

# The Empowered Community

## Proposed legal structure for the new membership model

### What is it?

The Empowered Community describes the legal structure by which the ICANN Community can organize under California law to legally enforce the community powers recommended by the CCWG-Accountability.

In short, the Supporting Organizations (SOs) and Advisory Committees (ACs) would each become "Members" of ICANN through unincorporated associations, giving them a range of powers guaranteed under California law, and the tools to enforce their rights against ICANN.

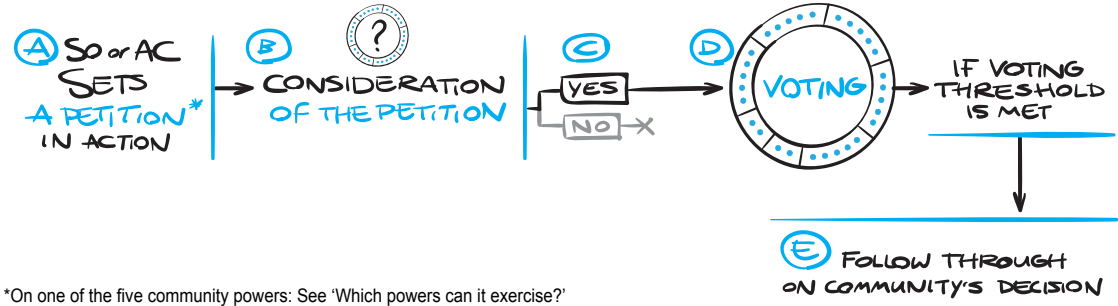
Making this change would not impact how participants of those groups operate, or introduce new risks to them.

### Which powers can it exercise?



### How does it work?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating the petition process.

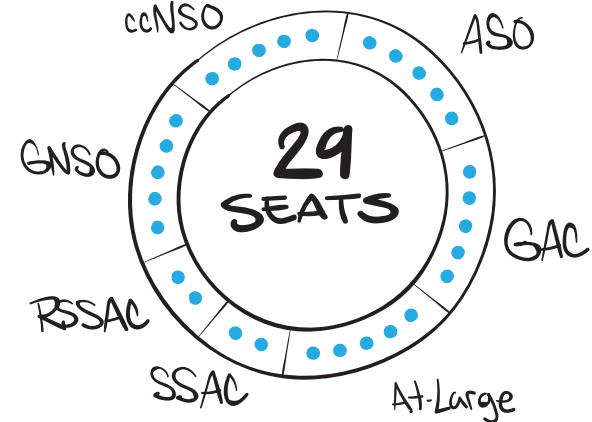


\*On one of the five community powers: See 'Which powers can it exercise?'

### Who gets to vote?

The members of the group are comprised of ICANN's core Supporting Organizations, Advisory Committees, and the Nominating Committee\*. Each SO and AC has a number of seats in the group, representing votes on matters brought before them.

(\* for powers 4 & 5)



**DRAFT**  
April 30, 2015

\*\*While there is broad support for the membership model, it must be confirmed in developing the community powers mechanism

# 1 Reconsider/Reject Budget or Strategy Operating Plans

## DESCRIPTION

This power would give the community the ability to consider strategic/operating plans and budgets after they are approved by the Board (but before they come into effect) and reject them.

## WHO CAN INITIATE A PETITION?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating a petition process.

## ON WHAT GROUNDS CAN THEY INITIATE?

The community can reject Board decisions on strategic/operating plans and budget where the Board has failed to appropriately consider community input.

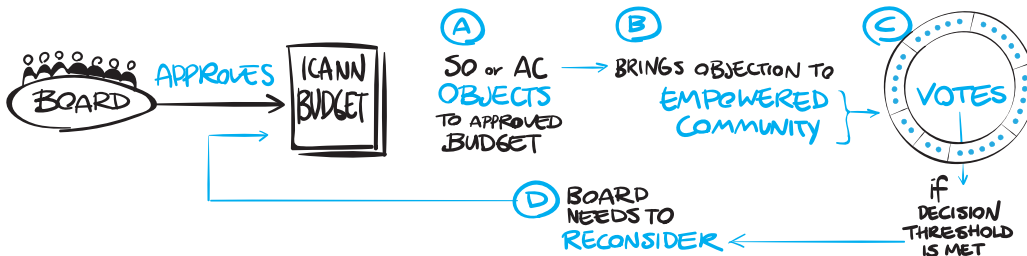
## THINGS REQUIRED TO INITIATE?

