

## Annex 12 – Stress Testing

### 1. Overview

An essential part of the CCWG-Accountability Charter calls for stress testing of accountability enhancements.

‘Stress Testing’ is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. In the financial industry for example ‘stress testing’ is routinely run to evaluate the strength of institutions.

The CCWG-Accountability Charter calls for stress testing of accountability enhancements in Work Streams 1 and 2. Among the deliverables listed in the charter is the following:

***Identification of contingencies to be considered in the stress tests:** Review of possible solutions for each Work Stream including stress tests against identified contingencies.*

The purpose of the stress tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community. The CCWG-Accountability ran a total of 37 Stress Test scenarios.

### 2. Purpose and Methodology

#### *Methodology*

The CCWG-Accountability considered the following methodology for stress tests:

- Analysis of potential weaknesses and risks
- Analysis existing remedies and their robustness
- Definition of additional remedies or modification of existing remedies
- Description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies

The CCWG-Accountability Stress Test Work Party documented contingencies identified in prior public comment rounds. The Stress Test Work Party then prepared a draft document showing how these stress tests are useful in evaluating existing and proposed accountability measures.

The exercise of applying stress tests identified changes to the current ICANN Bylaws that might be necessary to enable the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

#### *Purpose*

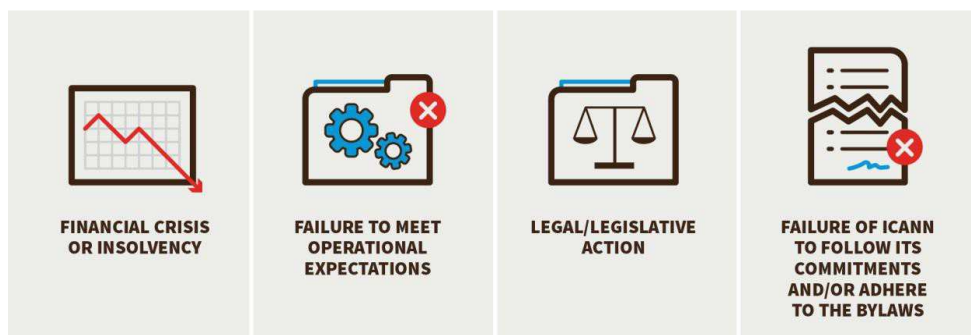
The purpose of the stress tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.

**Comment [A1]:** Clarify what is meant by “consequences” in this context.

The CCWG-Accountability Charter does not ask that probability estimates be assigned for contingencies. Probabilities are not needed to determine whether the community has adequate means to challenge ICANN’s reactions to the contingency.

In its initial phases of work, the CCWG-Accountability gathered an inventory of contingencies identified in prior public comments. The Work Team responsible for this then consolidated the inventory into five ‘stress test categories’ as listed below, and prepared draft documents showing how these stress tests are useful to evaluate ICANN’s existing, and CCWG-Accountability’s proposed, accountability measures.

### 3. Stress Test Categories



#### ***I. Financial Crisis or Insolvency (Stress Tests #5, 6, 7, 8 and 9)***

**Scenario:** ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the Domain Name industry, or the general global economy. It could also result from a legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes Domain Name registrations obsolete.

#### ***II. Failure To Meet Operational Obligations (#1, 2, 11, 17, and 21)***

**Scenario:** ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation despite objections of stakeholders, such as those defined as '[Significantly Interested Parties](#)'.

#### ***III. Legal/Legislative Action (#3, 4, 19, and 20)***

**Scenario:** ICANN is the subject of litigation under existing or future policies, legislation, or regulation. ICANN attempts to delegate a new TLD, or re-delegate a non-compliant existing TLD, but is blocked by legal action.

#### ***IV. Failure Of Accountability (#10, 12, 13, 16, 18, 22, 23, 24 and 26)***

**Scenario:** Actions (or expenditure of resources) by one or more ICANN Board Directors, the President and CEO, or other Staff, are contrary to ICANN’s Mission or Bylaws. ICANN is “captured” by one stakeholder segment, including governments via the GAC, which either is

able to drive its agenda on all other stakeholders, or abuse accountability mechanisms to prevent all other stakeholders from advancing their interests (veto).

