

Sidley/Adler Comments
November 23, 2015

**CCWG–ACCOUNTABILITY THIRD DRAFT PROPOSAL
ON WORK STREAM 1 RECOMMENDATIONS**

Third Draft Proposal on Work Stream 1 Recommendations

30 November 2015

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Summary

Over the last year, a working group of ICANN community members has been developing a set of proposed enhancements to ICANN's accountability to the global Internet community. This document is both a call for the Chartering Organizations to **consider** and a public consultation.

Comment [1]: There appears to be a word missing. Consider what?

This effort is integral to the transition of the United States' stewardship of the IANA functions to the global Internet community, reflecting the ICANN community's conclusion that improvements to ICANN's accountability **were** necessary in the absence of the accountability backstop that the historical contractual relationship with the United States government provided. The accountability improvements set out in this document are not designed to change ICANN's multistakeholder model, the bottom-up nature of policy development nor significantly alter ICANN's day-to-day operations.

Comment [2]: are?

The main elements of the proposal are outlined below, supported by additional appendices. Together with ICANN's existing structures and groups, these accountability enhancements will ensure ICANN remains accountable to the global Internet community.

- **A revised Mission statement** for the ICANN Bylaws that sets out what ICANN does. This Mission statement clarifies but does not change ICANN's historic mission
- An enhanced **Independent Review Process** and redress process with a broader scope and the power to ensure ICANN stays within its revised Mission
- New specific **powers** for the ICANN community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus including the powers to:
 - Reject ICANN Budgets, Operating Plans or Strategic Plans
 - Reject changes to ICANN's Bylaws
 - Approve changes to new **Fundamental Bylaws** (see below)
 - Remove an individual ICANN Director from the Board
 - Recall the entire ICANN Board
- An additional new power that gives the community a say in decisions about the **IANA Function Reviews** and any **separation** of the IANA Names **Functions**
- All of these **community powers** can only be exercised after extensive community discussions and debates through processes of **engagement and escalation**. The process of escalation provides many opportunities for the resolution of disagreements between the parties before formal action is required.

Comment [3]: Add "... and Articles of Incorporation".

Comment [4]: Should be "separation process for the IANA..."

Comment [5]: Sometimes only the above 5 powers are noted and sometimes the 5 are noted plus the CWG requirements. Consider making this consistent throughout the proposal.

Comment [6]: Consider whether "Community Powers" should be a defined term and capitalized throughout the proposal (global comment) and, if so, whether it should be defined to mean the 5 powers plus the CWG requirement for separation.

The accountability elements outlined above will be supported through:

- Additions to the ICANN Bylaws to create an **Empowered Community** that is based on a simple legal vehicle that will act **on** the instructions of ICANN stakeholder groups to exercise the Community Powers. The Empowered Community is granted the status of a Designator (a recognized role in law) and has the standing to enforce the Community Powers if needed.

Comment [7]: "act only on ..."

- Core elements of ICANN’s governing documents (the **Articles** and **Bylaws**) being categorized as **Fundamental Bylaws** that can only be changed with agreement between the ICANN community and the ICANN Board.

Comment [8]: The Articles of Incorporation are a document that is separate from and superior to the Bylaws. Amendments to the Articles can be made to require the same approval process and thresholds as for amendments to Fundamental Bylaws. Such requirements will need to be added directly to the Articles of Incorporation.

In addition, further proposed changes include:

- A recognition of ICANN’s respect for Human Rights
- Incorporation of ICANN’s commitments under the 2009 Affirmation of Commitments with the United States Department of Commerce into the Bylaws, where appropriate
- Improved accountability and diversity for ICANN’s Supporting Organizations and Advisory Committees
- A commitment to discuss additional accountability improvements and broader accountability enhancements in 2016, following implementation of this core set of accountability improvements

To develop these recommendations to improve ICANN’s accountability, the Working Group:

- Relied on suggestions and proposals generated inside the Working Group and by the broader Internet multistakeholder community
- Conducted public comment periods to gather feedback on earlier drafts and discussed iterations of its recommendations across the world at ICANN meetings and through online webinars
- Rigorously “stress tested” ICANN’s current and proposed accountability mechanisms to test their strength against problematic scenarios the organization could potentially face
- Engaged two external law firms to ensure the legal reliability of the proposed accountability enhancements
- Made the minimum enhancements to ICANN’s accountability necessary to meet the baseline requirements of the community, as required for the IANA Stewardship Transition
- Met the requirements of the group that developed the IANA Stewardship Transition proposal for the Domain Names community
- Met the requirements of the U.S. National Telecommunications and Information Agency for the IANA Stewardship Transition

Each central recommendation has a corresponding appendix with additional detail including a summary, CCWG-Accountability Recommendations, Detailed Explanation of Recommendations, Changes from the ‘Second Draft Proposal on Work Stream 1 Recommendations,’ Stress Tests Related to this Recommendation, **how does this meet the CWG-Stewardship Requirements, and how does this address NTIA Criteria.** We look forward to your thoughts and feedback on our Third Draft Proposal on Enhancing ICANN Accountability.

Comment [9]: Not in parallel form to the other items in the list.

Background

On 14 March 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions to the global multistakeholder community. NTIA asked ICANN to convene an inclusive, global discussion to determine a process for transitioning the stewardship of these functions to the Internet community.

During initial discussions on how to proceed with the transition process, the ICANN multistakeholder community, recognizing the safety net that the NTIA provides as part of its stewardship role of the IANA functions, raised concerns about the impact of the transition on ICANN's accountability.

To address these concerns, the ICANN community requested that ICANN's existing accountability mechanisms be reviewed and enhanced as a key part of the transition process. As a result, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) convened. The CCWG-Accountability's work consists of two tracks:

Work Stream 1: Focused on mechanisms to enhance ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

Work Stream 2: Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

Any other consensus items that are not required to be in place within the IANA Stewardship transition timeframe can be addressed in Work Stream 2. There are mechanisms in Work Stream 1 to adequately enforce implementation of Work Stream 2 items, even if they were to encounter resistance from ICANN management or others. Workable consensus reforms that enhance the role of the community and ICANN's Mission should be consistent with ICANN's interest as a corporate entity.

Comment [10]: Awkward to include boxes around the text above. Boxes usually indicate something that is separate. Here these points are essential part of paragraph.

Comment [11]: Awkward paragraph/transition.

The work documented in this 3rd proposal focuses on Work Stream 1, with some references to related activities that are part of Work Stream 2's remit.

Requirements

This section provides an overview of the requirements the CCWG-Accountability had to fulfill in developing its recommendations

NTIA Requirements

The National Telecommunications and Information Administration (NTIA) has requested that ICANN “convene a multistakeholder process to develop a plan to transition the U.S. government stewardship role” with regard to the IANA Functions and related Root Zone management. In making its announcement, the NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model
- Maintain the security, stability, and resiliency of the Internet DNS
- Meet the needs and expectation of the global customers and partners of the IANA services • Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

Additionally the NTIA also requires the CCWG-Accountability’s proposal to clearly document how it worked with the multistakeholder community, which options it considered in developing its proposal and how it tested these.

Please Refer to Annex 12 – NTIA Requirements for the details of how the CCWG-Accountability meets these requirements.

CWG-Stewardship Requirements

In the transmittal letter for the CWG-Stewardship transition plan to the ICG the CWG-Stewardship noted the following regarding its dependencies on the CCWG-Accountability work:

“The CWG-Stewardship proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms proposed by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). The co-Chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability Work Stream 1 recommendations, if implemented as expected, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG-Accountability. If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this proposal will require revision.”

The CWG-Stewardship requirements of the CCWG-Accountability are detailed on pages 20-21 of the CWG-Stewardship proposal transmitted on 25 June 2015. The Work Stream 1 proposals from the CCWG-Accountability address all of these conditions.

Comment [12]: Already defined on prior page.

Comment [13]: Delete reference if no longer going to be included in a separate Annex and/or cross-reference to the applicable sections of the Annexes. Also, Annexes should be numbered in the order they appear in this document.

Comment [14]: Clarify that this was in response to an earlier CCWG proposal. CWG has not opined on the new proposed structure.

Comment [15]: Add at the beginning of this sentence: “The CCWG-Accountability believes that”

These requirements are:

1. ICANN Budget
2. ICANN Board and Community Empowerment Mechanisms
3. IANA Function Review and Separation Process
4. Customer Standing Committee
5. Appeals Mechanism
6. Post-Transition IANA (PTI) Governance
7. Fundamental Bylaws

Please Refer to Annex 13 – CWG-Stewardship Requirements for the details of how the CCWG-Accountability meets these requirements.

Comment [16]: Need to rephrase since none of these are framed to state “conditions.” (for example, “The community should have the ability to reject an ICANN budget”. And also need to address “IANA Budget and Strategic/Operating Plans”.

Comment [17]: Delete reference if no longer going to be included in a separate Annex and/or cross-reference to the applicable sections of the Annexes.

The CCWG-Accountability's Findings and Recommendations

This section provides an overview of the CCWG-Accountability's findings and recommendations regarding Work Stream 1:

Recommendation #1: Establishing an Empowered Community for enforcing Community Powers

Recommendation #2: Empowering the community through consensus: engage, escalate, enforce

Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'

Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers

Recommendation #5: Changing aspects of ICANN's Mission, Commitments and Core Values

Recommendation #6: Reaffirming ICANN's commitment to respect internationally recognized Human Rights as it carries out its mission

Recommendation #7: Strengthening ICANN's Independent Review Process **Recommendation #8:** Improving ICANN's Request for Reconsideration Process

Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN's Bylaws

Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees

Recommendation #11: Committing to further accountability work in Work Stream 2

Note: The language proposed in these recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. CCWG-Accountability external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation, Fundamental Bylaws and Standard Bylaws.

Comment [18]: Fix footers on odd-numbered pages in the beginning part of the document.

Recommendation #1: Establishing an Empowered Community for enforcing Community Powers

Community Enforcement Mechanism

Since the publication of ‘Second Draft Proposal on Work Stream 1 Recommendations’, the CCWG-Accountability has changed its proposed mechanism for ensuring the community can effectively enforce its decisions. The CCWG-Accountability shifted from a “Sole Member” model to “Sole Designator” model. The reasoning for this change and description of the new model are outlined below.

Concerns with a “Sole Member” model

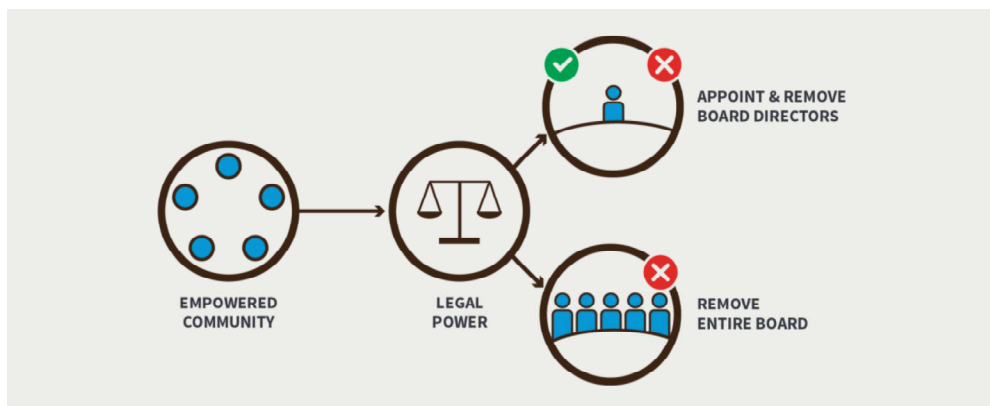
In the Public Comment on the ‘Second Draft Proposal on Work Stream 1 Recommendations’, concerns were raised that the “Sole Member” model. Commenters expressed concern that these rights, such as the ability to dissolve the corporation, could not be adequately constrained and might have unintended and unanticipated consequences.

