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Comments on Review of CCWG-Accountability Draft Annexes 1 (Inspection Rights) and 4 (Budget)

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 1: Recommendation #1: Establishing an Empowered Community for Enforcing Community Power *(Paragraph numbers refer to the 2nd reading conclusions draft on inspection rights)*	
Generally	"SOs/ACs" "SO(s)/AC(s)"
Section 1	"Under California law and the current Bylaws of the Internet Corporation for Assigned Name and Numbers (ICANN), the ICANN Board has the final responsibility for the activities and affairs of ICANNall decisions." "To manage the process of enforcement on the community's behalf, tThe CCWG-Accountability recommends creating a new entity that will act at the direction of the community to exercise and enforce community powers…" "As permitted uUnder California law, the Empowered Community only has will have the legally guaranteed power (statutory right) to appoint and remove ICANN Board Directors (whether an individual Director or an aggregate the entire Board). Other powers, such as the power to approve or reject amendments to the Articles and Bylaws may be provided to a Sole Designator. The CCWG–Accountability accepts that its statutory power will be limited as described above and that this only having the above statutory power is sufficient given:…" "The right of inspection is granted to the SOs and ACs Sole Designator, as outlined in the California Corporations Code 6333, as a

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	Fundamental Bylaw, as well as the right of investigation."
Paragraph 1	"The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce community powersmanages the process of enforcement on the community's behalf: This entity will take the form of athe Sole Designator model, which has legal standing as a California-based unincorporated association" "The SOs and ACs Empowered Community will be granted rights of inspection as outlined in California Corporations Code 6333 and rights of investigation."
Paragraph 5	"The power to approve changes to Fundamental Bylaws (CWG-Stewardship dependency) and changes to the Articles of Incorporation" "The power to launch a community Independent Review Process (along with an appeal mechanism for issues relating to the IANA functions, CWG-Stewardship dependency)." Consider adding the new rights of inspection and investigation to the bullet list of Objectives
Paragraph 7	"The CCWG-Accountability's "First Draft Proposal on Work Stream 1 Recommendations" proposed a "Supporting Organization/Advisory Committee Council Membership Model" as the reference model for the community enforcement mechanism."
Paragraph 11	"Under California law, Tthe Sole Designator only has will have the statutory power to appoint and remove individual ICANN Board Directors or the entire Board which is a requirement of the CCWG-Accountability and the CWG-Stewardship. This removes the concerns related to unintended and unanticipated consequences of the additional statutory powers associated with a member. Other powers, such as the power to approve or reject amendments to the Articles and Bylaws may be provided to a Sole Designator."
Paragraph 12	"…the CCWG-Accountability recommends that this right be granted to the SOs and ACs Sole Designator in the Fundamental Bylaws."
Paragraph 16	"Under California law, tThe Sole Designator has will have the right to appoint and remove ICANN Board Directors, whether individually or the entire Board."
Paragraph 18	"The CCWG–Accountability accepts that its statutory power will be limited as described above and that this only having the above statutory power is sufficient given:… **1. All of the recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws and protected from any changes without Empowered Community approval.** • "The ICANN Board would be in breach of following its own Bylaws if…" **2. The Empowered Community has legal standing as a California-based unincorporated association.** • The members of the unincorporated association would be Sole Designator will act as directed by participating representatives of

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	~~ICANN's~~ SOs and ACs ~~that wish to participate~~. **3. The Empowered Community and the rules by which it is governed will be constituted as a Fundamental Bylaw along with provisions _in the Articles of Incorporation and Bylaws_ to protect it from any changes without its own approval.** **4. The Articles of Incorporation will be amended to clarify that the _global public interest_~~interests of the corporation~~ will be determined through a bottom-up, multistakeholder process.** • Note: Legal counsel indicated that the Articles of Incorporation could be amended to ensure that the ICANN Board must consider the community's interpretation of the 'global public interest' 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. The Articles will be amended to clarify that the _global public interest_~~interests of the corporation~~ will be determined through a bottom-up, multistakeholder process."
Paragraph 20	"In addition to the statutory right that ~~granted to a~~ _the Sole_ Designator _will have_ ~~under California law~~ _and the new community powers described in Recommendation #4_, the CCWG-Accountability recommends including in the ICANN Bylaws the right for SOs or ACs to inspect as outlined in California Corporations Code 6333, although this specific article reference would not be mentioned in the Bylaws."
Paragraph 21	Clarify whether SOs/ACs are required to be Decisional Participants to enforce the inspection and/or investigation rights. Provide greater clarity around the process for enforcing inspection rights (i.e., whether an SO/AC requesting inspection would be required to follow escalation _and_ enforcement processes if the Board refuses the request, or whether it can proceed directly to enforcement; the current language is unclear: "initiate an escalating community decision-making process to enforce the demand on the Board.") If escalation is required prior to enforcement, specify what level of consensus support is required; consider replacing "requiring community consensus" with "requiring consensus support of the Empowered Community" "This _inspection_ right would include the accounting books and records of _ICANN_ ~~the corporation~~…" Replace "EC" with "Empowered Community" "SO_s_/ACs_through" "To address these concerns the CCWG-Accountability recommends the adoption of the following audit process~~–~~:"
Paragraph 25	Delete this paragraph, which was also deleted in Annex 2 (former Paragraph 62): "~~The CCWG also recommends that in a situation where use of a Community Power only attracts a decision to support or object to that power by four Decisional SOs or ACs, and the threshold is set at four in support (for Community Powers to block a budget, approve changes to Fundamental Bylaws or recall the entire ICANN Board), the power will still be validly exercised if three are in support and no more than one objects.~~" Renumber remaining paragraphs

3

Draft Annexes	Suggested Edits
Annex 4: Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers (*Paragraph numbers refer to the 2nd reading conclusions draft on budget*)	
Title	"~~Details on~~ Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers"
Section 1, Paragraph 1	"Reject Budgets or Strategic/Operating Plans"
Paragraph 4	"The Power to Reject ICANN~~'s~~ Budgets, IANA Budgets, or Strategic/Operating Plans."
Paragraph 10	"A community decision to reject a ~~B~~budget or a plan after it has been approved by the ICANN Board…" Delete this sentence, which may be confusing given the consensus requirement is already embedded in the escalation process described later in the annex: "~~The rationale for any community veto should be Consensus based.~~"
Paragraphs 13, 19	Discuss timing of the caretaker budget
Paragraph 14	"The Power to Reject ~~T~~the IANA Functions Budget"
Paragraph 20	The CWG-Stewardship comment letter noted that the CWG requires the CCWG proposal or the implementation process to address the timing of budget development; this does not appear to be addressed in the draft annex (although "budget review" is addressed in Paragraph 20, it is not clear whether the review process would encompass budget preparation)
Section 5	"The Power to Reject ICANN~~'s~~ Budgets or Strategic~~Strategy~~/Operating Plans and IANA Budgets directly meets the following CWG-Stewardship requirement: • ICANN Budgets and Strategic/Operating Plans and IANA Budgets: Community rights regarding the development and consideration of ~~the~~ ICANN Budgets, Strategic/Operating Plans and IANA Budgets…"

4