Cross Community Working Group
ACCOUNTABILITY (CCWG-ACCT)
DRAFT REPORT

ENHANCING ICANN ACCOUNTABILITY WORK STREAM 1 RECOMMENDATIONS
CCWG-ACCOUNTABILITY | APRIL 2015

Contents

Executive Summary

This proposal presents the outcome of Work Stream 1 and was the focus of the CCWG-Accountability the first five months of work (from December 2014 until June 2015). The CCWG has designed its work so that it may be coordinated with the timeline of the IANA Stewardship Transition. This proposal will be presented to the ICANN Board of Directors for transmission to NTIA along with the ICG assembled transition proposal.[1]

---

[1] After a meeting with the community at ICANN 52 in Singapore (February 2015), the Board issued a Statement on

1. Introduction and Background

This section includes an overview of the Enhancing ICANN Accountability & Governance process, and its foundation in the NTIA IANA Functions' Stewardship Transition.

Background on the NTIA IANA Functions' Stewardship Transition

On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked ICANN to convene a multistakeholder process to develop a proposal for the transition.

In making its announcement, 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.

The IANA Stewardship Transition Coordination Group (ICG) was formed in July 2014 to assemble and deliver through the ICANN Board to NTIA a transition proposal consistent with the key principles outlined in the NTIA announcement. The ICG is made up of 30 individuals representing 13 communities of both direct and indirect stakeholders of the IANA functions. Direct stakeholders are "direct customers" of the IANA functions, e.g. top-level domain registry operators, while indirect stakeholders are all those who benefit from performance of the IANA functions, e.g., businesses and end users.

In September 2014, the ICG published a Request for Proposals (RFP) to the three communities. The three operational communities with direct operational or service relationships with the IANA functions i.e. Domain Names, Number Resources and Protocol Parameters were asked to provide a formal response to the ICG regarding its community's use of the IANA functions, its existing, pre-transition arrangements, proposed post-transition oversight and accountability arrangements, and any anticipated transition implications.

Each of the three operational communities formed working groups to develop a proposal:
- Domain Names: Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship)
- Number Resources: Consolidated Regional Internet Registries (RIRs) IANA Stewardship Proposal Team (CRISP Team); and
- Protocol Parameters: IANAPLAN Working Group (IANAPLAN WG)

In January 2015, the ICG received a proposal from the Protocol Parameters community and a proposal from the Numbering Resources community; the Domain Names community – CWG- Stewardship continues to work on its proposal.

Following submissions from the three communities, the ICG will assess the respective outputs, assemble a complete proposal for the transition and provide numerous opportunities for additional input and comment.

Introduction to the Enhancing ICANN Accountability & Governance Process

As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to provide assurance that ICANN remains accountable in the absence of its historical contractual relationship with the U.S. Government, which has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.

Informed by community discussions held in March 2014 at ICANN's public meeting in Singapore, ICANN published a proposed process on Enhancing ICANN Accountability, with an opportunity for public dialogue and community feedback from 6 May – 27 June 2014, in addition to the comments received during the dedicated Enhancing ICANN Accountability session held on 26 June 2014 at the ICANN 50 meeting in London. The comments related to the development of the process were considered in the refinement of the second iteration of the process published on 14 August 2014. In response to community requests for additional time to review proposals and post questions and comments, ICANN provided an additional 21-day comment period from 6-27 September 2014.

The final Revised Enhancing ICANN Accountability: Process and Next Steps includes considering how ICANN's broader accountability mechanisms should be strengthened in light of the transition, including a review of existing accountability mechanisms such as those within the ICANN Bylaws and the Affirmation of Commitments.

Formation of the CCWG-Accountability

Following public comment periods and discussions on accountability, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened, designed and approved by a Drafting Team (DT) composed of five ICANN community groups. Further information, including document drafts and meeting transcripts of the Drafting Team that developed the CCWG-Accountability Charter (see appendix A), is available on the CCWG-Accountability Wiki site.

