been enriched by the participation of non-SO/AC aligned participants, and I would like assurances that these important voices will not be diminished should a membership-based model be adopted. Simply put, I would not like to see accountability come at the expense of expertise. With regard to the role of governments, I agree that the GAC should continue in an advisory role. I would prefer to see a model that would ensure that GAC advice, when backed by consensus, is given due consideration, and if rejected, is done so in a justifiable, transparent and open manner. - Finally, while I appreciate the assurances that the work of the SO/ACs would continue fundamentally unchanged, I would like to better understand whether the proposed model would result in additional time commitments on behalf of members.	**CCWG Response:**
256	SR	Para 191 is reasonable as a start. We should have the ability to change later.	"Agreement" **Summary / Impression:** Para 191 refers to allocation of votes in the mechanism. **Actions suggested:** **CCWG Response:**
257	USCC	- Strongly supports the membership structure proposal because it gives the community true enforceability. Significant legal work has gone into developing this portion of the proposal and without it, we fear that community powers would be unenforceable and there would be no true accountability. The membership model is the only way to secure these critical accountability reforms and to ensure true accountability of the ICANN Corporation, Board and management to the global multistakeholder community. - Believes the Membership model provides the best opportunity to secure the enforceable community powers required to provide sufficient accountability at ICANN. We further believe that the Designator model could be a sufficient alternative if barriers arise in implementing a Membership model.	"Agreement" **Summary / Impression:** Strongly supports membership model and the enforceability it ensures Designator model might be alternative option **Actions suggested:** **CCWG Response:**
258	INTA	- generally supports the Membership model, which the report asserts is consistent with California law. - does not support the proposed weighting of "community influence". In the current SO/AC structure business interests, except that of the contracted parties, are marginalized. INTA recommends that given the prevalence of trademark issues in the domain name system, in particular, business interests and advice be provided greater Community weight.	"Agreement" "Concerns" **Summary / Impression:** Generally supports membership model and powers Does not support weighting of community influence (voting) Concern about marginalization of voice of trade mark community/IPC **Actions suggested:**

		- also unclear how each organization will determine how its votes will be exercised and how many representatives, 1 or 5 for example, will participate in full votes of the Community mechanism. INTA is concerned that depending on how voting is structured, the voice of the trademark Community, and specifically the voice of the Intellectual Property Constituency, may be marginalized or not heard at all.	**CCWG Response:**
259	.NZ	- supports a community mechanism along the lines outlined by the CCWG. We have made broad comments in support of the approach in the first part of this comment. - supports making use of the powers that can be granted to members in a non-profit public benefit corporation under California law. The powers proposed for members in the CCWG's report are powers we support and that can best, most reliably & most simply be delivered by a membership option. - supports the proposed share of influence in the community mechanism, noting that it provides a broad cross-section of the Internet community with the ability to hold ICANN to account. - We ask the CCWG to carefully consider whether it is appropriate to give a fully appointed AC (the SSAC) influence in this system, but await with interest the SSAC's own comments on this matter, and the comments of the GAC as to the workability of the model. - We prefer the Reference Mechanism, not the alternatives presented.	"Agreement" "Concerns" " **Summary / Impression:** Supports the community powers, the membership mechanism, the share of influence in the community **Actions suggested:** for the CCWG to carefully consider whether the SSAC's influence foreseen in this model is appropriate **CCWG Response:**
260	NCSG	- Within NCSG there is support for both the membership and the empowered designator models. NCSG generally recognizes that the membership model provides a viable way of being able to realize the potential of the 6 enumerated powers. - This said, there remain concerns that the membership model itself, including the unincorporated associations aspect thereof, may require considerable changes in the structures,processes and relative power of the ACs and the SOs and their constituent groups (Constituencies and Stakeholder Groups) that the CCWG may not have spent adequate time assessing. Some are also concerned about the accountability mechanisms available to stakeholders when using a separate UA in the proposed model. We suggest that this deserves further discussion and that an empowered designator model be considered as an alternative.] - While an empowered designator model may not provide the tightest control nor the easiest means of achieving community empowerment, the extent to which the desired community powers can be realized should be further explored in a designator model for comparison. There may be some willingness to live with some flexibility in terms of enforcement of some of the desired community powers. Some NCSG members believe that internal mechanisms can be put in place to better align the board and the community on matters relating to the organization's budget and strategic plan such that tight legal enforcement on those matters is not the highest priority in this work. - Some in NCSG support providing each SO/AC with five votes in the community mechanism and others do not support that relative weighting of votes in the community mechanism and instead believe the relative weights should be more closely modeled on communities appointing to ICANN's existing board of directors. - Regarding the introduction of a community mechanism to empower the community over certain Board decisions, yes, we find this essential to securing the levels of accountability that are necessary for ICANN to be able to successfully function as a fully accountable, transparent and multistakeholder entity going forward. - does not support the suggestion that the same levels of accountability and community empowerment could be achieved without such a mechanism. However we believe significantly more work needs to be done within CCWG regarding the specific model and the important	"Agreement" "Concerns" **Summary / Impression:** Agrees that membership or designator model and powers identified would be viable to realize community empowerment. Some disagree with proposed weights of voting; should be more aligned with existing voting rights for BoD Concerns that UAs of membership model considerably change structures, processes and relative power of SOACs Concerns about available accountability mechanisms when using separate UAs Some are concerned that legal methods of enforcement particularly litigation, are inconsistent with the multistakeholder model and have potential to undermine this model **Actions suggested:** Spend more time discussing and assessing changes in structures, processes and relative power of SOs/ACs as result of membership model Consider and further explore designator model as alternative, **CCWG Response:**

		details of that mechanism. For example, some are concerned that the emphasis on legal methods of enforcement particularly litigation, are inconsistent with, or simply antithetical to, the multistakeholder model and have potential to undermine this model in the long term.	
261	MM	I believe that this plan does not yet have a coherent and workable concept of membership. The draft has not made clear the full implications of selecting one of the two membership models considered by the CCWG (the designator model and the SOAC Unincorporated Association model). While it expresses a preference for the SOAC model, it is not entirely clear how that model would be implemented nor how it could be implemented without major realignments of power within ICANN that are unpredictable. The other problem with the membership proposal is the radical and rather odd rebalancing of voting power within ICANN that it proposes. Assigning an equal number of votes to GNSO, ccNSO, ASO, ALAC and GAC seems like an unfair allocation of voting power and one that works against aligning accountability with the stakeholders. When it comes to membership, it seems incongruous to this veteran of ICANN's policy making process to consider Advisory Committees members of the same status as Supporting Organizations. With the separation of IANA and ICANN proposed by the CWG-Stewardship, ICANN is now more focused, as it should be, on policy development for domain names. This means that the two names-oriented Supporting Organizations, the ccNSO and the GNSO, are the key arenas for policy development in the new ICANN environment, and thus they are the stakeholders with the greatest interest in ensuring that the ICANN board is held accountable. ICANN's role as the ratifier of global policies for numbers also justifies a membership status for the ASO, as the ASO represents an extensive global community for policy development organized around Regional Internet Registries. A membership proposal that assigned 5 votes to ccNSO, GNSO and ASO makes sense. It is the ACs that don't really make sense in this scheme. Providing two votes to a highly technical committee whose membership is appointed by the ICANN board (SSAC) seems obviously wrong. If members are the key stakeholders for holding the board accountable, why do we have board-appointed committees afforded special membership powers? Both GAC and ALAC are also outliers in this proposal. Although one could make some case for considering ALAC a member, because it does select board members under the current regime, in terms of membership and participation ALAC is about the size of a single Stakeholder Group in the GNSO. Giving it the same weight as either GNSO or ccNSO seems woefully unbalanced. If it is to be considered a member at all it should be only two votes as proposed for the RSSAC. It seems especially incongruous to have the Governmental Advisory Committee become a member entity equivalent to a supporting organization. The GAC does not select board members and is barred from doing so by the current bylaws. The GAC is not supposed to be a policy development entity (although it oftentimes does not seem to understand that itself), but a provider of advice to the board on the policies developed by the bottom up process. The legal status of a collection of national governments and Intergovernmental organizations forming an unincorporated association under the umbrella of ICANN seems extremely odd, and will probably prove to be unacceptable to the GAC itself. In short, the proposed membership allocation does not make sense and needs to be rethought.	"Concerns" "Confusion" "Divergence" **Summary / Impression:** Proposal does not yet contain coherent and workable concept of membership. Proposal does not make clear full implications of implementing proposed mechanism Agrees with voting power proposed for SOs and RSSAC, disagrees with voting power for SSAC (appointed by board) and GAC. Disagrees with equal voting power for ALAC (proposes 2) **Actions suggested:** **CCWG Response:**
262	Board	- The membership model that is described within the CCWG-Accountability report is one of those main areas for which impact testing seems to be needed. One of the foundations of the CCWG-Accountability report is that a move to a membership model is a means to achieving the enhancements identified. The membership	"Concerns" "Confusion" **Summary / Impression:** Concerns/confusion about resulting rights of action against ICANN for individuals and risks of capture.

		model is noted as providing a “viable” solution, with viable meaning “enforceable through a judicial process.” (Annex A to 23 April 2015 Counsel memo.) Recognizing that there is continued debate surrounding this enforceability issue on the CCWG Accountability mailing list, the concept of membership and enforceability seems to raise some questions that should be considered prior to accepting a specific model, including analysis of what risks and liabilities are being introduced into the system as a whole. For example, while clearer community paths for impacting Board decisions may result in few situations where the community agrees that it is necessary to go to a California court to enforce a right against ICANN, there seems to be other questions about enforceability and impacts have not yet been considered. Such as: • What opportunities and rights of action are we opening up under law for individual members to bring against ICANN that cannot be constrained by the Bylaws? • What rights under law do members have to bring actions against other members, and what impact could that have on the multistakeholder model? Does this create opportunities for capture of ICANN or ICANN processes that are not an issue today? • Are all parts of the ICANN community comfortable with the role that California courts will assume in enforceability of accountability reforms through the membership model? • If any SO/AC does not want to be a “member,” how does this affect the proposed SO/AC Membership Model? Would it minimize that SO/AC’s participation in the ICANN process if other SOs/ACs have the proposed powers and rights that the “missing” SO/AC does not? - Under the current governance model, advisory committees are responsible for the provision of advice to the ICANN community and Board on certain areas (GAC for public policy issues; SSAC on security and stability concerns; RSSAC on root server stability; and ALAC on the interests of individual internet users.) For the areas of the proposal that rely upon a community “vote” to determine whether action should be taken, how are those pieces of advice proposed to be taken into account? How does the CCWG intend to deal with a Board action based on advice received from an AC that does not choose to become a member? What are the processes that the community would use to reject a Board action based on advice from the GAC, if it elected to do so? What is the basis for proposing to distribute two votes each to the SSAC and RSSAC (collectively less than any other single group in the voting model) when the Bylaws do not reflect any weighting of import across ACs? How does the CCWG contemplate ensuring that the security, stability and resiliency of the DNS be considered and maintained if the vote of the RSSAC and SSAC play such a limited role? - To the extent that ICANN decisions are subject to review or approval through the ICANN “empowered community” model via members, how is that group of members subject to considerations of conflict of interest identification in its decision making? o How will the impact of a community mechanism decision be assessed with regards to the broad global public to which ICANN is responsible? And will stakeholders not directly involved in ICANN have a voice? o With regards to removing an individual board director, what is the threshold that triggers this? How will the process not be capturable? What will be the basis for removing a board member? Is it worth considering a threshold that requires more than one SO or AC to support the removal of a board member – thus ensuring that individual Board members are accountable to the whole community for their performance as a director, not just the SO or AC that originally selected them. o With regards to removal of the entire board, what actions trigger this? What mechanisms will be in place to ensure continued stability and security	Concerns about role/influence courts under Californian law would get Concerns about impact on participation if SO or AC would choose not become UA/not to participate as a member **Actions suggested:** Questions raised by community on concept of membership and enforceability, including analysis of what risks and liabilities are being introduced into the system as a whole, should be considered prior to accepting a specific model **CCWG Response:** @@@@RM

