

Power: Recalling the entire ICANN Board

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

There were **28** comments in this section.

25 comments suggested **agreement**; 3 **divergent** comments and 6 comments noted **concerns**.

There was no **confusion** rated comment.

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

The main issue/s or concerns:

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

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

- Spilling the board should be a last resort after all else has failed
- Need to clarify the circumstances that would lead to a Board spill
- Clarify details of continuity measures

Proposed CCWG response/approach to resolution

#	Contributor	Comment	CCWG Response/Action
391	RH	Question: Yes. Membership should have full powers.	CCWG Response: Thank you for your input.
392	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	CCWG Response: Thank you for your input.
393	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., <u>spilling the Board</u> , reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.	CCWG Response: Thank you for your input.
394	CRG	I agree that removing the Board as a whole would increase Accountability.	CCWG Response: Thank you for your input.

3 9 5	AFRALO	While giving the community the power of recalling the whole board is an appropriate accountability mechanism, it should be the very extreme step to be taken. AFRALO members wish this would never happen. The majority of 75% proposed in the report for such decision looks acceptable.	CCWG Response: Thank you for your input. The question of the threshold is a matter that has been carefully considered by the CCWG, and we agree that the plan is for this power to be a “last resort”.
3 9 6	Afnic	Afnic supports this proposal and the limitation of powers it includes.	CCWG Response: Thank you for your input.
3 9 7	IA	Recalling the entire Board should be considered a measure of last resort, we propose an 80% threshold for this action.	CCWG Response: Thank you for your input. The final threshold proposed in our Second Draft Proposal is 75% of votes in the Community Mechanism as Sole Member. Please see section 7.4 of the proposal for further information.
3 9 8	eco	Recalling the entire board is the most important power to ensure that the community can step in in cases where the board is not willing to act in accordance with ICANN’s bylaws. Hence, this very community power should be made the most robust one, even in case the CCWG or the community wishes to compromise on other community powers and the associated escalation paths described in the report.	CCWG Response: Thank you for your input. The CCWG shares the view that this power, along with the others, must be enforceable. This has been achieved through development of the Community Mechanism as Sole Member model detailed in our Second Draft Proposal (section 6).
3 9 9	RySG	RySG agrees that an enforceable power to recall the entire ICANN Board would help to enhance ICANN’s accountability to the global multi-stakeholder community. We support the 75% member voting threshold for recalling the entire Board.	CCWG Response: Thank you for your input.
4 0 0	BC	- BC supports the CCWG proposal to allow community Members to vote for removing the entire ICANN Board. Some in the BC support a 75% Member voting threshold to recall the entire Board. Some in the BC support an 80% threshold. (p.50)	CCWG Response: Thank you for your input. The enforceability of this power with a 75% threshold has been achieved through development of the Community Mechanism as Sole Member model, detailed in our Second

		<p>- BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.</p> <p>- BC appreciates that CCWG anticipates the need for operational continuity measures in the event the entire ICANN Board is recalled (p.50), and will comment on the details when they are developed.</p>	Draft Proposal (see section 6).
4 0 1	.UK	<p><i>We are concerned that many of the mechanisms identified in the proposal will be massively disruptive – nuclear options. One result of sanctions of such consequence is that they are considered unusable.</i> Sacking the Board – a Board that has been selected by the community and where many of the members can be held directly to account by their own community – seems to be a case in point. This is particularly so in that there is a small pool of community candidates willing to take on the role. (One could question whether there should be more rotation of community-appointed members on the Board to develop a wider pool of experienced and knowledgeable candidates.)</p> <p>However, at a time of crisis in the organisation, it is hard to see who could step forward to populate a new Board at short notice and who will be able to command the trust needed to rebuild the organisation’s confidence. The steps following sacking the Board or individual Board members need to be considered carefully, as do scenarios for rebuilding the organisation once the ultimate mechanisms have been triggered.</p>	<p>CCWG Response: Thank you for your input. The CCWG has taken your comments on board in preparing its Second Draft Proposal. The updated approach to recalling the Board is set out in section 7.4. We encourage you to review this and provide further comments. Our hope is that the overall package of measures does indeed mean recalling the ICANN Board as a whole will remain a power ‘of final resort’.</p>
4 0 2	LINX	<p>We strongly support the existence of this power. The threshold to spill the entire ICANN Board is too high:</p> <p>a. ICANN interacts with the different communities (Numbers, Country-Code Domains, Generic Domains, IETF) in different ways; b. Some of those communities (Numbers, IETF) have additional accountability mechanisms already to preserve their</p>	<p>CCWG Response:</p> <p>Thank you for your comment. This suggestion was carefully and thoroughly considered by the CCWG, but the considered view of the group, consistent with the public feedback overall, does not support your proposal. As such, the Second Draft Proposal at section 7.4 retains a</p>