The CCWG Charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the Charter:

- Generic Names Supporting Organization (GNSO) on 13 November (see Motion here)
- At-Large Advisory Committee (ALAC) on 18 November (see poll results here)
- Country Code Names Supporting Organization (ccNSO) on 20 November (see meeting minutes here)
- Governmental Advisory Committee (GAC) on 8 December (see email here)
- Address Supporting Organization (ASO) on 9 December (see email here)

COMPOSITION OF THE CCWG-ACCOUNTABILITY

The CCWG-Accountability consists of xx people, organized as xx members, appointed by and accountable to the CCWG chartering organizations, xx participants, who participate as individuals, and xx mailing list observers. Each of the Chartering Organizations may appoint a minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures.

The CCWG also includes:
- 1 ICANN Board liaison who brings the voice of the Board and Board experience to activities and deliberations[2];
- 1 ICANN staff representative who provides input into the deliberations[3];
- 1 former ATRT member who serves as a liaison and brings perspective and ensures that there is no duplication of work[4];
- 4 ICG members who participate in the CCWG-Accountability, including two who serve as liaisons between the two groups.

Seven Advisors have also been appointed by a Public Experts Group (PEG) to contribute research and advice, and to bring perspectives on global best practices to enrich the CCWG-Accountability discussion, all while engaging with a broader network of accountability experts from around the world.

---

[2] Should there be an issue of a consensus call, the Board Liaison would not participate in such a consensus call.
[3] Should there be an issue of a consensus call, the staff representative would not participate in such a consensus call.
[4] Should there be an issue of a consensus call, the ATRT Expert would not participate in such a consensus call.

The CCWG-Accountability is open to all: anyone interested in the work of the CCWG-Accountability can join as a participant or observer. Participants may be from a chartering organization, from a stakeholder group or organization not represented in the CCWG-Accountability or currently active within ICANN, or self-appointed. For those who are merely interested to monitor the CCWG conversations, there is the possibility to sign up as a mailing list "observer" which offers read-only access to the mailing list.

The group first met in December 2014 and has held weekly meetings since. It operates in a transparent environment: its mailing-lists discussions, meeting archives, drafts and correspondence are documented on a public wiki space.

WORK STREAMS

Per the CCWG-Accountability Charter, the work of the CCWG-Accountability would proceed in two Work Streams defined as follows:
- **Work Stream 1**: focused on mechanisms enhancing 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

2. Methodology

This section describes the methodology through which the CCWG-Accountability developed and completed the Work Stream 1 proposal.
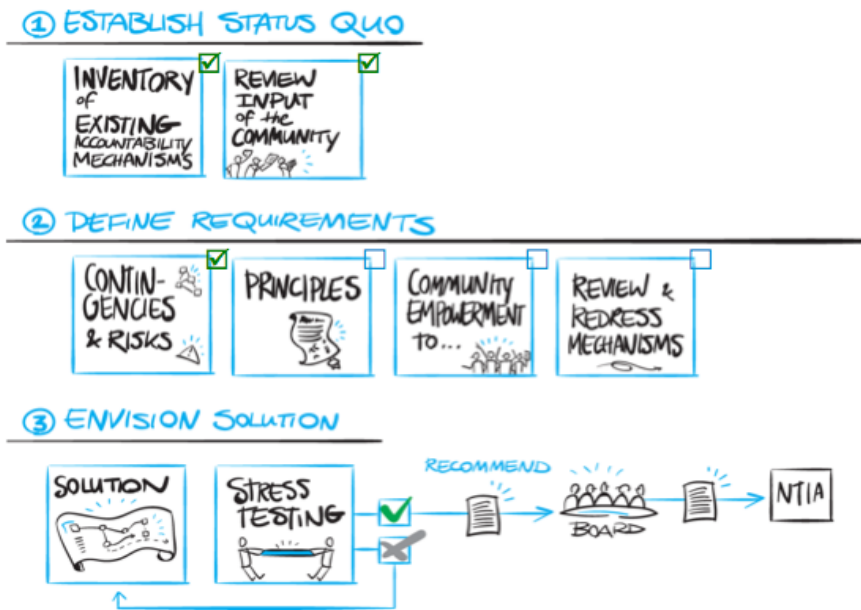
Defining Requirements for Work Stream 1

