

Question	Assigned ?	Status
Which available legal mechanisms would provide the means for achieving the CCWG's above-stated goals and concerns and how would we do it? Examples to evaluate: different corporate legal structures, amendments to bylaws or articles of incorporation, creation of internal or external decisional review mechanisms, legal contracts, community "veto" process, designators, etc. What additional legal (or legally viable) mechanisms are available to achieve the above-stated goals and concerns?	Yes	Answered
What are the available legal mechanisms for constraining ICANN's activities and preventing the organization from expanding the scope of its mission in the future?	Yes	Answered
How could a contract, "golden bylaw" / "durable bylaw", or some other enforceable agreement achieve this goal?	Yes	Answered
Which available mechanisms provide the most advantage to the community and the most effective means of enforcement?	Yes	Answered
Which legal jurisdictions provide for the ideal balance between community control, technical stability, and responsible corporate governance given the CCWG's above-stated goals and concerns?	Yes	Answered
Should ICANN consider relocating its headquarters to another legal jurisdiction (outside of California), and if so, where and why?	Yes	Answered
Should ICANN consider being subject to international legislation (which includes, e.g. in the case of an ordinary international organization, abiding by its Constitutive Treaty and other international norms) in order to reduce the influence of the legislation of a single country on ICANN?	Yes	Answered
How would a relocation of ICANN's legal jurisdiction influence the aforementioned proposed accountability mechanisms under consideration by the CCWG?	Yes	Answered
What antitrust legal issues could arise in the context of the CCWG's work and possible recommendations, and how can those issues be most effectively addressed given the CCWG's stated goals and concerns?	Yes	Answered

Particularly in light of the fact that a portion of the ICANN community are contracted parties, what protections can be built in to make sure that the recommendations do not run afoul of antitrust laws and subject ICANN or its participants to antitrust liability?	Yes	Answered
Do any particular models or mechanisms under discussion give rise to more antitrust related concerns than others?	Yes	Answered
How to best incorporate certain aspects of ICANN's Affirmation of Commitments into the organization's corporate governance structure (possibly its bylaws) and also to provide for the effective enforcement of those commitments?	Yes	Answered
What are the benefits, responsibilities, and risks including but not limited to the legal and financial liability of board directors, statutory members, representative delegates, and community participants (both collectively and individually) for ICANN's actions (including debts, bankruptcy, etc.) under the different legal structures available under California nonprofit corporations law?	Yes	Answered
What are the costs or barriers to participation in ICANN's bottom-up policy development or decision making processes under the different legal structures and mechanisms under consideration for both existing participants and potential participants?	Yes	Answered
How do the different structures and mechanisms under consideration assess against each other with respect to concerns about "capture" or undue influence, costs, barriers to participation, and required time to transition to a new structure?	Yes	Answered
What does it mean for an ICANN board member to hold a fiduciary duty to the organization?	Yes	Answered
To what extent can a board member meet her/his legal obligations as a corporate fiduciary while also representing the interests of a particular segment of the community that appointed her/him to the board?	Yes	Answered

How to increase (or even maximize) a director’s ability to represent the interests of the community that appointed her/him in the course of board decisions, given legal duties of board members to the corporation?	Yes	Answered
To what extent are ICANN’s board members required to approve or reject a community decision regarding the management of ICANN based upon the board’s separate and distinct interpretation of “what is in the best interest of ICANN” or “the global public interest”?	Yes	Answered
How could the board be bound to accept decisions made by an Independent Review Panel (or other independent entity) including decisions pertaining to the board’s oversight of the management of the organization?	Yes	Answered
How could the California Attorney General (or other public official) intervene in ICANN’s operation on behalf of community members?	Yes	Answered
How typical is such an intervention by the California Attorney General in the operation of a nonprofit corporation, what are the grounds for such intervention, and what is a reasonable expectation for a successful remedy in this situation?	Yes	Answered
What is recommended for an interim mechanism/caretaker board arrangements if the entirety of the board of directors are spilled by the community?	Yes	Answered
Would it be possible under California law for the community to limit the direct or other damages of third parties (ex: gTld applicants) in a lawsuit against ICANN and if so, how?	Yes	Answered
Are there ways to create disincentives to filing frivolous legal claims against ICANN?	Yes	Answered
How could such limitations be created so there is little “wobble room” in contract negotiations for ICANN, for example through boilerplate contract clauses?	Yes	Answered
Are the mechanisms being discussed by WP1 legally viable under current conditions and if not, what would be needed to make them legally viable?	Yes	Answered

Which are the provisions usually included, if any, on jurisdiction issues in Bylaws and Articles of Incorporation (and the current situation in the case of ICANN)?	Yes	Answered
Which would be the liabilities for those community council members if there was indeed a community council?	Yes	Answered
What is ICANN presently, member or designator or blended or none of these?	Yes	Answered
If it is one, can it change to another without a new IRS review of tax status?	Yes	Answered
What specifically would it mean to structure an SO or AC as an unincorporated association? Does it implicate liability on their part? Is there a chance they are already such status?	Yes	Answered
Two-tiered board: Can the full board step in and overturn an executive committee decision at any time, say even five years later?	Yes	Answered
Can a California board be required to keep detailed meeting minutes including vote tallies by member, or can meetings be recorded and open to inspection?	Yes	Answered
Would a board committee be an appropriate tool to keep check on mission creep?	Yes	Answered
If a hybrid structure is used (combination of corporate and contract law) would the contract be of indefinite duration? Who would the parties be? Would third-party beneficiaries feature in that arrangement? Could termination protections be sufficiently robust to protect the community? Are the remedies of specific performance or mandamus practically speaking remedies that would take years?	Yes	Answered
While it is understood that a board member can be selected for the board by a designator, is it also true that that particular board member may not be removed over the objection of the particular designator who appointed him/her?	Yes	Answered

Would the community's present apparent desire for an open records policy of some additional heft over the existing one (currently referred to in ICANN as the Documentary Information Disclosure Policy (DIDP)

<https://www.icann.org/resources/pages/didp-2012-02-25-en>) be something that should be handled in a bylaw? Does California have any law respecting access to non-profit organization records that would restrict access or enlarge it?