#### ***V. Failure Of Accountability To External Stakeholders (#14, 15, 25)***

**Scenario:** ICANN modifies its structure to avoid obligations to external stakeholders, such as terminating the Affirmation of Commitments, terminating its presence in a jurisdiction where it faces legal action, or moving contracts or contracting entities to a favorable jurisdiction. ICANN delegates, subcontracts or otherwise, abdicates its obligations to a third party in a manner that is inconsistent with its Bylaws or otherwise not subject to accountability. ICANN merges with or is acquired by an unaccountable third party.

#### ***Stress Tests Suggested by NTIA***

*The CCWG-Accountability added four stress test items that were suggested by NTIA in Secretary Larry Strickling's [statement](#) issued on 16 June 2015:*

- ***NTIA-1:*** *Test preservation of the multistakeholder model if individual ICANN AC/SOs opt out of having votes in community empowerment mechanisms.*
- ***NTIA-2:*** *Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an AC/SO.*
- ***NTIA-3:*** *Barriers to entry for new participants.*
- ***NTIA-4:*** *Unintended consequences of “operationalizing” groups that to date have been advisory in nature (e.g. GAC)*

#### ***Stress Tests Relating to the Transition of the IANA Naming Functions Contract***

Note that several stress tests can specifically apply to work of CWG-Stewardship regarding transition of the IANA naming functions contract (see Stress Tests #1 & 2, 11, 17, 19, 20, 21, 25).

Across all of the Stress Test categories, this exercise demonstrates that CCWG-Accountability's Work Stream 1 recommendations significantly enhance the community's ability to hold the ICANN's Board and management accountable, relative to present accountability measures. For Stress Tests that explore risks of “capture” of an Advisory Committee or Supporting Organization, the proposed Community Powers preserve the ability for aggrieved parties to challenge and block ICANN actions based on inappropriate Advisory Committee or Supporting Organization behavior.

#### **Stress Test #21**

Stress Test #21, regarding appeals of ccTLD revocations and assignments, has not been adequately addressed in either the CWG-Stewardship or CCWG-Accountability proposals. This is due to the ccNSO undertaking policy development work pursuant to the Framework of Interpretation approved in 2014.

## **4. Outcomes of Stress Testing**

The following section gives a short overview of the stress test scenarios and outlines whether existing accountability measures and proposed accountability measures are

adequate or not to mitigate the potential risks. A more detailed analysis of existing and proposed accountability methods can be found in section **XX**.

### ***Stress Test category I: Financial Crisis or Insolvency***

- Stress Tests:
    - #5 Domain industry financial crisis
    - #6 General financial crisis
    - #7 Litigation arising from private contract, e.g., breach of contract
    - #8 Technology competing with the Domain Name System
  - **Consequence(s)**: Significant reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN's ability to operate; loss affecting reserves sufficient to threaten business continuity.
  - ✓ Existing accountability measures would be **adequate** if revenue loss is not extreme.
  - ✓ Proposed accountability measures are **helpful** if revenue loss is not extreme.
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- Stress Test # 9: Major corruption or fraud
- **Consequence(s)**: Major impact on corporate reputation, significant litigation and loss of reserves.
- X Existing accountability measures would **not be adequate** if litigation costs or losses were extreme and sustained.
- ✓ Proposed measures would be **helpful**, but might **not be adequate** if revenue loss was extreme and sustained.

### ***Stress test category II: Failure to Meet Operational Expectations***

- Stress Tests:
  - #1: Change authority for the root zone ceases to function, in part or in whole.
  - #2: Delegation authority for the root zone ceases to function, in part or in whole.
- **Consequence(s)**: Interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.
- X Existing accountability measures would **not be adequate** after NTIA terminates the IANA contract.
- ✓ Proposed measures, in combination, would be **adequate** to mitigate this contingency.

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- Stress Test #11: Compromise of credentials.
  - **Consequence(s):** Major impact on corporate reputation, significant loss of authentication and/or authorization capacities.
  - ✗ Existing accountability measures would **not be adequate**.
  - ✓ Proposed accountability measures, in combination, would **be helpful to mitigate effects** of this scenario. Work Stream 2's suggestions could add **risk prevention** measures.
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- Stress Test #17: ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by the technical community or other stakeholder groups.
  - **Consequence(s):** DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.
  - ✓ Existing accountability measures would be **adequate** to mitigate the risks of this scenario.
  - ✓ Proposed accountability measures would **enhance** the community's power to mitigate the risks of this scenario.
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- Stress Test #21: A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager. However, the IANA functions manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a designated manager.  
But the IANA functions manager does not document that: significantly interested parties agree; that other stakeholders had a voice in selection; the designated manager has demonstrated required capabilities; there are not objections of many significantly interested parties.  
  
