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.

Tag count

Total comments: 45

Agreement:	29
Concern:	20
Confusion:	7
Divergence:	5

Macro level / overarching issues

- Avoid a system that allows for "ICANN insider" capture (224, 226, 227, 229, 241)
- Linkage of SO/AC system to relevant stakeholders or the "global public" (224, 229, 234, 262)
- Legal challenge for states in any "joining" re GAC, others (225, 237, 241, 252)
- Cascading accountability concerns - how are mechanism participants held accountable (224, 225, 226, 227, 229, 230, 235, 236, 241)
- Mutual, not just linear, accountability (227, 229)
- Don't have courts (any courts) making decisions for ICANN (225, 232, 252, 265)
- Diversity of participation (224, 229, 234, 236, 241, 243, 252)
- Promote effective govt involvement on public policy issues/relevant issues (226, 233, 234, 241)

1. Mechanism for community powers

Supports a mechanism to allow community powers (248, 250, 251, 252, 254, 255, 259, 260, 264, 269, 270)

Mechanism should be people not weighted votes / greater clarity on this to ensure diverse voices are heard (243, 251, 258)

Comments:

Time impact on participants - would model be more demanding? (255)
Conflict of Interest obligations on decisionmaking in community mechanism (229, 262)
Risks and scenarios of between-member legal action (262)
Links between advice from ACs and decision-making - how preserved / dealt with? (262)
Indemnify participants against legal action from exercising membership powers (265)
No indemnities for single-member actions (265)
Avoid future sclerosis (224, 246)
Reconsider two-tier Board model if this de facto emerges (231)
Encourage broader GAC participation (233, 234)
Avoid creating accountability at expense of expertise (255)
Lack of trust challenge to resolve (246, 265)
Simplicity of approach important (250)
Jurisdiction (252)
Question rationale for supermajority to veto changes to Bylaws (238)
Concern over community decisions being overruled by Board or national courts (252)
Safeguards to ensure there aren't constant challenges between Board and community (271)

2. Enforceability

Supports enforceable model for powers (237, 238, 239, 240, 242, 245, 248, 249, 251, 254, 255, 257, 259, 269)

- board member removal only (265)

Does not support enforceable model for powers (225, 250, 260, 265)

Comments:

Question whether enforceability undermines multistakeholder approach (225, 260)

Membership model

Supports membership model generally incl legal persons (223, 235, 236, 237, 238, 239, 240, 242, 245, 247, 251, 253, 254, 257, 258, 259, 260, 269)

Support membership model but limited to enforcement only (248, 265)

Concerns with membership model

- UAs may risk higher hurdles for involvement of ccTLDs in the ccNSO where govt is the manager (225, 255)

- implementation detail needed (251, 260, 261, 266, 267, 268, 269)
- complexity and unclear benefit (246)
- existing structures will struggle to organize into UAs (225)
- Do not remove influence of voices outside the SO/AC structure (255)
- Restrictions from UAs for govt based participants or others (225, 232, 241, 252, 255, 264)
- Be sure legal risk to participants is not changed (236)
- lack of clear safeguards against capture (226, 241)
- need better understanding of risks and liabilities (262)
- clarity on legal aspects and membership (263)

Does not support membership model

- complexity (225, 249)
- costs (225)
- Not allow existing stakeholders to participate (225, 232, 249)
- risk of legal exposure for participants (225, 232, 265)

Comments:

Allow individual participants to join, not SOs/ACs (223)
Let SOs and ACs choose their own model - UA or other legal form or individuals (237, 251)
Impact testing of membership model (262)
Sees UAs for membership as simple (251)
What if an SO/AC chooses not to become a member, impact? (262)
How will bodies that don't elect Directors participate (242)
Role of NomCom (242)
Don't "transform" the SOs ACs into UAs - use them only for acct'y powers (263)

Voting weights / Influence

Supports proposed voting weights (231, 236, 240, 242, 245, 247, 250, 256, 259, 260)

Changes to proposed voting weights (226, 232, 249, 251, 255, 258, 259, 260, 261, 262, 265)