Comment [19]: “. . . model provided to a member certain statutory powers under California law that could not be waived.”

The “Sole Designator” model

To address these risks, the CCWG-Accountability now recommends using a “Sole Designator” model. The Sole Designator has only two powers under California law and those are the powers to appoint and remove ICANN Board members, including the entire Board. Legal counsel informed the group that adopting a “Sole Designator” model could effectively be implemented while meeting the community’s requirements and having minimal impact on the corporate structure of ICANN.

Comment [20]: Clarify that these are its necessary statutory powers but that other powers can be assigned in the Bylaws. Consider restating as follows: “The Sole Designator has two defined powers under California law: the power to appoint directors and the power to remove directors, including the entire Board. Other powers, such as the power to approve or reject amendments to Articles and Bylaws may be provided to a Designator. Legal counsel has advised the group that a “Sole Designator” model could be implemented to effectively meet the community’s requirements while having a relatively minimal impact on the current corporate structure of ICANN.”

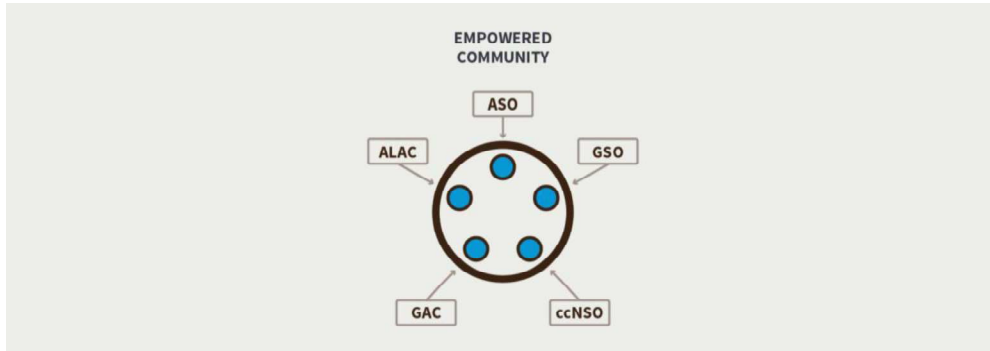


Comment [21]: Consider adding sentence: “Legal counsel notes that the Articles could be amended to ensure that the community interpretation of the global public interest must be considered by the Board as ICANN pursues the charitable and public purposes set forth in Article III. The CCWG-Accountability recommends this change as part of the shift from a Sole Member to a Sole Designator model.” Note: This was discussed in Dublin but it is unclear the outcome of the CCWG’s deliberation on this issue, as noted in our cover email.

To implement the “Sole Designator” model, ICANN’s Supporting Organizations and Advisory Committees would create a unified entity to enforce their Community Powers. This unified entity will be referred to as the “Empowered Community.”¹ The rules for how the Empowered

¹ The Empowered Community would act as a Sole Designator that would have legal standing as a California-based unincorporated association.

Community decides to use its powers will be added into the ICANN Bylaws and are described in detail in the following sections.



The powers required by the CCWG-Accountability will be included in the ICANN Bylaws. These powers will be subject to the enhanced Independent Review Process for enforcement.

Comment [22]: Add: "along with provisions in both the Articles and the Bylaws to ensure the required powers cannot be changed or avoided without community consent, for example by unilateral Board amendments to the Articles of Incorporation."

The Empowered Community has recourse to the courts if necessary to enforce community appointments to and removals from the Board, and to enforce its powers regarding changes to ICANN Bylaws.

Comment [23]: Replace with "will have"

In addition, the right to inspect certain records of the corporation will be included in the Empowered Community (a member would have this right by law, but it can be granted to the Empowered Community under ICANN's Bylaws).

Implementation of the Empowered Community currently anticipates that all of ICANN's Supporting Organizations, the At-Large Advisory Committee and Governmental Advisory Committee would participate in the Empowered Community.

The thresholds presented in this document were determined based on this assessment. If fewer than 5 of ICANN's Supporting Organizations and Advisory Committees agree to participate, these thresholds for consensus support may be adjusted. Thresholds would also have to be adjusted if ICANN changes to have more Supporting Organizations or Advisory Committees.

Comment [24]: Replace with "adds".

Detailed Recommendations

The CCWG-Accountability recommends creating an entity that manages the process of enforcement on the community's behalf:

1. This entity will take the form of the "Sole Designator" model, which has legal standing as a California-based unincorporated association.
2. The members of the unincorporated association would be representatives of ICANN's Supporting Organizations and Advisory Committees of ICANN.
3. This entity will be referred to as the "Empowered Community."

Comment [25]: Change to: "will act at the direction of the community to exercise and enforce the community powers"

Comment [26]: a

Comment [27]: Delete.

Comment [28]: Consider changing to: "The Sole Designator will act as directed by participating SOs and ACs." Avoid use of terms like "members" and "representatives".

4. The Empowered Community, and the rules by which it is governed, will be constituted in ICANN’s Fundamental Bylaws (see Recommendation #3: Redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’).

Relevant Annexes

Annex 01 – Details on Recommendation #1: Establishing an Empowered Community for enforcing Community Powers

Recommendation #2: Empowering the community through consensus: engage, escalate, enforce

The CCWG-Accountability expects that disagreements between the community and the ICANN Board might arise from time to time. In an effort to prevent such disagreements from happening the CCWG is recommending ICANN be required to engage with the community on any key decisions it is considering such as Budgets or changing Bylaws. Should disagreements arise, the CCWG-Accountability is proposing a series of procedures that ensure all sides have the chance to completely and thoroughly discuss any disagreements and have multiple opportunities to resolve any such issues before having to resort to the powers of the Empowered Community.

This process is referred to as Engagement, Escalation and Enforcement.

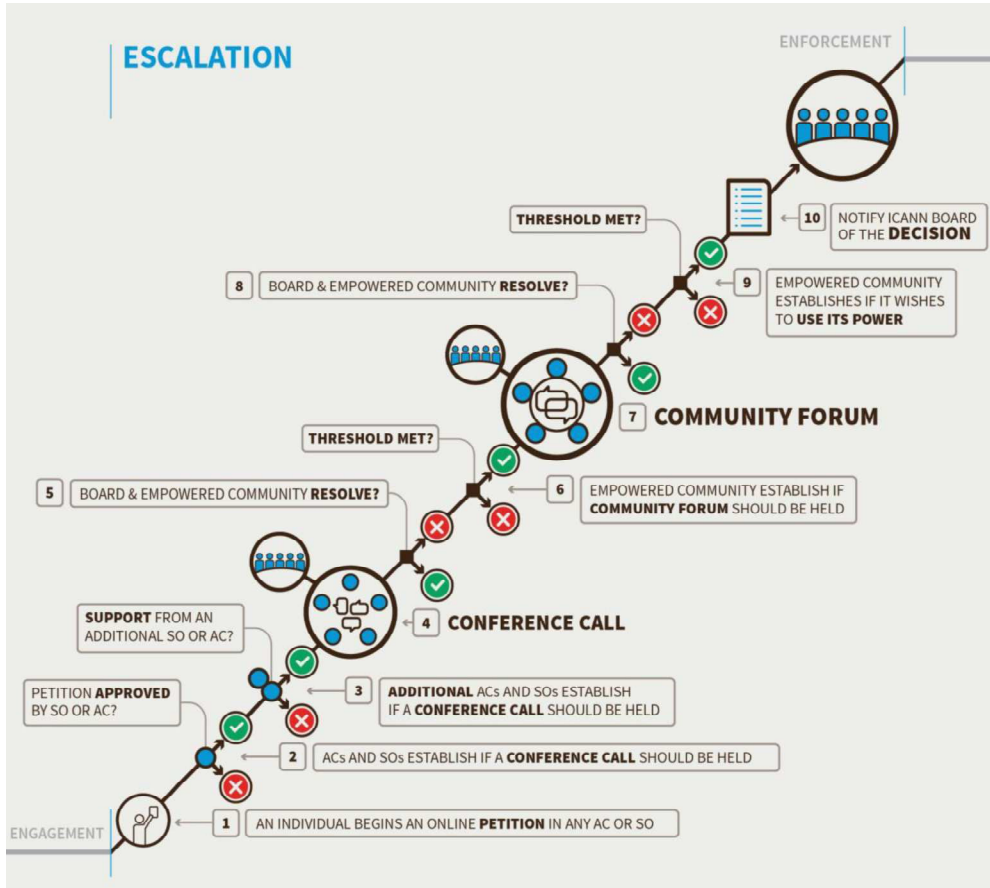
Engagement

Currently, the ICANN Board engagement processes, such as public consultations, are voluntary. The CCWG-Accountability recommends that the engagement processes be made mandatory, and be reinforced in the ICANN Bylaws.

The CCWG-Accountability proposes to require the ICANN Board to engage with the community before making certain critical decisions, including this engagement process that will allow for most community concerns to be addressed early and avoid the need for using the escalation and enforcement procedures.

Escalation

The CCWG-Accountability proposes a set of escalation steps that allow the ICANN Board and community to completely and thoroughly discuss any disagreements. The general escalation process (which may vary in application depending on the Community Power being used) is outlined below:



Step 1. Triggering Review by Community Petition (15 days) or by Board Action

- Begin a petition in a Supporting Organization or Advisory Committee
- Any individual can begin a petition as the first step to using a Community Power.
- For the petition to be accepted, the Supporting Organization or Advisory Committee, in accordance with its own mechanisms, must accept the petition
- If the Supporting Organization or Advisory Committee does not approve the petition within the 15 days the escalation process terminates
- If the Supporting Organization or Advisory Committee approves the petition it contacts the other Supporting Organizations or Advisory Committees to ask them to support the petition so a conference call can be organized that will allow the entire community to discuss the issue. At least one additional Supporting Organization and/or Advisory Committee must support the petition (for a minimum of 2) for a conference call to be organized

- If a minimum of two Supporting Organizations or Advisory Committees support the petition within 15-days, a conference call is organized
- If the petition fails to gather the required level of support, the escalation process terminates (except for removal of individual Director)
 - Note 1: To exercise any of the rejection powers, such rejection of a Budget, the 15-day period begins at the time the Board votes on the element to be rejected. If the petition is not successful within 15 days of the Board vote, the rejection process cannot be used.
 - Note 2: For ICANN Board resolutions on changes to Standard Bylaws, Budget, Strategic and Operating Plans, the Board would be required to automatically provide a 15-day period before the resolution takes effect to allow for the escalation to be confirmed. If the petition is supported by a minimum of 2 Supporting Organizations or Advisory Committees within the 15-day period, the Board is required to put implementation of the contested resolution on hold until the escalation and enforcement processes are completed. The purpose of this is to avoid requiring ICANN to undo things (if the rejection is approved), which could be potentially very difficult to undo.