		of ICANN's mission and responsibilities, while a new Board is appointed?	
263	CENTR	- We highly recommend the CCWG carefully check the option of creating a formal membership body with the power to hold the ICANN Board accountable. As a matter of fact, we understand that the SO/AC Membership Model has been scrutinised from the ICANN Bylaws perspective, but not from the perspective of those organisations/companies that are expected to become "engaged". Therefore, considering this is one of the most sensitive elements in the entire proposal, we invite the CCWG to further investigate the model from a legal perspective and present an ad-hoc paper about it to the community to explain – as clearly as possible – who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members, as well as possible financial and administrative provisions of such a body. The current proposal fails to describe these crucial elements in plain and clear words. - Furthermore, we firmly believe that sentences like "community participants would have the choice of option in and participating in this new accountability system, or to simply keep on doing what they do today in an ICANN that is more accountable than it is today" are poorly formulated and: introduce discrimination in processes that should be kept multistakeholder and bottom-up based; fail to acknowledge the existence of participants that may like to join the new model, but cannot do so because of the legal framework from which they operate. - We support the principle that the existing functions and work of the SOs and ACs would continue being done within the framework of the ICANN Bylaws and that only the new accountability powers require use of the "unincorporated associations" mechanisms. - CENTR recommends that the CCWG further investigates the membership model from a legal perspective and present an ad-hoc paper about it to the community to explain who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members as well as possible financial and administrative provisions of such a body; highlights the importance of keeping the multistakeholder model as one of the key principles of ICANN.	"Concerns" "Confusion" **Summary / Impression:** Seek further detail for precise operation of the membership model in the scenario of the ccNSO Disagree with CCWG contention that ICANN Participants would have a choice about participating in accountability mechanisms and e.g. UAs. [Drafter's note: this language was confusing in our PC report in retrospect. More correctly stated it would have said that because the UAs are the vehicle for SO to exercise membership powers, the powers are in reality exercised through and by the SO. No membership in the UA is required.] **Actions suggested:** An ad-hoc paper with more detail applied to the ccNSO as a case study. **CCWG Response:**
264	NIRA	- NIRA agrees with the introduction of a community mechanism but is unsure what and how the proposal on unincorporated status for SOs and ACs would work since this is the only way that the community can challenge and veto the decisions of the ICANN Board based on the California Law. CCWG should a rethink of the issues as they relate to GAC. NIRA finds it difficult to comprehend how governments can become an unincorporated entity in another jurisdiction. - NIRA would suggest a further exploration of globalization of ICANN that can provide a legal flexibility in the Bylaws that can allow the community exercise an oversight role similar to what NTIA currently does with ICANN. - The fact that there are restrictions within the existing legal status of ICANN that has the Board as the final arbiter in any policy development and processes including budgets and Bylaws changes and the legal status of ICANN based on California Law are the underlying rationale. - NIRA welcomes the proposal, however, it is unclear how the GAC fits in there, bearing in mind its working methods.	"Agreement" "Concerns" **Summary / Impression:** Support community mechanism Unclear on UAs Concern for possibility of Govt involvement in UA / reconsider GAC position Globalisation to allow for similar accountability as NTIA does today **Actions suggested:** **CCWG Response:**
265	ALAC	Section 5.1: - has significant concerns with the concept of enforceability. With the exception of removal of one or more Board members, most ALAC	"Agreement" "Concerns" **Summary / Impression:**

		members do not believe that legal enforceability is either required or desirable. - has significant concerns that a formalising of Legal Accountability that will open the door to litigation between the ICANN Communities and the ICANN Organisation also opens the door to third parties using the system for ICANN to self-destruct. We see it as an aberration that ICANN Community and Organisation would sue each other, resulting in every ruling causing harm to ICANN. This would be a loss-loss scenario. - specific concerns on the possibility of personal liability on volunteers who are not backed by any corporate employers who might have interests similar to theirs. Moreover, if one looks at past cases where parts of the community were displeased with Board actions, it is difficult to find instances were: • Sufficient parts of the community were displeased so as to trigger the kinds of powers we are now envisioning; and • The situation was sufficiently severe as to warrant community action. - understands that the prime intent of "enforceability" is not to take legal action, but to ensure that the community has the power to convince the ICANN Board that community wishes should take precedence. Nevertheless, the existence of such ultimate power is troublesome to many within the ALAC and At-Large. - believes that even in the unknown future, if ICANN is to be viable, there must be sufficient goodwill to ensure community empowerment, and that the threat of removal will be sufficient to cover any eventuality where this is not the case. • If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants. • ICANN must fully fund any legal or other actions taken by the above entities in enforcing the powers granted herein. • Indemnification funds must be held in escrow to ensure that they will be available without requiring ICANN action to release them. • Legal enforcement of community powers could ONLY be exercised if a critical mass of SO/ACs supported such action. Individuals and/or less than a critical mass of SO/ACs could not take such action and certainly would not be indemnified if such action could not be effectively controlled. • The availability of indemnification and holding the funds in escrow must be enshrined in a Fundamental Bylaw. In summary, enshrining the powers in the Bylaws is critical. Legal enforcement of them, with the exception of Board member removal, is of far less importance. If a choice between Members and Designators must be made, the ALAC believes that Membership is the correct choice. It is a simpler and well understood concept. Even if designators could achieve the same results, it is a construct that is foreign to most of the community and will add another level of complexity to an ICANN which is already nearly impossible to explain to newcomers or outsiders. Since both require legal status, there does not seem to be anything in favor of the adoption of the Designator model. - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could	Concerned with enforceability, except is required for Board member removal Confusion / concern re personal liability arising for participants from membership model A range of indemnities proposed for participants Suggest legal action restricted to situations where bulk of SOs/ACs support it (and no indemnities for single member actions) Prefer member model to designator model if choice must be made between them Support 5 votes per SO / AC (only ok w 2 for RSSAC/SSAC if they are), Alternative B **Actions suggested:** **CCWG Response:**

		accomplish that (similar to the mechanism described in Paragraph 235). - Section 5.1.2 Influence in the Community Mechanism: The ALAC would accept the Reference Mechanism of 5 votes per SO, the ALAC and the GAC, and 2 votes for the SSAC and RSSAC only if the SSAC and RSSAC agree. In all other matters, these ACs are according similar rights and privileges in ICANN and the ALAC sees no reason to alter that at this point. Although the size of the SSAC and RSSAC are "small", so is the ASO, and there seems to be no question about according it full weighting status. We note that it might not be unrelated that the SSAC and RSSAC have been allotted lesser status and neither are represented in the CCWG. The SSAC has explicitly stated that it is not a chartering organization SOLELY due to lack of available resources and not due to lack of interest. - In the absence of support for the Reference Mechanism by the SSAC and RSSAC, the ALAC supports Alternative B giving all ACs and SOs 5 votes. - Five is the correct number to allow regional diversity to be adequately covered by those ACs and SOs that are organized base on ICANN's regions. - Under no circumstances would the ALAC agree to support Alternative A giving 4 votes to SOs and 2 votes to all ACs.	
266	RSSAC	We do note that in the past, the purpose of RSSAC was to act in an advisory role to the ICANN board and community. RSSAC is happy to continue in its role as an advisory body. However, the proposal from the CWG also places additional responsibilities and requirements upon RSSAC that need careful consideration. As a specific observation, some RSSAC members are uncomfortable with the membership mechanism proposed as long as RSSAC is structured as a board appointed committee under the current charter. RSSAC currently has no plans or capacity to undertake a re-structuring that would eliminate this concern. In order to create a positive consensus view in RSSAC about the CCWG proposal we need to know a great deal more about the implementation and operation of the structures and procedures it discusses. As a specific point, we surmise that formal action by the members would be rare, not likely in the course of normal operations and decisionmaking in ICANN, but it would help us to have that view confirmed.	"Concerns" **Summary / Impression:** Generally happy to remain an advisory body Uncomfortable with membership as a board appointed committee and no plans to change that status Would need significantly more detail to understand full implications of membership approach **Actions suggested:** **CCWG Response:**
267	SSAC	In Section 5.1.2 of the Proposal, "Influence in the Community Mechanism," the CCWG notes that it considered three mechanisms for allocating votes to Supporting Organizations (SOs) and Advisory Committees (ACs), and that the "Reference Mechanism" was the "most supported approach." The Reference Mechanism allocates 5 votes to every AC and SO except SSAC and RSSAC, which are allocated 2 votes each. The CCWG provides the following rationale for preferring the Reference Mechanism to the two alternatives that it considered: b. The reasons to allocate a lower number of "votes" to SSAC in the Reference Mechanism is that it is a specific construct within ICANN designed to provide expertise on security and stability, rather than a group representing a community of stakeholders. At the end of Section 5.1.2, the CCWG asks: What guidance, if any, would you provide to the CCWG–Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies. The SSAC has no comment at this time on the rationale for the Reference Mechanism, but makes the following observation and request concerning the role of the SSAC in any proposed new structure. According to its Charter, the role of the SSAC is to "advise the ICANN	"Concerns" **Summary / Impression:** SSAC prefers to remain advisory only. **Actions suggested:** **CCWG Response:**

		community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems."3 The SSAC has neither been given nor sought any standing for its advice other than that it be evaluated on its merits and adopted (or not) according to that evaluation by the affected parties. The SSAC believes that this purely advisory role is the one to which it is best suited, and asks the CCWG– Accountability to take this into account in its review of the options described in Section 5.1.2. The SSAC has no comment at this time on whether or not a legal structure is required or desirable to compel ICANN and the Board to respond to the SSAC's advice. However, SSAC Comments on Cross Community Working Group Proposal on ICANN Accountability Enhancements SAC071 the SSAC is concerned about the way in which the proposed new SO/AC Membership Model might affect the way in which the SSAC operates, considering its narrow focus on security and stability matters and its reluctance to become involved in issues outside that remit. The SSAC expects that the community will adopt an organizational structure that recognizes the role and importance of high–quality expert advice on security and stability. The SSAC notes the relatively short time available for consideration of the draft proposal, driven by a timeline set by external events such as the expiration of the contract between NTIA and ICANN related to IANA. Accordingly, the SSAC reserves the right to make additional comments as further details are developed.	

Power: Reconsider/reject budget or strategy/operating plans

Question 8: Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Summary for Question 8 comments (Reject Budget or strategy/operating plans (268--289):

There were **twenty-two** comments in this section.

17 comments suggested **agreement;** 11 comments noted **concerns**.

There were no **confusion** rated comments.

There were three **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability**, but **significant concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

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

- Impact on ICANN's operational effectiveness arising from this power
- Desire for more incorporation of all relevant community input in the planning process, so as to make rejection less likely

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

- Greater transparency earlier in the process & more complete reporting (270)
- Planning process must deal with all input on a fair and equal basis (271)
- Better quality staff/board/community interactions before plans are approved (272)
- Limit rejection of a plan to once per cycle (273)
- Limit rejection of a plan to twice per cycle (281)
- Concern for impact of sustained rejection, some limit (275, 277, 283, 286, 289)
- Improved engagement and dialogue to prevent matters coming to the point of rejection (276, 282, 283, 285)
- Need greater IANA budget transparency (288)
- Clarify that aim is not to re-write a budget in the community mechanism, but to return to Board for adjustment (288)

Divergent comments:

- Doubtful of value or effectiveness, opposed to strengthening this power (278)

Proposed CCWG response/approach to resolution

- WS2 will look at the planning process to improve quality of engagement & inclusion of input between Board, staff and community, and lead to a lower likelihood of plan rejection
- CCWG will consider limit to number of times a plan/budget can be rejected
- CCWG will elaborate on caretaker approach where a plan/budget is rejected to minimise operational impact

#	Contributor	Comment	CCWG Response/Action
268	RH	Question: Yes. Membership should have full powers.	"Agreement" **Summary / Impression:** Reviewing/revoking budget and strategic / operating plans is desirable. **Actions suggested:** **CCWG Response:**
269	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.	"Agreement" **Summary / Impression:** Reviewing/revoking budget and strategic / operating plans is emphasized. **Actions suggested:** **CCWG Response:**
270	CRG	-I n principle yes, but don't thinks is efficient with the present structure of the budget presentations. - The Budget Veto mechanism should be developed to make transparent to the community how resources are being assigned not only to programs and priorities, but the the different parts of the ORGANISATIONAL STRUCTURE, like the full budget assignments between the major areas of (a) policy development, (b) compliance and (c) operational functions, separate from the corporate overhead which is not the case today.	"Agreement" "Concerns" **Summary / Impression:** More transparency in budget process and earlier and more complete reporting requirements to community. **Actions suggested:** **CCWG Response:**
271	DCA-T	YES - Moreover, the community should also have the power to veto or approve any plans to scrap an on-going strategic planning process. - The community should be allowed to be fully included in any discussions especially regarding the regions they come from, in the past, ICANN leadership has been seen to side with some stakeholders while alienating others yet they come from the same region and share interests. - ICANN must maintain impartiality and promote inclusivity in all budget or strategy/operating plans proposals	"Agreement" "Concerns" **Summary / Impression:** More inclusivity and impartiality need in budget strat plans. Community should be fully included in the budget development process. **Actions suggested:** **CCWG Response:**
272	Afnic	- Afnic strongly support this proposal. Not only it is necessary for the empowered community to be able to review the IANA functions budget (as clearly stated by the CWG-Stewardship) but also this will allow better quality interactions between staff, board and community on the budget and strategy BEFORE it's approved by the Board. - The limitation of powers such as not rewriting the budget or the super-majority needed to reject the budget twice seems reasonable.	"Agreement" **Summary / Impression:** Better quality interactions between staff, board and community on budget and strategy BEFORE approval by board. **Actions suggested:** **CCWG Response:**
273	IA	- Allowing the community to veto the budget or the strategic plan raises questions of efficiency and effectiveness. These are key operational documents, and holding them up for multiple cycles of back-and-forth between the Board and the community could be highly detrimental to ICANN's operational effectiveness.	"Concerns" **Summary / Impression:** Concern for operational efficiency and effectiveness from community veto of budget or strat plan. Suggest limiting veto to once per cycle.