Timeframes would be included in the planning and budgeting process to ensure that a single rejection would not unduly disrupt the planning and budgeting process.

## LIMITS SET TO PREVENT ABUSE?

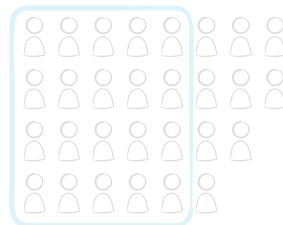
A process of reconsideration, it does not allow the community to re-write the budget. To prevent a cycle of blocking, a plan or budget cannot be sent back again with new issues raised, but the community can reject a subsequent version when it does not accept the Board's revisions.

## HOW DOES IT WORK?

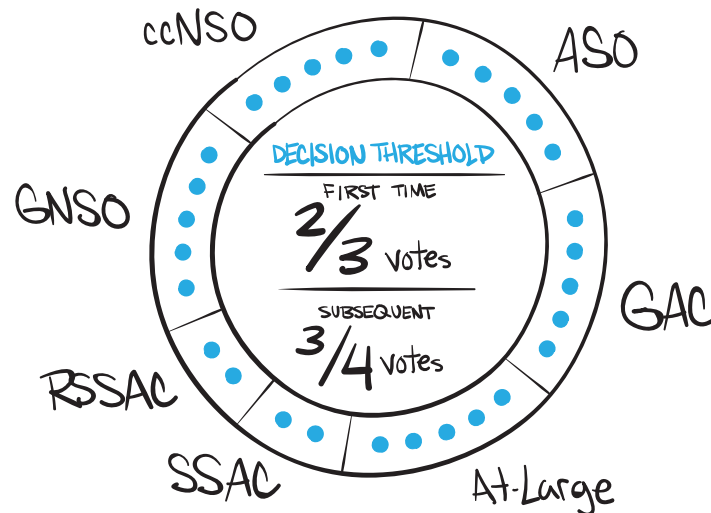


## QUORUM REQUIRED

$\frac{2}{3}$  ? of total member representation



## VOTING



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April 30, 2015

## 2 Reconsider/Reject Changes to ICANN Bylaws

### DESCRIPTION

This power would give the community the ability to reject proposed Bylaws changes after they are approved by the Board but before they come into effect.

### WHO CAN INITIATE A PETITION?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating a petition process.

### ON WHAT GROUNDS CAN THEY INITIATE?

This would most likely be where a proposed change altered the Mission, Commitments and Core Values, or had a negative impact on ICANN's ability to fulfill its purpose in the community's opinion, but would be available in response to any proposed bylaws change.

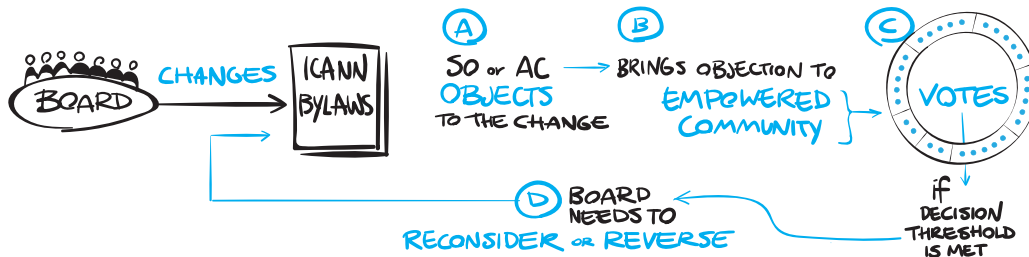
### THINGS REQUIRED TO INITIATE?

Exercising the power would be included in the bylaws adoption process (probably a two-week window following Board approval). Board response should be to absorb the feedback, make adjustments, and propose a new set of amendments to the bylaws.