Comment [29]: such as rejection

Step 2. Conference Call (7 days to organize and hold from the date the decision is made to hold the call)

- The petitioning Supporting Organizations and/or Advisory Committees circulate written justification for exercising the community power in preparation for the conference call. Any Supporting Organization or Advisory Committee may contribute preliminary thoughts or questions in writing before the call is held via a specific archived email list set up for this specific issue
- ICANN hosts a conference call open to any interested participants and will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised
- If the community and the Board can resolve the issue on the conference call, the escalation terminates
- If the community and the Board cannot resolve the issue the community must decide if it wishes to hold a Community Forum.

Step 3. Decision to hold a Community Forum (7days from the end of the conference call)

- If the community and the Board cannot resolve the issue on the conference call, the Supporting Organizations and/or Advisory Committees must decide if they want to hold a Community Forum. This would be a one or two day event, possibly face-to-face, where the ICANN community would explore in detail the issue between the Board and the community and the potential avenues for resolution or action.
- If three or more Supporting Organizations or Advisory Committees support holding a Community Forum within the 7-day period the Community Forum will be organized
- If the proposal to hold a Community Forum does not obtain the required support during the 7 days the escalation process terminates

Comment [30]: Add "(for the exercise of some Community Powers, at least two)" to conform to later description of Step 3 and table of support thresholds.

Step 4. Holding a Community Forum (15 days to organize and hold the event from the date of the decision to hold it)

- The Community Forum would be planned for 1 to 2 days
- The Community Forum would be open to all interested participants and ICANN will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
- The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any Supporting Organization or Advisory Committee may circulate in writing their preliminary views on the exercise of this community power
- The Community Forum will not make decisions nor seek consensus. It will not decide
- whether to advance the petition to the decision stage. This decision is up to the Supporting Organizations and/or Advisory Committees to determine after the forum
- The Community Forum should be managed/moderated in a fair and neutral manner
- Should the relevant Supporting Organizations or Advisory Committees determine a need for further deliberation, a second and third session of the Community Forum could be held
- Staff will collect and publish a public record of the Forum(s), including all written submissions
- If the Empowered Community and ICANN Board can resolve the issue in the Community Forum, the escalation process terminates
- If the Empowered Community and ICANN Board cannot resolve the issue, the community must decide if it wishes to take further action.

Step 5. Decision to use a Community Power as an Empowered Community (15 days from the conclusion of the Community Forum)

- If four or more (for some powers 3) Supporting Organizations and/or Advisory Committees support and no more than one objects within the 15-day period, the Sole Designator will use its power. The community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons
- If the proposal of some of the Supporting Organizations and/or Advisory Committees to use a Community Power as the Empowered Community does not meet the required thresholds during the 15-day period, the escalation process terminates

Comment [31]: Global comment: Recommend using "Empowered Community" instead of "Sole Designator" except where referring to the legal concept or the model itself.

Step 6. Advising the ICANN Board (1 day)

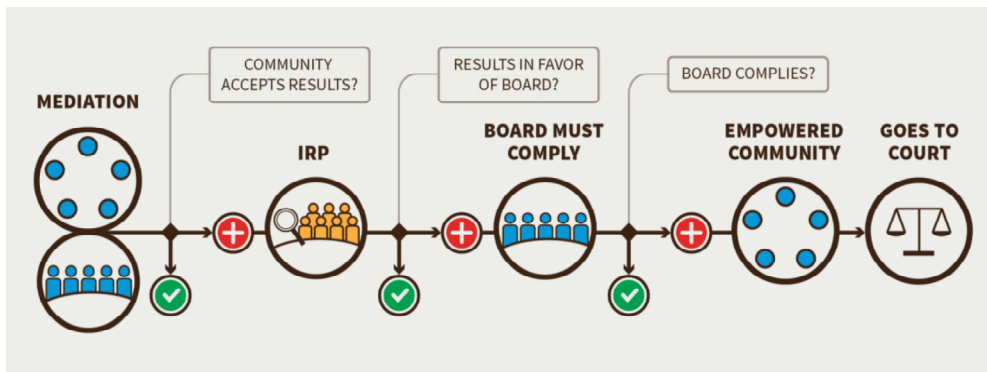
- If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct the Board to take any necessary action to comply with the decision

Enforcement

If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use a Community Power, the Empowered Community must decide if it wishes to begin the ‘enforcement process.’

The enforcement process can proceed in two ways:

Option 1: Initiate mediation and community Independent Review Process procedures.



- Representatives from ICANN Board and community undertake a formal mediation phase.
 - If the community accepts the results from the mediation phase, the enforcement process would be terminated.
 - Else if not, the community will proceed with a community Independent Review Process (that could only be initiated using the escalation process described above.)
- Representatives from the ICANN Board and community undertake a formal and binding Independent Review Process.
 - If the results of the community Independent Review Process are in favor of the ICANN Board, the enforcement process is terminated.
 - Else if the results of the binding Independent Review Process are in favor of the community, the ICANN Board must comply.
- Should the ICANN Board not comply with the decision of the Independent Review Process, the Empowered Community has two options:
 1. The Empowered Community can ask a court with jurisdiction to enforce the results of the Independent Review Process.

Comment [32]: Annex 9 refers to the ability of the community to invoke a Reconsideration process; amend this section to refer to this right and how it is initiated (e.g., escalation process?).

Comment [33]: Global comment: Enforcement steps are generally taken by the sole designator/Empowered Community, and therefore we recommend referring to the Empowered Community and not the community when describing these enforcement steps.

Comment [34]: Clarify that a decision to enforce in court is required to be made pursuant to the escalation process.

2. The Empowered Community can use the escalation process to use its Community Power to recall the entire ICANN Board.

Option 2: Initiate an escalation process to recall the entire ICANN Board.

- If the requisite threshold of community support is achieved, the Empowered Community removes all of the members of the ICANN Board (except the CEO) and replaces them with an Interim Board until a new Board can be seated.
- If ICANN staff, the outgoing Board or removed Directors questions the legitimacy of the decision made by the Empowered Community or blocks the Interim Board, it may seek enforcement by a court with jurisdiction

Detailed Recommendations

The CCWG-Accountability recommends:

- Establishing a Fundamental Bylaw that requires the ICANN Board to undertake an extensive ‘engagement process’ before taking action on any of the following:
- Approving ICANN’s Five-Year Strategic Plan
- Approving ICANN’s Five-Year Operating Plan
- Approving ICANN’s Annual Operating Plan & Budget
- Approving The IANA Functions Budget
- Approving any modifications to Standard or Fundamental Bylaws
- Including the ‘Enforcement process’ in the Fundamental Bylaws
- Note: The escalation processes for each Community Power is outlined in Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers.

Comment [35]: Consider adding the other CWG requirements for Fundamental Bylaws (e.g., IANA Function Reviews, CSC, Separation Process, etc.).

Comment [36]: Add “. . . and Articles of Incorporation”.

Comment [37]: Should be “in” .

Relevant Annexes

Annex 02 – Details on Recommendation #2: Empowering the community through consensus: engage, escalate, enforce

Annex03 – Details on Recommendation #3: Redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’

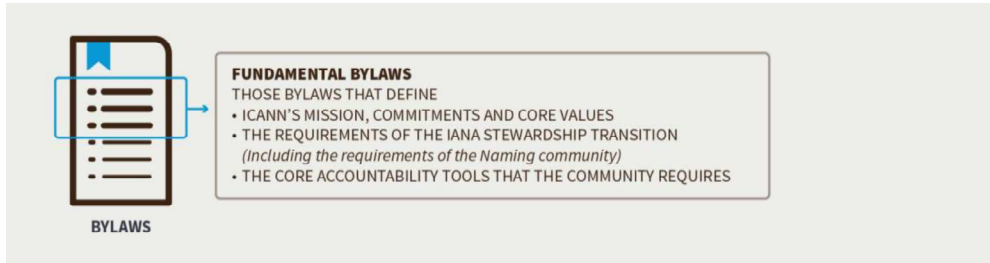
Annex04 – Details on Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers

Recommendation #3: Redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’

Today, ICANN Bylaws can be changed by a resolution of the ICANN Board upon a 66% majority vote. The CCWG-Accountability believes that the set of key Bylaws fundamental to ICANN’s stability and operational continuity and essential for the community’s decisions-rights should be given additional protection from changes.

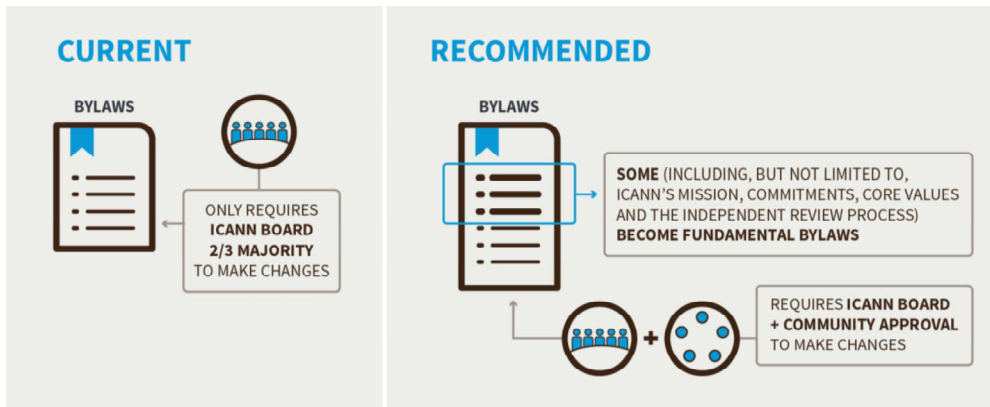
Comment [38]: Should be “two-thirds (i.e., 66.7%) vote”.

The CCWG–Accountability is recommending splitting the ICANN Bylaws into “Fundamental Bylaws” and “Standard Bylaws” where Fundamental Bylaws will be more difficult to change.



As such, the CCWG-Accountability proposes to make Fundamental Bylaws harder to change than Standard Bylaws in two ways:

- By sharing the authority to authorize changes between the ICANN Board and the ICANN community (organized through its Supporting Organizations and Advisory Committees in the “Empowered Community” outlined in “Recommendation #1: Establishing an Empowered Community for enforcing Community Powers”); and
- By requiring a higher threshold to authorize changes to Fundamental Bylaws than for Standard Bylaws.



Accordingly, the CCWG-Accountability recommends that the following aspects be made Fundamental Bylaws as a part of Work Stream 1:

1. The Mission, Commitments and Core Values
2. The framework for the Independent Review Process
3. The process for amending Fundamental Bylaws
4. The powers set out in Section 7 of this report
5. The Community Mechanism as the Sole Member Model

Comment [39]: Add “. . . and Articles of Incorporation.”