		<p>independence from ICANN. The ccTLD community is likely to acquire new such mechanisms as a result of Transition; c. We do not question, and indeed support, these distinctions. Nonetheless, it does mean that the gTLD community is the one that is most likely to ever need to exercise the extraordinary power to spill the ICANN Board; d. We do not think the power to spill the Board should be exercised lightly, and support the requirement for a high threshold within a given community; e. However, in the event that the unanimous decision of the gTLD community were to ask for a Board spill, we think it untenable and highly destabilising to ICANN that the Board remain in place merely because the ccTLD community and the numbers community were not affected by the cause of the gTLD community's complaint; f. To be clear, a choice must be made: either it must be possible for one or more of the SOs to be forced to accept the continuation in office of a Board in which it has utterly lost confidence, or it must be possible for one or more SOs to be forced to accept that a new Board will be required, even though it was content with the existing one. Neither situation is desirable, the only question is which would be worse; g. In our judgement, it is far worse to impose on an entire community a Board that is unacceptable to it, than to require a community to select alternative nominees from the huge range available to it. The continuation in office of a Board that was unacceptable to gNSO would pose grave existential risk to the future of ICANN; h. Accordingly, we recommend that any single SO should be able to dismiss the entire ICANN Board if it passes a vote of 'No Confidence' by a high threshold within itself (e.g. 75% or 80%).</p>	<p>high threshold for the exercise of this power. We encourage you to consider the revised proposal and welcome your further comments. We also note that the section contains this suggestion in condensed form, from a participant affiliated with you.</p>
<p>4 0 3</p>	<p>USCIB</p>	<p>However, because "spilling the board" should be considered a measure of last resort, we support an 80 percent threshold for this action.</p>	<p>CCWG Response: Thank you for your input. We have considered the matter carefully but in the end retained the 75% threshold. The</p>

			CCWG emphasises that this is of all the votes that could be cast in the Community Mechanism as Sole Member. See our Second Draft Proposal section 7.4 for further details on this power, or section 6 for more about the model.
404	JPNIC	<p>- We would like to understand, what the specific circumstances are, to require the recall of the entire Board, and why this is needed in addition to have the ability to recall individual Board members. Until they are clear, we are not sure at this stage whether this further enhances ICANN’s accountability, in balance with the risk of destabilizing the organization and the overhead of preparation needed to prepare for such situation.</p> <p>- In case there are specific circumstances for this need, out of the options provided in paragraph 246, we do not think option 1) makes sense, if we are overthrowing the entire Board due to its lack of accountability, to ask this board to act as “caretaker”, as there must be very serious reasons to overthrow the entire existing Board.</p>	<p>CCWG Response: Thank you for your response.</p> <p>As this is the ultimate recourse, it is not intended to specify criteria - but to set the high threshold so that it requires a very strong community view to exercise this power.</p> <p>Will provide more detail on caretaker role in next version of proposal.</p> <p>The Second Draft Proposal does provide more detail on a different caretaker mechanism, by requiring the SOs and ACs participating in a vote to recall the Board to propose alternate directors to serve if required. Please review section 7.4 of the Second Draft Proposal and we welcome any further comments you may have.</p>
405	CWG-St	We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the <u>entire Board</u> (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed.	CCWG Response: The CCWG thanks the CWG for your input. Our Second Draft Proposal retains this power, albeit with some modifications. See section 7.4.
4	IPC	Agree: yes, and Yes, the requirement threshold is sufficient.	

06			CCWG Response: Thank you for your input.
407	USCC	Yes, but believe there should be a high threshold as this should be an option of last resort. We strongly support the CCWG goal of binding accountability, which may only be achieved through legal mechanisms is necessary as merely providing power to spill the board is in itself not enough.	CCWG Response: Thank you for your input.
408	INTA	supports granting the Community the power to recall the entire Board of Directors. The proposed processes and threshold appear appropriate.	<p>"Agreement"</p> <p>Summary / Impression: In support of proposal</p> <p>Actions suggested: No action needed</p> <p>CCWG Response: Thank you for your input</p>
409	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. The CCWG must carefully consider the threshold – 75% is the highest that is viable otherwise the power will become only theoretical.	CCWG Response: Thank you for your input.
410	NCSG	Yes, we agree.	CCWG Response: Thank you for your input.
411	Board	<p>- We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.</p> <p>- With regards to removal of the entire board, what actions trigger this? What mechanisms will be in place to ensure continued stability and security of ICANN's mission and responsibilities, while a new Board is appointed?</p>	CCWG Response: Thank you for your input. Our Second Draft Proposal deals with the caretaker question you raise in more detail – please see section 7.4. It also sets out some more detail about the requirements to trigger a recall. We welcome any further comments.
41	CENTR	We support the introduction of mechanisms that would allow the ICANN community to eventually recall the entire ICANN Board.	CCWG Response: Thank you for your input.