### LIMITS SET TO PREVENT ABUSE?

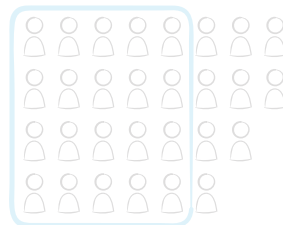
This power does not allow the community to re-write a proposed bylaws change: it is a rejection process, signalling the community is not happy. No limit to the number of times a proposed change can be rejected, but the threshold is a supermajority to limit potential for abuse of this power.

### HOW DOES IT WORK?

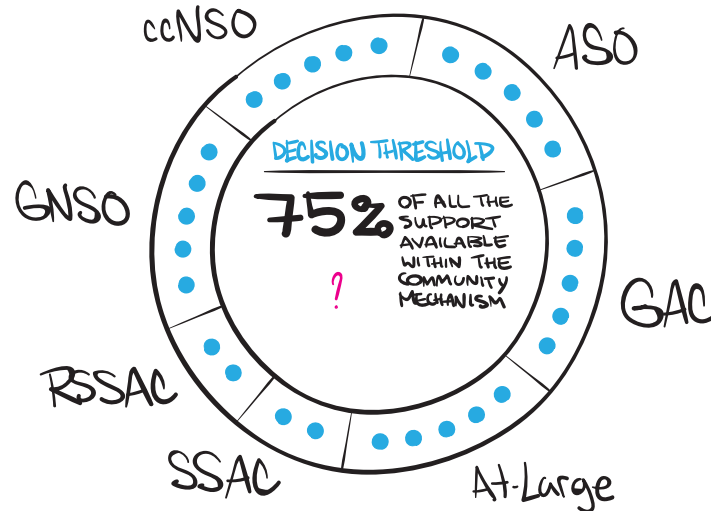


### QUORUM REQUIRED

$\frac{2}{3}$  ? of total member representation



### VOTING



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# 3 Approve Changes to Fundamental Bylaws

## DESCRIPTION

This power would form part of the process set out for agreeing any changes of the “fundamental” bylaws. It requires that the community would have to give positive assent to any change, a co-decision process between the Board and the community.

## WHO CAN INITIATE A PETITION?

No petition, a process of the Board and community. The Board may propose adding or removing a fundamental bylaw. This process requires a high degree of community support.

## ON WHAT GROUNDS CAN THEY INITIATE?

To protect bylaws provisions the community considers to be essential, and automatic process is triggered whenever the process of adding or removing a fundamental bylaw is proposed.

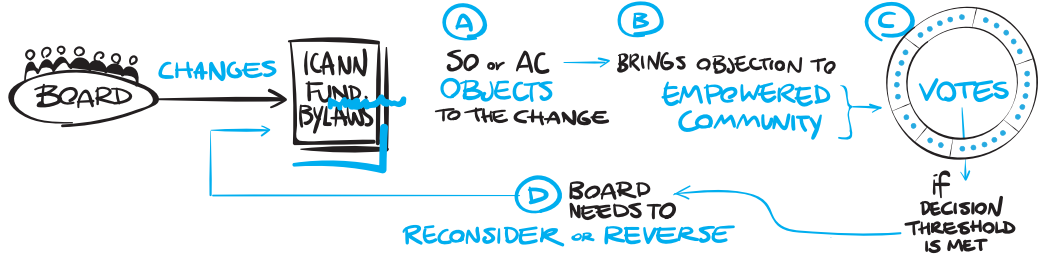
## THINGS REQUIRED TO INITIATE?

Such changes would require a very high degree of community assent, changing items in such bylaws should only be possible with a very wide support from the community. The Board must cast three quarters of votes in favor of any change.