		- IA suggests a workable solution may be to allow the SO/AC Members to place a one-time veto per cycle for these two powers, which the Board could override by providing an explanatory statement explaining why rejection of the veto was consistent with ICANN's mission and the public interest.	**Actions suggested:** **CCWG Response:**
274	RySG	- RySG agrees that enabling the community to reject a budget or strategic plan would help to enhance ICANN's accountability. The ability to control the budget is essential as it would have the most direct impact on Board and management actions and activity. - RySG agrees with the list of requirements for this recommendation	"Agreement" **Summary / Impression:** Ability to control budget is essential and has most direct impact on board and management. **Actions suggested:** **CCWG Response:**
275	BC	- BC supports the proposed community power to reject ICANN's draft budget and strategic plans. It seems appropriate to require 2/3 majority in the first vote and 3/4 majority in subsequent votes. - BC is concerned that a sustained rejection of ICANN budgets and strategic plans could result in the corporation having to operate under prior approved budgets and strategic plans for multiple years. This is not an efficient or effective way to operate an organization like ICANN, and the BC believes CCWG should consider at what point the budget and strategic plan vetoes would be truncated after multiple votes to block the Board's proposal. - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.	"Agreement" "Concerns" **Summary / Impression:** General support but concern over protracted community veto process. Requests explanation on how Member status can be created and maintained without undue costs, complexity, or liability. **Actions suggested:** **CCWG Response:**
276	.UK	Again this section shows a significant lack of trust in ICANN and its processes. This needs to be addressed. That the complex processes that ICANN goes through in developing strategy, operating plans and budgets, with open consultation, could lead to proposals being rejected by the community suggests something is seriously wrong. Some form of intermediary process – promoting dialogue between the executive and/or Board and the community – is needed to avoid disruptive processes.	"Divergence" **Summary / Impression:** An intermediary process - promoting dialogue between board and ICANN is needed to avoid disruptive [veto] processes. **Actions suggested:** **CCWG Response:**
277	USCIB	- Para 199: We strongly support the power for the community to reject a budget or strategic plan. In many instances, the power of the purse provides the ultimate check on an institution's. Further clarification also is needed regarding what constitutes when the Board has "failed to properly consider community input." - However, USCIB shares the concerns of the ICANN's Business Constituency (BC) that a sustained rejection of ICANN budgets could result in the corporation having to operate under prior-approved budgets for multiple years, comparable to the U.S. Government's practice of operating under a "continuing resolution" based on the budgets of prior fiscal years. This is not an efficient or effective way to operate an organization like ICANN, and USCIB concurs with BC recommendation that the CCWG consider at what point the budget veto would be truncated after multiple votes to block the Board's proposal.	"Agreement" "Concerns" **Summary / Impression:** General support but concern over protracted community veto process. Community veto power should be truncated at some point. **Actions suggested:** **CCWG Response:**
278	LINX	We are doubtful of the value or effectiveness of the power to reconsider/reject the Budget and Strategic/Operating Plans, but we are not strongly opposed to this power as designed. We would be opposed to greatly strengthening it.	"Concerns" "Divergence" **Summary / Impression:** Doubtful of value of this power and would be opposed to strengthening it. **Actions suggested:** **CCWG Response:**
279	JPNIC	It is a common practice for stakeholders who appoint Board members within an non-profit organization, to have the powers over key decisions made for the organization. We also recognize this as the power identified as required by the CWG-Stewardship.	"Agreement" **Summary / Impression:** It is a common practice for stakeholders to make decisions. This power is identified as required by CWG-Stewardship.

			Actions suggested: **CCWG Response:**
280	CWG-St	Including the ability for the community to have more rights regarding the development and consideration of the ICANN budget.	"Agreement" **Summary / Impression:** Request "more rights" regarding budget (but not necessarily primary authority). **Actions suggested:** **CCWG Response:**
281	IPC	The IPC generally supports some form of community oversight and "veto" over budgets and strategic plans, beyond the current public comment exercise. The IPC agrees that this power should be relatively narrowly focused and rely on inconsistency with ICANN's mission and role. A horse-trading line-item-veto process would be unwieldy and put too much power in the hands of the members. In that vein, there should not be an endless loop of feedback. The IPC is concerned by the reference to "subsequent rejection/s" and does not believe there should be more than two bites at the apple, at most. Rather there should be an appropriate consultation process to work through any issues that caused rejection in the first place.	"Agreement" "Concerns" **Summary / Impression:** General support but concern over community veto process resulting in endless feedback loop. Better approach: appropriate consultation process to work through issues prior to community / board rejection. Community veto should be limited to two bites at the apple. **Actions suggested:** **CCWG Response:**
282	USCC	Allowing the community to reject a budget or strategic plan would enhance ICANN's accountability. The list of requirements for this recommendation is satisfactory. However, the CCWG should create a proposal that guards against a situation where the Board and community could go back and forth submitting and rejecting several iterations of a budget, and avoid stalemate.	"Agreement" "Concerns" **Summary / Impression:** General support but concern over protracted community veto process resulting in stalemate. **Actions suggested:** **CCWG Response:**
283	INTA	- agree that giving the Community the power to reject a budget or strategic plan would enhance ICANN's accountability. However, as presented, we have concerns with the potential for this new power to lead to an impasse or budget crisis. In that regard, it is recommended that the feedback and amendment process not be unlimited. - rather than the Community having a limited number of opportunities for rejection, the Community and Board could be required to participate in mediation or some other form of consultation to resolve the matter. we believe that this type of dispute resolution should be clearly defined and set forth so that all the Community members understand how dispute resolution related to the budget would be handled.	"Agreement" "Concerns" **Summary / Impression:** General support but concern over potential for impasse or budget crisis. Mediation or other consultative process should be used to resolve disputes between board and community. **Actions suggested:** **CCWG Response:**
284	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. We note that the annual budgeting process will need to be adjusted to make provision for this power, and consider that that falls naturally into a broader improvement in the budget process that could be part of Work Stream 2.	"Agreement" **Summary / Impression:** Support this power. Annual budget process' adjustment for this power falls into workstream 2 with broader improvement to budget process. **Actions suggested:** **CCWG Response:**
285	NCSG	Some NCSG members believe the ability of the community to intervene in the budget process is a mechanism which is extremely important. A strong ability to ensure that the security and stability of the DNS is not impacted by unwise budgeting or financial planning is at the core of the community's responsibility to their stakeholders and the internet as a complete whole. Other NCSG members would like to see internal mechanisms put in place at ICANN to more closely align the board and the community at various stages in the process including the extent to which agreements between the two	"Agreement" "Concerns" "Divergence" **Summary / Impression:** Split in view of members: Some believe this power is extremely important and at the core of accountability.

		can be required before such decisions can be finalized. While the board may have the final say, processes can be put in place to direct the board to work more closely with the community in reaching the ultimate decision. For some NCSG members, that requirement would be sufficient on this issue.	Other members prefer internal engagement mechanisms put in place to more closely align the board and the community at earlier and subsequent stages in the process including a requirement for community agreement before budgets can be finalized for approval. **Actions suggested:** **CCWG Response:**
286	GG	The community's power to recall the ICANN Board and veto ICANN's strategic plan and budget should be reasonably limited. We applaud the CCWG-Accountability's efforts to identify potential accountability measures to protect ICANN's key operations in a crisis. However, we believe that one proposed accountability measure – the ability of the community to veto ICANN's strategic plan and budget – should be limited. Put simply, we do not believe that the community mechanism 14 should be able to veto the strategic plan and budget over multiple iterations. We have seen this play out in multiple global governing institutions and while it does provide an opportunity for checks and balances it also can render an organization unable to carry out its mission. We need to make sure we are striking the balance between accountability and organization paralysis. The community should be able to submit an initial veto, but if the ICANN Board chooses to override that veto, it should be able to do so provided it submits a detailed report that summarizes its reasons for doing so. If the community remained unsatisfied with the Board's explanation, it could invoke the Independent Review process or seek to recall individual Board members to change ICANN's direction. A process in which the community and Board could go back and forth for months at a time would unnecessarily and significantly degrade ICANN's operational efficiency. For similar reasons, we are concerned that the power to remove the ICANN Board as a whole could have a potentially destabilizing effect on the Internet ecosystem. While we 15 believe that the Proposal's suggestion that the community have the power, in exceptional circumstances, to remove individual Board members is a prudent way to enhance the organization's overall accountability, we believe that the decision to remove the entire Board should still happen on the basis of particular, serious concerns with each individual Board member, not a generalized objection to the Board as a whole. For this reason, we would favor the community only having the power to remove individual Board members.	"Divergence" **Summary / Impression:** Community veto can cause operational crisis. Any veto must be limited to avoid operational paralysis. **Actions suggested:** **CCWG Response:**
287	Board	We recognize the importance of affording the ICANN community a voice in assuring that the Strategic Plans of ICANN are within ICANN's mission, that budgets support the mission.	No color category **Summary / Impression:** Recognizes importance of affording community a voice in assuring budget's and strat plans are within ICANN's mission. **Actions suggested:** **CCWG Response:**
288	CENTR	We support the ability of the community to reject strategic and operating plans/budgets which have already been approved by the Board if they are believed to be inconsistent with the purpose, mission and ICANN's role as set out in the Bylaws. To this respect, we strongly reiterate the request that ICANN should be more transparent in terms of IANA's function costs and their itemisation. We believe that the community power should consist in inviting the Board to review the plans, but not in re-writing them. A better enhancement of ICANN accountability would occur if certain recommendations made unanimously by various stakeholder groups are taken on board at the time of their submission. That would avoid time consuming iterations like the Board approval of a plan and its possible, subsequent rejection by the community membership body.	"Agreement" **Summary / Impression:** ICANN should be more transparent about IANA function costs and their itemisation. **Actions suggested:** **CCWG Response:**

289	NIRA	Yes, however, further safeguard should be provided against abuse, e.g. number of times the budget can be rejected by the community, and what options the Board may have in such situations.	"Agreement" "Concerns" **Summary / Impression:** Concern for abuse and number of times budgets can be rejected. **Actions suggested:** **CCWG Response:**

Power: Reconsider/reject changes to ICANN "standard" Bylaws

Question 9: Do you agree that the power for the community to reject a proposed Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Summary:

There were **eighteen** comments in this section.

18 comments suggested **agreement;** five comments noted **concerns**.

There was one **confusion** rated comment.

There were no **divergent** rated comments.

