~~CCWG-Accountability (WP1): Draft Content for the Second Public Comment Report~~

~~5.5~~5B.3 Power: Removing Individual ICANN Directors

Final Draft: 28 July 2015

01 The Board is the governing body of ICANN, with main responsibilities that include employing the President and CEO, appointing the Officers, overseeing organizational policies, making decisions on key issues, defining the organization's strategic and operating plans and holding the staff to account for implementing them.

02 Of ICANN's sixteen Directors, fifteen are appointed for a fixed term (3 years) and generally are in office for the whole term that they are appointed for by their SO/AC, or by the Nominating Committee. In addition the Board appoints the President and CEO (confirmed each year at the AGM), who serves on the Board *ex officio* (by reason of his or her position as President and CEO). The power to remove individual directors of the ICANN Board is currently available only to the Board itself, and can be exercised through a 75% vote of the Board. There is no limitation[1] on the Board's power to remove a director specified in the Bylaws.

03 This power would allow for the removal of a director before his or her fixed term comes to an end, with no rules set as to limitations on such removal or requirements for a particular cause for such removal. It is expected that this power would only be exercised in cases of serious difficulty with a particular director.

04 For the seven directors appointed by one of the three Supporting Organizations or by the At-Large Community (or by subdivisions within them, e.g. within the GNSO), a process led by that organization or subdivision would decide on the director's removal. Only the SO or AC that appointed the director could decide on that director's removal.

The following process applies if the director was appointed by an SO or AC:

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[1] There are escalation paths, up to and including removal from the Board, for Board member violations of the Code of Conduct and Conflict of Interest Policies, but the Bylaws do not currently require such a violation to occur prior to Board removal.

43 ~~{00698732.DOCX; 3}~~**CCWG-WP1 Section 5.5 – removing individual Directors** ~~Draft 5 – at 22 July 2015 (post-WP1 call)~~

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a. A decision to start consideration of a director's removal requires a call to do so, approved by a **simple majority** in the SO or AC.
b. Where such a call to remove a director meets the required threshold, within **fifteen days** a meeting of the ICANN community forum (see section 5A3 for the concept) will be convened. At that meeting:
    i. the Chair of the forum must not be associated with the petitioning SO/AC or with the director involved;
    ii. representatives of the appointing/removing SO/AC must explain why they seek the director's removal;
    iii. the director has the opportunity to reply and set out his or her views; and
    iv. questions and answers can be asked of the appointing/removing SO/AC and of the director involved by all the other participants in the forum
c. Within **fifteen days** after the meeting of the forum, the SO/AC makes its decision through its usual process.
d. The threshold to cause the removal of the director is **3/4** of the votes cast in the SO/AC.
e. If the threshold is met, then, as will be set out in the bylaws, the Community Mechanism as Sole Member automatically validates this decision, and the director is removed.
f. If no decision is made within **fifteen days**, the process lapses and the director remains in place.

For directors appointed by the Nominating Committee, a process of the SOs and ACs participating in the Community Mechanism as Sole Member would make a decision on the director's removal by voting as detailed below. Any SO or AC would be able to petition for the removal of a director appointed by the Nominating Committee.

The following common elements apply if the director was appointed by the Nominating Committee:

a. A petition to start consideration of a director's removal requires a **simple majority** in one SO or AC.
b. Where a petition to remove a director meets the required threshold, within **fifteen days** a meeting of the ICANN Community Assembly (ICA)community forum will be convened. At that meeting:
    i. the Chair of the ICAforum must not be associated with the petitioning SO/AC or with the director involved;
    ii. representatives of the petitioning SO/AC must explain why they seek the director's removal;
    iii. the director has the opportunity to reply and set out his or her views; and
    iv. questions and answers can be asked of the petitioning SO/AC and of the director involved by all the other participants in the ICAforum
c. Between 7 and 14Within **fifteen** days after the meeting of the ICAforum, the Community Mechanism as Sole Member, through votes of participating SOs and ACs, makes a decision as to whether the director is removed or not.
d. The threshold to cause the removal of the director is **3/4** of the votes cast, with a minimum participation of **3/5** of eligible votes.

Comment [1]: Lawyers' comment: A petition need not be required or any voting of the Community Mechanism where the director being removed is being removed at the decision of the SO or AC appointing that director. That is our recollection of the decision in the last call.

Comment [2]: 01In discussion on 22 July WP1, there was an unclear discussion about the simple majority applying for the petition.

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Comment [3]: Lawyers' comment: Need to consider whether these thresholds make sense if there are only 4 participating SOs and ACs in the CMSM initially. Also need to consider whether standard should be percentage of votes cast or percentage of votes outstanding.

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07 ~~The decision to remove the director, where made by the appointing SO and AC, is implemented by the CMSM in a procedure to be set out in the Bylaws that involves a similar pass-through to that which will occur to implement the appointment of directors. Where the decision is made by votes through the CMSM process, the Sole Member will be bound by the vote outcome.~~

   e. If the threshold is met, the Community Mechanism as Sole Member has made its decision and the director is removed.
   f. If no decision is made within **fifteen days**, the process lapses and the director remains in place.

08 Where a director who had been appointed by an SO/AC is removed, that SO/AC is responsible for filling the vacancy through the usual process. ~~SOs or ACs may choose to develop expedited processes for use in such a situation, and suggest these to the ICANN Board for consideration of the relevant Bylaw changes.~~ (as set out in Article VI, Section 12.1 of the Bylaws).

| Comment [4]: Lawyers' comment: Note that the Bylaws already provide for filling vacancies in seats appointed by SOs/ACs with only a written notice by the appointing SO/AC under Article VI, Section 12.1. |

09 Where a director who has been appointed by the Nominating Committee is removed, the Nominating Committee may appoint a new director. It is expected that the Nominating Committee will amend its procedures so as to have two or three "reserve" candidates in place, should any or all of its directors be removed under this power (or as part of the recall of the entire ICANN Board described in ~~5.6~~5B4).

10 In all cases, directors appointed to replace directors removed by this power fill the same "seat" and their term will come to an end when the term of the director they are replacing would have done.

11 As part of Work Stream 2, the CCWG-Accountability is recommending the development of community standards that will guide Board members, SOs, and ACs regarding expected behavior of directors, and the expectations which if not met could be expected to lead to a petition for their removal. Such standards would help establish common expectations across the community – they would **not** be criteria for, nor limitations on, the exercise of this power, or give any grounds for a director subject to removal to appeal or challenge the decision. The development of such standards should be a matter of priority in Work Stream 2.

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Comment [5]: Lawyers' comment: Recommend deleting chart. If not deleted, then at least need to explain its purpose.

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