- GNSO needs more influence:
    - 7 votes suggested (249)
    - More flexible votes so more GNSO influence when needed (251)

- Business interests need more weight (258)
- Prefer GAC remain advisory (226, 237, 255)
- Query SSAC votes cf advisory (259)
- Prefer Alternative A for votes (238)
- More closely align votes to Board appointment shares (260)
- Better alignment between stakeholders and numbers - more for SOs, none for SSAC, less for ALAC, none for GAC (261)
- Equal voice for SSAC/RSSAC as others (Alternative B) (232, 262, 265)
- RSSAC prefers to remain advisory as a Board appointed ctte (266)
- SSAC prefers to remain advisory only (267)

Balance represented in chosen thresholds (246)

New/alternative suggestions and comments

Suggest renaming mechanism "Multistakeholder Assembly/Chamber/Council" so it is able to be better understood (224)
Public Accountability Forum proposal (227)
Mutual Accountability Roundtable proposal (227)
Avoid capture / insider influence through e.g. mechanism term limits, no path to Board from mechanism (229)
Cultural diversity and sStrong conflicts of interest policy key to for mechanism (241)
Review role and structure of NomCom (242)
SO consensus advice should have attention paid as per AC consensus advice (242)

Inappropriate implementation but agreed principles - CCWG should start again (225)

Awaiting / seeking further detail (239, 247, 251, 261, 263, 265)

#	Contributor	Comment	CCWG Response/Action
245	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	**CCWG Response:** 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: 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

		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. - 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.	corporation/nonprofit association be legal persons. In any event, the CCWG's Second Draft Proposal includes a different model – the Community Mechanism as Sole Member – detailed in Section 6. We encourage you to read this part of the proposal and to offer any further comments you may have.
246	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	**CCWG Response:** Thank you for your input. Certain issues, like reorganization of the SO/ACs for greater accountability to their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2. The CCWG's Second Draft Proposal includes a different model – the Community Mechanism as Sole Member – detailed in Section 6. We encourage you to read this part of the proposal and to share your views on how it deals with this, as well as any further comments you may have. We hope that the Second Draft is more readable and less inexplicable than 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?	previous. The very broadest questions you have raised are arguably at the heart of ICANN's overall legitimacy as a vehicle for Internet governance. Dealing with all of them is beyond our scope as a CCWG tasked with defining accountability improvements.
247	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, complexities and instabilities associated with delivering this goal. auDA disagrees with the CCWG that the benefits of legal enforceability outweigh these negative side effects.	**CCWG Response:** Thank you for these comments. The CCWG has taken your comments into consideration. While the CCWG notes disagreement in the underlying assumptions, such as legal enforceability for community empowerment, the group is adjusting its community empowerment model to account for concerns, political and practical, that have been raised in your submission. We encourage you to read the Second Draft

		- 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	Proposal, in particular section 6, which sets out the new Community Mechanism as Single Member model that addresses many of the concerns raised in your comment. We welcome any further comments in response to the revised proposal.

		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 their shadow entities). auDA believes this is a significant and unacceptable risk.	
248	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	**CCWG Response:** The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the community

		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.	empowerment model. We encourage you to read the Second Draft Proposal, in particular section 6, which sets out the new Community Mechanism as Single Member model. The model is a new approach to empowering the community, developed in response to the feedback received on our first draft proposal. The new model preserves the same allocation of voting – that is, the GAC will have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development. There are no proposals to change the GAC's participation in reviews – though the GAC chair would not in future be one of the two people deciding who serves on review teams. Certain issues, like reorganization of the SO/ACs for greater accountability to their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2. We welcome your further comments.
249	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 246). - 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*	**CCWG Response:** Thank you for your suggestion. In WS1, the CCWG is focused on elements necessary for the transition of IANA Functions stewardship. The Community Empowerment model was developed to complete the requirements.