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

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

- Time window for change rejection set out in proposal (at para 212) not seen as long enough

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

- Numerical change to SO/AC structure should be by supermajority (292)
- Increase **time window for rejection** from proposed two weeks:
  - to 30 days (293)
  - until the end of next ICANN meeting that begins at least 1 month after the proposed change (296)
  - to 60 days (299)
  - to one month (301)
  - unspecified but two weeks not long enough (307)
- Decrease threshold for rejection to ⅔ (from ¾) (299) (301)
- Include a mediation or arbitration process to reduce chances of impasse (301)
- Rejection must only be available before bylaws changes come into effect (305)
- Limit number of times community can reject changes (306)

Proposed CCWG response/approach to resolution

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#	Contributor	Comment	CCWG Response/Action
290	RH	Question: Yes. Membership should have full powers.	Agreement **Summary / Impression:** Agreement - and suggests that only members should be able to amend the bylaws. **Actions suggested:** No action needed **CCWG Response:** Thank you
291	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	Agreement **Summary / Impression:** Agreement **Actions suggested:** No action needed **CCWG Response:** Thank you

292	Afnic	Afnic supports this proposal. Nevertheless, if the change proposed by the Board can modify the number of SOs/ACs and subsequently their respective weights within the members' assembly, this change should be approved with a supermajority as described below (ref: 5.4).	Agreement Concerns **Summary / Impression:** Supports proposal **Actions suggested:** Approval of any numerical change to SO/AC structure should be by supermajority. **CCWG Response:**
293	RySG	- RySG agrees that an enforceable community power to reject a proposed Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community. We agree with the list of requirements for this recommendation, including the proposed 2/3 majority for a first member vote and 3/4 majority in any subsequent member votes. - RySG notes the following recommendation: *"The time required for this power to be exercised would be included in the Bylaws adoption process (probably a two-week window following Board approval)."* We understand the desire to put a time limit, but two weeks is a terribly short deadline for a multi-stakeholder process, so we would instead suggest at least 30 days.	Agreement Concerns **Summary / Impression:** Agrees with recommendation, but has concerns with short timeline. **Actions suggested:** Recommends a longer window of 30 days instead of 2 weeks. **CCWG Response:** The CCWG will consider adjusting the time period.
294	BC	- BC supports the proposal to allow the community to block a Bylaws change sought by ICANN's Board. It seems appropriate to require 2/3 majority in the first vote and 3/4 majority in subsequent votes. - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.	Agreement **Summary / Impression:** Agreement **Actions suggested:** Encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability. **CCWG Response:** CCWG will further investigate and explain membership.
295	.UK	We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG's proposals.	Agreement Confusion **Summary / Impression:** Support for proposed power, but concern that mission, commitments and core values are not fundamental. **Actions suggested:** None required - change examples in para 201 to avoid causing confusion. **CCWG Response:** Thanks for your input - the CCWG proposal does in fact suggest these should be fundamental bylaws, as set out in para 127. We apologise that the examples cited at the beginning of para 210 were poorly chosen and have caused a mistaken impression that the CCWG does not believe the the bylaws you cite in this part of your comment should be fundamental.
296	LINX	We strongly support the existence of this power. A time limit of two weeks to coordinate all the necessary parties to exercise the power to reconsider/reject changes to ICANN Bylaws is much too short. We suggest instead that the deadline should be the end of the next ICANN meeting that begins no sooner than one month after the Board posts notice of adoption. A bylaws provision could allow the Board to treat a Bylaws change as presumptively effective from the moment it posts notice of adoption, even though time window for the community to reject it remains open.	Agreement Concerns **Summary / Impression:** Strong support, but concern that 2 week period is too short. **Actions suggested:** Suggests instead that the deadline should be the end of the next ICANN meeting that begins no sooner than one month after the Board posts notice of adoption. **CCWG Response:**
297	JPNIC	Yes. Bylaws include Core Values, Mission and the clearly defines the scope of ICANN's activities. The community should have the ability to request for reconsideration or reject changes to the document which is such core to the organization.	Agreement **Summary / Impression:** Supports **Actions suggested:** No action necessary

			CCWG Response: Thank you
298	CWG-St	We understand that in Section 1.4, on page 12 of the CCWG Accountability interim proposals, you do acknowledge the intention of the CWG Stewardship to create a Customer Standing Committee. Moreover that you have not yet considered specific bylaw changes related to the CSC. However, we are encouraged by your view that such an addition would not, in your view, contradict any of the CCWG Accountability proposals. We will look further into this and may indeed, as suggested by your chairs' submission to the CWG-Stewardship public comment, draft and specify this directly as one of the CWG Stewardship recommendations.	Agreement **Summary / Impression:** CWG Stewardship Transition sees that CCWG proposal would not contradict or prevent the addition of a bylaw change related to a Customer Standing Committee. **Actions suggested:** No action needed **CCWG Response:**
299	IPC	- The IPC commends the CCWG for recognizing that SO/ACs (with input from the larger community) should have the right to reject Board approved Bylaw changes prior to such changes becoming effective. Allowing SOs/ACs the right to reject Board approved Bylaws is in keeping with ICANN's multi-stakeholder model. - The IPC disagrees with the short time period to object to a proposed Bylaw change: recommends a 60 day window to decide whether or not to reject a proposed Bylaw changes. - The IPC is unclear why the CCWG recommended a ¾ threshold for the community to reject a change to a "standard" bylaw or the introduction of a proposed standard bylaw. The IPC notes that the Board is required to approve any such new or changed bylaw by a 2/3 majority. Perhaps it would make sense for the "community veto" to be subject to a 2/3 majority as well	Agreement Concerns **Summary / Impression:** Support proposed power but 2-week period is too short. Also questions ¾ threshold. **Actions suggested:** Recommends a 60-day window and a ⅔ majority vote. **CCWG Response:**
300	USCC	The ability of the community to reject a proposed bylaw change would enhance ICANN's accountability. The list of requirements for this recommendation is satisfactory.	Agreement **Summary / Impression:** Supports proposal and list of requirements. **Actions suggested:** None **CCWG Response:**
301	INTA	- supports empowering the Community, through Member SOs and ACs, to reject amendments to the standard Bylaws proposed by the Board. - recognizes that 3/4 support is required to reject a Bylaw amendment, however, are concerned that the exercise of this power could result in an impasse. It is recommended that mediation, arbitration, or some form of consultation process be imposed at some stage. Further, with respect to any mediation or arbitration, this process should be clearly defined at the present time. - also suggest that the time period (one month for example) for objecting to a Bylaw amendment be extended in order to allow organizations to consult properly with their members. - questions whether 3/4 is the appropriate threshold for a first time rejection of a Bylaw amendment, noting that only 2/3 of the Community mechanism is required for a first rejection of a proposed budget or strategic plan.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**
302	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out – this will be a straightforward change to the bylaws adoption/amendment process.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**
303	HR2251	- The term "supermajority" is defined for purposes of the bylaws of ICANN to mean, with respect to a vote of the board of directors, an affirmative vote by at least four-fifths of all directors. - A change in the bylaws of ICANN requires a vote of a supermajority of the board of directors.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**

304	NCSG	Yes, we agree.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**
305	CENTR	We support the possibility for a new body to reject proposed Bylaw changes after their approval by the ICANN Board, but only before they come into effect. At the same time, we believe this power may slightly improve ICANN's accountability, but it may also impact the Bylaws amendment process and make the ICANN Board/staff in charge of it more defensive when coping with Bylaw changes. Over the past decade, we have witnessed a slow approach of ICANN staff and Board to certain Bylaws changes. The introduction of a community power even to reject Bylaws changes after their approval might push the ICANN staff (in charge of all the various preparatory, consultative, editorial and administrative steps to introduce the amendments) and the Board to delay possible change processes until there is certainty that they will not be questioned by the community at a later stage.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**
306	NIRA	Yes, however, NIRA is of the opinion that a limit should be provided on number of times the community can reject changes.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**
307	LAB	- para 212, a two-week window is indicated for exercising the proposed power to reject Board approval of changes to Bylaws. I query whether this is a sufficiently long time frame.	Agreement **Summary / Impression:** **Actions suggested:** **CCWG Response:**

Power: Approve changes to "Fundamental Bylaws"

Question 10: Do you agree that the power for the community to approve any fundamental Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Summary:

There were **number** comments in this section.

XX comments suggested **agreement;** yyy comments noted **concerns**.

There was aaa **confusion** rated comment.

There were bbb **divergent** rated comments.

There was **broad [agreement/disagreement/general summary if possible] that this power would enhance ICANN accountability**.

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

- A

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

- A

Proposed CCWG response/approach to resolution

- A

#	Contributor	Comment	CCWG Response/Action
308	RH	Question: Yes. Membership should have full powers.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
309	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
310	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
311	Afnic	Afnic supports this proposal.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
312	RySG	- RySG agrees that an enforceable community power to approve any Fundamental Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community. - RySG agrees with the list of requirements for this recommendation, with the addition of ICANN's existing Bylaw XVIII Section 1 current bylaw establishing ICANN's principle office location .	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
313	BC	- BC supports the approval mechanism for Fundamental Bylaws. - BC notes the recommendation to include ICANN primary office location as a fundamental bylaw - BC notes that Article 18 should be a Fundamental Bylaw - BC hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law. - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
314	.UK	(part b) We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG's proposals.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
315	USCIB	Para 199: We strongly support the requirement that the community ratify new "Fundamental" by-laws by giving positive assent.	"Agreement" **Summary / Impression:**

			Actions suggested: **CCWG Response:**
316	LINX	We strongly support the existence of this power.	"Agreement" " **Summary / Impression:** **Actions suggested:** **CCWG Response:**
317	ISPCP	- agrees that the introduction of Fundamental Bylaws in principle would enhance ICANN's accountability. However by introducing specific Fundamental Bylaws a trade-off between the potential accountability enhancement and ICANN (board) limitation to accomplish the mission seems to be needed. This should be discussed in particular under Work Stream 2. - As part of Work Stream 1 we do not see the necessity to add further Fundamental Bylaws.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
318	JPNIC	- This is a common mechanism for non-profit organization. It is good to have checks and balances on the Board decisions. We recognize this is again listed as a requirement by the CWG-Stewardship. - We do not see a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to proposal new Fundamental Bylaws or changes to existing ones. It is not clear how this enhances accountability and implications of adopting such system. This may be something for consideration in the long term, as a part of Work Steam 2, if such needs are identified.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
319	IPC	The IPC agrees that empowering the community to approve any change to a Fundamental Bylaw will enhance ICANN's accountability to the community. However, at this time, there does not appear to be a well-defined list of requirements for this recommendation, either in Section 5.4 or in Section 3.2.3. It is critical that these requirements be expressed with clarity, and the IPC urges the CCWG to revisit these sections for purposes of clarification.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
320	Board	We recognize that the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
321	USCC	Yes, the community approval of any fundamental bylaws would enhance ICANN's accountability and we believe is the list of requirements for this recommendation is sufficient.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
322	INTA	- generally supports the idea of requiring some form of assent or involvement of SO/ACs as outlined in §5.4. However, INTA may later object to this requirement depending upon the details of the assent process and we respectfully note that there are flaws in the current proposal since the SO/AC structure is not truly representative of the entire Community and its various constituencies. - supports mechanisms to make it more difficult to change ICANN's purpose and core values and processes and powers critical to its accountability. However, the process for distinguishing between standard and fundamental Bylaws and for objecting to each, will have to be very clear and this standard is not clear enough in its proposed form. For example, at the	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** **CCWG Response:**

		present time, there is not a list of requirements for this recommendation either in Section 5.4 or Section 3.2.3. We recommend that ICANN develop a list of recommendations and submit them to the Community for public comment. - supports the concept that changes to such Bylaws should require Community consent before changes are implemented, rather than the rejection mechanism available for standard bylaws.	
323	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out: we support the "co- decision" model that this represents, with the Board and the community mechanism together having to approve changes to Fundamental Bylaws.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
324	NCSG	Yes, we agree.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
325	CENTR	We believe that the power of the membership body to reject proposed Bylaw changes after their approval by the ICANN Board before they come into effect and to give positive assent to any change to the Fundamental Bylaws before completion might seriously hamper the process flow and therefore, introduce unnecessary approval layers. Accountability mechanism refinements might be better introduced at the Board representativeness level rather than via new approval layers. The fact the Board does not represent the community that elects it indicates one of the intrinsic accountability issues discernible in the current ICANN structure.	"Divergence" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
326	NIRA	NIRA agrees.	"Agreement" **Summary / Impression:** Agreement **Actions suggested:** No action needed **CCWG Response:** Thank you

Power: Removing individual ICANN Directors

Question 11: Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Summary:

There were **23** comments in this section.