Comment [40]: Change to: “The Community Powers”.

Comment [41]: Replace with The Community Mechanism as the Sole Designator, i.e. the “Empowered Community”.

6. The IANA Function Review and the Separation Process required by the CWG-Stewardship’s proposal
7. The Post-Transition IANA governance and Customer Standing Committee structures, also required by the CWG-Stewardship’s proposal

Comment [42]: Add “Special IANA Function Review” to this list.

The establishment of Fundamental Bylaws would indirectly enhance ICANN’s accountability to the global Internet community by sharing the authority of decision-making more widely for, and increasing the difficulty to amend, these integral aspects of ICANN.

Comment [43]: The list above is redundant with list below. Somewhat awkward reading given that they are in such close proximity.

This is recommendation is important in the context of the IANA Stewardship Transition because the historic contractual relationship with the U.S. Government provided assurance to the community that the fundamental nature of ICANN was unlikely to be changed without widespread agreement. Without that relationship, procedural protections and more widely shared decision-rights on core components of ICANN’s scope and authority should help maintain the community’s confidence in ICANN.

Comment [44]: Delete.

Detailed Recommendations

The CCWG-Accountability recommends:

- Splitting the ICANN Bylaws into “Fundamental Bylaws” and “Standard Bylaws”. Examples of Fundamental Bylaws include:
 - The Mission, Commitments and Core Values
 - The framework for the Independent Review Process
 - The process for amending Fundamental Bylaws
 - The five newly proposed Community Powers
 - The Community Mechanism as the Sole Designator, i.e. the “Empowered Community”
 - The IANA Function Review, Special IANA Function Review and the Separation Process required by the IANA Stewardship Transition proposal
 - The Post-Transition IANA Governance and Customer Standing Committee also required by the IANA Stewardship Transition proposal
- Requiring approval for any changes to Fundamental Bylaws from both the ICANN Board and community as outlined in the respective Community Power (See “Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers”).
- Raising the threshold for ICANN Board approval for changing a Fundamental Bylaw from 66% to 75%.

Comment [45]: The language may be read by some to suggest that CCWG is suggesting dividing the bylaws into two different documents. In fact, the classification of bylaws would be accomplished by identifying certain bylaws as “Fundamental.” No action would be needed to specifically identify other or “standard” bylaws; they would be such simply because they have not been designated as “Fundamental.” Thus, the second bullet point might say “That certain ICANN Bylaws be designated as “Fundamental Bylaws” that would be more difficult to change. Remaining (or “Standard”) Bylaws would also require consultation before they can be changed.”

Comment [46]: Add “. . . or Articles of Incorporation”.

Comment [47]: Add “. . . or Articles of Incorporation”.

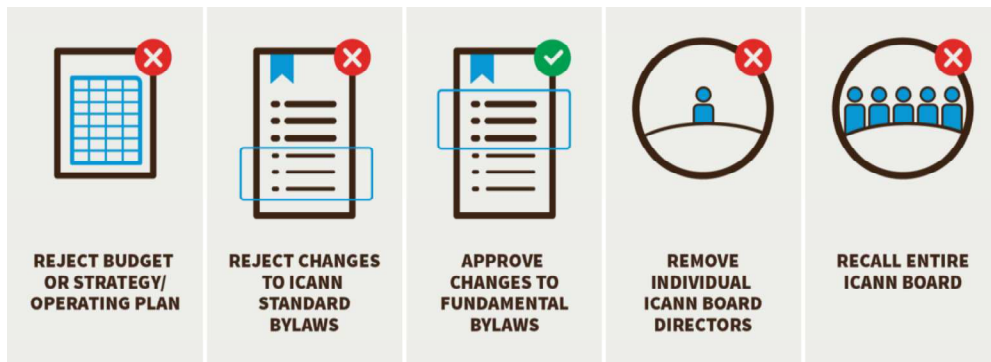
Comment [48]: Add “. . . or Articles of Incorporation”.

Comment [49]: Should be “two-thirds”.

Relevant Annexes

- Annex 03 – Details on Recommendation #3: Redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’
- Annex 04 – Details on Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers

Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers



The CCWG-Accountability has proposed a set of five Community Powers designed to empower the community to hold ICANN accountable for the organization’s Principles (the Mission, Commitments, and Core Values). The proposed Community Powers are:

The Power to Reject ICANN’s Budget or Strategy/Operating Plans

The Power to Reject Changes to ICANN Standard Bylaws

The Power to Remove Individual ICANN Board Directors

The Power to Recall the Entire ICANN Board

The Power to Approve Changes to **Fundamental Bylaws**

Comment [50]: Add “. . . and Articles of Incorporation”.

It is important to note that the above powers, as well as the launch of a Separation Cross Community Working Group,² (as required by the CWG-Stewardship dependencies), can be enforced by using the community Independent Review Process or the Power to recall the entire Board.

The Power to Reject ICANN’s Budget or Strategic/Operating Plans

Comment [51]: We note that no limitations are described here or in the Annexes on the number of times a budget or plan can be rejected; confirm that CCWG has agreed that there be no such limitations.

The right to set budgets and strategic direction is a critical governance power for any organization. By allocating resources and defining the goals to which these resources are directed, Strategic Plans, Operating Plans and Budgets have a significant impact on what ICANN does and how effectively it fulfils its role. The ICANN community already plays an active role

² If the CWG-Stewardship’s IANA Function Review determines that a separation process is necessary, it will recommend the creation of a Separation Cross Community Working Group. This recommendation will need to be approved by a supermajority of each of the Generic Names Supporting Organization and the Country-Code Names Supporting Organization Councils, according to their normal procedures for determining supermajority, and will need to be approved by the ICANN Board after a public comment period, as well as a community mechanism derived from the CCWG-Accountability process.

in giving input into these key documents through participation in the existing consultation processes ICANN organizes.

To provide additional accountability safeguards, the CCWG-Accountability has proposed that the community be given the power to reject:

- ICANN’s Five-Year Strategic Plan • ICANN’s Five-Year Operating Plan
- ICANN’s Annual Operating Plan & Budget
- The IANA Functions Budget

The CCWG-Accountability has determined that a separate petition would be required for each Budget or Strategic/Operating plan being challenged. A Budget or Strategic/Operating plan could only be challenged if there are significant issue(s) brought up in the Engagement Phase that were not addressed prior to approval.

A Supporting Organization or Advisory Committee petitioning to reject a budget or strategic/operating plan would be required to circulate a rationale and obtain support for its petition from at least one other Supporting Organization or Advisory Committee according to the Escalation Process.

The Escalation and Enforcement processes for rejecting any Strategic, Operating or Annual Budget would be the detailed process presented in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce.

Should the power be used to reject the annual budget, a caretaker budget would be enacted (details regarding the caretaker budget are currently under development).

The IANA Functions Budget

Under this power the community will be able to consider the IANA Functions Budget as a separate budget. The IANA Functions Budget is currently part of ICANN’s Annual Operating Plan & Budget.

The CCWG-Accountability recommends that there should be two distinct processes with respect to the community’s power to reject the IANA Budget and its power to reject the ICANN Budget, meeting the requirements set forward by the IANA Stewardship Transition proposal. The use of the Community Power to reject the ICANN Budget would have no impact on the IANA Budget, and a rejection of the IANA Budget would have no impact on the ICANN Budget.

Comment [52]: Should use consistent terminology to refer to the IANA Functions Budget (global comment).

In addition, to reinforce the bottom up, collaborative approach that ICANN currently uses to enable the community to give input into budget documents, the CCWG-Accountability recommends adding such a consultation process into the ICANN Bylaws for the IANA functions Budget.

The Escalation and Enforcement processes for rejecting an IANA Functions Budget would be the detailed process presented in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce.

Should the power be used to reject the annual IANA Functions budget, a caretaker budget would be enacted (details regarding the caretaker budget are currently under development).

The Power to Reject Changes to ICANN Standard Bylaws

In addition to the safeguard against the possibility that the ICANN Board could unilaterally amend Fundamental Bylaws without consulting the community, the CCWG-Accountability recommends that the community be given the power to reject changes to Standard ICANN Bylaws after the Board approves them, but before the changes come into effect. Any changes approved by the Board would take 15 days to come into effect to enable the community to decide whether a petition to reject the change should be initiated.

This power, with respect to Standard Bylaws, is a rejection process that is used to tell the ICANN Board that the community does not support a Board-approved change. It does not enable the community to re-write a Standard Bylaw change that has been proposed by the Board.

The escalation and enforcement processes for this power are as presented in “Recommendation #2: Empowering the community through consensus: engage, escalate, enforce.”

The Power to Approve Changes to Fundamental Bylaws

To safeguard against the possibility that the ICANN Board could unilaterally amend Bylaws without consulting the community, the CCWG-Accountability determined that the community consultation process should be reinforced in Fundamental Bylaws. The proposed set of Fundamental Bylaws would be harder to change than the Standard Bylaws for two reasons:

- The authority to change Fundamental Bylaws would be shared between the ICANN Board and the ICANN community
- The required threshold of support to change a Fundamental Bylaw would be significantly higher than the threshold to change a Standard Bylaw

The CCWG-Accountability emphasizes the importance for the ICANN Board and ICANN community to be able to define new Fundamental Bylaws over time, or to change or remove existing ones to ensure that ICANN can adapt to the changing Internet environment.

The escalation processes for this power is as follows:

Step 1. The ICANN Board approves a change to the Fundamental Bylaws

Step 2. Conference Call (15 days to organize and hold from the date the decision is made by the ICANN Board to approve a change to the Fundamental Bylaws)

- ICANN hosts a conference call open to any interested participants and will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised

Comment [53]: Add “. . . and Articles of Incorporation” and discuss how Articles amendments are approved in this section.

Step 3. Decision to hold a Community Forum (7days from the end of the conference call)

- If three or more Supporting Organizations or Advisory Committees support holding a Community Forum within the 7-day period the Community Forum will be organized
- If the proposal to hold a Community Forum does not obtain the required support during the 7 days the process goes directly to deciding to use the community power.

Step 4. Holding a Community Forum (15 days to organize and hold the event from the date of the decision to hold it)

- The Community Forum would be planned for 1 to 2 days
- The Community Forum would be open to all interested participants and ICANN will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
- The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any Supporting Organization or Advisory Committee may circulate in writing their preliminary views on the exercise of this community power
- The Community Forum will not make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage. This decision is up to the Supporting Organizations and/or Advisory Committees to determine after the forum
- The Community Forum should be managed/moderated in a fair and neutral manner
- Should the relevant Supporting Organizations or Advisory Committees determine a need for further deliberation, a second and third session of the Community Forum could be held
- Staff will collect and publish a public record of the Forum(s), including all written submissions

Step 5. Decision to use a Community Power as an Empowered Community (15 days from the conclusion of the Community Forum)

- If four or more Supporting Organizations and/or Advisory Committees support and no more than one objects within the 15-day period, the Sole Designator will use its power to approve the change to the Fundamental Bylaws.
- If the required thresholds during the 15-day period, are not met the escalation ends without the changes to the Fundamental Bylaws being approved.