		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	In our Second Draft Proposal, and in part in response to your feedback, we have suggested the creation of an ICANN community forum that could fulfill the role you propose for a Mutual Accountability Roundtable. This is detailed in Section 6.4 of the revised proposal. We welcome your feedback in response.

		does have in its system of governance is a strong set of 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.	
250	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.	**CCWG Response:** The CCWG has considered different forms of Community Empowerment, including membership models, and revised its proposal extensively in response to public feedback. We encourage you to read the Second Draft Proposal, in particular section 6, which sets out the new Community Mechanism as Single Member model. The model is a new approach to empowering the community, developed in response to the feedback received on our first draft proposal. We welcome your further comments.
251	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	**CCWG Response:** Thank you for your suggestions and comments. The CCWG has improved its proposal by including the following safeguards in its 2nd draft proposal: 1. The openness of the SO/AC structure to new participation is a Work Stream 2 subject for the CCWG. 2. Further work is needed on the question of avoiding those involved with accountability mechanisms simply

		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.	being past or future decision-makers. 3. The overall question of insider/outsider control or dominance, and the true openness of ICANN to new voices, is, as mentioned, on the agenda for WS2.
252	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	**CCWG Response:** The CCWG thanks you for your comments. Certain issues, like reorganization of the SO/ACs for greater accountability and openness to their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as

		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.	part of the various SO/AC reviews and as part of the larger task of WS2. The suggestion of a Public Accountability Forum is one the CCWG is eager to explore early in its WS2 work. It could be organized under the auspices of the proposed ICANN community forum – see section 6.4 of the Second Draft Proposal for further details.
553	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.	**CCWG Response:** Thank you for your comment. The CCWG does not see the need for Board restructuring at this (WS1) stage: the CWG requirements asked only for more right towards the Board, not new options for selecting the Board nor for how it is structured. While the CCWG recommendations might lead to Board restructuring, this is not an area of focus for WS1 (but could be considered as part of WS2). The proposed ICANN community forum may fulfill the role of a supervisory board in some ways – see section 6.4 of the Second Draft Proposal for further details. All of the reforms proposed by the CCWG require bylaws changes.
254	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	**CCWG Response:** Thank you for your comment. The CCWG has considered different forms of community empowerment, including membership, and is revised its proposal to take into account concerns raised in the Public Comment.

		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.	The CCWG has developed the Community Mechanism as Sole Member model that addresses many of the concerns you raise. See section 6 of the Second Draft Proposal for more details. We note that ICANN will always be based somewhere, and that court action is always a possibility. The package the CCWG has assembled seeks to resolve differences or concerns on substantive ICANN matters within the IRP, and procedural concerns as well. Courts always remain a last resort, as they are today.
255	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.	**CCWG Response:** The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the Community Empowerment model. In the Second Draft Proposal, the GAC will, if it chooses to to do, have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development. There are no proposals to change the GAC's participation in reviews – though the GAC chair would not in future be one of the two people deciding who serves on review teams.
256	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	**CCWG Response:** The CCWG thanks you for your comments and

		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.	has engaged further with the GAC about how they envision their role in the Community Empowerment model. In the Second Draft Proposal the GAC will, if it chooses, have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development. The CCWG's view is that the accountability improvements at the heart of its proposal do not require differential participation, as they generally deal with ICANN-wide issues. As such, different voting weights depending on the issue is not supported in the Second Draft Proposal. Section 6.3 of that Proposal deals with voting weights.
257	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.	**CCWG Response:** The CCWG has considered different forms of Community Empowerment, including membership. It has developed the Community Mechanism as Sole Member model that addresses many of the concerns you raise. See section 6 of the Second Draft Proposal for more details. In our view this largely deals with the concerns you raise, though there are ongoing issues of SO/AC accountability that will feature as part of our Work Stream 2 work.

258	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.	**CCWG Response:** Thank you for your suggestion. In WS1, the CCWG is focused on elements necessary for the transition of IANA Functions stewardship. The Community Empowerment model was developed to complete the requirements, and in the Second Draft Proposal the Community Mechanism as Sole Member does so (see section 6). The CCWG has not however adopted your proposal to require geographic diversity – as part of the new model, no representatives are chosen, with votes in the CMSM cast by existing SOs and ACs. Considering SO/AC accountability is part of Work Stream 2. We look forward to your further comments in response to the updated Proposal.
259	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	**CCWG Response:** The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the community empowerment model. In the Second Draft Proposal, the GAC will, if it chooses, have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development. This

