

5.35B.2 Power: Reconsider/Reject Changes to ICANN “Standard Bylaws”

Final Draft: 28 July 2015

This Section applies to “Standard Bylaws” – all those Bylaws that are not Fundamental Bylaws (see Section 3B)

ICANN’s Bylaws set out the details for how power is exercised in ICANN, including— by setting out the company’s Mission, Commitments and Core Values. Changes to those Bylaws have been discussed in 3.B on Fundamental Bylaws.

It is possible for the Board to amend Standard Bylaws in ways that the community may not support. For example, the Board could unilaterally change the ccNSO’s Policy Development Policy, or the SG structure of the GNSO, or the composition of the Nominating Committee.

Therefore, this power would give the SOs/ACs who participate in the Community Mechanism as Sole Member (with input from the larger community) the right to reject proposed changes to Standard Bylaws after they are approved by the Board (but before they come into effect). This power would be available in response to any proposed change to Standard Bylaws.

The time required for this power to be exercised would be included in the Bylaws adoption process (during a [15/30] calendar day window) following Board approval. If and according to the community-elected-to-exercise three phase approach set out in the introduction to this section.

That is, the power —would be triggered through a petition calling for ~~votes~~ use within fifteen days of the announcement of the Board’s decision. Where a petition was successful, there would follow fifteen days of community discussion, including in the ICANN community forum, to consider use of the power. Finally, participating SOs/ACs throughin the Community Mechanism as Sole Member —,would have fifteen days to vote.

Where a veto was successful, the Board would have to absorb the feedback, make adjustments, and propose a new set of amendments to the Bylaws. Before the process

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Comment [1]: Deleted language is confusing; already addressed in section on Fundamental Bylaws

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to reject changes to the Standard Bylaws, we expect there will as there is today be a public comment period (standard is 40 days) for the community to provide feedback to the proposed changes. Therefore, the ~~[15/30] calendar day window is not the only opportunity for the community to provide input for changes to the Standard Bylaws, relatively short petitioning window is acceptable.~~

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It would require a **2/3** level of support in the Community Mechanism to reject a Bylaw change proposed by the Board. Note that for the Board to propose a Bylaws amendment, two-thirds (2/3) of the ~~Board~~ must vote in favor of the change.

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This power does not allow the community to re-write a Board-proposed Bylaw change: it is a rejection process where the Board gets a clear signal that the ICANN community is not supportive.

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~~There is no limit to the number of times a proposed change can be rejected, but the threshold for sending one back is a supermajority in the Community Mechanism set out in ~~5.1 above~~ section 5A, to limit any potential for abuse of this power by a small number of SOs/ACs.~~

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~~The impact of this power~~ is to keep ICANN operating under the existing Bylaws despite changes proposed by the Board unless the community by inaction in response to a proposed amendment does not object. If the petitioning period expires with no valid petition, fifteen days after a Bylaws change is announced by the Board, the change goes into effect.

Comment [2]: Note that the Sole Member would have the statutory authority to amend Bylaws under California law, without Board approval. The Bylaws could impose an extremely high threshold, up to requiring unanimity among the votes of the SOs and ACs, for exercise of this power.

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