Step 6. Advising the ICANN Board (1 day)

- The Empowered community will advise the Board of its decision.

The Power to Remove Individual ICANN Board Directors

The proposed power to Remove Individual ICANN Board Directors would allow for the removal of a Director before the Director's current term comes to an end. This was a formal requirement

from the CWG-Stewardship. Currently, the power to remove Individual Directors is only available to the Board itself as per the existing Bylaws.

Given ICANN Board Directors can be nominated in two significantly different ways, specific SO/AC nomination or by the Nomination Committee (NomCom), the process for removing each type of Director will be different.

In cases where the nominating Supporting Organization or Advisory Committee perceives that there is a significant issue with its appointed Director it can use the following escalation process to determine if removal of the Director is recommended. It is important to note that this process can only be used once during a Director's term if the process reaches the step of holding a community forum or above and then fails to remove the Director:

Comment [54]: Replace with "nominated" (global comment).

Directors nominated by the Nominating Committee (detailed process available in Annex04)

- In cases where the community perceives that there is a reason to remove a Director appointed by the Nominating Committee it could use the engagement and escalation process to decide if the Sole Designator should remove the Director. It is important to note that this process can only be used once during any single term a Director is in office if the process reaches the step of holding a Community Forum or above and then fails to remove the Director.
- Only require 2 Supporting Organizations or Advisory Committees to convene a Community Forum
- Only require 3 Supporting Organizations or Advisory Committees, and none objecting, for the empowered community to use the power.
- Naming a replacement
 - The Nominating Committee may instruct the Sole Designator to appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several "reserve" candidates in place.
 - Replacement Directors will fill the same "seat" and their term will come to an end when the term of the original Director was to end.

Directors Nominated by a Supporting Organization or Advisory Committee (detailed process available in Annex04)

- In cases where the nominating Supporting Organization or Advisory Committee believes there is a reason to remove a Director it nominated, it can use the following escalation process to determine whether the Empowered Community will remove the Director. It is important to note that this process can only be used once during a Director's term if the process reaches the step of holding a Community Forum or above and then fails to remove the Director.
- The petition can only be started in the Supporting Organization or Advisory Committee that nominated the Director.
- The petition to hold a conference call is successful if the Supporting Organization or Advisory Committee that nominated the Director approves it.

Comment [55]: Consider referring to the requirement that the SO/AC circulate its written justification prior to the conference call.

- If a petition is accepted, the Chair of the relevant Supporting Organization or Advisory Committee will meet promptly in private (by phone or in-person) with the concerned Director to discuss the approved petition. If no resolution is found, the Supporting Organization or Advisory Committee schedules a conference call within 7 days of the petition being accepted.
- The process proceeds directly to a Community Forum following the conference call if the parties have not resolved their differences.
- At the end of the Community Forum the Community Forum Chair will issue a formal call for comments and recommendations from the community, and input received will be sent to the relevant Supporting Organization or Advisory Committee and posted publicly within 7 day
- Supporting Organizations and/or Advisory Committees publish their comments and recommendations (7 days)
- Decision to use its power as an Empowered Community (7 days from the conclusion of the comment period) is the responsibility of the nominating Supporting Organization or Advisory Committee only. As such the threshold is 1.
- Naming a replacement
 - The respective Supporting Organization or Advisory Committee is responsible for nominating an individual to fill the vacancy on the ICANN Board through its usual process (as set out in Article VI, Section 12.1 of the Bylaws).
 - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end. A Director appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

The Power to Recall the Entire ICANN Board

The CCWG-Accountability believes there may be situations where removing Individual Directors from ICANN’s Board may not be a sufficient accountability remedy for the community.

In cases where the community perceives that a set of problems has become impossible to resolve, the community may wish to signal its lack of confidence in the Board by petitioning for a recall (i.e. the removal) of the entire ICANN Board (except the CEO who is appointed by the Board). The power to recall a Board is a critical enforcement mechanism for the community under the Sole Designator model because it can be used to support the other Community Powers and provide a final and binding accountability mechanism.

By exercising this power, the entire ICANN Board (except the CEO) could be removed by the community. However, it is unlikely that the community would use this power lightly, and the engagement and escalation pathways are designed to encourage agreement between the Board and the community. If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.

The CCWG-Accountability expects that this power would only be exercised as a last resort after all other attempts at resolution have failed. As a recall of the Board would be extremely disruptive for the entire organization, the CCWG-Accountability has included several safeguards in the proposed escalation process to ensure that this decision reaches the maturity and level of support needed before it can be used.

The Escalation and Enforcement processes for recalling the **entire** would be the detailed process presented in Recommendation #2: Empowering the community through consensus: engage, escalate, enforce except for the fact that SOs and ACs and the NomCom must have Directors ready to stand in to be the Interim Board prior to deciding to use the power to recall the entire Board.:

Comment [56]: Word missing – “Board”.

Threshold for calling a Community Forum is three Supporting Organizations or **Advisory** supporting.

Comment [57]: Word missing – “Committees”. Assume this section is still to be completed.

Threshold for using the power is four Supporting Organizations or Advisory Committees supporting and no more than one objecting.

Interim Board

The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations, Advisory Committees and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the Supporting Organization and Advisory Committee leadership before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN’s strategy, policies, or management, including replacement of the serving President and CEO.

Detailed Recommendations

The CCWG-Accountability recommends:

- Defining the following community powers as Fundamental Bylaws:

1. Reject Budget or Strategy/Operating Plans
2. Reject changes to ICANN “Standard” Bylaws
3. Approve changes to “Fundamental” Bylaws
4. Remove individual ICANN Board Directors
5. Recall the entire ICANN **Board**

Comment [58]: Add other CWG dependencies (e.g., IANA Function Reviews, Special IANA Function Reviews, CSC, Separation Process).

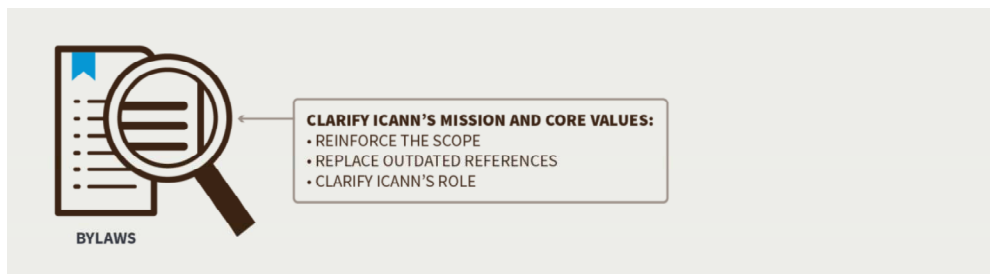
- Adding an ICANN Bylaw that states that if the Board is removed the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations, Advisory Committees and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the Supporting Organization and Advisory Committee leadership before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN’s strategy, policies, or management, including replacement of the serving President and CEO.

Relevant Annexes

- Annex 02 – Details on Recommendation #2: Empowering the community through consensus: engage, escalate, enforce
- Annex03 – Details on Recommendation #3: Redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’
- Annex 04 – Details on Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers

Recommendation #5: Changing aspects of ICANN’s Mission, Commitments and Core Values



ICANN’s current Bylaws contain (a) a Mission statement; (b) a statement of Core Values; and (c) a provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment. These three sections are at the heart of ICANN’s accountability: they obligate ICANN to act only within the scope of its limited Mission, and to conduct its activities in accordance with certain fundamental principles. As such, these three sections also provide a standard against which ICANN’s conduct can be measured and held accountable through existing and enhanced mechanisms such as Reconsideration and Independent Review.

The relevant language in the current Bylaws was adopted in 2003. Based on community input and discussions since January 2015, the CCWG-Accountability concluded that these provisions should be strengthened and enhanced to provide greater assurances that ICANN is accountable to its stakeholders and the global Internet community. In particular, the CCWG-Accountability found that:

- ICANN’s Mission statement needs clarification with respect to the scope of ICANN’s policy authority;
- The language in the Bylaws describing how ICANN should apply its Core Values is weak and permits ICANN decision makers to exercise excessive discretion;
- The current Bylaws do not reflect key elements of the Affirmation of Commitments; and
- The Board should have only a limited ability to change these key accountability provisions of ICANN’s Bylaws.

Detailed Explanation

The proposed language for Bylaw revisions is conceptual in nature at this stage; the legal team will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.

The CCWG-Accountability is recommending changes to the ICANN Bylaws to address the deficiencies described above. The CCWG-Accountability deliberately attempted to minimize language changes, and in the charts that follow, has included the existing language and provided a redline showing proposed changes. The CCWG-Accountability discussed how to balance the needs of limiting ICANN’s Mission and the necessary ability of the organization to adjust to a changing environment. Below we provide a summary of the proposed changes.

ICANN Mission Statement. The CCWG-Accountability recommends the following changes to ICANN’s “Mission Statement,” (Bylaws, Article I, Section 1):

- Clarify that ICANN’s Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the DNS and are reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS.
- Clarify that ICANN’s Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide.
- Clarify that ICANN’s powers are “enumerated” – meaning that anything not articulated in the Bylaws are outside the scope of ICANN’s authority. This does not mean ICANN’s powers can never evolve – but ensures that any changes will be deliberate and supported by the community.

Core Values. The CCWG-Accountability recommends the following changes to ICANN’s “Core Values” (Bylaws, Article I, Section 2 and Article II, Section 3):

Divide the existing Core Values provisions into Commitments and “Core Values.”

- Incorporate into the Bylaws ICANN’s obligation to operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition. These obligations are now contained in ICANN’s Articles of Incorporation.
- Designate certain Core Values as “Commitments”. These values are so fundamental to ICANN’s operation that they are intended to apply consistently and comprehensively. Those Commitments include ICANN’s obligations to:
 - Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
 - Limit its activities to those within ICANN’s Mission that require or significantly benefit from global coordination;
 - Employ open, transparent, bottom-up, multistakeholder processes; and
 - Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
 - Reflect various provisions in the Affirmation of Commitments, e.g., efficiency, operational excellence, and fiscal responsibility; (Note for more information on incorporating the various provisions of the AoC into the Core Values please see Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws)
- Add an obligation to avoid capture.

Balancing or Reconciliation Test

Modify the “balancing” language in the Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated.

Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public

interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.

Fundamental Bylaws Provisions.

The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. (See: Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws')

Changes from the 'Second Draft Proposal on Work Stream 1 Recommendations'

The CCWG-Accountability attempted to minimize changes to current ICANN Bylaw language. In the forthcoming charts, the CCWG-Accountability has included a redline of the existing Bylaw language to show its proposed changes.

Comment [59]: Clarify what the redline in the 3rd Draft Proposal column compares to; for example, in the first row below, the existing Bylaws do not include the word "support". Clarify why some text in the Existing Bylaws column is colored red. Also clarify that where indicated, redlining below is against the 2nd Draft Proposal (not the Existing Bylaws).