This Stress Test examines the community's ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place.
- **Consequence(s):** Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected

stakeholders.

- X Existing accountability measures would **not be adequate**.
- X Proposed accountability measures would **not adequately** empower the community to address this scenario. ***CCNSO is developing policy pursuant to the Framework of Interpretation.***

### **Stress test category III: Legal/Legislative Action**

- Stress Test #3: Litigation arising from existing public policy, e.g., antitrust suit. In response, ICANN Board would decide whether to litigate, concede, settle, etc.
  - **Consequence(s):** Significant interference with existing policies and/or policy development relating to relevant activities.
  - X Existing accountability measures would **not be adequate**.
  - ✓ Proposed accountability measures **would help** the community hold ICANN accountable, but might **not be adequate** to stop interference with ICANN policies.
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- Stress Test #4: New regulations or legislation. For example, a government could cite anti-trust or consumer protection laws and find unlawful some rules that ICANN imposes on TLDs. That government could impose fines on ICANN, withdraw from the GAC, and/or force ISPS to use a different root, thereby fragmenting the Internet. In response, ICANN's Board would decide whether to litigate, concede, settle, etc.
  - **Consequence(s):** Significant interference with existing policies and/or policy development relating to relevant activities.
  - X Existing accountability measures would **not be adequate**.
  - ✓ Proposed accountability measures would be **an improvement** but might **not be inadequate**.
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- Stress Test #19: ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court. In response, the ICANN Board would decide whether to litigate, concede, settle, etc.
- **Consequence(s):** The entity charged with root zone maintenance could face the question of whether to follow ICANN's re-delegation request or to follow the court order.
- ✓ Existing accountability measures would not **be adequate**.

- ✓ Proposed accountability measures would be **adequate** as they allow the community to challenge and reverse decisions of ICANN Board and management.

**Comment [A2]:** Not directly true under a designator model as it was under a membership model. In the sole designator model, the community challenges the decisions of board and management, and ultimately has the power to remove some or all directors, but it does not have the legal power to directly reverse a board or staff decision.

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- Stress Test #20: A court order is issued to block ICANN's delegation of a new TLD, because of a complaint by existing TLD operators or other aggrieved parties. For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string. In response, the ICANN Board would decide whether to litigate, concede, settle, etc.
  - **Consequence(s):** ICANN's decision about how to respond to court order could bring liability to ICANN and its contract parties.
  - ✗ Existing accountability measures would **not be adequate**. Proposed accountability measures would be **an improvement** but might **not be inadequate**.]

#### ***Stress test category IV: Failure of Accountability***

- Stress Tests:
  - #10: Chairman, CEO, or Officer acting in a manner inconsistent with the organization's Mission.
  - #24: An incoming Chief Executive institutes a "strategic review" that arrives at a new, extended mission for ICANN. Having just hired the new CEO, the Board approves the new Mission/strategy without community consensus.
- **Consequence(s):** The community ceases to see ICANN as the community's mechanism for limited technical functions, and views ICANN as an independent, *unique* entity with its own agenda, not necessarily supported by the community. Ultimately, the community questions why ICANN's original functions should remain controlled by a body that has acquired a much broader and less widely supported Mission. This creates reputation problems for ICANN that could contribute to "capture" risks.
- ✗ Existing accountability measures would **not be adequate** after NTIA terminates the IANA contract.
- ✓ Proposed accountability measures in combination would be **adequate**.

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- Stress Test: #12: Capture of ICANN processes by one or several groups of stakeholders.

- **Consequence(s):** Major impact on trust in multistakeholder model, prejudice to other stakeholders.