The primary goal of the CCWG-Accountability is to deliver proposals that would enhance ICANN's accountability towards all stakeholders. The first step in achieving this goal was to understand and describe the status quo. To do this efficiently, the CCWG-Accountability established four initial Work Areas:

- Work Area 1: Existing Accountability Mechanisms (including the AOC reviews on accountability)
- Work Area 2: Review Input from Public Comment and Categorize Items into Work Streams 1 & 2 (WS1 & WS2)
- Work Area 3: Review Issues Identified by CWG-Stewardship
- Work Area 4: Identify Contingencies (especially in relation to Work Stream 1)

The four areas were populated with volunteer CCWG members and participants who had dedicated mailing lists and wiki spaces to advance their work.

WORK AREA 1

One of the first deliverables within the CCWG was an inventory of existing accountability mechanisms on 15 December 2014, delivered just one week after the CCWG-Accountability first met. The inventory was the starting point of CCWG's discussions about which ICANN accountability mechanisms should be enhanced to address the risks the group had identified, and where gaps would remain and the group would need to develop new mechanisms to mitigate against those risks. This inventory is further described in section 4 of this document.

ASSESSMENT OF COMMENTS TO DATE - WORK AREA 2

Another area of initial CCWG work focused on a review of the collection of comments received during the development of the Enhancing ICANN Accountability process and assessed whether they were issues to address as part of Work Stream 1 (WS1) or Work Stream 2 (WS2). The group categorized the comments based on the following rationale:[5]

- Work Stream 1 *is designated for accountability enhancement mechanisms that must be in place or committed to, before IANA transition occurs.*
- *Work Stream 1 mechanisms are those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.*
- *All other consensus items could be in Work Stream 2, provided the mechanisms in WS1 are adequate to force implementation of WS2 items despite resistance from ICANN management an*d board.

In addition to categorizing the comments, the ATRT Expert reviewed the comments and noted, where relevant, a reference to ATRT recommendations. Work Area 2 was complete as of 15 January 2015.

See Appendix E. Input from Public Comment and Categorization into Work Streams 1 & 2 (15 January 2015)

INTERRELATION WITH THE CWG STEWARDSHIP WORK - WORK AREA 3

The CCWG also reviewed the accountability elements identified by the CWG-Stewardship[6]. In light of the clear linkage between the works of the two groups, the CWG-Stewardship and CCWG-Accountability Co-Chairs agreed that it would be valuable for the CWG-Stewardship to provide the CCWG-Accountability with a list of issues it identified during its deliberations where the work of both groups may overlap. A robust collaboration was built between the two groups including leadership coordination call and exchange of letters.

In January 2015, the CCWG extensively discussed the CWG-Stewardship list of issues, offered input and indicated that these avenues of work would be one of the focuses of CCWG attention.

While the work was completed in March 2015, the collaboration was maintained throughout the end of their respective mandates.

---

[5] Please see WA2 output document, Draft 5.3, 15-Jan-2015 (.doc) (.pdf)
[6] CWG to develop an IANA Stewardship Transition Proposal on Naming Related Functions. See here for more information.

STRESS TEST AND CONTINGENCIES WORK PARTY - WORK AREA 4

A final area of focus was on the identification the main stress tests and contingencies that the CCWG-Accountability would use to test the proposed mechanisms and solutions, once elaborated.

The goal of this group was to identify the main contingencies that CCWG Accountability should use to test proposed mechanisms and solutions once they are elaborated. The group defined contingencies as consisting of:
- An event (threat) to the IANA Functions Contract;
- Its consequence, such as creating significant interference with existing policy or the policy development processes, and;
- What contingency plan, if any, is known to exist.