## LIMITS SET TO PREVENT ABUSE?

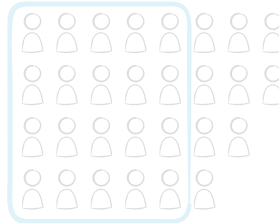
N/A

## HOW DOES IT WORK?

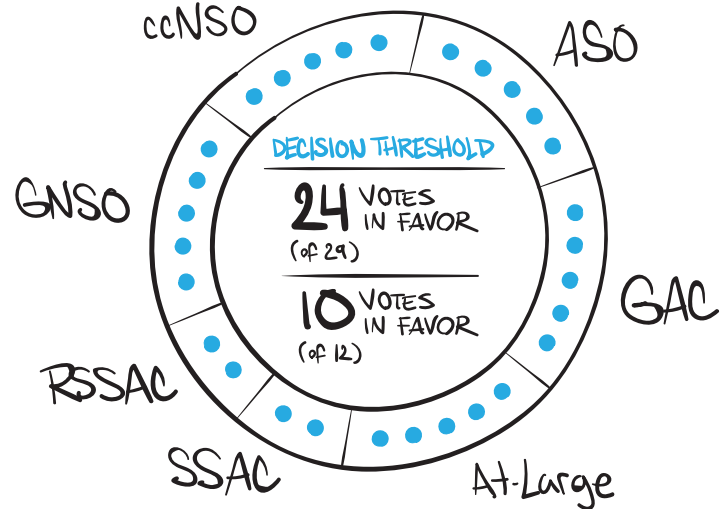


## QUORUM REQUIRED

$\frac{2}{3}$  ? of total member representation



## VOTING



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# 4 Recalling Individual Board Directors

## DESCRIPTION

The community organizations that appointed a given director could end their term, and trigger a reappointment process. The general approach, consistent with the law, is that the appointing body is the removing body.

## WHO CAN INITIATE A PETITION?

A removal process should be triggered by petition of at least two SOs or ACs (or a Stakeholder Group from the GNSO). Such a petition would set out the reason/s removal was sought.

## ON WHAT GROUNDS CAN THEY INITIATE?

For the 7 directors appointed by the 3 SOs or 1 by the At-Large, a process led by that entity would lead to the director's removal. For the directors appointed by the Nominating Committee, the CCWG seeks the community's views about how to allow for removal.

## THINGS REQUIRED TO INITIATE?

Whether the decision-making body is the SOs, ACs or the Nominating Committee, removal would require a [75%] level of support (or equivalent) to decide in favor of removal.

## LIMITS SET TO PREVENT ABUSE?

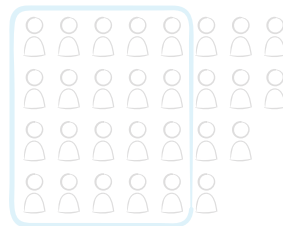
The voting thresholds for both the Petition and Recall processes are high to prevent frivolous use of the process and to ensure it is a mechanism of last resort.

## HOW DOES IT WORK?

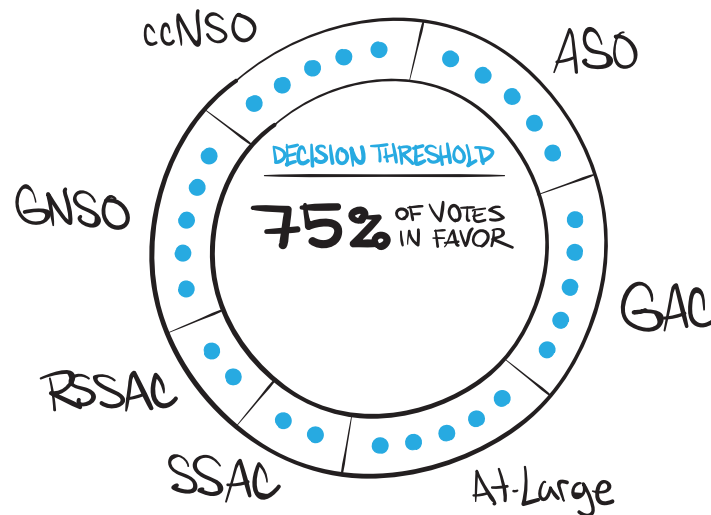
PROCESS TBD

## QUORUM REQUIRED

$\frac{2}{3}$  ? of total member representation



## VOTING



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## DESCRIPTION

This power would allow the community to cause the removal of the entire ICANN Board.