Existing Bylaws	2 nd Draft Proposal	3 rd Draft Proposal
The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:	The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:	The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to support, at the overall level, core Internet registries, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems as described below. In particular, Specifically, ICANN:
1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:	1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:	<i>This language has been modified and distributed over the specific functions. See below.</i>
a. [<i>Coordinates the allocation and assignment of</i>] Domain names (forming a system referred to as "DNS");	a. [<i>Coordinates the allocation and assignment of</i>] Domain names (forming a system referred to as "DNS");	1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's Mission is to coordinate the development and implementation of policies:

Existing Bylaws	2 nd Draft Proposal	3 rd Draft Proposal
		* For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability:
		* That are developed through a bottom-up, consensus-based multi-stakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems.
2. Coordinates the operation and evolution of the DNS root name server system.	2. Coordinates the operation and evolution of the DNS root name server system.	2. Coordinates the operation and evolution of the DNS root name server system. In this role, ICANN’s Mission is to [to be provided by root server operators].
b. [<i>Coordinates the allocation and assignment of</i>] Internet protocol (“IP”) addresses and autonomous system (“AS”) numbers; and	b. [<i>Coordinates the allocation and assignment of</i>] Internet protocol (“IP”) addresses and autonomous system (“AS”) numbers; and	3. Coordinates the allocation and assignment at the top-most level of Internet Protocol (“IP”) and Autonomous System (“AS”) numbers. ICANN’s Mission is described in the ASO MoU between ICANN and RIRs.

Existing Bylaws	2 nd Draft Proposal	3 rd Draft Proposal
c. [<i>Coordinates the allocation and assignment of</i>] Protocol port and parameter numbers.	c. [<i>Coordinates the allocation and assignment of</i>] Protocol port and parameter numbers.	4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN’s Mission is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, such as the Internet Engineering Task Force.
3. Coordinates policy development reasonably and appropriately related to these technical functions.	3. Coordinates policy development reasonably and appropriately related to these technical functions.	[The chapeau has been deleted been distributed as shown above.]
	a. In this role, with respect to domain names, ICANN’s Mission is to coordinate the development and implementation of policies:	
	* For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and	
	* That are developed through a bottom-up, consensus-based multi-stakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems.	

Comment [60]: Text missing.

Existing Bylaws	2 nd Draft Proposal	3 rd Draft Proposal
	b. In this role, with respect to IP addresses and AS numbers, ICANN's Mission is described in the ASO MoU between ICANN and RIRs.	ICANN shall 4aw-ffe-pewef to act strictly other than in accordance with, and only as reasonably appropriate to achieve its Mission.
	c. In this role, with respect to protocol port and parameter numbers, ICANN's Mission is to [to be provided by the IETH. [IN MOU AND SUPPLEMENTAL AGREEMENTS WITH ...]	the foregoing absolute prohibition, ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet's unique identifiers, or the content that such services carry or provide.
	d. In this role, with respect to the DNS root server system, ICANN's Mission is to [to be provided by root server operators].	ICANN shall have no power to act strictly other than in accordance with, and as reasonably appropriate to achieve its Mission.
	Without in any way limiting the foregoing absolute prohibition, ICANN shall not regulate services that use the Internet's unique identifiers, or the content that such services carry or provide.	Without in any way limiting the foregoing absolute prohibition, ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet's unique identifiers, or the content that such services carry or provide.
		ICANN shall have the ability too negotiate, enter into and enforce agreements with contracted parties in [service of] [support of] [furtherance of] its Mission.

	2nd Draft Proposal	3rd Draft Proposal (changes from 2 nd Draft Proposal in RED)
<p>Section 2. CORE VALUES</p> <p>In performing its mission, the following core values should guide the decisions and actions of ICANN:</p>	<p>Section 2. COMMITMENTS & CORE VALUES</p> <p>In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.</p>	<p>Section 2. COMMITMENTS & CORE VALUES</p> <p>In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.</p>
	<p>COMMITMENTS</p> <p>1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:</p>	<p>COMMITMENTS</p> <p>1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:</p>
<p>1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.</p>	<p>2. Preserve and enhance the neutral and judgment free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;</p>	<p>2. Preserve and enhance the neutral and judgment free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;</p>

	2nd Draft Proposal	3rd Draft Proposal (changes from 2 nd Draft Proposal in RED)
	3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;	3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.	4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;	4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.	5. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, and academia that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;	5. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;

	2nd Draft Proposal	3rd Draft Proposal (changes from 2 nd Draft Proposal in RED)
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.	6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;	6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;
(From ARTICLE II, Section 3. NON-DISCRIMINATORY TREATMENT) ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.		
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.	7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.	7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.
	Core Values:	
	1. In performing its Mission, the following core values should also guide the decisions and actions of ICANN:	1. In performing its Mission, the following core values should also guide the decisions and actions of ICANN:

	2nd Draft Proposal	3rd Draft Proposal (changes from 2 nd Draft Proposal in RED)
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.	2. Delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;	2. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.	2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;	3. Seeking and supporting broad, informed participation reflecting the functional, geographic, and transparent; cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.	4. Depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.	4. Depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.	5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.	5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.

	2nd Draft Proposal	3rd Draft Proposal (changes from 2 nd Draft Proposal in RED)
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.	6. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.	6. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.	7. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, and academia, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.	While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.
	8. Striving to achieve a reasonable balance between the interests of different stakeholders.	8. Striving to achieve a reasonable balance between the interests of different stakeholders.
These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.	These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.	These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.

	2nd Draft Proposal	3rd Draft Proposal (changes from 2 nd Draft Proposal in RED)
Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible.	The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.	individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.
Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.	In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.	In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.

Detailed Recommendations

The CCWG-Accountability recommends:

- Modifying ICANN’s Fundamental Bylaws to implement the following:
 - Clarify that ICANN’s Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.
 - Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
 - Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority.
 - Divide ICANN’s existing Core Values provisions into Commitments and “Core Values.”
 - Designate certain Core Values as “Commitments.”
 - Slightly modify ICANN’s remaining Core Values.
 - Modify the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place.
 - Constitute the revised Mission Statement, Commitments and Core Values as Fundamental Bylaws.
 - Note: The discussions around **Stress Test 18** are still ongoing at the time of publication. The final results may affect Standard Bylaws or Fundamental Bylaws.

Comment [61]: Consider cross reference to clarify why the reference to Stress Test 18 is relevant.

Relevant Annexes

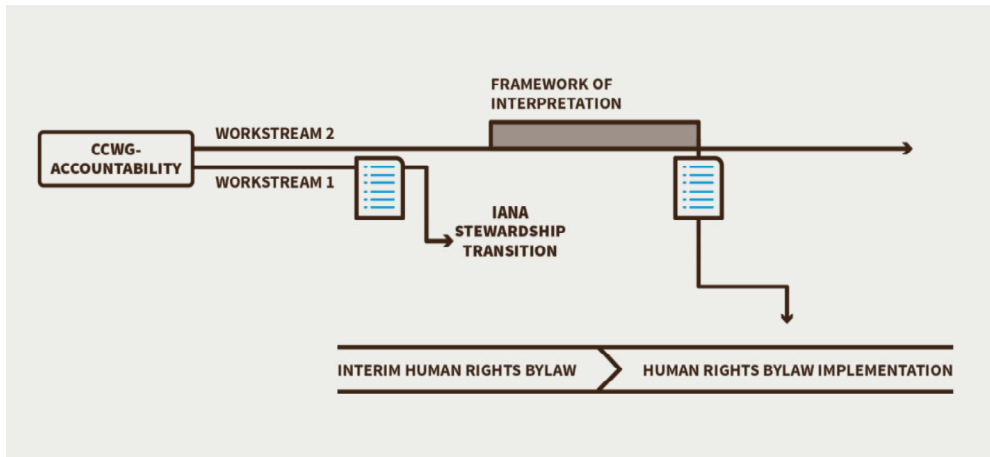
- Annex 05 – Details on Recommendation #5: Changing aspects of ICANN’s Mission, Commitments and Core Values

Recommendation #6: Reaffirming ICANN’s commitment to respect internationally recognized Human Rights as it carries out its mission



The subject of including a Commitment to Human Rights in the ICANN Bylaws has been extensively discussed by the CCWG-Accountability.

The CCWG-Accountability sought legal advice on whether, upon the termination of the IANA Functions Contract between ICANN and the NTIA, ICANN’s specific Human Rights obligations could be called into question. It was found that, upon termination of the Contract, there would be no significant impact on ICANN’s Human Rights obligations. However, the CCWG-Accountability reasoned that a commitment to Human Rights **should be included** in ICANN’s Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet.



This proposed Draft Bylaw on Human Rights would reaffirm ICANN’s existing obligations within its narrow scope and Mission, and would clarify ICANN’s commitment to respecting Human Rights.

Amendments to the proposed Draft Bylaw text since Draft 2 aim to prevent Mission expansion or ‘Mission creep’ by stating that ICANN’s commitment to respect internationally recognized Human Rights is conducted “*within its mission and in its operations*”.

The proposed Draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.

Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN’s commitment to Human Rights, including the development of a Framework of Interpretation.

To ensure that the work assigned to Work Stream 2 takes place, the CCWG-Accountability proposes that an interim Bylaw that outlines the specific areas to be addressed is added to the current Bylaws. This interim Bylaw will exist temporarily in the ICANN Bylaws up until a Framework of Interpretation for the actual Human Rights Bylaw is published.

Detailed Recommendations

The CCWG-Accountability recommends:

- Including a Bylaw with the following intent in WS1 Recommendations:
 - “Within its mission and in its operations, ICANN will respect internationally recognized human rights. This commitment does not in any way create an obligation for ICANN, or any entity having a relationship with ICANN, to protect or enforce human rights beyond what may be required by applicable law. In particular, this does not create any additional obligation for ICANN to respond to or consider any complaint, request or demand seeking the enforcement of human rights by ICANN.”
 - In order to ensure that the Human Rights related tasks that are allocated to Work Stream 2 take place, the CCWG-Accountability proposes a draft interim Bylaw, which must be adopted as part of Work Stream 1. The interim Bylaw would convey the following:

“Bylaw xx will be implemented in accordance with the framework of interpretation to be developed as part of “Work Stream 2” by the CCWG-Accountability or another cross-community working group chartered for such purpose by one or more Supporting Organizations or Advisory Committees. This group must be established promptly, in order to develop an appropriate framework of interpretation as promptly as possible, but in no event later than one year after Bylaw xx is adopted.” (This interim Bylaw will exist temporarily in the ICANN Bylaws up until a Framework of Interpretation for the actual Human Rights Bylaw is published.)

Comment [62]: Unclear why some text is underlined.

