5.6 Power: Recalling the entire ICANN Board

240 There may be situations where removing individual ICANN directors is not viewed~~seen~~ as a sufficient accountability remedy for the community: where a set of problems have become so entrenched that the community wishes to signal its lack of confidence in the Board by considering a recall of the entire ICANN Board in one decision.

241 Beyond the power set out above in Section 5.5 to remove individual directors, this power would allow the community to consider and cause the recall of the entire ICANN Board. The community would initiate use of this power on the petition of two-thirds of the ~~sum of~~ SOs and ACs participating in the Community Mechanism as Sole Member of ICANN, with at least one SO *and* one AC petitioning. ~~Again, I~~implementation of this community power would be set out in Bylaws requiring petition and notice procedures along the following general lines:

- A petition (a) sponsored by at least one SO and one AC (indicated by signature), (b) setting forth the reasons for requesting that the CMSM consider recall of the entire Board, and (c) supported by signed statements by two-thirds of the SOs and ACs participating in the CMSM indicating their interest in considering the petition (a "Valid Petition") is delivered to ICANN's Board of Directors and [Corporate Secretary/General Counsel];
- Upon receipt of the Petition, within [7] calendar days the [Corporate Secretary/General Counsel] must either
  - provide notice to the sponsoring and supporting SOs and ACs of any issue identified with respect to the validity of the Petition, with an unlimited period to cure; or
  - provide notice to all SOs and ACs participating in the CMSM that (a) a Valid Petition has been received, including a copy of the Valid Petition, (b) setting forth a Consultation Date within [30] days and a Voting Date [5] business days thereafter, and (c) calling for all SOs and ACs that have the right to require the CMSM to select one or more directors to notify the [Corporate Secretary/General Counsel] by the Consultation Date of the person[s] it has selected to serve on an Interim Board (for only so long as necessary until a replacement election could be held) should a vote be held in favor of recall of the entire Board, such notice to include a signed statement from the candidate of their willingness to serve and any other information that the Bylaws require Board candidates to provide prior to election.
    - A member of the Board that is subject to the recall vote is not eligible to serve on the Interim Board.
- ~~decision will be accompanied through a further step to be developed in conjunction with legal counsel.~~

242 After a Valid ~~p~~ Petition is raised, the Consultation Date would provide ~~re would be~~ a set period of time [30 calendar days] for SOs / ACs to individually and collectively deliberate and discuss whether the ~~removal~~ recall of the entire ICANN Board is warranted under the circumstances. On the Consultation Date, a formal opportunity for the SOs and ACs to discuss and collectively deliberate would be held [in person or through electronic means (telephone and Adobe connect).] Each SO and AC would then have [7] calendar days, to follow its own ~~following its~~ internal processes~~,~~ to ~~would~~ decide how to vote on the matter, with its vote certified in writing by the Chair of the SO/AC to the [Corporate Secretary/General Counsel] and copied to the ICANN Board and all participating SOs and ACs. ~~Again, implementation of this community decision will be accompanied through a further step to be developed in conjunction with legal counsel.~~

243 It would be preferable for a decision of this sort to be the result of cross-community consensus. Therefore~~Where this consensus is not apparent~~, a suitably high threshold for the exercise of this power, **[75%]** of all the voting power ~~support~~ available within the CMSM~~community mechanism~~ [insert reference to appropriate section/paragraph] would have to be cast in favor of recall of the entire Board for the recall to be effective.~~to exercise this community power.implement it.~~ Requiring a majority of voting power rather than a majority of votes cast~~This~~ ensures that non-participation does not lower the threshold required to remove the Board. In this instance, abstention and non-participation have the same impact and effectively count as a vote against the action.

244 This threshold was chosen to stop any particular SO or AC from being able to prevent the recall of the Board, but to be as high as possible without allowing that to occur. **[Note the need to reconsider precise threshold once the number of participating SOs/ACs in the CMSM and their voting power is decided.]** ~~The requirement on all recordable support/opposition to be counted was to avoid non-participation reducing the effective threshold for decision.~~

~~245 An alternative option for the threshold is to set it at 80%. This alternative is being considered, but as it would require a unanimous vote by the community, save for one SO or AC. Such a threshold is seen as too high.~~

246 It is expected that recall of the entire ICANN Board will rarely, if ever, occur. Should it occur, however, there must be a Board immediately in place to serve as a fiduciary caretaker for ICANN until an election can be held for a Replacement Board. As previewed in Paragraph [241], in the event that the threshold vote is met for a recall of the entire Board, simultaneous with that vote, members of the Interim Board will be selected automatically as the group of candidates that each SO and AC was required to provide on the Consultation Date and the Interim Board would replace the ICANN Board upon the determination of the voting results. ~~Ongoing work in the CCWG Accountability will flesh out how to implement this community decision through the ICANN Members~~community process, ~~and how to deal with transitional matters raised.~~, including at least the following: Since the President serves on the Board by virtue of his or her executive position and is not subject to election/selection by the CMSM,

recall of the entire Board would not affect the President's position either as President or as a member of the ICANN Board.