## WHO CAN INITIATE A PETITION?

The community would initiate use of this power on the petition of two thirds of the SOs or ACs in ICANN, with at least one SO and one AC petitioning.

## ON WHAT GROUNDS CAN THEY INITIATE?

There may be situations where removing individual ICANN directors is not seen as a sufficient remedy for the community -- where a set of problems have become so entrenched that the community wishes to remove the entire ICANN Board in one decision.

## THINGS REQUIRED TO INITIATE?

It would be preferable for a decision of this sort to be the result of cross-community consensus. Where this consensus is not apparent, a suitably high threshold for the exercise of this power, [75%] of all the support available within the community mechanism would have to be cast in favor to implement it.

## LIMITS SET TO PREVENT ABUSE?

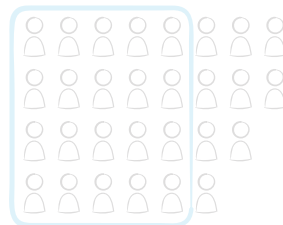
The high threshold for initiation was chosen to prevent any particular SOs or ACs to be able to prevent the recall of the Board, but also as high as possible without making it impossible to occur. The requirement on all recordable support/opposition to be counted is to avoid non-participation reducing the effective threshold for decision..

## HOW DOES IT WORK?

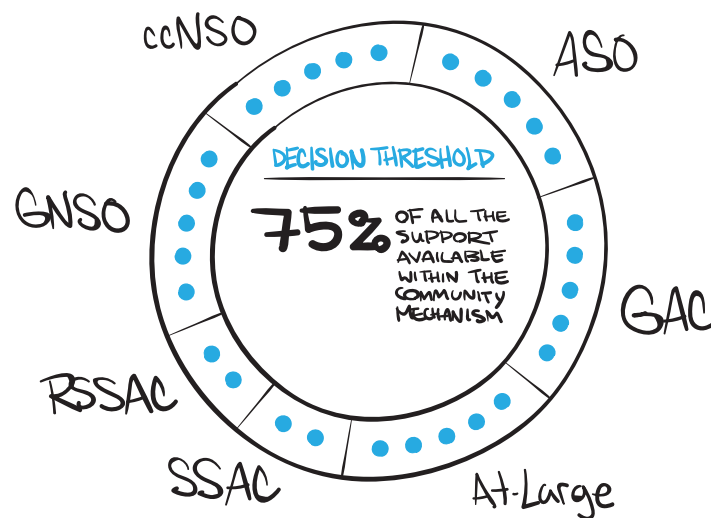
PROCESS TBD

### QUORUM REQUIRED

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### VOTING



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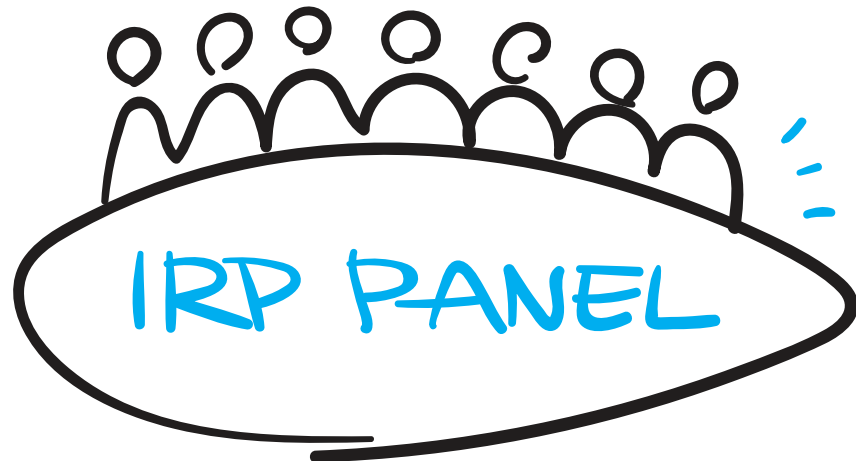
### What is new?