- Including the following in Work Stream 2 Activities

The CCWG-Accountability identified several work areas that it recommends should be undertaken as part of Work Stream 2 in order to fully operationalize ICANN's commitment to Human Rights:

- Development of a Framework of Interpretation for the Human Rights Bylaw
- Consider which specific Human Rights conventions or other instruments should be used by ICANN in interpreting and implementing the Human Rights Bylaw
- Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfil its commitment to Human Rights
- Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process
- Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC)
- Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out
- Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

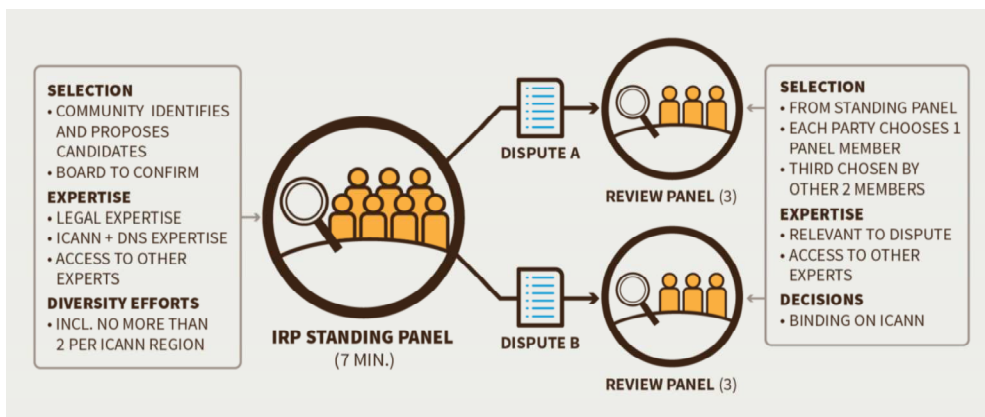
Relevant Annexes

- Annex 06 – Details on Recommendation #6: Reaffirming ICANN's commitment to respect internationally recognized Human Rights as it carries out its mission

Recommendation #7: Strengthening ICANN's Independent Review Process

The overall purpose of the Independent Review Process (IRP) is to ensure that ICANN does not exceed the scope of its limited technical mission and complies with both its Articles of Incorporation and **Bylaws**.

Comment [63]: Consider qualifying in the graphic that decisions would be "Generally" binding on ICANN (as correctly described in the text).



The CCWG-Accountability recommends that the existing Independent Review Process be modified to:

Have a standing judicial/arbitral panel: Tasked with reviewing and adjudicating complaints lodged by individuals, entities, and/or the community who have been materially harmed by ICANN’s action or inaction in violation of the Articles of Incorporation and/or Bylaws.

Composition of Panel and Expertise: Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration. Panelists should also possess expertise, developed over time, about the DNS and ICANN’s policies, practices, and procedures. At a minimum, panelists should receive training on the workings and management of the domain name system. Panelists must have access to skilled technical experts upon request. In addition to legal expertise and a strong understanding of the DNS, panelists may confront issues where highly technical, civil society, business, diplomatic, and regulatory skills are needed. **To the extent that individual panelists have one or more of these areas of expertise, the process must ensure that this expertise is available upon request.**

Comment [64]: Unclear what this sentence means: if individual panelists have the expertise, are they to be on the panel, or they will be available for consultation by the panel?

Standard of Review: The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on their own independent interpretation of the ICANN Articles and Bylaws in the context of applicable governing law. The standard of review shall be an objective examination as to whether the complained-of action exceeds the scope of ICANN’s Mission and/or violates ICANN’s Articles and Bylaws. Decisions will be based on each IRP panelist’s assessment of the merits of the claimant’s case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts

Be more accessible: Any person/group/entity “materially affected” by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. The CCWG-Accountability requires also giving the Empowered Community the right to have standing with the IRP

Be more affordable: The CCWG-Accountability recommends that ICANN would bear all the administrative the costs of maintaining the system (including Panelist salaries), while each party should bear the costs of their own legal advice. The Panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access, for example by access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded from utilizing the process. Details of IRP procedure rules will be identified by a subgroup of the Cross-Community Working Group. A community Independent Review Process would be completely subsidized by ICANN

Result in a binding decision that an action/failure to act complied or did not comply with ICANN’s Articles of Incorporation and/or Bylaws: To the extent permitted by law, the Independent Review Process decisions would be binding on ICANN. The powers of the Independent Review Process are strictly limited to confirming or rejecting ICANN’s decisions; it has no mandate to enforce specific outcomes of these decisions.

It is important to note that the ccTLD Delegations and Redelegations as well as Numbering resources are excluded from the IRP at their respective SO's request. The ccNSO will be undertaking work to consider how an appeal mechanism could apply to the Delegation and Revocation of ccTLDs.

As requested by the CWG-Stewardship, the Community can use the Independent Review Process to challenge a decision by the Board not to implement a recommendation of the IANA Function Review team.

Comment [65]: Use "re-delegation" elsewhere. Is this the same thing?

Comment [66]: Change to "Empowered Community".

Comment [67]: Clarify what the standard of review is for these decisions. Clarify whether it is contemplated that the IRP would cover actions (inactions) of Post-Transition IANA. Clarify that IFR team recommendations require community approval before the community can challenge the Board's refusal not to implement (per footnote above and CWG proposal).

The CCWG-Accountability's enhancements to the Independent Review Process ensure that the Independent Review Process will not be empowered to circumvent the bottom-up, multistakeholder-driven nature of ICANN's processes.

Detailed Recommendations

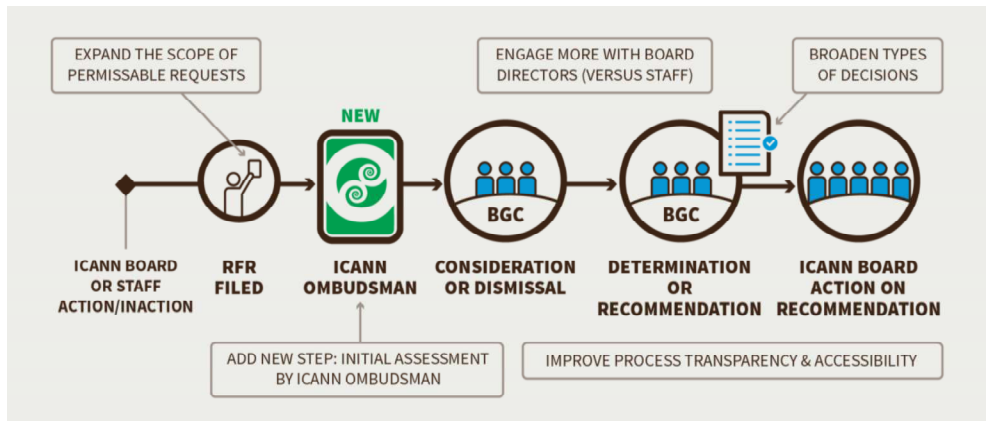
The CCWG-Accountability recommends:

- Modifying the Fundamental Bylaws to implement the following modification to the IRP process:
 - Including a standing judicial/arbitral panel
 - Putting together a Panel composed of experts in various fields
 - Standard of Review
 - Making the Independent Review Panel more accessible
 - Making the Independent Review Panel more affordable
 - Ensuring that the process Results in a binding decision
 - Ensuring that the process does not circumvent the bottom-up, multistakeholder-driven nature of ICANN's processes

Relevant Annexes

- Annex 07 – Details on Recommendation #7: Strengthening ICANN's Independent Review Process

Recommendation #8: Improving ICANN's Request for Reconsideration Process



Comment [68]: Consider defining “RFR” and “BGC”.

ICANN’s current Request for Reconsideration process is a prominent feature of its appeals mechanisms. The RFR is an internal process to ICANN overseen by the Board Governance Committee where decisions by the Board that affect a party can be appealed. If the request is found to have merit, the Board Governance Committee could recommend that the Board review its decision.

The CCWG-Accountability proposes a number of key reforms to ICANN’s Request for Reconsideration process to increase its effectiveness, whereby the ICANN Board of Directors is obliged to reconsider a recent decision, action or inaction by ICANN’s Board or staff.

The CCWG-Accountability recommends the following enhancements to the current Request for Reconsideration Process:

- Expanding the scope of permissible requests to include actions or inactions by Board or ICANN staff that contradict established policy, ICANN’s Mission, Commitments, or Core Values
- Extending the timeframe for filing a Request for Reconsideration from 15 days to 30 days
- Focusing on having the ICANN Ombudsman perform the initial assessments of Reconsideration Requests instead of ICANN’s Legal Department
- Broadening the types of decisions, and providing more transparency in the dismissal process while also providing the Board with reasonable right to dismiss frivolous requests
- Engaging more with the Board Directors instead of with ICANN staff
- Providing general transparency enhancements to the Request for Reconsideration request evaluations, Board discussions and rationales for dismissal

Comment [69]: For these types of actions/inactions that could constitute a violation of the Articles or Bylaws, clarify whether the Reconsideration Request process must be pursued prior to initiating an IRP (i.e., whether the Reconsideration Request process is a mandatory escalation path to an IRP). Will actions/inactions of PTI be subject to this process?

Comment [70]: How does the timing work when the community wants to initiate a Reconsideration Request (assuming escalation is required)?

Detailed Recommendations

The CCWG-Accountability recommends:

- Modifying Article IV, Section 2 of ICANN’s Bylaws to reflect the following changes:
 - Expanding the scope of permissible requests
 - Extending the time period for filing a Request for Reconsideration from 15 to 30 Days
 - The grounds for summary dismissal have been narrowed
 - The ICANN Board of Directors must make determinations on all requests (rather than a committee handling staff issues)
 - ICANN’s Ombudsman should make the initial substantive evaluation of the requests
 - Recordings/transcripts of board discussion should be posted
 - Provision of a rebuttal opportunity to the BGC’s final recommendation
 - Hard deadlines should be added to the process, including an affirmative goal that final determinations of the Board be issued within 60 days from request filing wherever possible, and in no case more than 120 days from the date of the request.

Comment [71]: Should be “to” rather than a dash.

Comment [72]: See comment above re community initiation.

Comment [73]: Consider clarifying, e.g., “requests relating to the Board and staff”.

Comment [74]: Consider clarifying.

Relevant Annexes

- Annex 08 – Details on Recommendation #8: Improving ICANN’s Request for Reconsideration Process

Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws



Based on stress test analysis, the CCWG-Accountability recommends incorporating the reviews specified in the Affirmation of Commitments, a 2009 bilateral agreement between ICANN and the NTIA, in ICANN’s Bylaws. This will ensure that Community Reviews remain a central aspect of ICANN’s accountability and transparency framework.

Specifically, the CCWG-Accountability proposes to:

1. Add the relevant ICANN commitments from the Affirmation of Commitments to ICANN Bylaws.
2. Add the four review processes specified in the Affirmation of Commitments to ICANN Bylaws. Including:
 - Ensuring accountability, transparency and the interests of global Internet users
 - Enforcing its existing policy relating to WHOIS, subject to applicable laws
 - Preserving security, stability and resiliency of the Domain Name System (DNS)
 - Promoting competition, consumer trust, and consumer choice

In addition, to support the common goal of improving the efficiency and effectiveness of Reviews, ICANN will publish operational standards to be used as guidance by community, staff and Board in conducting future Reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet community's needs.

Detailed Recommendations

The CCWG-Accountability evaluated the contingency of ICANN unilaterally withdrawing from the Affirmation of Commitments (AOC) (see information about Stress Test 14 in the section, "Detailed Explanation of Recommendations" section below). To ensure continuity of these key commitments, the CCWG-Accountability proposes the following two accountability measures:

Preserve in ICANN Bylaws any relevant ICANN commitments from the AOC.³

- This includes Sections 3, 4, 7 and 8 of the AOC. Sections 3, 4, 8a and 8c would be included in the Core Values section of the ICANN Bylaws.
- The content of Section 8b of the AOC is already covered by ICANN Bylaws Article XVIII. Article XVIII is to remain a regular bylaw and not to be moved into the Core Values section with material derived from AOC sections 8a and 8b.
- Section 7 of the AOC would be inserted as a new Section 8 in Article III, Transparency, of the ICANN Bylaws.