		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.	is set out in section 6 of the revised Proposal. In developing this Community Mechanism as Sole Member model, great care has been taken to design a system where there are no new obligations or barriers created to the participation of any group, including the GAC and its members. Whether or not GAC remains advisory only is a topic the CCWG continues to discuss, and encourages the German Government to debate with its fellow GAC members. Certain issues, like reorganization of the SO/ACs for greater accountability to and participation of their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2.
260	DP-DK	- We have alternative proposals that can distribute the power to enforce the Bylaws more broadly to representatives of the ICANN community. - 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	**CCWG Response:** Thank you for your comment. The CCWG agrees with you that the issue of enforcement of the Bylaws is an important one, and will factor this into its development of the 2nd draft proposal. This includes a revised proposal for the Community Empowerment model, which is an integral part of such enforcement questions. The Community Mechanism as Sole Member, described in Section 6 of the Second Draft Proposal, does achieve the enforceability the community requires. The CCWG does not share your perspective regarding Alternative A for the distribution of

		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	votes between SOs and ACs. There was very little support in public comments for this alternative. Our Second Draft Proposal maintains the proposed distribution of voting weight.

		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).	
261	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	**CCWG Response:** Thank you for your comment - the CCWG broadly agrees with you and considered this feedback as it develops the next version of the proposal. We recommend you consider the revised Community Empowerment model in our second draft proposal: the Community Mechanism as Sole Member. This is detailed in section 6 of the revised Proposal. We welcome your comments assessing this new approach.

		Internet Association believes the Designator Model could be a sufficient alternative if the SO/AC Membership model is not accepted by the community.	
262	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.	**CCWG Response:** Thank you for your comment - the CCWG broadly agrees with you and considered this feedback as it developed the Community Mechanism as Sole Member model described in section 6 of the Second Draft Proposal. We look forward to your comments on this revised approach.
263	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	**CCWG Response:** Thank you for your comment. The CCWG will consider the suggestion made regarding the Conflicts of Interest policy as part of its Work Stream 2 efforts – the group does not see this as integral to the Work Stream 1 effort. In respect of diversity, at this stage the CCWG believes this to be a matter best addressed in Work Stream 2, the future work it has to do

		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 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	following the IANA Stewardship transition. The CCWG has clarified matters and addressed many of the other concerns raised as it developed the next version of the proposal. In particular, the nature of the Community Empowerment model and the obligations that different versions of it might cause for ICANN participants, including governments, has being very carefully scrutinized. The revised Community Empowerment mechanism in our Second Draft Proposal (detailed at Section 6) addresses many of the concerns raised by the French Government, in our view – and in particular in respect of the legal requirements our previous model included, which could have limited the potential participation of governments in the GAC. We welcome your further comments on the Second Draft Proposal.

		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?	
264	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	**CCWG Response:** Thank you for your comment. The Second Draft Proposal has clarified many of the matters you raise. The NomCom will not participate in the Community Mechanism as it is not an ICANN SO/AC. The CCWG has developed a mechanism to remove NomCom-appointed directors – see section 7.3 of the Second Draft Proposal for details. We urge you to analyze the revised Community Empowerment model proposed in our second draft proposal (section 6). It appears to us to address many of the matters raised in this comment. Your suggestion regarding consensus advise from SOs is an interesting one which will be considered for inclusion in Work Stream 2.

		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	
265	CCG	- As for the voting structure for the Empowered Community, the proposal states that the same has not been decided and will be 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?	**CCWG Response:** Thank you for your comment. The CCWG has considered different forms of Community Empowerment, including membership, and has revised its proposal to take into account concerns raised in the Public Comment. The Second Draft Proposal proposes a new mechanism, the Community Mechanism as Sole Member, to empower the community. Details are in section 6. In particular, there is a view that SOs and ACs should be able to share their votes between different SGs or regions in the SO and AC, by formal agreement of the SO – or to decide that they will decide how to vote by consensus. It is up to participating SOs and ACs to decide how to do this.
267	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.	**CCWG Response:** The CCWG thanks you for your comment. The Second Draft Proposal does show some changes to these matters (see section 6) and we encourage you to review it and provide comments.

