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.

There were **eighteen** comments in this section.
20 comments suggested **agreement;** 10 comments noted **concerns**.
There were 1 **confusion** rated comments.
There were no **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability,** but **moderate 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:**
- More time needed for community review process – 2 weeks seen as too short.
- Impact on ICANN's operational effectiveness arising from this power

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:
- Approval of any numerical change to SO/AC structure should require super-majority vote (292)
- Recommends a longer period for community review. Extend from 2 weeks to 30 days. (293)
- Encourages CCWG to further explore and explain member structure. (294)
- Recommends no supermajority but simple majority, to avoid majority of community not approving of a bylaw but being unable to block it (238 bis)
- Recommends a longer period for community review. Extend from 2 weeks to the end of next ICANN meeting beginning no sooner than one month before posts notice of adoption. (296)
- Recommends a 60-day window for community review. (299)
- Recommends a 2/3 majority vote instead of 3/4. (299)
- Concern about a procedural impasse; recommends introducing a consultation stage. (301)
- Recommends a longer time period for community review. Extend from 2 weeks to 30 days. (301)
- Recommends a 2/3 majority vote instead of 3/4 for first rejection. (301)
- Raises concern that a community approval/rejection process could cause ICANN to delay introduction of proposed bylaws changes. (305)
- Recommends creating a limit on the number of times the community can reject changes. (306)
- Recommends a longer period for community review. (307)
- Concern with Govts having too much influence in ccNSO, proposes more votes for other constituencies (Siva)

Proposed CCWG response/approach to resolution
- CCWG will consider extending the community review period from 2 weeks to a longer timeframe TBD.
- CCWG will continue to explore and explain member structure
- CCWG will consider lowering the vote threshold from 3/4 to 2/3.
- CCWG will consider mechanisms for limiting procedural impasse and possible delays.
- CCWG will consider a cap on the number of times this power can be utilized. Further clarification needed

#	Contributor	Comment	CCWG Response/Action
320	RH	Question: Yes. Membership should have full powers.	**CCWG Response:** Thank you for your comment. This power is maintained in the Community Mechanism as Sole Member model the CCWG has set out in its Second Draft Report – see section 7.2.
321	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.	**CCWG Response:** Thank you for your comment. This power is maintained in the Community Mechanism as Sole Member model the CCWG has set out in its Second Draft Report – see section 7.2.
322	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).	**CCWG Response:** Thank you for your comment. The participation by SOs and ACs in exercising these accountability powers will be set out in Fundamental Bylaws. Generally, this power is maintained in the Community Mechanism as Sole Member model the CCWG has set out in its Second Draft Report – see section 7.2.
323	DP-DK	- 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. [comment moved in document]	==CCWG Response:== Thank you for your comment. The CCWG has maintained the supermajority requirement in its Second Draft Proposal (see section 7.2). The general view of the CCWG is that high thresholds are required for exercising any of these community powers, which it sees largely as "reserve" powers. There was not support to lower the threshold for this power.
324	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*	**CCWG Response:** Thank you for your comment. The CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general

		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.	approach, and para 396 for its particular application to this power.
3 2 5	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.	**CCWG Response:** Thank you for your comment. The CCWG has maintained this power in its Second Draft Proposal (see section 7.2). It has also further developed the membership model, with the Community Mechanism as Sole Member allowing for legal enforceability of all the community powers (see section 6).
3 2 6	.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.	**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 caused a mistaken impression that the CCWG did not believe the bylaws you cite in this part of your comment should be fundamental. We have maintained this in our Second Draft Proposal – see section 3 for further details.
3 2 7	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.	==CCWG Response:== Thank you for your comment. The CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power.
3 2 8	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	**CCWG Response:** Thank you for your comment.

		such core to the organization.	
3 2 9	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.	**CCWG Response:** The CCWG thanks the CWG for this comment. Our Second Draft Proposal includes a specific matching of our proposals against your requirements – please see paras 90-112 for further details.
3 3 0	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	**CCWG Response:** Thank you for your comment. In its Second Draft Proposal the CCWG has simply provided for a flat 2/3 majority in the Community Mechanism as Sole Member to exercise this power – see para 398. In respect of timelines - the CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power.
3 3 1	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.	**CCWG Response:** Thank you for your comment. This power is maintained in the Second Draft Proposal – see section 7.2.
3 3 2	INTA	- supports empowering the Community, through Member SOs and ACs, to reject amendments to the standard Bylaws proposed by the Board.	**CCWG Response:** Thank you for your comment. This power is maintained in the Second Draft Proposal – see

		- 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.	section 7.2. The threshold proposed in the Second Draft proposal is lower (2/3 rather than ¾). In respect of timelines - the CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power.
3 3 3	.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.	CCWG Response: Thank you for your comment.
3 3 4	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.	<mark>CCWG Response:</mark> Thank you for your comment. This power is maintained in the Second Draft Proposal – see section 7.2. The threshold proposed in the Second Draft proposal is lower (2/3 rather than ¾). This power would be exercised by the Community Mechanism as Sole Member – see section 6 of our Second Draft Proposal.
3 3 5	NCSG	Yes, we agree.	CCWG Response: Thank you for your comment.
3 3 6	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	<mark>CCWG Response:</mark> Thank you for your comment. To the extent that introducing this community power makes the ICANN Board and staff more careful to work with the community in ensuring there is consensus about bylaws changes, we regard that as a good thing.

		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.	
3 3 7	NIRA	Yes, however, NIRA is of the opinion that a limit should be provided on number of times the community can reject changes.	**CCWG Response:** Thank you for your comment. The CCWG considered this but did not propose any changes to the unlimited number of vetoes available through this community power – see para 401 of our Second Draft Proposal.
3 3 8	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.	<mark>**CCWG Response:**</mark> Thank you for your comment. In respect of timelines - the CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power.
3 3 9	SB	No comments on this section	
3 4 0	RIR	This power would enhance ICANN s accountability, and there is support for the requirements for this recommendation.	**CCWG Response:** Thank you for your comment.
3 4 1	Siva	- The Community needs to be empowered to reconsider/reject changes to the standard ICANN bylaws. In the proposal as presented, there is an imbalance in the manner in which the 29 Community votes are distributed. ccNSO predominantly comprises Government participants, or at least comprises participants more prone to be influenced by Governments and by this subjective observation, ccNSO votes could be	**CCWG Response:** Thank you for your comment. The final proposed distribution of votes, now within the Community Mechanism as Sole Member, is set out in section 6 of our Second Draft Proposal.

| | | counted as quasi-governmental votes. The 5 ccNSO votes added to the 5 GAC votes makes a total of 10 out of 29 votes, which could skew the multi-stakeholder process, considering the fact that the presence of Governments in the multi-stakeholder process is not restricted to the visible roles and positions.
- This imbalance is amended in the short term by increasing votes for other stakeholder groups. Long term amendments are outlined as part of the comments in the section on WorkStream2. | |