- X Existing accountability measures would **not be adequate**.
  - ✓ Proposed accountability measures would be **adequate**.
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- Stress Test #13: One or several stakeholders excessively rely on accountability mechanism to “paralyze” ICANN.
  - **Consequence(s):** Major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff.
  - ✓ Existing accountability measures **seem to be adequate**.  
Proposed accountability measures: improved access to the Request for Reconsideration (RfR) process and the Independent Review Process (IRP) **could allow individuals to impede ICANN processes**, although this risk is mitigated by dismissal of frivolous or abusive claims.
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- Stress Test #16: ICANN engages in programs not necessary to achieve its limited technical Mission. For example, ICANN uses fee revenue or reserve funds to expand its scope beyond its technical Mission, giving grants for external causes.
  - **Consequence(s):** ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.
  - X Existing accountability measures would **not be adequate**.  
Proposed accountability measures in combination **may be adequate**.
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- Stress Test #18: Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's Board.
  - **Consequence(s):** Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus.
  - X Existing accountability measures would **not be adequate**
  - X Proposed accountability measures would be **adequate**.
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- Stress Test #22: ICANN Board fails to comply with Bylaws and/or refuses to accept the decision of a redress mechanism constituted under the Bylaws.
  - **Consequence(s):** Community loses confidence in multistakeholder structures to govern ICANN.
  - X Existing accountability measures would **not be adequate**.
  - ✓ Proposed accountability measures in combination would be **adequate** because the community would have the power to recall the Board.
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- Stress Test #23: ICANN uses Registrar Accreditation Agreement (RAA) or Registry contracts to impose requirements on third parties, outside the scope of ICANN Mission. (e.g. registrant obligations.) Affected third parties, not being contracted to ICANN, have no effective recourse. Contracted parties, not affected by the requirements, may choose not to use their ability to challenge ICANN's decision. This issue occurs in policy development, implementation, and compliance enforcement.
  - **Consequence(s):** ICANN may be seen as a monopoly leveraging power in one market (domain names) into adjacent markets.
  - X Existing accountability measures would **not be adequate**.
  - ✓ Proposed accountability measures would be **adequate**.
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- Stress Test #26: During implementation of a properly approved policy, ICANN staff substitutes their preferences and creates processes that effectively change or negate the policy developed. Whether staff does so intentionally or unintentionally, the result is the same.
- **Consequence(s):** Staff "capture" of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.
- X Existing accountability measures would **not be adequate**.
- X Proposed accountability measures would be **adequate**.

### ***Stress test category V: Failure of Accountability to External Stakeholders***

- Stress Test #14: ICANN or NTIA choose to terminate the Affirmation of Commitments.
- **Consequence(s):** ICANN would no longer be held to its Affirmation commitments, including the conduct of community reviews and required implementation of review team recommendations.

**Comment [A3]:** Change to "Affirmation of Commitments".

- X Existing accountability measures would **not be adequate** after NTIA terminates the IANA contract.
  - ✓ Proposed accountability measures in combination are **adequate**.
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- Stress Test #15: ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN's failure to enforce contracts, or other actions.
  - **Consequence(s)**: Affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.
  - X Existing accountability measures would **not be adequate** after NTIA terminates IANA contract.  
Proposed accountability measures **improve** upon existing measures, and **may be adequate**.
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- Stress Test #25: ICANN delegates or subcontracts its obligations under a future IANA functions operator agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.
- **Consequence(s)**: Responsibility for fulfilling the IANA functions could go to a third party that was subject to national laws that interfered with its ability to execute IANA functions.
- X Existing accountability measures would **not be adequate** after NTIA terminates the IANA contract.
- ✓ Proposed accountability measures would be **adequate** as they would allow the community to challenge ICANN's decisions in this scenario.

### ***Stress Tests #27 and #28: Giving Ultimate Authority to a State-Based US Court***

After publication of the CCWG-Accountability's First Draft proposal, new Stress Tests were suggested on the CCWG-Accountability discussion list and in the public comments received.

The two following Stress Tests were created to address a scenario that might give ultimate authority to a state-based American court and allow it to make binding and precedent setting decisions about the interpretation of ICANN's mission.

- Stress Test #27: Board refuses to follow community recommendation, triggering a "Member" to sue ICANN in the California courts. For example, an Accountability and Transparency Review Team (ATRT) recommends a new policy for implementation

**Comment [A4]:** Do these stress tests that relate to a member model need to be updated to reflect the designator model?

but the ICANN board decides to reject the recommendation.

- **Consequence(s):** Gives ultimate authority to a state-based American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission.

**Not applicable** to ICANN's existing accountability measures.

- ✓ Proposed accountability measures would be **adequate** to mitigate the risk of this scenario as California courts would not interpret ICANN Mission statement.
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- Stress Test #28: The ICANN Board follows community recommendation, but is reversed by an Independent Review Process (IRP) decision, triggering a "Member" to sue ICANN in California courts. For example, an Accountability and Transparency Review Team (ATRT) recommends a new policy for implementation. The ICANN Board decides to accept the recommendation, believing that it does not conflict with ICANN's limited Mission Statement in the amended Bylaws.