Yes Answered

Are there any restrictions in California law or in applicable federal US-law with respect to government officials (US or foreign) becoming statutory members (or designators) of a non-profit organization? Would all liabilities applied to US or foreign citizens in a membership (or designator) structure equally apply to a government official which has legal immunity and privileges in the United States?

Yes Answered

What are the specific legal requirements for a third-party which may have approval or veto rights over board decisions and what are its liabilities?

Yes Answered

A community veto (be it exercised in a membership or a designator structure) over a bylaw change could be potentially reverted through a court decision in California? Same question applies to a decision made by an Independent Appeals Panel mechanism.

Yes Answered

The fact that the "board bears ultimate responsibility for corporate decisions and must provide oversight of the exercise of those powers it has delegated" (Sidley Austin LLP, Initial Discussion Draft 1, p. 3) implies that the board may eventually revert a community veto (member or designator structure) over its own decision or over the budget it has originally approved?

Yes Answered

Is the Californian Attorney General able to intervene in ICANN's operations upon the complaint of a government (US or other)? How does this situation relate to norms of international private law internalized by the United States?

Yes Answered

If ICANN were to be converted to a membership based structure (or required some restructuring to incorporate delegates or designators), what impact would that have on ICANN's not-for-profit public benefit designation under California law, or its 501c3 public charity status as recognized by the U.S. Internal Revenue Service? Would ICANN have to re-apply for any status or designation upon a change?

Yes Answered

If so, would any of the models under consideration put ICANN's status/designation at issue, or pose challenges to the likelihood of achieving the same designation?

Yes Answered

Can you provide some clarification on how the designator model described within the document is different from the model currently in place within ICANN? Understanding that the current Bylaws do not allow for a designator to remove a selected director (and that is something that is likely to be changed through this accountability work) what else is different here? Some specific questions are – are you anticipating that the current form of ICANN's SOs and ACs are sufficient to meet the requirement for the unincorporated associations referred to in your responses? What are the characteristics of the unincorporated associations that would be appropriate for this role? How is the ICANN Nominating Committee different from the group of entities that is discussed as coming together to be the collective designators acting together/the "constellation" referred to in the memo?

Yes Answered

The ICANN Bylaws currently require indemnification of directors to the extent allowed by law. What are the implications of such a provision being in place if ICANN were to move to a "super board" with a majority of directors not holding a fiduciary duty to the organization? What are the governance and accountability implications for this?

Yes Answered

Is payment for membership required?

Yes Answered

Where would commitments of accountability to other members/broader ICANN community be housed? Could there be broad principles developed for members, with the requirement that individual internal operating procedures be drafted in line with those? How do we assure that the membership concept allows for the introduction of future participants?	Yes	Answered
Can you provide some clarity on who the party/parties are with whom ICANN would be contracting? It's not quite clear which whom ICANN is suggested to contract with and what consideration is provided as the basis for the contract. Is this considered a broad solution, or a specific solution for those who are already under contract with ICANN?	Yes	Answered
Comments to ARIN memorandum	Yes	Answered
Comments on comparison chart between membership and designators structure	Yes	Answered
If there is a move to member organization, what does it really mean in terms of exercising of community powers if some Sos/Acs are members and some aren't?	Yes	Answered
If there are members/non-members how much of the relationships among the Sos and Acs in exercising community powers would be based in contract?	Yes	Answered
Would non-members need to enter into contracts too, or would their powers just be expressed within the Bylaws or Articles of incorporation?		
If contracts are required, wouldn't that also require the formation of some sort of legal entity (unincorporated association or otherwise) to enter into the agreements, even among non-members? Who are the parties to these contracts?	Yes	Answered
Would each of the groups that are members have be subject to California law once they form as an unincorporated association (or other legal entity)? Is this viable across the ICANN community?	Yes	Answered
What are the mechanisms that the members will use to be accountable to each other, particularly when there is no fiduciary duty and the expectation of acting in personal interest?	Yes	Answered

Particularly if there are members/non-members, what accountability mechanisms will be in place to make sure that the members don't act to the disadvantage of non-members? (Examples: blocking a budget that includes funds for the performance of the IANA functions in service to the protocol parameters community, assuming the IETF is not a member; blocking a board action that is intended to enact a non-member advisory committee's advice)	Yes	Answered
To what extent does the designator model rely on the formation of associations and contracts to achieve the stated reforms?	Yes	Answered
Comments on WP2 templates	Yes	In Progress
can IRP be binding whether by statute, contract or otherwise?	Yes	In Progress
Will it be more difficult for participants in countries that are on the US's naughty list (like Iran, Cuba, Syria) to be able to participate in the reformed ICANN and to fully exercise equal rights given this US trade law OFAC? Will they need to apply for and obtain a special exemption from OFAC in order to do so? Does it make a difference between the two models under consideration how this law will impact participation from individuals in those countries?	Yes	In Progress
If statutory membership is chosen do we need to have a certain number of members in order to be able to concurrently have a supermajority threshold for Board removal, is the number of members irrelevant to the issue, or is something else involved?	Yes	In Progress
Which are the grounds for ICANN to claim control over the root?	No	N/A
Which is the legal foundation for the USG to claim control over the root?	No	N/A