268	.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	**CCWG Response:** Thank you for this comment. The CCWG understands your concerns and has considered them in the development of the Second Draft Proposal. In particular, the dialogue or discussion phase that occurs before the exercise of the main community powers helps to address your concerns (see the introduction to section 7 for the detail of this, and section 6.3 for the proposed ICANN community forum). We look forward to your further comments.

		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.	
269	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. 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:** The CCWG thanks you for your supportive comment and agreement with overall direction. We look forward to your comments on the updated Second Draft Proposal, especially as it relates to a fresh approach to the Community Empowerment mechanism. See section 6 in particular.
270	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	**CCWG Response:** Thank you for your comment. The CCWG agrees that enforcement is an underlying assumption of its work and in reviewing the community empowerment model through which this is applied, as well as enforcement of IRP rulings, has developed the refinements shown in the Second Draft Proposal – including the Community Mechanism as Sole Member model which deals directly with the simplification point (see section 6). We look forward to your further comments in response to the second draft.

		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.	
271	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	**CCWG Response:** Thank you for this comment. The CCWG has considered different forms of community empowerment model, including membership models, and revised its proposal to take into account concerns raised in the Public Comment. See the Second Draft Proposal for more information, including the simpler Community Mechanism as Sole Member model which replaces the previously suggested

		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 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.	SO/AC membership model (section 6). There is not broad support for a greater number of votes for the GNSO, but the CCWG is ensuring that SOs can allocate their votes to all relevant sub-units by ensuring the vote allocation decision within an SO is a matter for that SO to determine. The CCWG has clarified the voting mechanism in the updated arrangement. We welcome your comments on the second draft proposal.
272	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	**CCWG Response:** Thank you for your comment. The CCWG agrees and notes that the focus for WS1 is to design the simplest, most effective model. Further powers can be contemplated in WS2. We look forward to your comments in regard to our Second Draft Proposal, which incorporates a revised Community Empowerment model that deals with some of the concerns you have raised regarding complexity and legal

		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.	personality (see in particular section 6 which sets out the new Community Mechanism as Sole Member model). Thank you for your comment.
273	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	**CCWG Response:** Thank you for your comment - the CCWG broadly agrees with you and has considered this feedback as it developed the next version of the proposal. In particular, in the second draft we draw your attention to the revised Community Empowerment model, and to the clear potential for SOs and ACs to allocate their voting rights in a manner that suits their internal structure. As such the IPC would be able to secure representation and a voice, presuming the GNSO agrees to this (the proposal has SOs determining the internal sharing of their voting influence).

		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 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	We look forward to your further comments on the revised proposal.

		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.	
274	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	**CCWG Response:** Thank you for your comments, many of which the CCWG agrees with. The Second Draft Proposal incorporates a fresh Community Empowerment mechanism on which we seek your further comments, regarding participation by the GAC and the overall question of enforceability of the community's rights. This is section 6 of the Second Draft Proposal. In respect of diversity, at this stage the CCWG believes this to be a matter best addressed in Work Stream 2, the future work it has to do following the IANA Stewardship transition.

		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"). - 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.	
275	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.	**CCWG Response:** The CCWG thanks you for your comments. Note that the Second Draft Proposal includes a different but comparable approach with the Community Mechanism as Sole Member model (section 6).
276	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	**CCWG Response:** Thank you for your comments and your broad support of the CCWG's first proposal. We urge you to read and consider our second proposal, which incorporates a revised Community

		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.	Empowerment model (the Community Mechanism as Sole Member model (see section 6), and we look forward to your further comments on what we have proposed.
277	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	**CCWG Response:** Thank you for your comments. The CCWG is proposing a revised Community Empowerment model as part of its second draft proposal that addresses the concerns you have raised, in particular the inclusivity of the system and minimizing any barriers to participation. We urge you to consider it and provide further comments – in particular on section 6 which details the Community Mechanism as Sole Member model.

		structure and functioning of the SO/AC's could remain unchanged. - 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.	