2		We believe that both this community power, the steps to implement it and the causes to enforce this ultimate power must be extremely well designed and transparently described.	
4 1 3	NIRA	NIRA agrees.	CCWG Response: Thank you for your input.
4 1 4	GG	For similar reasons, we are concerned that the power to remove the ICANN Board as a whole could have a potentially destabilizing effect on the Internet ecosystem. While we believe that the Proposal's suggestion that the community have the power, in exceptional circumstances, to remove individual Board members is a prudent way to enhance the organization's overall accountability, we believe that the decision to remove the entire Board should still happen on the basis of particular, serious concerns with each individual Board member, not a generalized objection to the Board as a whole. For this reason, we would favor the community only having the power to remove individual Board members.	CCWG Response: Thank you for your comment. The CCWG does not share your judgement about the impact of this power on the Internet ecosystem. The Second Draft Proposal does however require some different steps in using this power that may allay some of your concerns. We recommend you consider section 7.4 of the updated proposal and offer further comments if you wish.
4 1 5	ALAC	<p>- 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.</p> <p>- 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).</p> <p>- The ALAC has reservations about this mechanism. Exercising it</p>	CCWG Response: Thank you for your input. The CCWG remains of the view that this power should remain part of the proposal, based on its own analysis and work and on the strong public comments in favour of it offered in response to our first proposal. The Second Draft Proposal addresses many of the concerns you raise – we welcome your comments on the updated proposal (see section 7.4).

		could potentially be catastrophic for ICANN, all the more so given that to date there has not been a viable proposal on how to govern ICANN in the interim until a new Board is selected. The potential for any interim Board being subject to capture or being unresponsive to community input is high, as is the danger of not having an effective Board in place to address any unforeseen circumstances that might arise. It is because of these difficulties that the ALAC would far prefer the “surgical” approach of carefully removing the Directors that the community believes are the source of ICANN’s problems while leaving a core Board in which it has confidence.	
4 1 6	SB	<p>ii. Recalling the whole Board of Directors</p> <p>1. It is possible that the process will be too complex and will never go beyond distracting the participants and the staff, not making any progress related to ICANN's functions.</p> <p>2. It is also possible that it will be so painful for ICANN (as an organization) that it will lead to its end and its subsequent transfer to an intergovernmental structure (which we do not want.)</p> <p>c. Alternative proposal</p> <p>i. In a given year the community will have the possibility of recalling up to 7 members of the Board of Directors.</p> <p>ii. This proposed limit of 7 members allows the retention of 9 members who will undertake everyday operations until the 7 new members are elected.</p> <p>iii. With the proposed annual election of 5 members, it would be possible to change up to 12 members each year.</p>	<p>CCWG Response:</p> <p>Thank you for your comment. The CCWG has revised and changed the way this proposed power would operate. The detailed explanation is in section 7.4 of our Second Draft Proposal. We have not adopted your proposed approach, but we would welcome your comments on our second proposal.</p>
4 1 7	RIR	In principle there are no objections to the introduction of this power, assuming that this power can only be exercised with the proposed threshold (75%). However, concerns were expressed as to whether such a threshold can be readily achieved by a membership-based organization under Californian law. It was appreciated that under Californian law the entire board could be	<p>CCWG Response: Thank you for your comment. The Second Draft Proposal from the CCWG addresses your concern. The new Community Mechanism as Sole Member model (see section 6) avoids the problem of the proposed threshold (still 75% - see section 7.4 for the details) being overridden by</p>

		dismissed, if requested by a simple majority of the members. If this understanding is correct, the introduction of this power would put at risk ICANN's stability and have a negative impact on the organization's accountability. Therefore, it is recommended that the CCWG ensure that a higher threshold than simple majority can be required for the exercise of this power under Californian law, and that the proposed structure for accomplishing this be detailed in the proposal	statutory rights of members. We welcome your review of the updated proposal and any further comments you have.
4 1 8	DotMusic	DotMusic agrees that the community should have the power to remove Board members or the entire Board. A special committee may be considered to handle these petitions for any Board member removal.	CCWG Response: Thank you for your input. The Second Draft Proposal includes more details for how to deal with the problem of an interim board – please review section 7.4 and offer us any further comments you have.
4 1 9	Siva	So long as an eco-system prevails within ICANN wherein the Community is not “captured”, the provision of powers to recall the entire ICANN Board is notionally appropriate if acknowledged as Titular powers to be invoked during an unlikely disaster.	CCWG Response: Thank you for your input.