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#### The new IRP

- has decisions that are binding
- allows for a review of the merits
- is more accessible in terms of who has standing to initiate an IRP
- has lower cost
- has a new standing Panel of seven

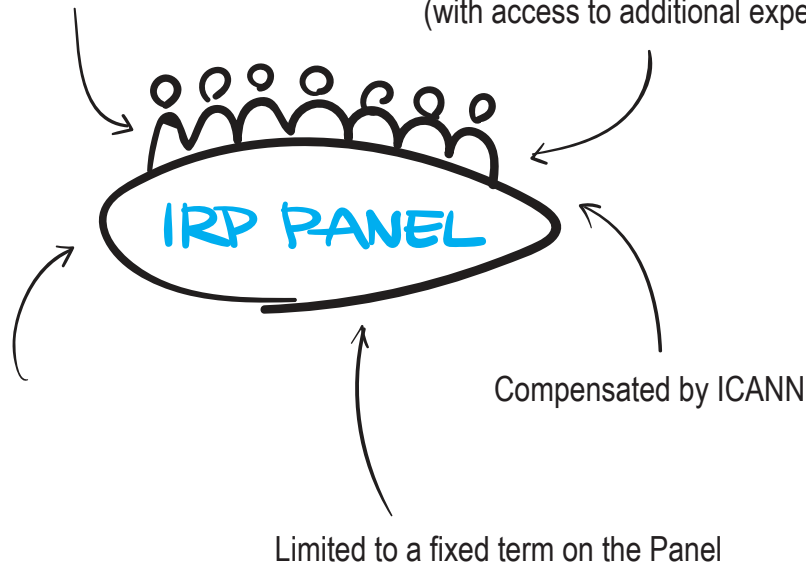


The core of the recommendation is a standing, 7-member panel to serve as a fully independent judicial/arbitral function for the ICANN Community.

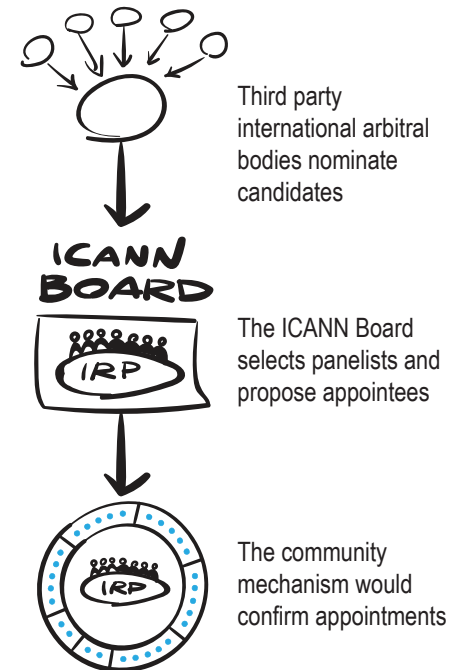
### Panel characteristics

Culturally & Geographically diverse  
(English is primary language  
+ translation as needed)

Significant experts in international  
arbitration and ICANN  
(with access to additional experts)



