

Community Powers	Designator Model			Membership Model		
	Where can right be created?	How can right be exercised?	How can right be enforced?	Where can right be created?	How can right be exercised?	How can right be enforced?
1. Total Board Recall	Right created by statute & augmented by contract.	Recall triggered pursuant to procedure specified in bylaws/contract.	Via Contract	Right created by statute & augmented by contract	Recall triggered pursuant to procedure specified in bylaws/contract.	Enforced via contract, intra-ICANN judiciary, IRP, or by a member lawsuit on behalf of the corporation (as created by statute)..
legal memo:	"This mechanism has high viability using contractual agreements to allow enforcement of provisions of the bylaws. Under either designation or membership, the designator(s) and member(s) select directors. Except for very specific circumstances, those same directors may not be removed without the consent of the appointing designator or electing member group. Therefore, if the entire board is to be removed at once, every designator or every member, as applicable, must agree by contract among or by themselves or ICANN or a 3rd-party (such as community council) to remove the director it selected if and when the community has voted to recall the board (however this process is defined and structured by contract)." p. 57 April 10 legal memo - Template WP1-7A					
2. Individual Board Recall	Right created by statute.	Recall triggered pursuant to procedure specified in bylaws (and possibly internal-designator process).	[Question: What recourse would a designator have if ICANN refused to recognize the removal of a director by a designator?]	Right created by statute.	Recall triggered pursuant to procedure specified in bylaws (and possibly internal-designator process).	Enforced via intra-ICANN judiciary, IRP, or by a member lawsuit on behalf of the corporation (as created by statute)..
From chat during call on 15 April 2015	There are two types of director removal in California. One is removal "for cause" and one is "without cause". A board can actually remove ANY director, regardless of how appointed, "for cause", which are fairly narrow reasons (felony, etc.) It is the "without cause" (for any reason) removals that only members/designators, respectively, can do.			There are two types of director removal in California. One is removal "for cause" and one is "without cause". A board can actually remove ANY director, regardless of how appointed, "for cause", which are fairly narrow reasons (felony, etc.) It is the "without cause" (for any reason) removals that only members/designators, respectively, can do.		"The rights provided to members are enforceable through the ability of members to bring an action on behalf of the corporation." p. 77 April 10 legal memo - Template WP1-D
3. Approve Bylaws	Right created by statute, augmented by bylaws.	Approval triggered pursuant to procedure specified in bylaws	Enforced via intra-ICANN judiciary, IRP, or by lawsuit.	Right created by statute.	Approval triggered pursuant to procedure specified in bylaws	Enforced via intra-ICANN judiciary, IRP, or by a member lawsuit on behalf of the corporation (as created by statute).
legal memo:	"For non-member 3rd-parties such as designators, corporate law provides that they may be given the right to consent to certain or all amendments to the articles of incorporation or bylaws. It should also be possible to give them special approval or veto rights in the bylaws over other board actions, either as a matter of corporate law, or through contractual arrangements." p. 9 March 27 legal memo of A&C					
	"Regardless of whether ICANN has members, the CA nonprofit corp law specifically allows bylaws to state that a specified person(s) can be given the power to approve their amendment. Therefore, the bylaws could give the power to block any changes to the bylaws to certain community representatives, either individuals (such as by office or position) or entities. Note that if desired, the power can be given to multiple persons simultaneously, so that all would have to approve the bylaw amendment for it to take effect." p. 4 of April 10 Legal Memo - Template WP-1A					
4. Golden Bylaw	Right created via bylaws.	Amendments to golden bylaws would be voted upon by the designators pursuant to the bylaw creating such right.	Enforced via contract, intra-ICANN judiciary, IRP, lawsuit.	Right created by statute.	Amendments to golden bylaws would be voted upon by the Members.	Enforced via contract, intra-ICANN judiciary, IRP, or by a member lawsuit on behalf of the corporation (as created by statute).