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

There was no **confusion** rated comments.

There were no **divergent** rated comments.

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

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

- The NomCom process/ procedure for removing a board member

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

-

Proposed CCWG response/approach to resolution

	•		
#	Contributor	Comment	CCWG Response/Action
327	RH	Question: Yes. Membership should have full powers.	"Agreement" " **Summary / Impression: Agreement** **Actions suggested: No Action needed** **CCWG Response: Thank You**
328	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	"Agreement" **Summary / Impression: Agreement** **Actions suggested: No Action Needed** **CCWG Response: Thank you**
329	CRG	Removing an individual Director: again this makes the difference between NomCom and SO/ AC directors so obvious, that I m afraid it will necessarily put the present operating procedures of the Board under review.	"Divergence" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
330	DCA-T	- Recommendation: Add a clause to allow individuals to be able to lodge valid complaints about a particular board member (s), then this can be viewed by the petition of at least two of the SOs or ACs (or an SG from the GNSO). - The creation of a separate special committee of the NomCom to deal with removal petitions when they arise will be a viable proposition since it allows each special committee to be appointed on case by case then disbanded when a closure of a removal petition is finalized - There should also be a provision that enables a Standing Community Group to investigate any Conflict of Interest allegations against Board members, and the Standing Community Group to determine whether or not such alleged Conflicted Board members should be made to recuse themselves on a pertinent (or particular) Board issue. Conflicted Board members who fail to recuse themselves should be voted out from the ICANN Board.	"Agreement" **Summary / Impression:** Adds recommendation to the process **Actions suggested:** Consider recommendation **CCWG Response:** Thank you
331	AFRALO	Recalling one or more board members without reason is an aberration in itself; Its impact would be that the Board directors will act in the interest of the SOs or ACs that appointed them rather than acting in the interest of the entire community (ICANN as an organization). The AFRALO members believe that such a power shouldn't exist in the CCWG recommendations. It shouldn't exist also because the Board directors appointed by the NomCom would have a different recalling procedure that makes the whole members of ICANN board not having an equal treatment.	"Divergence" **Summary / Impression:** **Actions suggested: Consider divergent view** **CCWG Response: Thank you**
332	Afnic	Afnic supports this proposal. Furthermore, Afnic wants to recall that mechanisms set by ACs and SOs for the removal of the board member they appointed should be transparent and aligned between constituencies. - As for the nominating committee, the rationale behind point 234 seems contradictory. - "The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters [removing a NomCom appointed board member]. The disadvantage is that it would require a new set of volunteers to populate it, as it would be preferable for the personnel of the two groups to be separate."	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider the concerns raised** **CCWG Response:**

		- Afnic is of the opinion that it's not a burden but a duty of the NomCom to nominate and, therefore, to remove.	
333	RySG	RySG Agrees that an enforceable power to remove individual Board Directors, under special circumstances, would help to enhance ICANN's accountability to the community. The RySG supports the CCWG proposal to enable the respective appointing organization (SO, AC, SG, NomCom or community members) to recall and replace their associated Board member. We also support allowing each appointing group to determine its own voting threshold for recall and replacement of the associated individual Board member.	"Agreement" **Summary / Impression:** **Actions suggested:** No action needed **CCWG Response:**
334	BC	- BC supports the CCWG proposal to allow the appointing organization to vote to recall individual directors. This is far more effective accountability mechanism than simply waiting for the next election cycle. - BC supports the proposal to allow each SO/AC to determine its own voting threshold for removing its designated director(s) and appointing replacement(s).	"Agreement" **Summary / Impression:** **Actions suggested:** No action needed **CCWG Response:**
335	USCIB	99: We support the ability of the community to recall board members. However, because "spilling the board" should be considered a measure of last resort, we support an 80 percent threshold for this action.	"Agreement" **Summary / Impression:** In support. **Actions suggested:** **CCWG Response:**
336	LINX	We strongly support the existence of this power.	"Agreement" **Summary / Impression:** **Actions suggested:** No action needed **CCWG Response:**
337	ISPCP	Removal of Directors by the Nominating Committee. ISPCP do not see any justification to use a different NomCom or a different balance within the NomCom, than the NomCom seated at the time of a petition is made to remove Directors selected through this mean. ISPCP believes that using the NomCom is a more consistent and simple way to proceed. The potential "burden" over the NomCom is not seen as a valid argument as such petitions would only happen in exceptional occasions and the level of work required would not destabilize the functioning of the NomCom.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider concern** **CCWG Response:**
338	JPNIC	Yes. While it should not be abused, and discourage a Board member to act according to its fiduciary duties to please a particular stakeholder, it would be reasonable for the community to have this ability.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider concern** **CCWG Response:**
339	Govt-IT	Considering Paragraph 5.5 "Power: Removing individual ICANN Directors" It's our opinion that, taking into account the horizontal role of the GAC, it might be important that the GAC can propose the removal of a member of the Board. In that case, all the SO/ACs and the NomCom could participate in the voting process.	"Agreement" "Concerns" **Summary / Impression: Additional recommendation** **Actions suggested: Consider concern** **CCWG Response:**
340	CWG-St	We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement	"Agreement" **Summary / Impression:** **Actions suggested: No action needed**

		and look forward to working with you as further details of such proposed processes are developed.	**CCWG Response:**
441	IPC	Agree: yes. When considering the removal of a director appointed by the NomCom, the IPC believes a special committee of the NomCom should be established to deal with removal petitions when they arise.	"Agreement" **Summary / Impression:** **Actions suggested: No action needed** **CCWG Response:**
342	USCC	The Chamber supports the proposal to enable the appointing organization to recall and replace their Board member as a means to improve accountability. Each respective organization should be given the power to set their own voting threshold.	"Agreement" **Summary / Impression:** Agreement **Actions suggested:** No action needed **CCWG Response:** Thank you
343	INTA	strongly supports the ability for the removal of individual Board of Directors and believes that such a measure would certainly increase ICANN's overall accountability. The current threshold proposed by the CCWG appears to be sufficient as well.	"Agreement" **Summary / Impression:** **Actions suggested: No action needed** **CCWG Response:**
344	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. - We suggest that there be common requirements on all appointing bodies as to the thresholds that must be met (75% in the proposal) to remove a director. - We do not take a stance in this comment regarding the best method of allowing the Nominating Committee to remove directors it has appointed, but we do support such directors being able to be removed when the community petitions for this to occur.	"Agreement" **Summary / Impression:** **Actions suggested: No action needed** **CCWG Response:**
345	NCSG	Yes, we agree.	"Agreement" **Summary / Impression:** **Actions suggested: No action needed** **CCWG Response:**
346	Board	We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.	"Agreement" **Summary / Impression:** **Actions suggested: No action needed** **CCWG Response:**
347	CENTR	We support the introduction of mechanisms that would allow the community – not necessarily the "membership body" – to eventually remove individual directors. We would recommend a cautious approach when expanding the role of the NomCom be followed (which should undergo a major review process to refine certain procedures, like the Board members selection and interview phases). We are against asking each Director to sign a resignation letter when accepting their appointment as it could trigger any Board member's accountability profile. A Board member cannot be held legally/administratively accountable with a dated and signed resignation letter because they can always say that the letter was signed and filed before the wrong action they might be held liable.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider concern** **CCWG Response:**
348	NIRA	Yes. NIRA seeks clarification as to the standing of direction. Would they all become voting members of the Board?	"Agreement" "Concerns" **Summary / Impression:**

			Actions suggested: Consider concern **CCWG Response:**
349	ALAC	- If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235). - Some members of At-Large believe that AC/SO-appointed Directors should not be removable: by the community in general; or solely by the AC/SO that appointed them; or under any circumstances. However, many believe that if a group has the ability to appoint a Director, they should also be able to withdraw that appointment. Specifically, a Director is appointed not to "represent" the appointing group, but because the members of the group believe that the person shares common values with the group. If that belief ceases to be correct, then it is reasonable to no longer support that person as a Director. - The ability to remove individual Board members, either by the appointing AC/SO or by a supermajority of the community, is viewed as crucial by most ALAC Members. Without it, the only alternative is to remove the entire Board and this is a cataclysmic alternative as described under the comment to section 5.6. - Regarding removal by the AC/SO that made the appointment, it has been argued that being able to withdraw such an appointment will "politicize" the appointment, that the Director will alter their behaviour because of it, or that the group might withdraw the appointment as punishment for not voting the way they would have wished on a specific issue. The ALAC believes that all of these reasons have little merit. - Politicizing: This a curious comment given the fact that the selection of Board Members by some AC/SOs is already an extremely political process. - Altered behavior: Although the Director does not "represent" the group, surely the Director should remain in regular contact with the group and understand where the group stands on specific issues. When a vote is approaching that may go against the group, it is reasonable for the Director to approach the group and explain why there are other considerations. Such a dialogue should allow the occasional divergence of opinion. If this becomes a regular occurrence, perhaps the person DOES need to be replaced. Moreover, it has been said that some Directors already vote differently near the end of their term, hoping to encourage renewal – a characteristic which one would hopefully encourage non- renewal. - Punishment: This rationale is interesting. We endow a group with the very serious responsibility of appointing Directors to ICANN's Board, and we trust them to do it with care and consideration of the needs of the organization. But we then presume that they may act capriciously if they don't get their way in a particular vote. If we really believe that an AC or SO would act in that way, then ICANN needs to rethink whether constituent bodies should be allowed to appoint Directors at all. Either we have some level of trust that the groups will behave in a serious and thoughtful way on behalf of the organization as a whole, or we don't. We cannot have it both ways.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider concern** **CCWG Response:**

		- The process used by an AC/SO to approve removals of one or more Board members must be formally documented in that entity's operating procedures and approved by that AC/SO. On the issue of removing NomCom appointees to the Board, the ALAC believes that this should be a community decision, just as it is to remove the entire Board. The ALAC does not support having the regular NomCom remove Directors (and specifically those appointed by previous NomComs). The work of the NomCom is sufficiently difficult that this additional task would either come at a time when they are already overwhelmed with the task of identifying and narrowing down new potential appointees, or could come at a time when the NomCom is not even fully organized. Moreover this responsibility would taint what should be a group that is focussing purely on finding the best candidates for the Board as well as other ICANN bodies. Lastly, since the NomCom must operate in complete secrecy (regarding candidates), it would be a bad plan to alter that rule for this particular task allowing full consultation with the community. It would be equally bad to shroud the removal process in secrecy and NOT allow consultation. - The original intent of the CCWG was that the community (ie the Members or Designators) would remove NomCom appointees. Legal advice indicated that since these people were appointed by the NomCom, they must be removed by the NomCom. There is a simple way to effect this. There should be a sub-committee of the NomCom appointed to carry out NomCom-appointed Director removals. This committee should be composed of the representatives of the SO/AC (or their Unincorporated Associations) empowered to act on behalf of the SO/ACs for all of the other empowerment mechanisms (ie the Members or Designators). We therefore have the removal of NomCom appointees carried out by the very community that desires these removals, without having to create an artificial and perhaps distorting intermediary mechanism. The Bylaws restricting who can sit on a NomCom or what NomCom members can do after their term may need to be reviewed for the members of this sub-committee, particularly in the expected typical case where the sub-committee may technically exist in a given year, but may never actually be convened to take any action.	

Power: Recalling the entire ICANN Board

Question 12: Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Summary:

There were 23 comments in this section.

21 comments suggested agreement; 2 divergent comments and 5 comments noted concerns.

There was no confusion rated comment.

