

## Community Power 5.6 – Recalling the Entire ICANN Board

Public Comment 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.

Public Comment Summary on Recalling the entire ICANN Board: (Responses 391-419)

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%
- Unintended consequences of risk and instability

### 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
- **Does the CCWG proposal meet the CWG Requirements?**

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## 5.6 Power: Recalling the entire ICANN Board

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

Comment [DK1]: Several comments emphasized the need to identify the circumstances and/or triggers where this power could be used.

241 Beyond the power set out above to remove individual directors, this power would allow the community to cause the recall of the entire ICANN Board. The community would initiate use of this power on the petition of two thirds of the SOs and ACs in ICANN, with at least one SO and one AC petitioning. Again, implementation of this community decision will be accompanied through a further step to be developed in conjunction with legal counsel.

Comment [DK2]: How will this be impacted if one or more SOs or ACs elect to not participate in the community council, or elect to abstain?

242 After a petition is raised, there would be a **set period of time** for SOs / ACs to individually and collectively deliberate and discuss whether the removal of the Board is warranted under the circumstances. Each SO and AC, following its internal processes, would decide how to vote on the matter. Again, implementation of this community decision will be accompanied through a further step to be developed in conjunction with legal counsel.

**Comment [DK3]:** Need to define.

243 It would be preferable for a decision of this sort to be the result of cross-community consensus. Where this consensus is not apparent, a suitably high threshold for the exercise of this power, **[75%]** of all the support **available within the community mechanism** would have to be cast in favor to implement it. This ensures that non-participation does not lower the threshold required to remove the Board.

**Comment [DK4]:** We need to further define "available within the community mechanism" to address non-participation.

244 This threshold was chosen to stop any particular SO or AC being able to prevent the recall of the Board, but to be as high as possible without allowing that to occur. The requirement on all recordable support/opposition to be counted was to avoid non-participation reducing the effective threshold for decision.

~~245 An alternative option for the threshold is to set it at 80%. This alternative is being considered, but as it would require a unanimous vote by the community, save for one SO or AC. Such a threshold is seen as too high.~~

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246 Ongoing work in the CCWG-Accountability will flesh out how to implement this community decision through the ICANN Members, and how to deal with transitional matters raised, including at least the following:

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~~1. 1-~~A phase of "caretaker" behavior by the outgoing Board while new members are elected;

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~~a. A minority subset of public comments reflected concern about the "caretaker board" concept, including potential limits on the pool of available candidates, discomfort with allowing the spilled Board to remain in a caretaker capacity, and potential instability during the transition phase.~~

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~~b. Several comments emphasized the need to carefully plan for and define the succession process to limit instability.~~

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~~2. 2-~~A need to elect alternate Board Directors in each Board selection process;

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~~a. Need to consider and address concerns about the pool of possible candidates.~~

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~~3. 3-~~A pre-defined subset of the community that could function as an interim Board;

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~~a. Perhaps the Chairs and Vice-Chairs of the SOs, ACs and NomCom?~~

~~4. 4-~~Continuity in the role of Chief Executive were the Board to be removed;

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~~a. Need to define.~~

~~5. 5-~~"Caretaker" conventions for the CEO to follow in a situation where the Board had been removed.

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a. Need to define.

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NOTE: Here's the relevant language from the CWG-Transition proposal. These are the dependencies we need to consider as we refine our work on Community Power 5.6:

The CWG-Stewardship proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) as described below. The co-chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations, if implemented as envisaged, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG. If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this CWG-Stewardship proposal will require revision. Specifically, the proposed legal structure and overall CWG-Stewardship proposal requires ICANN accountability in the following respects:

1. **ICANN Budget and IANA Budget.** The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The CWG-Stewardship recommends that the IFO's comprehensive costs should be transparent and ICANN's operating plans and budget should include itemization of all IANA operations costs to the project level and below as needed. An itemization of IANA costs would include "Direct Costs for the IANA department", "Direct Costs for Shared resources" and "Support functions allocation". Furthermore, these costs should be itemized into more specific costs related to each specific function to the project level and below as needed. PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis. PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget. The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.

2. **Community Empowerment Mechanisms.** The empowerment of the multistakeholder community to have the following rights with respect to the

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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;

(b) The ability to exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving

(i) ICANN Board decisions with respect to recommendations resulting from an IFR or Special IFR and

(ii) the ICANN budget; and

(c) The ability to approve amendments to ICANN's "fundamental bylaws," as described below.

3. **IFR** . The creation of an IFR which is empowered to conduct periodic and special reviews of the IANA functions (see Annex F). IFRs and Special IFRs will be incorporated into the Affirmation of Commitments mandated reviews set forth in the ICANN Bylaws.
4.
5. **CSC** . The creation of a CSC which is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the ccNSO and GNSO. The ccNSO and GNSO should be empowered to address matters escalated by the CSC.
6.
7. **Separation Process** . The empowerment of the Special IFR to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group (SCWG) be established to review the identified issues and make recommendations. See Annex L for more detailed information as to approval requirements with respect to the formation of a SCWG and approval of SCWG recommendations.
8.
9. **Appeal mechanism** . An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.
10.
11. **Fundamental bylaws** . All of the foregoing mechanisms are to be provided for in the ICANN bylaws as "fundamental bylaws." A "fundamental bylaw" may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote).

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~~247 It should be noted that legal advice has confirmed that a caretaker Board mechanism was achievable.~~

~~248 **QUESTIONS AND OPEN ISSUES:**~~

~~249-15a) Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability?~~

~~250-15b) Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.~~