278	SR	Para 191 is reasonable as a start. We should have the ability to change later.	**CCWG response:** Thank you for your comment. The ability to change this at a later point will be there, through changes to the bylaws that set out the voting weights.
279	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.	**CCWG Response**: Thank you for your comment. The CCWG has proposed a revised Community Empowerment model in its second draft proposal, and we welcome your comments on this (section 6).
280	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. - 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	**CCWG Response:** Thank you for your comment. The CCWG has proposed a revised Community Empowerment model in its second draft proposal, and we welcome your comments on this. The second draft proposal also explains how SOs can share their votes flexibly among their various constituent parts. There is not broad support to allocate more voting weight to business interests, broadly expressed, and the revised proposal does not do this.

		Intellectual Property Constituency, may be marginalized or not heard at all.	
281	.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.	**CCWG Response:** Thank you for your comment. The CCWG has proposed a revised Community Empowerment model in its second draft proposal, and we welcome your comments on this, particularly section 6, which sets out the new Community Mechanism as Sole Member model.
282	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	**CCWG Response:** Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We look forward to your further comments.

		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 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 multi-stakeholder model and have potential to undermine this model in the long term.	
28	MM	I believe that this plan does not yet have a coherent and workable	**CCWG Response:**

3		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	Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. The CCWG hasn't proposed different voting weights in the Second Draft Proposal but has aimed to explain the rationale more clearly for its choice – see section 6.2 of the proposal. We look forward to your further comments.

		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.	
284	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 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	**CCWG Response:** Thank you for your comments – we appreciate the Board sharing its views direct in this manner through the public comment process. Many of the questions raised and concerns noted are addressed in the CCWG's second draft proposal, particularly in its fresh Community Empowerment model (the Community Mechanism as Sole Member – see section 6). As this model does not have multiple members, many of the concerns you

		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	identify with respect to members acting against each other or the corporation are removed as risks. Very high thresholds are proposed for the Community Mechanism to exercise any of the other statutory rights members have under California law. We note in respect of the last part of this comment that the purpose of the accountability tools the CCWG is developing is not to disrupt ICANN's commitment to the broad global public – which ICANN serves through its limited technical mission. It is to give ways for the community to hold the corporation to account when it is failing to achieve that overall goal.

		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? + 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?	
285	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	**CCWG Response:** Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. The Community Mechanism as Sole Member model (see section 6 of the Second Draft Proposal) specifically resolves feared barriers to participation that were raised about the SO/AC membership model. No UAs need to be created for SOs or ACs and so our previous assertion that no changes are required of ICANN participants or their standing in relation to the organization is now more clearly accomplished.

		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.	We look forward to your further comments.
286	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	**CCWG Response:** Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We draw your attention in particular to section 6, which sets out the new Community Mechanism as Sole Member model.

		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.	We look forward to your further comments.
287	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 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	**CCWG Response:** Thank you for your comments. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to the concerns you and others have raised. In particular, the single member at the heart of the model removes the issue of members acting against each other, and the revised bylaws will impose very high thresholds on the CMSM exercising any o the statutory rights of membership – while being clearly empowered to do so if required. Possible barriers to participation arising from the nature of the previous SO/AC membership model have also been addressed by this change. We look forward to your further comments.

		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 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.	

288	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.	**CCWG Response:** Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Mechanism that responds to some of the concerns you and others have raised. In particular, the updated proposal offers RSSAC two votes within the Community Mechanism if they choose to join at a later stage (see section 6.2 of the Second Draft Proposal). Joining or not joining would remain at the discretion of the RSSAC. We look forward to your further comments, including in particular whether you wish to remain listed as a possible participating AC.
289	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	**CCWG Response:** Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Mechanism that responds to some of the concerns you and others have raised. In particular, the updated proposal offers SSAC two votes within the Community Mechanism if they choose to join at a later stage (see section 6.2 of the Second Draft Proposal). Joining or not joining would remain at the discretion of the SSAC.

		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 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.	We look forward to your further comments, including in particular whether you wish to remain listed as a possible participating AC.