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

The main issue/s or concerns:

- **The threshold for removing the entire board with recommendations for a higher option of 80%**

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

-

Proposed CCWG response/approach to resolution

-

#	Contributor	Comment	CCWG Response/Action
350	RH	Question: Yes. Membership should have full powers.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
351	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
352	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
353	CRG	I agree that removing the Board as a whole would increase Accountability.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
354	AFRALO	While giving the community the power of recalling the whole board is an appropriate accountability mechanism, it should be the very extreme step to be taken. AFRALO members wish this would never happen. The majority of 75% proposed in the report for such decision looks acceptable.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** Consider concern **CCWG Response:** The question of the threshold is a matter that has been carefully considered by the CCWG, and we agree that the plan is for this power to be a "last resort".
355	Afnic	Afnic supports this proposal and the limitation of powers it includes.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
356	IA	Recalling the entire Board should be considered a measure of last resort, we propose an 80% threshold for this action.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** Consider concern **CCWG Response:**
357	eco	Recalling the entire board is the most important power to ensure that the community can step in in cases where the board is not willing to act in accordance with ICANN's bylaws. Hence, this very community power should be made the most robust one, even in case the CCWG or the community wishes to compromise on other community powers and the associated escalation paths described in the report.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required

			CCWG Response:
358	RySG	RySG agrees that an enforceable power to recall the entire ICANN Board would help to enhance ICANN's accountability to the global multi-stakeholder community. We support the 75% member voting threshold for recalling the entire Board.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
359	BC	- BC supports the CCWG proposal to allow community Members to vote for removing the entire ICANN Board. Some in the BC support a 75% Member voting threshold to recall the entire Board. Some in the BC support an 80% threshold. (p.50) - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability. - BC appreciates that CCWG anticipates the need for operational continuity measures in the event the entire ICANN Board is recalled (p.50), and will comment on the details when they are developed.	"Agreement" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
360	.UK	*We are concerned that many of the mechanisms identified in the proposal will be massively disruptive – nuclear options. One result of sanctions of such consequence is that they are considered unusable.* Sacking the Board – a Board that has been selected by the community and where many of the members can be held directly to account by their own community – seems to be a case in point. This is particularly so in that there is a small pool of community candidates willing to take on the role. (One could question whether there should be more rotation of community-appointed members on the Board to develop a wider pool of experienced and knowledgeable candidates.) However, at a time of crisis in the organisation, it is hard to see who could step forward to populate a new Board at short notice and who will be able to command the trust needed to rebuild the organisation's confidence. The steps following sacking the Board or individual Board members need to be considered carefully, as do scenarios for rebuilding the organisation once the ultimate mechanisms have been triggered.	"Concerns" **Summary / Impression:** **Actions suggested:** Consider concern **CCWG Response:** "Agreement" "Concerns" **Summary / Impression:** **Actions suggested:** Consider concern **CCWG Response:**
361	LINX	We strongly support the existence of this power. The threshold to spill the entire ICANN Board is too high: a. ICANN interacts with the different communities (Numbers, Country-Code Domains, Generic Domains, IETF) in different ways; b. Some of those communities (Numbers, IETF) have additional accountability mechanisms already to preserve their independence from ICANN. The ccTLD community is likely to acquire new such mechanisms as a result of Transition; c. We do not question, and indeed support, these distinctions. Nonetheless, it does mean that the gTLD community is the one that is most likely to ever need to exercise the extraordinary power to spill the ICANN Board; d. We do not think the power to spill the Board should be exercised lightly, and support the requirement for a high threshold within a given community; e. However, in the event that the unanimous decision of the gTLD community were to ask for a Board spill, we think it untenable and highly destabilising to ICANN that the Board remain in place merely because the ccTLD community and the numbers community were not affected by the cause of the gTLD community's complaint; f. To be clear, a choice must be made: either it must be possible for one or more of the SOs to be forced to accept the continuation in office of a Board in which it has utterly lost confidence, or it must be possible for one or more SOs to be forced to accept that a new Board will be required, even though it was content with the existing one.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider concern** **CCWG Response:** No analysis for this one?

		Neither situation is desirable, the only question is which would be worse; g. **In our judgement, it is far worse to impose on an entire community a Board that is unacceptable to it, than to require a community to select alternative nominees from the huge range available to it. The continuation in office of a Board that was unacceptable to gNSO would pose grave existential risk to the future of ICANN**; h. Accordingly, we recommend that any single SO should be able to dismiss the entire ICANN Board if it passes a vote of 'No Confidence' by a high threshold within itself (e.g. 75% or 80%).	
362	JPNIC	- We would like to understand, what the specific circumstances are, to require the recall of the entire Board, and why this is needed in addition to have the ability to recall individual Board members. Until they are clear, we are not sure at this stage whether this further enhances ICANN's accountability, in balance with the risk of destabilizing the organization and the overhead of preparation needed to prepare for such situation. - In case there are specific circumstances for this need, out of the options provided in paragraph 246, we do not think option 1) makes sense, if we are overthrowing the entire Board due to its lack of accountability, to ask this board to act as "caretaker", as there must be very serious reasons to overthrow the entire existing Board.	"Divergence" **Summary / Impression:** **Actions suggested:** **CCWG Response:**
363	CWG-St	We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed.	"Agreement" **Summary / Impression:** **Actions suggested:** No action required **CCWG Response:**
364	IPC	Agree: yes, and Yes, the requirement threshold is sufficient.	"Agreement" **Summary / Impression:** **Actions suggested: No action required** **CCWG Response:**
365	USCC	Yes, but believe there should be a high threshold as this should be an option of last resort. We strongly support the CCWG goal of binding accountability, which may only be achieved through legal mechanisms is necessary as merely providing power to spill the board is in itself not enough.	"Agreement" "Concerns" **Summary / Impression:** **Actions suggested: Consider concern** **CCWG Response:**
366	INTA	supports granting the Community the power to recall the entire Board of Directors. The proposed processes and threshold appear appropriate.	"Agreement"" **Summary / Impression:** **Actions suggested: No action required** **CCWG Response:**
367	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. The CCWG must carefully consider the threshold – 75% is the highest that is viable otherwise the power will become only theoretical.	"Agreement" **Summary / Impression:** **Actions suggested: No action required** **CCWG Response:**
368	NCSG	Yes, we agree.	"Agreement" **Summary / Impression:** **Actions suggested: No action required**

			CCWG Response:
369	Board	We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.	"Agreement" **Summary / Impression:** **Actions suggested: No action required** **CCWG Response:**
370	CENTR	We support the introduction of mechanisms that would allow the ICANN community to eventually recall the entire ICANN Board. We believe that both this community power, the steps to implement it and the causes to enforce this ultimate power must be extremely well designed and transparently described.	"Agreement" **Summary / Impression:** **Actions suggested: No action required** **CCWG Response:**
371	NIRA	NIRA agrees.	"Agreement" **Summary / Impression:** **Actions suggested: No action required** **CCWG Response:**
372	ALAC	- If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants. - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235). - The ALAC has reservations about this mechanism. Exercising it could potentially be catastrophic for ICANN, all the more so given that to date there has not been a viable proposal on how to govern ICANN in the interim until a new Board is selected. The potential for any interim Board being subject to capture or being unresponsive to community input is high, as is the danger of not having an effective Board in place to address any unforeseen circumstances that might arise. It is because of these difficulties that the ALAC would far prefer the "surgical" approach of carefully removing the Directors that the community believes are the source of ICANN's problems while leaving a core Board in which it has confidence.	"Concerns" **Summary / Impression:** **Actions suggested: Consider concerns** **CCWG Response:**

Incorporating the Affirmation of Commitments into the ICANN Bylaws

Question 13: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments principles would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.
Question 14: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments reviews would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Summary:

There were **number** comments in this section.

XX comments suggested **agreement;** yyy comments noted **concerns**.

There was aaa **confusion** rated comment.

There were bbb **divergent** rated comments.

There was **broad [agreement/disagreement/general summary if possible] that this power would enhance ICANN accountability**.

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

- A

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

- A

Proposed CCWG response/approach to resolution

- A

#	Contributor	Comment	CCWG Response/Action
373	RH	Question 13: Disagrees. ICANN should not be incorporated in the USA	"Agreement" "Concerns" **Summary / Impression / Response:** RH acknowledges that jurisdiction is distinct from where ICANN is organized and located. " ICANN will be subject to the laws of the countries in which it operates" No disagreement there. RH says ICANN would "primarily be subject to the laws of the country in which it is incorporated. If California law does not allow the membership to exercise full powers, then it might be better to incorporate ICANN elsewhere" Legal advice provided to the CCWG indicates that CA law allows membership to exercise (and enforce) full powers, so there is no disagreement here. RH says, " ICANN should not be incorporated in the USA, or in any other powerful state that might be tempted to interfere with ICANN for political or economic reasons. It should be incorporated in a neutral state that is unlikely to interfere, for example Switzerland." On this point, ICANN's Articles of Incorporation and Bylaws Article 18 require California incorporation and location. The CCWG is not proposing a change in ICANN's state of incorporation. As to the question of whether Bylaws Article 18 should be a Fundamental Bylaw, RH would likely say, No. However, RH seems to imply that all bylaws should be fundamental, with this comment: "the membership, and only the membership, should have the power to change the bylaws." Note that RH suggests that individuals should be the Members, not the ACs and SOs themselves. **Actions suggested:** Make sure jurisdiction and state of incorporation are serious topics for WS2.
374	DBA	Question 14: important that governments are given appropriate weight in the proposed multi-stakeholder reviews, including the ATRT Reviews.	"Agreement" DBA supports import of AoC Reviews into ICANN bylaws. DBA also notes that "it is important that governments are given appropriate weight in the proposed multi- stakeholder reviews, including the ATRT Reviews" While the precise makeup of the AoC review teams is not specified in the CCWG proposal, we did propose that all SOs and ACs (incl the GAC) should be represented in the AOC reviews (see para 305) **CCWG Response:**

			The CCWG agrees that GAC should be part of AoC review teams, and will consider how to express this more specifically in the next version of the proposal.
375	WC comment 1	The inclusion of the Affirmation of Commitments into the ICANN Bylaws strengthens community review of ICANN's activities.	"Agreement" **CCWG Response:** The CCWG thanks you for your comment and has considered it in its discussions.
376	CRG	Not if transferred as they are today. Based on my limited experience in ATRT2 I think the structure of the 4 reviews is outdated, cumbersome, and too slow for an ICANN directly accountable to the community. In itself there is a potential conflict of interest there in the community reviewing and organisation led by the community. This is a very serious task for WS2 to define how reviews have to be changed so they enhance accountability under the new stewardship!	"Agreement" "Concerns" "Confusion" CRG might mistakenly believe that CCWG proposed importing the AoC reviews "as they are today". In fact, CCWG proposed many changes to the existing AoC reviews. As to whether the AoC reviews are "too slow", the CCWG did not propose more frequent reviews. Instead, we assume that enhanced IRP and other enforceable community powers will provide quick remedies to decisions or inactions by ICANN. **CCWG Response:** CCWG does not see the suggested conflict of interest, since the community is distinct from the ICANN board and management that handles implementation and operations. In WS2 we could further improve these AoC Reviews. But folding them into the bylaws now is important, since either ICANN or NTIA could terminate the AoC at any time.
377	Afnic	Incorporating the AoC into the ICANN Bylaws is a coherent step toward the termination of the unique US oversight role for ICANN. Therefore, Afnic supports this proposal, along with the revised version of the Bylaws proposed at 3.1and including the IANA function review.	"Agreement"
378	IA	- IA agrees this is a necessary step in the transition, and must be completed prior to the transition. - The various review mechanisms provided by the AOC have historically been helpful tools for addressing concerns with ICANN's accountability. - IA strongly supports the proposed Bylaw changes regarding the new gTLD program, particularly the requirement that recommendations from the previous review be implemented before rounds of new gTLDs can be opened.	"Agreement"
379	Govt-ES	- Key elements of the AoC addressing ICANN's commitments to the Community are proposed to be reflected in ICANN's Bylaws and Articles of Incorporation (page 20). [Note: request paragraph number] We ask for a detailed timescale, requirements and processes that would lead to the termination of the AoC, including steps to be taken by the USG and ICANN. Full privatization of ICANN requires all contractual links with the USG to be finished. - While the AoC actually states that ICANN should be headquartered in the USA, and the Articles of Incorporation set forth that ICANN is a non-profit public benefit corporation under the California law, *we do not believe this should be incorporated into a core or fundamental value of ICANN* (page 21), for the reason that the remaining of ICANN subject to Californian Law is not fundamental to the global Internet community. - Regarding periodic reviews, provisions are insufficient to ensure that the community input is duly and fairly taken into account. Some language regarding the decision making procedures that the review team should follow and how their deliberations are reflected in their final recommendation report. - Recommendations issued by the review team should explicitly indicate whether they were reached at by consensus, qualified majority or simple majority in the team. For the sake of transparency, the review teams should describe how they have considered community inputs explaining why they embraced the ones that made their way to the final report and why they rejected the other ones. In addition, a table displaying the suggestions	"Agreement" with suggestions **Summary / Impression:** • Wants to terminate the AoC after transition. • Article 18 should not be a Fundamental Bylaw. • Several ideas about transparency and process for the periodic reviews imported from the AoC. **CCWG Response:** On terminating the AoC: The CCWG proposal (para 257) indicates expectation that AoC could be terminated post-transition: "It is possible that once adopted as fundamental Bylaws, ICANN and the NTIA could consider mutually agreed changes to or ending of some or all of the Affirmation of Commitments, since in some respects it will no longer be necessary." In the next CCWG draft, we could make termination of AoC an intentional consequence of bringing commitments and reviews into the bylaws. Regarding the periodic reviews imported from the AoC: Our next draft could add specific rules about how review teams reach decisions. Review teams could be required to publish the degree of consensus for their conclusions. And review teams could

