5.5 Power: Removing individual ICANN Directors

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 can remove a director.

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.

> [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?

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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.

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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** 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 voters.

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 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 could be expected to lead to a petition for removal. The development of these standards should be a matter of priority in Work Stream 2.

12   the CCWG-Accountability seeks the community's views about how to allow for removal. Following the principle of "the appointing body is the removing body", it does need to be the NomCom that takes the decision to remove one of these directors. Consistent with the Empowerment Process above, the NomCom will need to obtain legal structure to be able to remove directors as well as to appoint directors. The actual removal process can be carried out by the sitting NomCom, or a sub-committee of the NomCom which is given the right to act on behalf of the NomCom

The removal process would be triggered by the petition of at least two of the SOs or ACs.

13   The CCWG-Accountability considered three options for the composition of the NomCom when considering removal of a NomCom-appointed director.

1. 1 A vote of the SO/ACs participating in the Sole Member would be called. If at least X non-abstention votes were cast and more that 75% supported removal, the Sole Member would recall that director. [is recall or removal the correct term? Need the right words for referring to actions of the sole member.]

2 The NomCom could have a special Sub-committee populated with community members explicitly selected for this task. One option would be to have former NomCom Members from the NomCom that selected the particular Director (implying several difference committees if removing Directors selected in different years). If that Sub-committee recommended removal, the Sole Member would recall that director.

3 The standing NomCom at the time of a petition being lodged would decide on whether to remove the director. If it recommended removal, the Sole Member would recall that director.

Option 1 was the methodology that attracted the most support within WP1. It is a pre-existing group of people and will require no effort to convene. The removal is effected by those who are empowered to act on behalf of the SO/AC community.

Option 2 is potentially awkward to create given that some of the people involved may still be on the NomCom and occupied and multiple groups may be required if there are multiple removals. If former NomCom members are not used, this will require a potentially complex process to select community members.

Option 3 requires that time be focused on removal might be at a point where the current NomCom may not be well organized or may be in the midst of its selection process and would not have the time to re-direct its efforts. Moreover, the NomCom is bound to carry out its deliberations in secret, and there was strong community support for ensuring that any Director removal be done in an open and transparent manner (presumably in option 1 and 2, the sub-committee would not be bound by the confidentiality and other constraints imposed on the NomCom

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Comments / Revision marks:

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Jordan Carter 22/7/15 10:20 PM
Comment [1]: 01This text is redundant as is based on the former "Empowered SO/AC model" – **tagged for deletion**

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proper). If the NomCom would act in the open, the discussions could jeopardize its impartiality, and it could be in the awkward position of considering a director for re-appointment that it is simultaneously removing.

☐

An additional mechanism to support the removal and recall of Directors is to have each person sign a letter of resignation when they accept the appointment. This pre-signed resignation letter would be trigged by certain pre-defined criteria, such as the ones described in this Section or the following ("recalling the entire Board").

Votes Cast	>66%	75%	>75%
1	1	1	1
2	2	2	2
3	2	3	3
4	3	3	4
5	4	4	4
6	4	5	5
7	5	6	6
8	6	6	7
9	6	7	7
10	7	8	8
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14	10	11	11
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Comment [2]: 02This text is all replaced by what now appears above. – **flagged for deletion**

AlanGreenberg 22/7/15 12:45 AM
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Comment [3]: 03Is this still required? – **flagged for deletion**