## 5B.46 Power: Recalling the entire ICANN Board

240 There may be situations where removing individual ICANN directors is not viewed as a sufficient accountability remedy for the community: where a set of problems have become so entrenched that the community wishes to signal its lack of confidence in the Board by considering a recall of the entire ICANN Board in one decision.

241 Beyond the power set out above in Section 5.5 to remove individual directors, this power would allow the community to consider and cause the recall of the entire ICANN Board. (with the exception of the President of ICANN, who serves on the Board ex officio). The community would initiate use of this power on the petition of two-thirds of the SOs and ACs participating in the Community Mechanism as Sole Member of ICANN, with at least one two SOs and orne ACs petitioning. Implementation of this community power would be set out in Bylaws requiring petition and notice procedures along the following general lines:

- A petition (a) sponsored by at least one SO and one ACtwo SOs or ACs (indicated by signature following the decision of a majority of the SO or AC's governing body), (b) setting forth the reasons for requesting that the CMSM consider recall of the entire Board, and (c) supported by signed statements by two-thirds of the SOs and ACs participating in the CMSM indicating their interest in considering the petition (a "Valid Petition") is delivered to ICANN's Board of Directors and [Corporate Secretary/ or General Counsel];:

- Upon receipt of the Valid Petition, within [7] calendar days the [Corporate Secretary/ or General Counsel] must either

  - provide notice to the sponsoring and supporting SOs and ACs of any issue identified with respect to the validity of the Valid Petition, with an unlimited period to cure; or

  - provide notice to all SOs and ACs participating in the CMSM that (a) a Valid Petition has been received, including a copy of the Valid Petition, (b) setting forth a Consultation Discussion Period of Date within [3015] days and a Voting Date [5] businessDecision Period of 15 days thereafter, and (c) calling for all SOs and ACs that have the right to require the CMSMappoint directors to select one (or two, depending on their allocation) or more directors to notify the [Corporate Secretary/ or General Counsel] by the Consultation Dateclose of the Discussion Period of the person[s] it has selected to serve on an Interim Board (for only so long as necessary until a replacement election could be held) should a vote be held in favor of recall of the entire Board occur, such notice to include a signed statement from the candidate(s) of their willingness to serve and any other information that the Bylaws require Board candidates to provide

prior to election. SOs and ACs must nominate at least one such prospective director.

- A member of the Board A director that is a member of the Board subject to the recall vote is not eligible to serve on the Interim Board.

242 After a Valid Petition is raised, the Consultation Date Discussion Period would provide a set period of time [30 15 calendar days] for SOs / ACs to individually and collectively deliberate and discuss whether the recall of the entire ICANN Board is warranted under the circumstances – including through a meeting of the proposed ICANN community forum.

At the end of the Discussion Period. On the Consultation Date, a formal opportunity for the SOs and ACs to discuss and collectively deliberate would be held [in person or through electronic means (telephone and Adobe connect).]Connect)]. Each, each SO and AC would then have [7]fifteen calendar days (the Decision Period), to follow its own internal processes to decide how to vote on the matter, with its vote certified in writing by the Chair of the SO/AC to the [Corporate Secretary, or General Counsel] and copied to the ICANN Board and all participating SOs and ACs.

243 It would be preferable for a decision of this sort to be the result of cross-community consensus. Therefore, a suitably high threshold for the exercise of this power, **[75%]** of all the voting power available within the CMSM [insert reference to appropriate section/paragraph] would have to be cast in favor of recall of the entire Board for the recall to be effective.

Requiring a majority of voting power rather than a majority of votes cast ensures that non-participation does not lower the threshold required to remove the Board. In this instance, abstention and non-participation have the same impact and effectively count as a vote against the action.

244 This threshold was chosen to stop any particular SO or AC from being able to prevent the recall of the Board, based on initial voting participation by four SOs/ACs in the Community Mechanism, but to be as high as possible without allowing that to occur. **[Note the need to reconsider precise threshold once the number of participating SOs/ACs in the CMSM and their voting power is decided.]**

246 It is expected that recall of the entire ICANN Board will rarely, if ever, occur. Should it occur, however, there must be a Board immediately in place to serve as a fiduciary caretaker for ICANN until an election can be held for a Replacement Board Directors.

As previewed in Paragraph [241], above, in the event that the threshold vote is met for a recall of the entire Board, simultaneous with that vote, members of directors to

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**Comment [3]:** Removed as it was repetitive.

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**Comment [4]:** Lawyers' comment: Precise threshold to be reconsidered once the number of participating SOs and ACs in the CMSM and their voting power is decided.

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**Comment [5]:** ACTION ITEM #2 – WP1 TO ENSURE PROPOSED PROCESS SYNCS WITH REFERENCE MODEL.

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**Comment [6]:** This section was removed in light of strong support for 75% threshold and only a couple of comments supporting 80% threshold.

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serve on the Interim Board will be selected automatically as the group of candidates that each SO and AC was required to provide ~~on the Consultation Date~~by the end of the Discussion Period, and the Interim Board would replace the ICANN Board upon the determination of the voting results. In addition, the NomCom will amend its processes so as to be able to supply two candidates to serve on such an Interim Board if required (such candidates to be confirmed by the NomCom each year at the time of ICANN's AGM, and to be available for service on an Interim Board or if required due to community recall of an individual director, until the date of the next AGM).

Due to its short term, this Interim Board is not subject to the diversity requirements that apply to the ICANN Board generally.

Since the President serves on the Board by virtue of his or her executive position and is not subject to election/selection by the CMSM, recall of the entire Board would not affect the President's position either as President or as a ~~member of~~director serving on the ICANN Board.

- The Bylaws shall provide that the Interim Board will be in place only so long as required for the selection/election process for the Replacement Board and in no event longer than [120 days]. ~~[Consideration should be given as to how to expedite the selection of a Replacement Board.]~~

  - In selecting a Replacement Board, SOs and ACs and the Nom Com may, if they so choose, select ~~members of the Board that was subject to recall~~ directors who were recalled and/or ~~members of~~directors serving on the Interim Board. ~~Service~~ In other words, service on the recalled Board or the Interim Board does not disqualify service on the Replacement Board.

  - The directors selected for the Interim Board, and later those selected for the Replacement Board, will step into the terms that were vacated by the recalled directors. Each SO and AC and the Nom Com shall determine which of the terms the interim and replacement directors shall fill. In this way there will be no disruption to the staggered terms of the ICANN Board.

- The Interim Board will have the same powers and duties as the Board it replaces because it is critical to the stability of ICANN (and required by law) that at all times there is a fiduciary in place. However, the Bylaws ~~may~~ will provide that absent compelling circumstances it is the expectation that the Interim Board will consult with the CMSM before taking any action that would be a material change in strategy, policies or management, including without limitation, replacement of the President.

- Under the CMSM ~~reference model,~~Model, the collective results of the vote of the SOs and ACs becomes the action of the CMSM without any further Board action; the Interim Board would be in place as of the time that it is determined that the community vote satisfied the threshold for recall, and both the CMSM and the

Interim Board would have the power to ~~assert~~ enforce their rights in relation to that vote.

Finally, the CCWG acknowledges the dependency between CCWG Community Power 5.6 and the CWG-Stewardship ~~Transition~~ reference as follows:

1. **Community Empowerment Mechanisms.** The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:

   (a) The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;