290	SB	The accountability of the Board of Directors is absolutely essential. But it may only be accountable to organizations (SOs, ACs, Ralos...) which are, in turn, accountable themselves. These organizations must consider the accountability of their operations vis-à-vis their participants and the other components of ICANN as an essential element. To be clear and direct, I support none of the solutions which require the creation of structures (UA or others) complementary to the existing organizations. This is due to several reasons: · **Inequality**: certain organizations will not be able to / will not want to implement this type of structures. · **Complexity**: this adds a further layer to the already complex ICANN system. · **Increased litigiousness**: favors the recourse to the courts to decide on disputes which could be settled by other means (consensus building, mediation, reconsideration, and even recourse to the independent review process - IRP.) **Trust** should / must be the cornerstone of the accountability system. But if this is not enough, in order to allow "community" representatives to access certain powers -currently, to the 5 proposed powers (see discussion of these powers later in the document)- they must be integrated into ICANN's bylaws before the transition. So let's start by defining in detail the composition, the selection, and the operation of the structure that will represent the "community" and what needs to be changed in the bylaws for the latter to receive the powers that will be ultimately be required.	Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. In particular, the new Community Mechanism as Sole Member model reduces the risk of litigation compared against what we had proposed earlier (see section 6 of the Second Draft Proposal). We look forward to your further comments.

		And if in the framework of these new bylaws a disagreement were to arise between the Board of Directors and the "community," a reconsideration would be resorted to, or even the Independent Review Process - IRP. Trust, consensus-building, and transparency must be the keys in the processes involving the "community" and the Board of Directors. Replacing them with a legalistic solution can only undermine the organization's strategic objectives and the spirit in which volunteers get involved - particularly end users.	
291	ZR	- Regarding the community power, I am not very clear that the "community" here whether includes the end user. If not, is it any channel available for end user or netizen to learn about how the ICANN Board makes a decision, or the decision making process be more open and transparent to the public. From the Proposal, it seems that ICANN only is accountable to AC/SO communities, so it is suggested that a kind of mechanism could be set up for the global public to join in exercising the community power. - The Proposal indicates the SOs and ACs creating an unincorporated association to be the members of ICANN. However, it is not very clear how these association work, especially how to how to ensure various voices be heard and reflect relevant stakeholders' opinion and interests.	Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. In general, the end user is represented through the NCSG in the GNSO, and through the At Large Advisory Council. Internet users are also the end customers of other participants in the ICANN environment (including registrars), who are aware of their customers' interests. We look forward to your further comments.
292	RIR	The creation of a community mechanism to empower the community with regard to certain Board decisions makes sense and would enhance ICANN s accountability. Such a community mechanism should indeed be based on the already existing structure of the chartering organisations SOs and ACs), either as a formalized designator-based model or via a membership model There are no objections to the suggested reference composition of this mechanism being the membership-based model, but observe	Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We look forward to your further

		that significant details regarding the proposed implementation of powers under the membership model have been deferred and may not prove in the end.) It is suggested that sufficient detail on the proposed implementation model by provided in a future plan, so that community assessment of related risks may be performed.	comments.
293	DotMusic	DotMusic agrees with the proposal for ICANN to introduce a community mechanism to empower the community over certain Board decisions because it would enhance ICANN's accountability. DotMusic also recommends that ICANN consider additional accountability reforms that would consider how the community can have oversight over ICANN Staff decisions. Furthermore, ICANN must incorporate an external, independent process for reviewing and resolving disputes between ICANN and third-parties. Such a process should include the ability to reverse ICANN Board decisions.	Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Mechanism that responds to some of the concerns you and others have raised. It has also made progress in dealing with the staff accountability question you raise, though further progress on this will be done in Work Stream 2 of the CCWG's work, following the IANA Stewardship Transition. We look forward to your further comments.
294	Siva	A general comment is that the overall design has to have sufficient safeguards to ensure that the exercise of balancing the powers of the Board should not result in a situation of constant challenges between the Board and the Community. - Community powers over Board decisions provide a safeguard against the abuse of position and power by an accidental ICANN Board constituted of members with unworthy motives. However, it needs to be emphasized that the communities to be balanced and become accountable within, so as to ensure that the community powers are exercised in a fair and balanced manner.	Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We look forward to your further comments.