- **Consequence(s):** Gives ultimate authority to a state-based US court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission.

**Not applicable** to ICANN's existing accountability measures.

- ✓ Proposed accountability measures would be **adequate** as California courts would not interpret ICANN's Mission statement because an Empowered Community claim would be subject to a binding decision by the Independent Review Process.

### ***Stress Tests #39 and #30: Enforcement of Contract Provisions That Exceed ICANN's Mission***

Public commenters requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.

- Stress Test #29: (Similar to #23) ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations. ICANN also insists that legacy gTLD operators adopt the new gTLD contract upon renewal.
- **Consequence(s):** ICANN's enforcement of registry and registrar contract terms might be blocked by an Independent Review Process (IRP) ruling citing amended Mission and Core Values.

- X Existing accountability measures would **not be adequate** to challenge ICANN's enforcement decision.

- ✓ Proposed accountability measures would be **adequate** to challenge ICANN enforcement actions, but it is unlikely that Independent Review Process Panels would block enforcement of voluntary contract terms and consensus policies

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- Stress Test #30: (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.
  - **Consequence(s)**: ICANN's enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing amended Mission and Core Values.

Existing accountability measures **might be adequate** for a registrar, but would **not be adequate** for a registrant to challenge ICANN enforcement decision.

- ✓ Proposed accountability measures would be **adequate** to challenge ICANN enforcement actions, but it is unlikely that the Independent Review Process Panels would block enforcement of voluntary contract terms and consensus policies

### **Stress Test #31: "Rouge Voting"**

**Comment [A5]:** Replace with "Rogue".

Several individuals requested evaluation of a stress test scenario where the individual designated by an Advisory Council or Supporting Organization failed to follow their Advisory Council or Supporting Organization instructions when communicating Advisory Council or Supporting Organization decisions for any of the community powers proposed by CCWG-Accountability.

- Stress Test #31: "Rogue" voting, where an Advisory Council or Supporting Organization vote on a community power is not exercised in accord with the express position of the Advisory Council or Supporting Organization.
- **Consequence(s)**: Decisions on exercising a community power would be challenged as invalid, and the integrity of decisions could be questioned more broadly.

**Not applicable** to ICANN's existing accountability measures.

- ✓ Proposed accountability measures would be **adequate** to avoid "rogue voting" problems.

### **NTIA Stress Tests**

There are four stress test items suggested in NTIA Secretary Larry Strickling's [statement](#) issued on 16 June 2015:

- **NTIA-1**: Test preservation of the multistakeholder model if individual ICANN AC/SOs opt out of having votes in community empowerment mechanisms.

- **NTIA-2:** Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an AC/SO.
- **NTIA-3:** Barriers to entry for new participants.
- **NTIA-4:** Unintended consequences of “operationalizing” groups that to date have been advisory in nature (e.g. GAC)

Each of these NTIA Stress Tests is outlined below.

- Stress Test #32: (NTIA-1) Several Advisory Councils or Supporting Organizations opt-out of exercising community powers (blocking budget, blocking op plan, blocking changes to bylaws, approving changes to fundamental bylaws, recalling board members).
- **Consequence(s):** ICANN’s multistakeholder model would be in question if multiple stakeholders did not participate in community powers.

**Not applicable** to ICANN’s existing accountability measures.

- ✓ Proposed accountability measures would ensure that ICANN’s multistakeholder model **would be preserved**, even if multiple Advisory Councils or Supporting Organizations decided not to exercise the new community powers.

- Stress Test #33: (NTIA-2) Participants in an Advisory Council or Supporting Organization could attempt to capture an Advisory Council or Supporting Organization, by arranging over-representation in a working group, in electing officers, or making a decision.
- **Consequence(s):** Internal capture, whether actual or perceived, would call into question ICANN’s credibility in applying the multistakeholder model.

Existing accountability measures are **not likely to be adequate**.

- ✓ Proposed accountability measures would be **adequate**, provided that the **Bylaw** requirement for a “bottom-up, consensus-based, multistakeholder process” is interpreted by the board and Independent Review Process Panelists to include assessment of how decisions were reached in an Advisory Council or Supporting Organization.