21 broad scenarios were initially identified, including for example, the impact of financial crisis in the domain name industry, capture by one or more stakeholders, and termination of the Affirmation of Commitments. A full list is available from the WA4 webpage.

The group also received inputs from the ICANN Board Risk Committee on enterprise-wide risks identified within ICANN, as an input to its work. Furthermore, details of strategic risks that ICANN may face are identified in "ICANN Strategic Plan for fiscal years 2016-2020".

This work continues through the **Stress Tests Work Party (ST-WP)**, so as to continue its identification of stress tests and their application. Section 7 of this proposal describes the work of the Stress Test Work Party.

Defining WS1 high level requirements

The Frankfurt face-to-face meeting on 19-20 January 2014 was a key turning point for the CCWG-Accountability: the group moved from an assessment phase into a development phase. As part of this development phase, the CCWG-Accountability mapped out Work Stream 1 requirements leading to a restructure of the group into two Work Parties:
- **Work Party 1 -- Community Empowerment** (WP1) is considering powers for the community to hold ICANN to account, and to develop a consensus on the most appropriate mechanisms to allow the community to exercise these powers. WP1 will set out the necessary changes that would be required (e.g. Bylaws changes) to deliver these.
- **Work Party 2 -- Review and Redress** (WP2) is considering enhancements to existing accountability and new mechanisms and the creation of a standard for review and redress, the goal is to develop a clearly articulated standard against which ICANN's actions are evaluated.

Work Party 1 (WP1) and Work Party 2 (WP2) were formed following the Frankfurt meeting in January 2015.

WORK PARTY 1 (WP1) - COMMUNITY EMPOWERMENT

A new working group was formed to consider proposed powers for the community to hold ICANN to account, and to develop a consensus on the most appropriate mechanisms (or structures) that would allow the community to exercise these powers. Powers and mechanisms were defined as follows:
- Powers actions the community should be able to take to maintain and improve ICANN's accountability;
- Mechanisms are the structures or processes by which the community exercises its powers.

WORK PARTY 2 - REVIEW & REDRESS

A second new working group was tasked with considering enhancements to existing accountability mechanisms and the creation of new accountability mechanisms to allow for review and redress for those affected by ICANN's failure to carry out its mission statement, and to hold ICANN accountable for carrying out its mission in compliance with agreed-upon standards.

Work Party 2 articulated the following principles to guide its work:
- Ensure that ICANN actions relate to issues that are within its stated mission and require ICANN to act consistent with clearly articulated principles;
- Ensure that the ICANN Board can be held to its Bylaws;
- Ensure that ICANN carries out its mission consistent with a binding statement of values/principles;
- Prevent scope/mission creep through bylaws changes, policy, policy implementation, contracts and/or other mechanisms.

Building Blocks

In February 2015, the CCWG-Accountability identified four building blocks that would form the accountability mechanisms required to improve accountability.

Drawing a state analogy:

- **Empowered community** refers to the powers that allow the community i.e. the people to take action should ICANN breach the principles.
- **Principles** form the mission and core values of the organization i.e the Constitution.
- **ICANN Board** represents the executive entity the community may act against, as appropriate.
- **Independent Review Mechanisms**, i.e. the judiciary, confers the power to review and provide redress, as needed.

The accountability framework was compared to a cookbook populated with recipes for which the CCWG-Accountability would need to identify ingredients. A distinction was made between triggered actions i.e. triggered by the community and non-triggered i.e. part of a normal ICANN processes. A template was designed to structure and help identify ingredients. A set of criteria was also suggested to frame discussions.

Legal Advice

The CCWG-Accountability engaged two law firms to receive expertise on feasibility of its proposed frameworks and mechanisms, Adler & Colvin and Sidley Austin LLP. The firms, through the coordination of the Legal Sub-Team of the CCWG. See Appendix B for more information on the legal sub-team methodology. The legal advice was key to the CCWG-Accountability in formulating its recommendations.

The CCWG legal sub-team's rules of engagement and working methodologies are described in Appendix B.