### Panel member selection process





# IRP Recommended Enhanced ICANN Independent Review Process

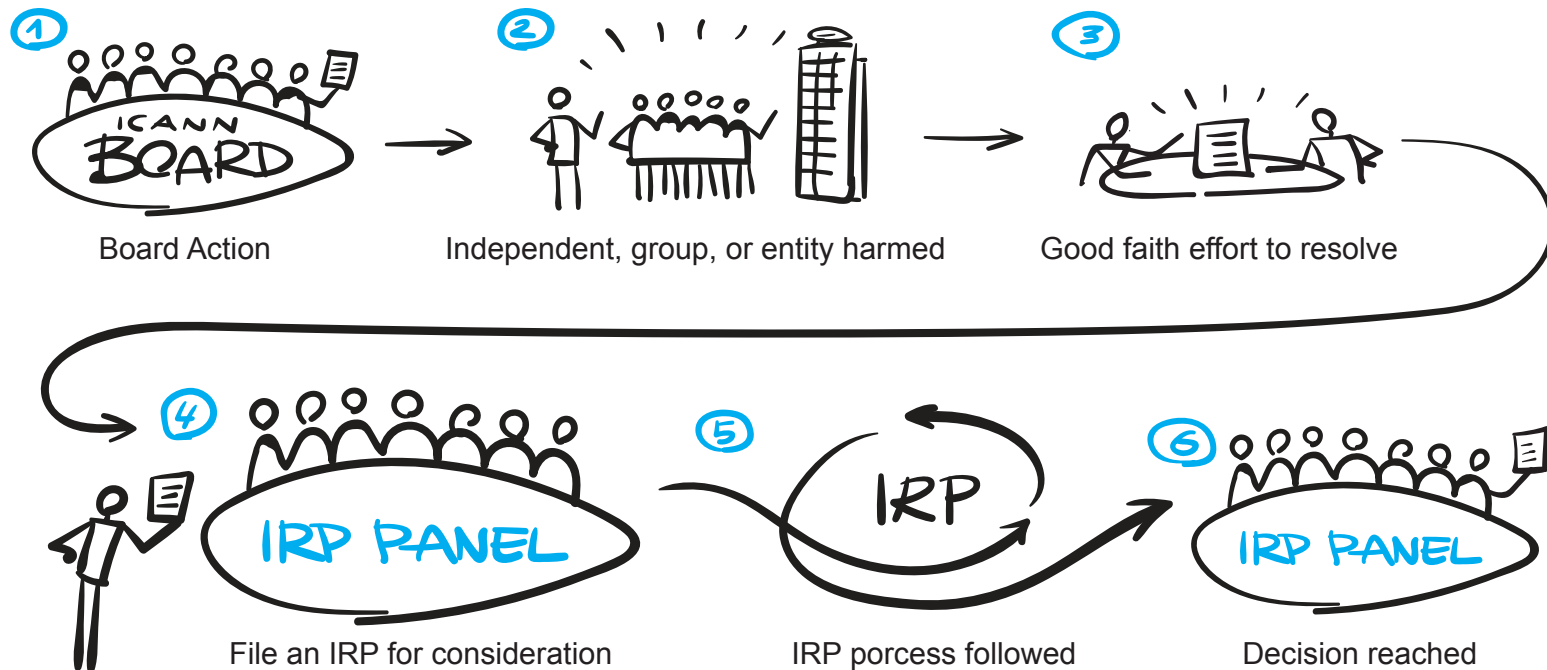
## Filing an IRP

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### Who can request an IRP?

An IRP can be initiated by any community person/group/entity who can demonstrate:  
Material harm by ICANN's actions or inactions in violation of commitments made in ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Guarantees & Core Values

### IRP Process



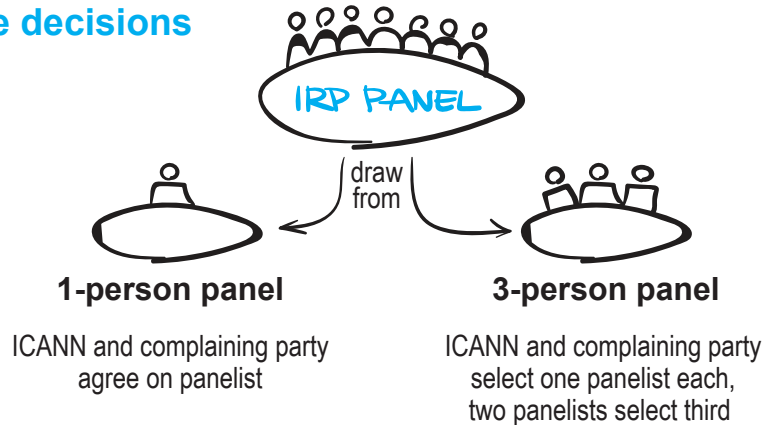
# IRP Recommended Enhanced ICANN Independent Review Process

## IRP Decisions

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IRPs reach a decision by creating a 1- or 3-person panel from the standing 7-person panel

### Possible decisions



### Possible decisions

Possible decisions are that an action:

- is or is not within ICANN's Mission
- was undertaken in a manner that violates ICANN's Guarantees or Core Values

The IRP and its decision reached cannot prescribe remedy to the situation; it can only confirm a violation exists, and/or cancel a decision totally or in parts.

### Decision characteristics

