

There were a fair number of comments on the concept of removing individual Board Members. All supported the concept although the details varied.

- a. Several commenters supported the concept of an SO/AC that appoints should be able to recall.
- b. Several said that the “community” should be able to recall individual Board members.
- c. There was a comment that removal should be for cause only, with the cause explicitly identified.
- d. There were strong comments that the process had to be open, transparent and verifiable (ie not capricious).
- e. One commenter suggested that in individual removal should be in lieu of a complete board removal, but the number removed per year should be limited (to ensure a vestigial board remains to act).

We need a firm recommendation to either support SO/AC removal or community removal (with the support of the applicable SO/AC).

On the issue of pre-seating resignation letters, there was one comment saying that they would not be enforceable, a position not agreed to by our legal advisors.

On the issue of removal of NomCom appointed board members, there were three positions put forth.

- a. Use the regular NomCom
- b. Appoint a special NomCom
- c. The community should be able to remove NomCom appointees.

I do not believe that there were sufficient clear comments on which to base a decision.

I will give my personal views, and the WP1 will have to make a decision, or we take the issue to Paris.

- In our original discussions, we said the “community” should remove NomCom-appointed directors. Legal advice was that for the Member or Designator model, only the entity that appointed the Director could remove him/her. So it was clear that the NomCom had to do it, but legal advice was that it could be done by a separate subcommittee of the NomCom.
- Having the regular NomCom take this action, presumably using their normal methods of secret deliberation, violates the transparency rule. If they do it openly, it could jeopardize their impartiality with respect to the nominations they are making (a person they are in the process of nominating could be slated for removal).
- If the recall comes at the “wrong time” the NomCom could be not yet organized or in the midst of their selection process and not able to focus on the removal.
- If indeed we need to still have the NomCom do the removal (based on the model selected), I suggest that the ICANN Community Council act as the NomCom Sub-committee responsible to removals. This reverts back to the original intent while honouring the legal requirement. It also supports those commenters who said the community should be able to remove all directors.

Lastly, the phrase highlighted in turquoise below was not commented on, but I find not at all clear. Is an SG instead of a AC? Did we mean a House of the GNSO in lieu of the entire GNSO?

## 5.5 Power: Removing individual ICANN Directors

- 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 Directors are currently appointed for a fixed term and generally are in office for the whole term they are appointed - by their SO/AC, by the Nominating Committee. In addition the Board appoint the President and CEO (confirmed each year at the AGM). The power to remove individual directors of the ICANN Board is available only to the Board itself, and can be exercised through a 75% vote of the Board. There is no limitation<sup>1</sup> on the types of situation for which the Board can remove a director.
- 03 This power would clarify that each specific community organization that appoints a given director may end his or her service in office, prior to the expiration of the term, and trigger a reappointment process. The general approach, consistent with the law, is that the appointing body is the removing body.
- 04 For the seven directors appointed by 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 lead to the director’s removal.
- 05 For the directors appointed by the Nominating Committee, the CCWG-Accountability seeks the community’s views about how to allow for removal. Following the principle of “the appointing body is the removing body”, it does need to be the NomCom that takes the decision to remove one of these directors. Consistent with the Reference Mechanism outlined above, we expect that the NomCom will need to obtain legal structure to be able to remove directors as well as to appoint directors.
- 06 Our initial view is that such a removal process should only be triggered on the petition of **at least two of the SOs or ACs (or an SG from the GNSO)**. Such a petition would set out the reason/s removal was sought, and then the NomCom would consider the matter. Legal counsel is also considering alternative approaches that would permit NomCom to act without itself becoming a legal entity.

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<sup>1</sup> 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 occur prior to Board removal.

07 The CCWG-Accountability sees two options (either of which is legally viable) for the composition of the NomCom when considering removal of a director.

1. It could simply be that the NomCom members at the time of a petition being lodged would decide.
2. Alternatively, a special committee of the NomCom could be established to deal with removal petitions when they arise. This is likely to only rarely be used. The composition of such a special committee has not been determined, and input is welcome.

08 The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters. The disadvantage is that it would require a new set of volunteers to populate it, as it would be preferable for the personnel of the two groups to be separate.

- Whether the decision-making body is the SO/AC or the NomCom, removal would require a **[75%]** level of support (or equivalent) to decide in favor of removal.
- The petitioning threshold to start the NomCom consideration of removing a director should be set at least at a majority of the SO/AC's governing body/council.

09 An additional mechanism to support the removal and recall of Directors is to have each person sign a letter of resignation when they accept the appointment. This pre-signed resignation letter would be triggered by certain pre-defined criteria, such as the ones described in this Section or the following ("recalling the entire Board").

10 **QUESTIONS AND OPEN ISSUES:**

11 *14a) Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability?*

12 *14b) Do you agree with the list of requirements for this recommendation?*

13 *If not, please detail how you would recommend to amend these requirements.*