

4.1 Power: Removing Individual Board Directors – (section 7.3)

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Current State

Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director

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CCWG – Accountability Proposal

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This power would allow for the removal of a Director before his or her fixed term comes to an end. It is vitally important to recognize that the Bylaws state that each Director must act in the collective interest of all stakeholders and not the single interest of a single stakeholder. Therefore, there will be a singular process for Director removal that applies to all Directors, with no differentiation as to the appointing body. This will ensure that no Director can be subject to capture by his/her appointing body.

It is equally important to recognize that the removal of a Director is a serious matter and cannot be exercised without cause. Accordingly, pre-service letters are to be signed as a condition of serving on the ICANN Board. These letters would indicate cause for removal from the Board upon the occurrence of specific events (to be defined).

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~~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.~~

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~~For the seven Directors appointed by one of the three SOs or by the At Large Community), 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. For the purposes of such a removal process, SO means the SO or for the case of the GNSO, the GNSO House that has the Bylaw right to appoint a director. AC means the At-Large Community and Nominating Committee means~~

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~~The following process applies for removing a Director appointed by an SO or AC:~~

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~~1. 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 which originally appointed the director.~~

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~~2. Where such a call to remove a Director meets the required threshold is announced, within fifteen days a meeting of the ICANN Community Forum (see Section 6.3 for the concept) will be convened. At that meeting:~~

The following singular process applies for removing a Director appointed by an SO or AC ~~or the by the Nominating Committee~~ ~~Nominating Committee:~~

1. A petition to start consideration of a Director's removal requires a simple majority in two one of the participating SOs or ACs.
2. Where a petition to remove a Director meets the required threshold is announced, within fifteen days a meeting of the ICANN Community Forum will be convened. At that meeting:
 - a) The Chair of the Forum must not be associated with the petitioning SOs or ACs or with the Director involved;
 - b) Representatives of the petitioning SOs or ACs must state publicly and within the petition the grounds for seeking ~~explain why they seek~~ the Director's removal;
 - c) The Director has the opportunity to reply and set out his or her views; and
 - d) Questions and answers can be asked of the petitioning SOs or ACs and of the Director involved by all the other participants in the Forum.
3. Within fifteen days after the meeting of the Forum, 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.
4. The threshold to cause the removal of the Director is 75% of the SOs and ACs votes available in the Community Mechanism.
5. If the threshold is met, the Community Mechanism as Sole Member has made its decision and the Director is removed through the enforcement mechanism.
6. If no decision is made within fifteen days, the process lapses and the Director remains in place.

No new call to consider the removal of that same Director can be made during the term they are serving on the Board following a vote to remove them failing or no decision being made. Consideration should be given to developing interim measures prior to removal, as removal may not always be the appropriate step. Tiered sanctions could be developed for continuous violations. If there is a path to tiered sanctions, the limitation may need to be reconstructed to allow sanctions to be imposed.

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With the development of the pre-service letters, the Board would no longer have the ability to remove individual Directors without cause. The Board would also be limited by the pre-service letters in initiating Board member removal, and the Board's existing governance documentation could still serve as guide for identifying when pre-service letter process could be initiated by the Board. This upholds the Board's role in maintaining high governance standards amongst Directors.

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Where a Director who has been appointed by the ~~Nominating~~ ~~inating~~ 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 several "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 Section 7.4).

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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. A Director appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

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.