- The Bylaws shall provide that the Interim Board will be in place only so long as required for the selection/election process for the Replacement Board and in no event longer than [120 days]. [Consideration should be given as to how to expedite the selection of a Replacement Board.]

  - In selecting a Replacement Board, SOs and ACs and the Nom Com may, if they so choose, select members of the Board that was subject to recall and/or members of the Interim Board. Service on the recalled Board or the Interim Board does not disqualify service on the Replacement Board.
  - The directors selected for the Replacement Board will step into the terms that were vacated by the recalled directors. Each SO and AC and the Nom Com shall determine which of the terms the replacement directors shall fill. In this way there will be no disruption to the staggered terms of the ICANN Board.

- The Interim Board will have the same powers and duties as the Board it replaces because it is critical to the stability of ICANN (and required by law) that at all times there is a fiduciary in place. However, the Bylaws may provide that absent compelling circumstances it is the expectation that the Interim Board will consult with the CMSM before taking any action that would be a material change in strategy, policies or management, including without limitation, replacement of the President. ~~Following the receipt of public comments and further WP1 discussion, the CCWG will now work to develop a process for establishing a "Caretaker Board" to act in an interim capacity while the community pursues its normal ICANN Board director appointment process. The process for establishing a Caretaker Board must be clearly defined to minimize instability.~~
- Under the CMSM reference model, the vote of the SOs and ACs becomes the action of the CMSM without any further Board action; the Interim Board would be in place as of the time that it is determined that the community vote satisfied the threshold for recall, and both the CMSM and the Interim Board would have the power to assert their rights in relation to that vote.

~~Such definition will address concerns surrounding the potentially limited pool of Caretaker Board candidates and will ensure a transition phase that does not rely on a carryover of recalled Board members. It will also enumerate the specific Board powers to be given to a Caretaker Board.~~

~~The CCWG will also address enforcement procedures to be used in the event a future ICANN Board rejects the community's decision to invoke this power.~~
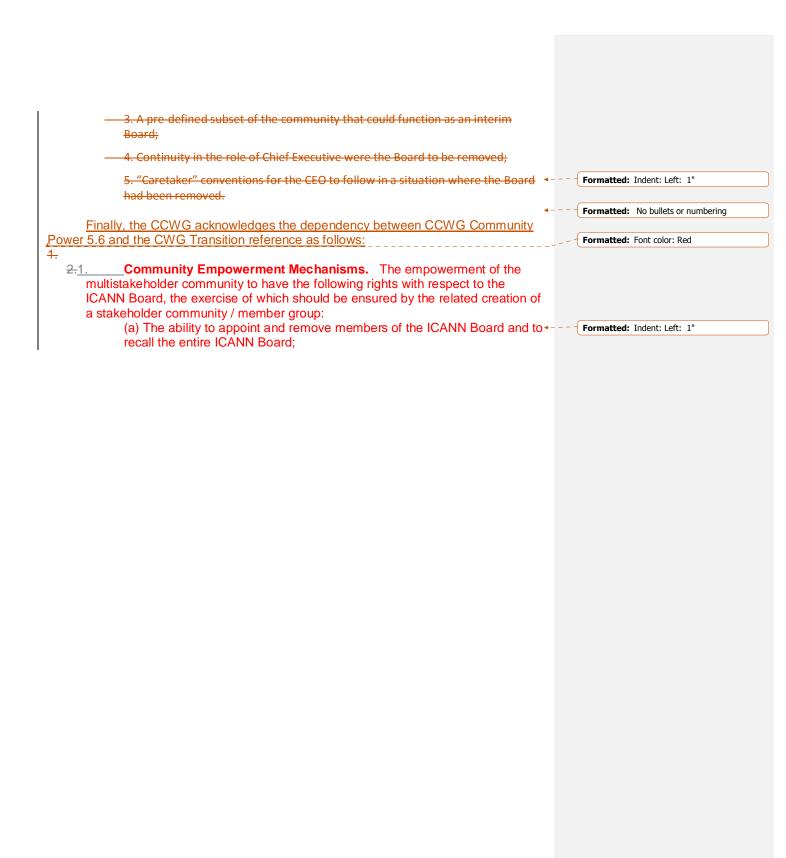
~~1. A phase of "caretaker" behavior by the outgoing Board while new members are elected;~~

~~2. A need to elect alternate Board Directors in each Board selection process;~~

3. A pre-defined subset of the community that could function as an interim Board;

4. Continuity in the role of Chief Executive were the Board to be removed;

5. "Caretaker" conventions for the CEO to follow in a situation where the Board had been removed.

Finally, the CCWG acknowledges the dependency between CCWG Community Power 5.6 and the CWG Transition reference as follows:

1. **Community Empowerment Mechanisms.** The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:

(a) The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;

247 It should be noted that legal advice has confirmed that a caretaker Board mechanism was achievable.

248 **QUESTIONS AND OPEN ISSUES:**

249 *15a) Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability?*

250 *15b) Do you agree with the list of requirements for this recommendation?* If not, please detail how you would recommend amending these requirements.