3. Definitions & Scoping

The CCWG-Accountability scoped out and elaborated a problem statement along with definitions to help refine its understanding of the task it was entrusted with. The group endeavored to produce a definition of what accountability is, listed transparency, consultation, review mechanisms and redress mechanisms as criteria of accountability mechanisms.

As a general concept, the group proposed that accountability encompassed processes whereby an actor answers to others for the effects on them of its actions and omissions. For the CCWG, then, accountability involves the processes whereby ICANN answers to its stakeholders for the impacts on those stakeholders of ICANN's decisions, policies and programs.

The group proposed that accountability is comprised four dimensions: One, transparency, means that an actor (ICANN) is answerable to its stakeholders by being open and visible to them. A second, consultation, means that the actor (ICANN) continually takes input from and explains its positions to the stakeholders. Third, review means that the actor's actions, policies and programs are subject to outside monitoring and evaluation. The fourth dimension, redress, means that the accountable actor makes compensations for any harms of its actions and omissions, for example, by means of policy changes, institutional reforms, resignations, financial reparations, etc.

Independence and checks and balances were identified as two key qualities of any accountability mechanism. The group defined "checks and balances mechanisms" as a series of mechanisms put in place to adequately address the concerns from the various interested parties in the discussion and decision process, as well as to ensure that the decision is made in the interest of all stakeholders. The group investigated two different non-exclusive views in order to assess independence: independence of persons participating in the decision process, and independence of a specific accountability mechanism with regards to other mechanisms

The group flagged to whom should ICANN be accountable as an important component, and assembled a list of stakeholders which distinguished between affected parties and parties affecting ICANN. The following principles were agreed to guide CCWG-Accountability's activities:
- ICANN accountability requires that it comply with its own rules and processes (part of "due process", as a quality of fairness and justice);
- ICANN accountability requires compliance with applicable legislation, in jurisdictions where it operates;
- ICANN should be accountable to achieving certain levels of performance as well as security;
- ICANN should be accountable to ensure that its decisions are for the benefit of the public, not just in the interests of a particular set of stakeholders or ICANN the organization.

See Appendix C "CCWG Accountability – Problem definition" (current version, 13 March 2015) for more information.

4. Inventory of existing ICANN Accountability Mechanisms

This section presents an inventory of existing ICANN accountability mechanism and expands on the work developed by Work Area 1 mentioned on Section 2. The inventory of existing accountability mechanisms produced by the group on 15 December 2014 is available as Appendix D of this report.

ICANN Bylaws and Bylaws-Mandated Redress Mechanisms

ICANN Bylaws specifically provide four avenues for review:
- Reconsideration Process (Art. IV, Sec. 2): mechanism to challenge staff action taken against ICANN policies, or Board actions taken without consideration of material information or based upon false or inaccurate information.
- Independent Review Process (IRP) (Art. IV, Sec. 3)[7]: allows for claims that the ICANN Board acted in a manner inconsistent with its Bylaws or Articles of Incorporation to be considered by an independent panel of neutrals.
- Organizational Reviews (Art. IV, Sec. 4): As required by the Bylaws, periodic reviews of the performance and operation of each Supporting Organization, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee are organized to determine whether that organization has a continuing purpose in the ICANN structure, and, if so, whether any

---

[7] Until April 2013, the standard of review was:
"Requests for such independent review shall be referred to an Independent Review Panel ("IRP"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws."

Effective in April 2013, the Board specified three areas for allowable review:
"The IRP Panel must apply a defined standard of review to the IRP request, focusing on:
a.) did the Board act without conflict of interest in taking its decision?
b.) did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
c.) did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?"

change in structure or operations is desirable to improve its effectiveness. These regular reviews allow an examination of the continuing efficacy of ICANN's component entities.

- Office of the Ombudsman (Art. V): reviews claims of unfairness by ICANN or its constituent entities. The Ombudsman framework is consistent with international standards. Office of Ombudsman publishes on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns.