	<p>"Regardless of whether ICANN has members, the CA nonprofit corp law specifically allows bylaws to state that a specified person(s) can be given the power to approve their amendment. Therefore, the bylaws could give the power to block any changes to the bylaws to certain community representatives, either individuals (such as by office or position) or entities. Note that if desired, the power can be given to multiple persons simultaneously, so that all would have to approve the bylaw amendment for it to take effect." p. 4 of April 10 Legal Memo - Template WP-1A</p>		<p>[Question: What contract?] [Question: Who would have standing to sue?] [Note that Designators do not have the right to sue on behalf of the corporation.]</p>	<p>"High viability with statutory members, medium viability with designators or other non-member parties." p. 34 April 10 Legal Memo - Template WP1-5B2</p>		
legal memo:	<p>"Certain powers also can be reserved to 3rd parties, but they typically revolve around designating board members or having special control of specific bylaws amendments (i.e., the golden bylaws)." p. 60 April 10 Legal Memo - Template WP1-7A</p>					
	<p>"If other non-member groups are given the right to consent to a bylaw amendment, they would need to have a separate contract that, for example, provided liquidated damages if the board did not obtain their consent to an amendment in order to give them standing to enforce it." p.34 April 10 legal memo - Template WP1-5B2</p>					
5. Approve Strategic	<p>Option 1: Approval / Reconsideration right (forcing re-vote with a higher voting threshold of board members) could be created by bylaws and/or contract.</p>	<p>Exercised by designators pursuant to vote or consensus.</p>	<p>Enforced via contract, intra-ICANN judiciary, lawsuit, or board recall. [Question: Who would have right to sue?] A: Enforced by the Designators</p>	<p>Right created by statute.</p>	<p>Strategic plan would be submitted to Members for approval (by vote or consensus).</p>	<p>Enforced via intra-ICANN judiciary, IRP, or by a member lawsuit on behalf of the corporation (as created by statute)..</p>
	<p>Option 2: Right to revisit board decisions by larger community board in 2-tier board</p>					
legal memo:	<p>"While there is no mechanism in CA corp law for giving designators the right to revisit board decisions, this could be accomplished either through contractual arrangements, or through the board-within-a-board structure." p. 3 April 10 legal memo</p>		<p>"ICANN could be bound by contractual agreements with outside entities (including members and designators), the breach of which, in limited circumstances, could give rise to a remedy of specific performance." p.5 - March 27 legal memo S&A</p>			
	<p>"Designators could also be given the authority to limit the ability of the board to make unilateral changes to all or certain bylaws (for example, as through a requirement that designators approve any changes to bylaws (or certain fundamental bylaws) and changes to the Articles of Incorporation...Contract rights, however, could be created between ICANN and the designators to provide an avenue for legal action in the event ICANN fails to adhere to a bylaw procedure." p. 72 April 10 legal memo</p>					
6. Approve Budget	<p>Option 1: Approval / Reconsideration right (forcing re-vote with a higher voting threshold of board members) could be created by bylaws and/or contract for designators.</p>	<p>Exercised as specified in bylaws and/or contract.</p>	<p>Enforced via intra-ICANN judiciary, lawsuit, or board recall. [Question: lawsuit by whom?] A: Enforced by the Designators</p>	<p>Right created by statute.</p>	<p>Exercise as specified in statute and bylaws</p>	<p>Enforced via intra-ICANN judiciary, member lawsuit, or board recall.</p>
	<p>Option 2: Right to revisit board decisions by larger community board in 2-tier board</p>	<p>Community Board would exercise right pursuant to their bylaws</p>				
legal memo:	<p>"While there is no mechanism in CA corp law for giving designators the right to revisit board decisions, this could be accomplished either through contractual arrangements, or through the board-within-a-board structure." p. 3 April 10 legal memo</p>		<p>"ICANN could be bound by contractual agreements with outside entities (including members and designators), the breach of which, in limited circumstances, could give rise to a remedy of specific performance." p.5 - March 27 legal memo S&A</p>			

<p>"(the 'upper tier' or 'full' board) could be established to provide overall oversight of the corporation and to approve or reject certain decisions by an executive cmte or other cmte of the board, which cmte could be thought of as the 'lower tier' or 'small' board. The executive cmte / small board (which under CA law would have to consist exclusively of individuals who are members of the full board), could exercise most powers ordinarily exercised by a board of directors (powers relating to the governance of the corporation) while the full board may possess powers relating to supervising the small board. Fullboard powres may include the ability to: i) appoint additional committees, ii) remove individuals from the executive cmte, iii) amend bylaws and iv) veto or overturn decisions of the executive committee." p.80 - April 10 legal memo - Template WP1E</p>							