		received and their authors ranked by their level of support among community members contributing to the comment periods should be publicly available, as a reflection of the community's preferences.	publish how they responded to community input on their recommendations and report.
380	RySG	- Q13 - agrees to incorporating key principles and elements of the Affirmation of Commitments (AoC) into the ICANN Bylaws - It further enshrines key accountability and transparency review commitments and helps to eliminate a remaining vestige of the United States government's unique role with regard to ensuring ICANN's accountability. Transitioning key components of the AoC would, in effect, transition that oversight from the USG to the global multi-stakeholder community. - RySG supports the list of requirements for this recommendation - RySG note that there are some conflicting revisions proposed in Sections 3 and Section 6. Generally, we support the more active language used Section 3. We trust that the CCWG-Accountability will reconcile these discrepancies in its final proposal. In the final proposal, we recommend that a single and complete redline of the ICANN Bylaws be included reflecting both the proposed changes to the Mission and Core Values as well as the incorporation of the Affirmation of Commitments into the Bylaws. - RySG has one point of concern with respect to the following text: *ICANN will ensure that as it expands the top-level domain space, will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.* We agree that the above issues are important topics, but wish to underscore that these topics must be addressed through the multi-stakeholder model and not unilaterally by ICANN as an organization. We urge that this be clarified in the final proposal. Q14. agrees to incorporating the Affirmation of Commitments (AoC) reviews into the ICANN Bylaws - RySG believes the Accountability and Transparency Reviews must be incorporated. - RySG other reviews, such as the Whois review, could be sunset. The RySG believes that the community should have the power to designate participants on future reviews (unlike today, where the Chairs of the ICANN Board and GAC have that unique power.)	"Agreement" "Concerns" **Summary / Impression:** 1. We should fix inconsistencies between sections 3 and 6. 2. RySG wants to require a bottom-up multistakeholder process to interpret new gTLD review criteria. As a point of clarification, we should ask RySG if they believe the community-driven AoC reviews are sufficiently bottom-up, or should we require a different process such as a PDP? 3. RySG supports ATRT having role to sunset periodic reviews, and believes the WHOIS review is a good candidate for sunset. **CCWG Response:** Ask RySG to clarify whether they believe the community-driven AoC reviews are sufficiently bottom-up, or should we require a different process, such as a PDP?
381	JH	- It's not reasonable to fully incorporation all the principles of AOC into Bylaws. It's a possible option to abolish AOC and put some appropriate principles of AOC into ICANN Bylaws. Because on the one hand, some principle in AOC could regulate ICANN, such as "Require the ICANN Board to consider approval and begin implementation of review team recommendations, including from previous reviews." But the word "Consider" is too weak. Language should be changed in this principle and ICANN Board "must" implement in time. On the other hand, AOC also some terms are questionable by communities, such as ICANN commit to always headquartered in LA, California, USA. Those questionable terms should not be incorporated into Bylaws before communities consensus. - Put some appropriate principles of AOC into ICANN Bylaws would enhance ICANN's accountability. Actually, this is to solve the problem of effectively implementation of ICANN Board. Without strict regulations in Bylaws, even if the IRP determined that ICANN is wrong and there are specific penalties or solutions, It is still possible for ICANN board to delay the process of implementation or do nothing. So the "appropriate" principles should be the principles that could regulate ICANN board to some extent. Additionally, ICANN should be accountable for all the stakeholders, not only for US government. According to the AOC contract relation between US government and ICANN, ICANN is only accountable for US government. Well, after abolishing AOC and partly incorporation some appropriate principles into Bylaws, ICANN will be more accountable for multi-stakeholders. Moreover, some principles from AOC are not enough to	"Agreement" "Concerns" JH wants ICANN to be required to implement review team recommendations. The CCWG discussed this and concluded that some review team recommendations could be rejected or modified by ICANN, for reasons such as implementability or cost. If the community disagreed with the Board's decision, it could invoke the Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP. JH has mistaken impression that AoC 8b is driving requirement to locate ICANN in Los Angeles. As noted in CCWG report, ICANN's current Articles and Bylaws state the California incorporation and location. The CCWG is not proposing changes to those requirements. It is likely that JH would not want Bylaws Article 18 to be a fundamental bylaw, but we should ask to be sure. JH supports having enforceable IRP decisions. CCWG agrees. JH does not want ICANN to be accountable to US Government via a bilateral agreement such as the AoC. The CCWG proposal (para 257) indicates expectation that AoC could be terminated post-transition: "It is possible that once adopted as fundamental

		make ICANN accountable for community. There should be more regulations in Bylaws. Currently, regulation to be binding upon ICANN Board is too vague, should be more clear and powerful. For example, if removal of a director is determined, then ICANN does not implementation, automatic removal after 10 days; if a policy made by ICANN Board is determined to be rejected by ICANN communities, the policy will be automatically stopped to implementation.	Bylaws, ICANN and the NTIA could consider mutually agreed changes to or ending of some or all of the Affirmation of Commitments, since in some respects it will no longer be necessary." In the next CCWG draft, we could make termination of AoC an intentional consequence of bringing commitments and reviews into the bylaws.
382	BC	- BC supports having key commitments from the Affirmation incorporated in ICANN Bylaws according to CCWG proposal (p.55). - BC believes that *Affirmation of Commitments* paragraph 8b should also become a Fundamental Bylaw" "ICANN affirms its commitments to: 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" - BC believes that Article XVIII should be designated a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed without broad community approval. - Moreover, hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law.	"Agreement" BC believes Article 18 should be a Fundamental Bylaw.
383	.UK	We welcome the approach of embodying the Affirmation of Commitments into ICANN's DNA and of building on the AoC reviews. This process has been criticised in the past as another layer of review ("ICANN reviewing itself to death") and has also excited little interest in the community. Yet as part of enabling the community, the mechanism provides a way of ensuring concerns are being heard and addressed. We believe that this process is fundamental as a way of building trust in ICANN and it could usefully be included earlier in the report: it is based on improving the organisation, rather than sanctioning it. However, the processes are slow, greedy on volunteers' time and cumbersome (a year to review and even longer to implement: given the frequency of the reviews, one can be started before all the recommendations from the previous review have been fully considered). Hence we welcome the proposals to increase the time cycle of the review process and of focussing reviews on areas of greatest concern. The requirement for an annual report on the state of improvements to accountability and transparency is a good idea: we think it should be a clear part of the CEO's report.	"Agreement" with suggestion UK believes that periodic reviews imported from AoC are slow and consume valuable volunteer time. .UK recommends increasing the cycle time of periodic reviews. **CCWG Response:** Ask UK if they agree with the longer cycle times in the CCWG proposal: ATRT -- no less frequently than every 5 years SSR -- no less frequently than every 5 years New gTLD -- no less frequently than every 5 years WHOIS -- no less frequently than every 5 years
384	USCIB	The AoC currently calls for several reviews that have served as effective tools for reviewing and strengthening ICANN's accountability. USCIB therefore strongly supports the inclusion of the Accountability and Transparency Review (ATRT), the Security, Stability, & Resiliency of the DNS Review, the Competition, Consumer Trust, & Consumer Choice Review, and the WHOIS Policy Review into Article IV of the ICANN Bylaws so that ICANN will be legally bound to continue them on a regular and permanent basis. In sum, we regard incorporation of the AoC into the ICANN Bylaws as a fundament requirement of the transition. This will provide the Internet user community with greater confidence that the safety, security, and resiliency of the DNS will continue uninterrupted as NTIA's stewardship of the IANA functions is transitioned. - para 345: We support the bylaw changes on the new gTLD program generally and specifically: "Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section have been implemented."	"Agreement" USCIB believes Article 18 should be a Fundamental Bylaw. Regarding periodic review of new gTLD expansion, USCIB supports CCWG proposal to require implementation of prior review recommendations. "Divergence"

		- para 269: The proposed text for insertion in the bylaws is "where feasible, and appropriate, depending on market mechanisms..... " We feel that there is a large range of opinions on the role of the market. The AoC, however, is stronger in its support of the marketplace, so we would suggest deleting the words "and appropriate". **-- belongs with question 16**	This belongs in a different section. Regarding AoC commitment 3c: USCIB does not support adding this text to the Bylaws: "Where feasible and appropriate" and suggests deleting "and appropriate"
385	LINX	We support the CCWG's proposed changes to the Core Values. We have no other comments regarding the incorporation of items from the Affirmation of Commitments.	"Agreement"
386	JPNIC	Binding the AoC related to Accountability into the Bylaws would ensure that ICANN will be committed to them. However, instead of writing what is in the AoC in the Bylaws and producing duplicate description in two different documents, we suggest to reference relevant sections of the AoC in the Bylaws and bind referred sections by the Bylaws. This would avoid a situation in the future where the Bylaws or AoC was changed but the other document remains unchanged.	"Agreement" "Concerns" **Summary / Impression:** JPMIC might mistakenly believe that CCWG proposes "binding" the AoC into the bylaws. In fact, CCWG proposed many changes to the existing AoC reviews as part of bringing them into the bylaws. The CCWG proposal (para 257) indicates expectation that AoC could be terminated post-transition: "It is possible that once adopted as fundamental Bylaws, ICANN and the NTIA could consider mutually agreed changes to or ending of some or all of the Affirmation of Commitments, since in some respects it will no longer be necessary." In the next CCWG draft, we could make termination of AoC an intentional outcome. **CCWG Response:** The CCWG is proposing several enhancements to the AOC reviews, improving them beyond what was agreed between the United States and ICANN in 2009. Incorporating AOC by reference would lose these improvements. Because the AOC is a bilateral agreement between the USG and ICANN, it is not appropriate for it to be referred to in the bylaws after the transition. That is why the CCWG has taken the approach of including the commitments direct into the bylaws, to allow the AOC to expire at a later point.
387	CWG-St	We understand that the CCWG Accountability proposes to incorporate the review system defined in the Affirmation of Commitments into ICANN's Bylaws, including the ability to start new reviews (section 6.2, page 60). Moreover, that based on the CWG-Stewardship proposal, the CCWG introduced a recommendation to create a new review, based on the requirements we had provided to you.	"Agreement"
388	IPC	- The IPC supports having key commitments from the Affirmation incorporated in ICANN bylaws according to CCWG proposal (p.55). IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw. - The IPC supports the notion of enshrining the key reviews in the ICANN bylaws to enhance ICANN accountability. The IPC also supports the CCWG proposal to empower the Accountability and Transparency Review Team (ATRT) to create new reviews and reschedule reviews as community priorities demand. However, empowering the ATRT to completely eliminate any of the reviews now provided for in the AoC raises concerns. Rather than the expedited six-month review Board review process applicable to ATRT recommendations generally, the elimination of any current AOC-mandated review should be undertaken only through amendment of the relevant new Bylaws through the amendment process ordinarily provided. - Paragraph 305 should be modified to provide that Review Teams include representatives of all "constituencies" as well as the other entities listed. - The reference in paragraph 338 to a Board-initiated review of "any batched round of new gTLDs" is somewhat confusing as to whether it refers to the review required by the AoC (as proposed to be incorporated in the bylaws) or something else. Furthermore, experience with the current new gTLD round (and the pending reviews) suggests that one year after the first new gTLD in the round becomes operational may not be long enough if other	"Agreement" with suggestions "Concerns" **Summary / Impression/Response:** IPC believes that Bylaws Article 18 should be a Fundamental Bylaw. IPC has concerns about allowing the ATRT to recommend sunset of other AoC reviews. CCWG notes that such a recommendation would be created by community members and would be subject to public comment. If the board approved a recommendation to sunset a review, this decision could be challenged by Reconsideration and IRP. And, as IPC points out, sunsetting a review that is in the bylaws is itself a bylaws revision that is subject to veto by supermajority of Members. IPC believes that each GNSO Constituency be represented in periodic review teams (para 305). While the precise makeup of the AoC review teams is not specified in the CCWG proposal, we did propose that all SOs and ACs (incl the GAC) should be represented in the AOC reviews. The CCWG will consider adding "and constituencies" in the next version of the proposal. If so, we may need to normalize voting in

