January 18, 2016

Comments on Review of CCWG-Accountability Draft Annexes 2 and 12

Draft Annexes	Suggested Edits
Global	Replace "Icann" with "ICANN"
Global	Consider replacing and/or supplementing the sections discussing "Changes from the Second Draft Proposal on Work Stream 1 Recommendations" with sections discussing changes from the Third Draft Proposal (where appropriate)
Global	Consider conforming references to "CWG-Stewardship proposal" and "IANA Stewardship Transition proposal" where appropriate; terms are currently used interchangeably
Global	After a name has been selected for the sole designator unincorporated association, references to "Sole Designator," "Empowered Community" and "community" will need to be updated as appropriate; the name selected should be the only term used to refer to the sole designator unincorporated association.
Annex 2: Recommendation #2: Empowering the Community Through Consensus: Engagement, Escalation, Enforcement *(Paragraph numbers refer to the 2ⁿᵈ reading conclusions draft)*	
Generally	If escalation of the inspection right is required prior to enforcement, add to list of matters for which the community may begin an escalation process and specify what level of consensus support is required (Paragraph 21 of Annex 1 is unclear whether escalation is required prior to enforcement or whether the right can be enforced directly: "initiate an escalating community decision-making process to enforce the demand on the Board"). The CWG-Stewardship comment letter stated that the final version of the CCWG proposal should provide that the right to reject ICANN Board decisions relating to IANA function reviews (including the triggering of PTI separation) can be exercised an unlimited number of times; this is not specified in the draft annex.
Paragraphs 1, 4, 5	"[T]his recommendation would formally require the ICANN Board to undertake an extensive engagement process before taking action on any of the following… • Approving any modifications to Standard or Fundamental Bylaws or the Articles of Incorporation… • ICANN Board decisions relating to reviews of IANA Functions, including the triggering of any Post-Transition IANA (PTI) separation process"

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Paragraphs 1, 5, 45	"The community may begin an escalation process to… • Reject ICANN Board decisions relating to reviews of IANA Functions, including the triggering of <u>any</u> PTI separation <u>process</u>."
Paragraphs 2, 7	"One of the most standardized versions of the escalation process is required for all Community Powers to "reject," remove individual Nominating Committee-<u>nominated</u>~~appointed~~ Board Directors, or recall the entire Board."
Paragraph 3	"4. An open one<u>- to</u> <u>–</u> two-day Community Forum is organized for any interested stakeholder in the community to participate."
Paragraphs 3, 13, 14	Inconsistency between providing that the Community Forum "will not make decisions nor seek consensus" (with the decision whether to advance the petition up to the SOs/ACs to determine after the Forum) and contemplating that the Empowered Community and ICANN Board may "resolve the issue in the Community Forum" If issues can be resolved between the Empowered Community and ICANN Board before or at the Community Forum, clarify how resolution occurs (e.g., does this require consensus support of participants? If so, what thresholds apply?)
Paragraphs 4, 19-22	Clarify that the Empowered Community can seek enforcement by a court of the statutory power to remove directors, and that there is no requirement to use the IRP or recall the entire Board to enforce this power Clarify that the Empowered Community can submit a Request for Reconsideration, the process that must be followed to submit such a Request (e.g., escalation process) and what decisional thresholds apply
Paragraph 8	"The power to approve changes to Fundamental Bylaws <u>and the Articles of Incorporation</u> and remove individual Directors nominated by an SO or AC contain special features…"
Paragraph 9	"To exercise any of the rejection powers, such <u>as</u> rejection of a budget, the 21-day period begins at the time the Board publishes its vote on the element <u>that may</u> ~~to~~ be rejected."
Paragraph 11	"To petition for a <u>Community Forum</u> ~~community forum~~ to consider the recall of the entire ICANN Board requires three SO<u>s</u>/ACs to support the petition."
Paragraph 13	"The Forum is to be held within 21 days of the successful petition <u>to hold a Community Forum</u> being made."
Paragraphs 13, 21	Consider clarifying whether "representatives of the ICANN Board" refers to ICANN Directors
Paragraph 21	Clarify how the Empowered Community "accepts the results from the mediation phase" (e.g., does this require consensus support? If so,

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	what thresholds apply?)
Paragraph 22	"• If the requisite threshold of community support is achieved, the Empowered Community will instruct the Sole Designator to 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. • The Sole Designator Empowered Community may legally enforce the power to recall the entire Board in court."
Paragraph 32	"4a. Remove an individual Board Director nominatedappointed by an SO or AC (and appointed by the Sole Designator)"
Paragraph 33, 34	"Replace "appointing AC/SO" with "nominating AC/SO""
Paragraph 35	"4b. Remove an individual Board Director nominatedappointed by the Nominating Committee (and appointed by the Sole Designator)"
Annex 12: Recommendation #12: Committing to Further Accountability Work in Work Stream 2 (*Paragraph numbers refer to the 2nd reading conclusions draft*)	
Summary	"5. Agreed to incorporate PEG Advisor input to strengthen the diversity requirement"
Paragraph 4	"To prevent this scenario, the CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider implementing the CCWG-Accountability Work Stream 2 recommendations…"
Paragraph 5	"Considering enhancements to the Ombudsman's role and function" "wcommunity"
Paragraph 9	"The CCWG Accountability acknowledges the specific Aadvice received ..." "Maximally participatory and transparent deliberations by all affected stakeholders are necessary in order to capture the diversity of views…"
Paragraph 16	"As part of the Work Stream 2"
Paragraph 22	"ICANN is a nonprofit public benefit corporation incorporated in California and subject to applicable California state laws, applicable U.S. federal laws and both state and federal court jurisdiction."
Paragraph 24	"ccTLDs managers"

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Paragraphs 24, 34	Clarify references to "decisions" to also include actions/inaction
Paragraph 28	"Recommendation #8: ~~Fortifying~~ Improving ICANN's Request for Reconsideration Process"
Paragraphs 30, 34	"…~~the~~ ~~W~~work ~~S~~stream 1"
Paragraph 31	Delete (as this paragraph is blank)
Paragraph 33	"Also, enshrining the process and conditions within a Bylaw (even if it~~'s~~ is a transitional provision~~article~~)…"
Paragraph 38	"Refinement of Proposals by Subgroups, under supervision of the CCWG-Accountability or other CCWG as appropriate" Clarify whether reference in the last bullet should be to ICANN 59 (instead of ICANN 58)