**Comment [A6]:** Replace with “Articles and Bylaws”.

- Stress Test #34: (NTIA-3) Stakeholders who attempt to join an ICANN Advisory Council or Supporting Organization encounter barriers that discourage them from participating.
- **Consequence(s):** Barriers to entry, whether actual or perceived, would call into question ICANN’s credibility in applying the multistakeholder model.

- ✓ Existing accountability reviews **could help** erode barriers to entry, though not in real-time.
  - ✓ Proposed changes to Core Values and the Independent Review Process (IRP) **could provide faster solutions to barriers** encountered by new entrants
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- Stress Test #35: (NTIA-4) Unintended consequences of “operationalizing” groups that formerly only gave advice to the ICANN board (for example, the GAC)
- **Consequence(s)**: An Advisory Committee that previously gave only advice on a narrow scope of issues could affect decisions on community powers that extend beyond that narrow scope.
- ✓ Existing accountability measures **have already given Advisory Committees significant influence** over ICANN operations.
- ✓ Proposed accountability measures would treat Advisory Committees as **multi-equal** stakeholders in exercising the five proposed Community Powers, while also reducing the GAC’s ability to affect ICANN operations.

### ***Stress Test 36: Unintended Consequences of Empowerment***

The ICANN Board sent a letter on 20-Jun-2015 with 156 questions regarding the impact and implementation of CCWG-Accountability's proposals. Two of these questions included requests for stress testing the CCWG-Accountability's proposal for a membership-based model:

*"What unintended consequences may arise from empowering (e.g., approval rights, etc.) entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members or the community as a whole and have stress tests been conducted for each of these consequences?"*

*"What are the risks associated with empowering members to bring lawsuits against ICANN, each other and other parties and have stress tests been conducted for each of these situations?"*

Both of these scenarios are addressed in Stress Test 36:

- **Stress Test #36**: Unintended consequences arising from empowering entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members, or the community as a whole.

- **Consequence(s):** An entity could exercise statutory powers accorded to members under California law, and pursue legal actions that would harm interests of the ICANN community.

**Not applicable** to ICANN's existing accountability measures.

- ✓ Proposed Empowered Community measures would be **adequate** to avoid this scenario.

### **Stress Test 37: "Deadlock"**

After publication of the CCWG-Accountability second draft proposal, one new Stress Test was suggested in public comments received. ELIG (a law firm) suggested stress testing on a "deadlock" over approving changes to Fundamental bylaws, and blocking changes to regular bylaws: "*We believe that it would be helpful to also explain the details of the legislation procedures in case of a deadlock during the amendment/enactment of a bylaw.*"

- Stress Test #37: The Empowered Community blocks a Board-proposed change to a regular Bylaw, or withholds its approval of a Board-proposed change to a Fundamental Bylaw.
- **Consequence(s):** A "deadlock" between the ICANN board and the Empowered Community, where the board-proposed bylaws change is not enacted.
- ✓ Existing accountability mechanisms would **prevent "deadlock"** because the community has no power to **affect** Board-proposed Bylaws changes. Empowered Community measures would **enable "deadlock"** over board-proposed Bylaws changes, but only if that is the consensus decision of the community.

**Comment [A7]:** Replace with "effect".

## **5. Bylaws to reflect ICANN commitments made in the Affirmation of Commitments (AoC)**

Stress Test #14 stems from the concern that absence of the NTIA oversight may cause ICANN to unilaterally cancel key initiatives arising out of the Affirmation of Commitments. Stress Test #14 led to the CCWG-Accountability proposal to add, to the ICANN Bylaws, any relevant ICANN commitments from the [Affirmation of Commitments](#), including Sections 3, 4, 7, and 8, plus the four Affirmation of Commitments Review processes. Two of the Affirmation of Commitments Reviews include ICANN commitments that will be preserved in the Bylaws.

Other sections in the Affirmation of Commitments are either preamble text or U.S. Government commitments. As such they do not contain commitments by ICANN, so they cannot usefully be incorporated in the Bylaws. After the relevant ICANN commitments from the Affirmation of Commitments are adopted in the ICANN Bylaws, ICANN and the NTIA should mutually agree to terminate the Affirmation of Commitments.

**6. Forcing the Board to Respond to Advisory Committee Formal Advice**

**7. Require ICANN to Try “to find a mutually acceptable solution” for GAC Advice that is Backed by Consensus**