		new gTLDs are still being rolled out at that time. It's also possible that there will not be further "batched rounds" of new gTLDs. We support having bylaws requirements for periodic community-wide reviews of whether ICANN's new gTLD activities are promoting competition, consumer trust and consumer choice, and the proposal in paragraph 347 that such reviews occur at least once every five years. - Paragraph 351 is a sentence fragment referencing the OECD Guidelines as playing some role in future Whois Policy reviews. It is not clear what role is contemplated. The reference to "legal constraints" is also ambiguous since the OECD Guidelines do not have the force of law.	the review team since not every AC/SO contains as many chartered constituencies as the GNSO. IPC asks for clarification on "batched round of new gTLDs" in para 338. The original AoC review of new gTLDs was required 1 year after new gTLDs had been operation. The CCWG preserved that requirement -- if ICANN has any more batched rounds of gTLD expansion. If, however, ICANN moved to continuous gTLD applications, this 1-year trigger would not apply, and ICANN would be required to perform this review noss frequently than every 5 years. IPC indicates ambiguities in para 351 with respect to OECD guidelines, which do not have the force of law.
389	Govt-BR	- The AoC was created in the context of the US Government's oversight of ICANN. Once that relation is ended, due consideration should be given as to whether commitments established in the past should remain valid within the new oversight structure. In other words, the incorporation of the provisions contained in the AoC should reflect the agreement of the global multistakeholder community, including governments, and not be automatically transcribed from the AoC. - In this regard, Brazil considers inappropriate that Section 8(b) of the AoC be incorporated to the bylaws without further reflection, as ICANN should not be constrained to be legally established in a specific country if, in the future, its stakeholders decide that it would be more convenient for the corporation to change its main office to another location. - CCWG should consider reviewing Article XVIII, Section 1, of ICANN's bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a "fundamental bylaw". - References to the leadership of the private sector ("private sector led", "rooted in the private sector") are inadequate and contradict the spirit of multistakeholderism that should govern the corporation. The fact that ICANN is currently incorporated as a "non-profit organization" reinforces this understanding.-- **this regards Core Values, so belongs with question 1**	"Agreement" "Confusion" "Concerns" Brazil might mistakenly believe that CCWG proposed importing the AoC commitments and reviews verbatim. In fact, CCWG proposed many changes to the existing AoC reviews. Public comment on these proposed changes is intended to "reflect the agreement of the global multistakeholder community, including governments" Brazil might mistakenly believe that AoC 8b is driving requirement to locate ICANN in Los Angeles. As noted in CCWG report, ICANN's current Articles and Bylaws require the California incorporation and location. The CCWG is not proposing changes to those requirements. Brazil suggests elimination of Bylaws Article 18. Presumably, Brazil would suggest amending ICANN articles of Incorporation as well, since that also describes a CA corporation. Brazil does not support having bylaws article 18 become a Fundamental bylaw. **Move to Question 1:** Brazil mistakenly believes that CCWG proposed bringing the phrase "rooted in the private sector" from the AoC into ICANN bylaws. That phrase is already in the ICANN bylaws (para 103). Brazil disagrees with CCWG proposal to import the phrase "private sector led" from AoC8c into ICANN bylaws (para 292).
390	CDT	- Supports the inclusion of key Affirmation of Commitments (AoC) principles and reviews. The AoC is an important document that has significantly improved ICANN's accountability and transparency. Importantly, the AoC also outlines criteria and characteristics of the organization's relationship with its community including, among others, the importance of the multistakeholder, bottom-up policy development model. The proposal does a thorough job of bringing these key elements into the bylaws.	"Agreement"
391	USCC	- Incorporating keys aspects of the AoC into the bylaws is critical to enhancing ICANN's accountability. Even though ICANN has said is has no plans to terminate the AoC, incorporating key provision into the bylaws makes this and the unique bilateral relationship with the USG a non-issue going forward. - Making the reviews permanent would enhance ICANN's accountability.	"Agreement"
392	INTA	- it is important to preserve the critical role of the AoC in reviewing and enforcing accountability principles by incorporating its principles within ICANN's Bylaws. - generally agrees with the list of requirements for this recommendation as they appear to incorporate and enhance all of the commitments made by ICANN when it signed the AoC. - With regard to the proposed incorporation of AoC paragraph 7, we note that the introductory provision of a new Section 8 in Article II of the Bylaws presently reads, "ICANN **shall** adhere to transparent and accountable budgeting processes, **providing [reasonable] [adequate] advance notice to facilitate stakeholder engagement in policy decision- making**..." We believe that the use of the term "advance" is insufficient, as ICANN often	"Agreement" "Concerns" with suggestions INTA believes bylaws should require periodic reviews more frequently than every 5 years. Specifically, INTA recommends a 3-year cycle and another 3-year cycle after transition, with 5-years cycles thereafter. INTA recommends that the new gTLD reviews occur no less frequently than every 3 years.

		provides inadequate time for comment periods, and the resulting limitation on adequate review is especially difficult for large membership organizations such as INTA, which represents trademark professionals from around the world. Therefore, we recommend that this phrase read, "providing reasonable and adequate advance notice." **Belongs with question 1** - agrees that it is very important to give force to the incorporation of the AoC within the Bylaws by amending them as proposed. This will ensure periodic reviews relevant to assuring accountability and transparency; preserving security, stability, and resiliency; promoting competition, consumer trust, and consumer choice; and reviewing effectiveness of the WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust. - further agrees that all reviews should be conducted by volunteer community review teams comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board; and that the review group should be as diverse as possible. - concurs that review teams should be empowered to solicit and select independent experts to render advice, and should have access to ICANN internal documents. - have some significant concerns regarding the recommendation that the separate periodic reviews should be carried out at least every five years, whereas the current AoC requires them to be performed every three years (or two years after the receipt of the initial one-year review required for new gTLD rounds). Given the uncertainty of the post-transition situation, we believe that the requirements for reviews to be held every three years should be maintained for at least two full cycles after the transition takes place, with a review mandated after the first six years to decide if less frequent reviews (but no less frequent than every five years) would be adequate to ensure continued adherence to AoC principles. - in regard to any possible future rounds of the new gTLD program, we believe that reviews of its promotion of competition and consumer trust and choice should take place at least every three years -- even if the Board should adopt an open-ended version of the program that does not have discrete rounds with set application deadlines.	
393	.NZ	- supports the incorporation of the AOC principles and reviews in the bylaws as an enhancement to ICANN's accountability. We are in support of the requirements set out.	"Agreement"
394	NCSG	Yes, we agree and find this an essential component of the proposal.	"Agreement"
395	GG	GG supports incorporating the Affirmation of Commitments into ICANN's bylaws.	"Agreement"
396	Board	- With regards to the inclusion of the Affirmation of Commitments reviews into the bylaws: Are there sufficient mechanisms in place to assure diversity of the review teams (geographic, gender, etc.)? What are the mechanisms to adjust the review processes as needed by the community? What are the mechanisms for ensuring costing and subsequent prioritization of recommendations, and determination if recommendations are feasible? What limitations on review team access to documents will be identified to address issues such as restricting access to employee records, trade secrets provided to ICANN by others, and assuring that competitors do not gain access to others' sensitive documentation that ICANN has within its files? - We recommend that language that is incorporated into the Bylaws on WHOIS be updated to reflect the potential for future modification and overhaul of the registration directory system, and not hardcode the legacy "WHOIS" requirements into the Bylaws.	"Agreement" "Concerns" Board suggests mechanisms to assure diversity of review teams. Board asks about mechanisms to prioritize recommendations. Board asks about costs and feasibility of recommendations. The CCWG notes that recommendations are created by community members and are subject to public comment, including ICANN staff input on cost and feasibility. CCWG concluded that some review team recommendations could be rejected or modified by ICANN, for reasons such as implementability or cost. If the community disagreed with the Board's decision, it could invoke the Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP. CCWG notes that recommendations are created by community members and are subject to public comment, including ICANN staff input on cost and feasibility.

			Board is concerned about disclosure of sensitive or confidential information provided to review teams under proposal to give review teams "access to ICANN internal documents" (para 307). CCWG will consider language to require non-disclosure of sensitive or confidential information obtained in a review, although the designation of sensitive / confidential might not be in ICANN's sole discretion. Board recommends bylaws language reflecting potential for change to WHOIS. CCWG attempted to reflect that in para 349-33, by using the expression "WHOIS/Directory Services"and believes that phrase should be sufficiently flexible. If not, a review team could recommend a change to the name.
397	CENTR	- We agree that the incorporation of the Affirmation of Commitment principles into the ICANN Bylaws might enhance certain accountability aspects. At the same time, we believe that adding a new Bylaws section for Periodic Review of ICANN Execution of Key Commitments will certainly serve to better assess ICANN's high-level performances. - Concerning the proposed IANA Function Review – IFR – we are supportive of a review to take place no more than two years after the transition is completed, but we believe that subsequent reviews should occur more regularly and not every five years.	"Agreement"and suggestion. CENTR believes subsequent IFR cycle should be more frequent than every 5 years (para 360). In its other AoC periodic reviews, the CCWG used the phrase "no less frequently than every five years" which allows for more frequent reviews. And in para 362, CCWG indicates that Special Reviews may be initiated at any time.
398	NIRA	NIRA agrees.	"Agreement"
399	ALAC	Accountability and Transparency (A&T) Review - Paragraphs 310-317: The wording of this section should be altered to indicate that the a-e list is not prescriptive. Each review team should be given the authority to decide exactly what A&T issues it will address. Based on the experiences of the ATRT1 and ATRT2, the current formulation implies: • A narrow focus of A&T as understood by particular individuals in 2009. The very existence of this CCWG illustrates the "straitjacket" that the A&T review teams were controlled by forcing concentration on issues that may have been of lesser importance and restricting what they could look at in addition to or instead of the prescribed list. • The requirement to review in depth the previous work and to explore new areas creates an ever increasing workload that will make it very difficult for an ATRT to effectively tackle real issues that are relevant at the time of its formation.	"Agreement" with suggestion. "Concerns" ALAC notes that imported items from AoC ATRT review are over 6 years old and more flexibility is needed for future ATRT reviews. The CCWG could modify para 311 to something like "issues that may merit attention include" ALAC is concerned about workload in requiring ATRT to assess the extent to which prior ATRT recommendations were implemented. CCWG notes that requirement was imported from the AoC. (note that CCWG extended that requirement to the other 3 periodic reviews imported from the AoC). CCWG will discuss whether to retain this AoC requirement.
400	LAB	Regarding the various periodic reviews, these are stipulated to occur "no less frequently than every five years" (see, e.g., paragraph 322 regarding accountability and transparency reviews), yet no explanation is given as to why a five-year cycle is chosen as opposed to, say, a three-year cycle as per the AOC. Perhaps an explanation is in order.	"Agreement" and request an explanation. LAB asks for rationale for period reviews "no less frequently than every five years". The CCWG suggested longer review cycles based on experience with AoC reviews over last 6 years. That experience indicates that ATRT, WHOIS, and SSR reviews are triggered before the prior review has completed implementation. Moreover, the CCWG noted that AoC reviews involve intense volunteer work for up to a year, and are aware that volunteer fatigue is a significant problem today.