Bring the four AOC review processes into ICANN's Bylaws.

The following four reviews will be preserved in the Reviews section of the Bylaws:

- Ensuring accountability, transparency and the interests of global Internet users
- Enforcing its existing policy relating to WHOIS, subject to applicable laws
- Preserving security, stability and resiliency of the Domain Name System (DNS)

³ Sections 3, 4, 7 and 8 of the AOC contain relevant ICANN commitments. The remaining sections in the AoC are preamble text and commitments of the U.S. Government. As such, they do not contain commitments by ICANN, and cannot usefully be incorporated in the Bylaws.

- Promoting competition, consumer trust, and consumer choice

After these elements of the AOC are adopted in the ICANN Bylaws, the following should take place:

- ICANN and the NTIA should mutually agree to terminate the AOC.
- New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the AOC to not disrupt any AOC Reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned AOC review should not be deferred simply because the new rules allow up to 5 years between review cycles. If the community prefers to do a review sooner than 5 years from the previous review, that is allowed under new rules.
- To support the common goal of improving the efficiency and effectiveness of Reviews, ICANN will publish operational standards to be used as guidance by community, staff and Board in conducting future Reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet community’s needs.

IANA Function Review & Special IANA Function Review

- A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws. Specifications will be based on the requirements detailed by the CWG-Stewardship. It is anticipated that the Bylaw drafting process will include the CWG-Stewardship.

Relevant Annexes

- Annex 09 – Details on Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws

Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees

ICANN Supporting Organizations and Advisory Committees constitute a key component of the ICANN ecosystem. The CCWG-Accountability recommends that a review of Supporting Organizations’ and Advisory Committees’ accountability mechanisms be included as part of these entities’ existing periodic Structural Reviews of (see article IV, section IV of ICANN’s Bylaws).

Comment [75]: Delete.

Structural Reviews are intended to review the performance and operation of ICANN Supporting Organizations and Advisory Committees. The CCWG-Accountability expects that consideration of accountability issues will be added to Structural Reviews as part of Work Stream 1.

Comment [76]: Recommends?

Concerns

During the Public Comment Period on the ‘CCWG-Accountability Second Draft Proposal regarding Work Stream 1 Recommendations’, the community presented several concerns and

suggestions on how the accountability of the Supporting Organizations and Advisory Committees could be enhanced. As the focus of Work Stream 1 recommendations is to ensure that the accountability enhancements necessary for the IANA Stewardship Transition to occur are in place, the CCWG-Accountability will discuss other aspects of this topic as part of Work Stream 2.

Detailed Recommendations

Having reviewed and inventoried the existing mechanisms related to Supporting Organization and Advisory Committee accountability, it is clear that current need to be enhanced in light of the new responsibilities associated with the Work Stream 1 proposals.

The CCWG-Accountability recommends:

In Work Stream 1, include the review of Supporting Organization and Advisory Committee accountability mechanisms into the independent periodical structural reviews performed on a regular basis.

- These reviews should include consideration on the mechanisms that each SO/AC, as the case may be, has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
- This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:
- *The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

In Work Stream 2, include the subject of Supporting Organization and Advisory Committee accountability as part of the Accountability and Transparency Review process

- Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and if viable, and undertake the necessary actions to implement it.
- Develop a detailed working plan on enhancing Supporting Organization and Advisory Committee accountability.
- Assess whether the Independent Review process would also be applicable to Supporting Organization and Advisory Committee activities as well.

Comment [77]: Since not defined here, a little confusing for the reader.

Relevant Annexes

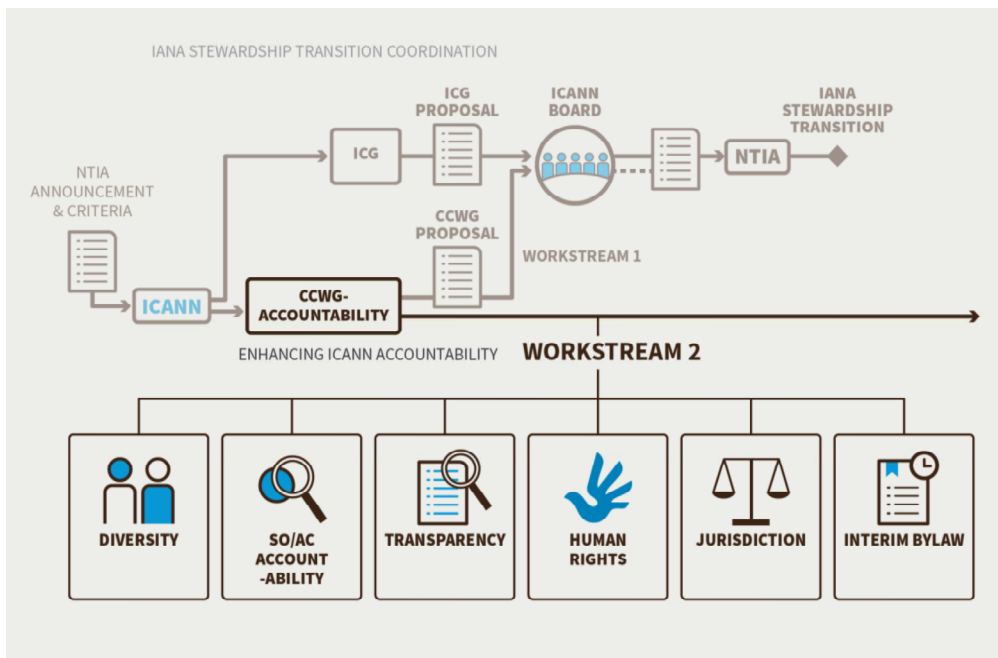
- Annex 10 – Details on Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees

Recommendation #11: Committing to further accountability work in Work Stream 2

The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.

As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms and processes and to refine the operational details associated with some of its recommendations for Work Stream 1.

The CCWG-Accountability expects to begin refining the scope of Work Stream 2 during the upcoming **ICANN 55 Meeting** taking place in March 2016. It is intended that Work Stream 2 will be completed by end of 2016.



The community raised concerns that, post-Transition, there may be a lack of incentive for ICANN to implement the proposals arising out of Work Stream 2. To bridge this gap, the CCWG-Accountability recommends that the ICANN Board adopts an interim Bylaw that would commit ICANN to implementing the CCWG-Accountability Work Stream 2 recommendations. In a [letter](#) dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.

Detailed Recommendations

The CCWG-Accountability recommends that the Board adopt an interim Bylaw that would commit ICANN to implementing the CCWG-Accountability recommendations, and task the group with creating further enhancements to ICANN's accountability including, but not limited to, the Work Stream 2 list of issues:

- Improving ICANN's transparency with a focus on:
 - Enhancements to ICANN's existing Documentary Information Disclosure policies (DIDP)
 - Transparency of ICANN's interactions with governments
 - Improvements to the existing Whistleblower policy
- Considering improvements to ICANN's standards for diversity at all levels
- Addressing jurisdiction related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw

In addition, the CCWG-Accountability foresees making refinements to some of the operational details of its Work Stream 1 recommendations, including but not limited to:

- Establishing rules of procedure for the enhanced Independent Review Process
- Further enhancing the accountability of ICANN's Supporting Organizations and Advisory Committees in addition to Work Stream 1 recommendations that call for incorporation of this parameter into existing structural reviews of these entities
- Defining the practical modalities for the ICANN Community Forum

Relevant Annexes

- Annex 11 – Details on Recommendation #11: Committing to further accountability work in Work Stream 2

Conclusion

The CCWG-Accountability believes that the set of accountability mechanisms it has proposed, outlined above, empowers the community through the use of the bottom-up, multistakeholder model by relying on each of the stakeholders within ICANN's existing and tested community structures. Furthermore, the CCWG-Accountability believes that this community-driven model is appropriate for replacing the accountability inherent in ICANN's historical relationship with the U.S. Government.

Community Powers are an effective replacement of the safety net provided by the U.S. Government's current IANA stewardship role

The CCWG-Accountability believes that the five Community Powers, as a package, can effectively replace the safety net that the U.S. Government has provided to date as part of its oversight role. It is recommended that these powers need to be enforced by a court of law only as a last resort. The CCWG-Accountability has based its recommendations on existing structures and recommends:

- Considering the entire community as ICANN's Empowered Community
- Ensuring no part of the community has more rights than another part, either by having the ability to push through its individual interests or by blocking community consensus. The CCWG-Accountability has ensured that no Community Powers or statutory rights can be exercised singlehandedly
- Ensuring the community can only jointly exercise its powers using a consensus-based model

Comment [78]: SOs and ACs?

The CCWG-Accountability believes that the recommended accountability frameworks provided in this proposal meet the requirements of the Domain Names Community and the IANA Stewardship Transition proposal

The CCWG-Accountability will seek confirmation from the Cross Community group that developed the IANA Stewardship Transition that this proposal meets its requirements.

The CCWG-Accountability believes that its proposal also meets the requirements the NTIA published for the transition and will present its analysis of this in the full proposal.

Comment [79]: Consider: "presents its analysis of this in the Annexes."

List of Appendices

- Annex 1: Recommendation #1: Establishing an Empowered Community for enforcing Community Powers
- Annex 2: Recommendation #2: Empowering the community through consensus: engage, escalate, enforce
- Annex 3: Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'
- Annex 4: Recommendation #4: Ensuring community involvement in ICANN decision-making: five new Community Powers
- Annex 5: Recommendation #5: Changing aspects of ICANN's Mission, Commitments and Core Values
- Annex 6: Recommendation #6: Reaffirming ICANN's commitment to respect internationally recognized Human Rights as it carries out its mission
- Annex 7: Recommendation #7: Strengthening ICANN's Independent Review Process
- Annex 8: Recommendation #8: Improving ICANN's Request for Reconsideration Process
- Annex 9: Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN's Bylaws
- Annex 10: Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees
- Annex 11: Recommendation #11: Additional changes to ICANN's Bylaws suggested by stress testing (ST18)
- Annex 12: Recommendation #12: Committing to further accountability work in Work Stream 2
- Summary of key recommendations, with summary of changes between PC2 and current version
- Documentation of how the proposal meets the CWG-Stewardship Requirement
- Documentation of how the proposal meets the NTIA criteria
- Background & Methodology
- Charter
- Initial Work to Determine Focus of the WS 1 Proposal
- Legal Sub team Methodology
- CWG-Stewardship Dependencies
- Legal documents
- Affirmation of Commitments
- Bylaws framework - Principles
- Bylaws framework - AoC
- Full set of stress tests
- Glossary
- Documenting CWG-Stewardship Requirements
- Documenting NTIA criteria
- Documenting process of building consensus
- Engagement

- Participation summaries incl. statistics
- Minority views
- Documenting public consultations
- Links to public comment summaries