

Answers to questions:

1.a) How important is it for the accountability mechanisms to be binding (enforceable in court if necessary) versus reliant on voluntary compliance as in the current system?

A. Making accountability mechanisms binding is one of the most important concerns raised by the community. "Binding" accountability mechanisms are not truly binding if there is no way to enforce compliance. If a court or independent body is the only way to truly enforce compliance, then the ability to enforce a decision in court is critical. In this sense, voluntary compliance would not be an acceptable way to address the community's concerns.

1.b) Would a non-judicial yet binding enforcement mechanism be a good option, perhaps after exhaustion of the existing mechanisms?

A. Yes. However, this assumes that non-judicial enforcement mechanisms can be made just as effective as judicial ones. We would need to understand how a non-judicial enforcement mechanism can be made truly binding and enforceable.

2) Does the community need the power to approve or reject certain Board decisions, or is the ability to ask the Board to reconsider its decisions sufficient?

A. We believe that power to approve or reject Board decisions is necessary in order to effectively address some accountability concerns that have been raised. Reconsideration does not provide sufficient power to the community.

3.a) Assuming that there is some need for a power to overrule the Board with respect to certain decisions (for example, rejection of or a failure to take action on IRP recommendations), over which decisions does the community need to be able to bind or overrule the Board?

A. Those decisions would ideally be:
a) Change in mission
b) Acting contrary to bylaws (including acting beyond mission)

- c) Changing bylaws
- d) Budget and strategic plan approval
- e) Complying with IRP recommendations

3.b) Should this power to bind the Board go as far as being able to enforce the community preference in court, or will reliance on the Board's voluntary compliance with an arbitral ruling suffice?

A. This power should go as far as being able to enforce the community preference in court.

4) If, using a membership model, members could have the power to bind the Board on budgets or strategic plans, but under a designator model, designators could only force the Board to reconsider its budget or strategic plan (subject to designators' coercive power to remove the Board, but without being able to force their will on the Board), which is preferable?

A. At this stage and considering that there's still an ongoing discussion on the issue, we are unable to provide an answer but would like the lawyers to keep an open mind as to continue to think of this as an open item.

5) We have heard many comments expressing concern over lawsuits by or against designators and members if they are established as unincorporated associations with separate legal personhood from ICANN. We would like to understand better this concern, as we don't see these associations as fundamentally changing the exposure or risk of litigation. On the contrary, the proper use of an unincorporated association provides further protection against an individual participant being sued.

A. This concern likely stems from several factors:

- a) The greater amount of power and ultimate decision-making responsibility the community will likely have.
- b) A belief that the current set-up of of "non-entity" Stakeholder Organizations and Advisory Committees does not subject participants to exposure or risk of litigation (in other words, that the change in structure alone creates greater exposure).
- c) Most participants in the ICANN community are from countries

other than the US and they (along with some participants in the US) are concerned with the reputation of the US as an unduly litigious country.

d) Lack of understanding of and concern about an unknown situation.

e) A desire to create greater concern in other CCWG participants and thus steer the group away from certain outcomes.

We need to be able to give reasonable assurances that community members will have no greater exposure to litigation currently, and that any new structure will provide community participants and organizations the best possible protection from litigation.