CCWG-Accountability (WP1): Draft Content for the Second Public Comment Report

5.5 Power: Removing individual ICANN Directors

Item/s for CCWG discussion/decision on 23 July:

1. Paragraph 11 on the development of community standards – WP1 meeting #20 discussed this on 22 July and some members did not support any development of such standards or mention of them. **The CCWG needs to resolve this matter.**

01 The Board is the governing body of ICANN, with main responsibilities that include employing the President and CEO, appointing the Officers, overseeing organizational policies, making decisions on key issues, defining the organization's strategic and operating plans and holding the staff to account for implementing them.

02 Of ICANN's sixteen Directors, fifteen are appointed for a fixed term and generally are in office for the whole term they are appointed - by their SO/AC, or by the Nominating Committee. In addition the Board appoint the President and CEO (confirmed each year at the AGM). The power to remove individual directors of the ICANN Board is currently available only to the Board itself, and can be exercised through a 75% vote of the Board. There is no limitation[1] on the types of situation for which the Board's power can to remove a director specified in the Bylaws.

03 This power would allow for the removal of a director before their fixed term comes to an end, with no rules set as limit or require particular cause for such removal. It is expected it would only be exercised in cases of serious difficulty with a particular director. See paragraph XX below for proposed future work to develop standards to guide the use of this power.

04 For the seven directors appointed by the three Supporting Organizations or by the At-Large Community (or by subdivisions within them, e.g. within the GNSO), a process led by that organization or subdivision would decide on the director's removal. Only the SO or AC that appointed the director can petition for their removal.

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[1] There are escalation paths, up to and including removal from the Board, for Board member violations of the Code of Conduct and Conflict of Interest Policies, but the Bylaws do not currently require such a violation occur prior to Board removal.

~~[Some CCWG Members/Participants believe that the appointing SO/AC should only be able to **petition** for the removal of their director(s) and that the actual removal would require the concurrence of the other SO/ACs similar to the removal of a NomCom appointed director.~~

~~**Does WP1 recommend:**~~
~~a. that we eliminate this option;~~
~~b. that we leave in such a bracketed option for the decision of the CCWG; or~~
~~c. that we recommend to the CCWG to present the options in the next draft proposal?]~~

05   For directors appointed by the Nominating Committee, a process of the SOs and ACs organized in the community mechanism would make a decision on the director's removal. Any SO or AC can petition for the removal of a director appointed by the Nominating Committee.

06   The following common elements apply regardless of whether the director is appointed by an SO/AC or by the Nominating Committee:

    a. A petition to start consideration of a director's removal requires a ~~2/3~~**simple** majority in an SO or AC.

    b. Where a petition to remove a director meets the required threshold, a meeting of the ICANN Community Assembly (ICA) will be convened. At that meeting:
       i. the Chair of the ICA must not be associated with the petitioning SO/AC or with the director involved;
       ii. representatives of the petitioning SO/AC must explain why they seek the director's removal;
       iii. the director has the opportunity to reply and set out their views; and
       iv. questions and answers can be asked of the petitioning SO/AC and of the director involved by all the other participants in the ICA

    c. Between seven and fourteen days after the meeting of the ICA, the decision-making body (the SO/AC's governing body or the Community Mechanism) makes a decision as to whether the director is removed or not.

    d. The threshold to cause the removal of the director is **3/4** of the votes cast, with a minimum participation of **3/5** of eligible vote~~r~~s.

07   The decision to remove the director, where made by the SO and AC, is legally validated by the CMSM in a procedure to be set out in the bylaws – a similar pass-through to that which will occur to validate the appointment of directors. Where the decision is made by the CMSM, it is binding already.

08   Where a director who had been appointed by SO/AC is removed, that SO/AC is responsible for filling the vacancy through the usual process. SOs or ACs may choose to develop expedited processes for use in such a situation, and suggest these to the ICANN Board for consideration of the relevant bylaws changes.

09   Where a director who has been appointed by the Nominating Committee is removed, the Nominating Committee may appoint a new director. It is expected that the Nominating Committee will amend its procedures so as to have two or three "reserve" candidates in place, should any or

Comment [JTC1]: 01In discussion on 22 July WP1, there was an unclear discussion about the simple majority applying for the petition.

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all of their directors be removed under this power or as part of the recall of the entire ICANN Board.

10 In all cases, directors appointed to replace directors removed by this power fill the same "seat" and their term will come to an end when the term of the director they are replacing would have done.

11 As part of Work Stream 2, the CCWG-Accountability is recommending the development of community standards that will guide Board members, SOs and ACs regarding expected behavior in their role, and the expectations which if breached not met could be expected to lead to a petition for their removal. Such standards would help establish common expectations across the community – they would **not** be criteria for, nor limitations on, the exercise of this power, or give any grounds for a director subject to removal to appeal or challenge the decision. The development of these such standards should be a matter of priority in Work Stream 2.

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