Policy Consideration Requirements: Bylaws-Based Advisory Mechanisms

Bylaws define ICANN's relationships to its component entities, including its Supporting Organizations (GNSO, ccNSO, and ASO) and Advisory Committees (SSAC, GAC, ALAC, and RSSAC). The Bylaws include detailed requirements for how the Board considers community-developed policies and receives advice. Some of these relationships are further defined through more detailed documentation, such as the Memorandum of Understanding with the Address Supporting Organization.

Affirmation of Commitments (AoC)

Signed with the United States Department of Commerce (DoC) on 30 September 2009, the Affirmation of Commitments (AoC) contains joint commitments relating to ICANN's technical coordination role of the Internet Domain Name System. The commitments uphold the multi-stakeholder model, commit to operate in a transparent manner and in the global public interest, and, among other things, to undertake community-led, regular reviews relating to accountability and transparency as well as on three other fundamental organizational objectives. More information about the Accountability and Transparency Reviews are outlined below. See appendix F.

Headquarters

ICANN, as a California Not-for-Profit Public Benefit Corporation, is obligated to follow the laws of the State of California. ICANN is also subject to both California and U.S. laws and regulations regarding ICANN's tax-exempt, public benefit status, which each require ICANN to act in furtherance of its stated public benefit purposes. These laws, as well as the laws of other places where ICANN has a presence, carry with them obligations. For example, under law, all ICANN Directors hold a fiduciary duty to act in the best interests of ICANN, and not for their own personal (or business) benefit. ICANN has the ability to sue and be sued for its actions and to be held responsible in a court of proper jurisdiction for its dealings with the global community.

Accountability and Transparency Review Teams 1 and 2 Recommendations

Periodic assessments of ICANN's progress toward ensuring accountability, transparency and the interests of global Internet users are undertaken by community-led Review Teams. The first accountability and transparency review, conducted in 2010 by the Accountability and Transparency Review Team 1 (ATRT1), resulted in a set of recommendations. A second review was launched in 2013 - in compliance with the AoC timeframe. Pursuant to the AoC, the Second Accountability and Transparency Review Team (ATRT2) assessed the extent to which the ICANN board and staff implemented the recommendations arising of the ATRT1, in addition to the core scope, and issued a set of recommendations.

Contractual Requirements

ICANN enters into a variety of contractual arrangements through which it takes on obligations. While meeting these requirements are a matter of contractual compliance for ICANN, at times the contracts also include broader accountability requirements as well. Some of these contracts include:

- **The IANA Functions Contract** with the NTIA, which incorporates, for example, a customer complaint resolution process at c.2.9.2.g as well as requirements for how ICANN is to consider delegation requests for ccLTDs (C.2.9.2.c) and gTLDs (C2.9.2.d)..

- **Registry Agreements** and **Registrar Accreditation Agreements**
  (see https://www.icann.org/resources/pages/agreements-policies-2012-02-25-en and https://www.icann.org/resources/pages/registries/registries-agreements-en). Through these agreements, there are escalation paths set out in the event of disagreement between ICANN and the Registry or Registrar, in each case leading to the ultimate reference to arbitration if needed
  o Both Registry and Registrar Contracts include a requirement to follow "Consensus Policies", which are policies developed through the ICANN multistakeholder process and approved with high thresholds of support. Most commercial contracts do not include the ability to insert new obligations in this way, and so the requirements on the ICANN Board and the ICANN community in developing and approving these policies are high and must be followed.
  o The consensus policies may only cover specific issues that are specified within the agreements, and may not touch on other specific areas (such as pricing terms). Historically, this has been referred to as the "picket fence" around where ICANN could mandate registry and registrar compliance with obligations that are not specifically included within the contracts.

Detailed topics subject to "Consensus Policy" are defined in the gTLD Registry and Registrar Agreements.

Board of Directors Documentation

Documents relating to the Board of Directors include briefing materials, resolutions, preliminary reports and minutes. Since 2010, the ICANN Board has provided a rationale for its decisions, which are published in both Resolutions and Minutes. All resolutions of the Board are tracked in a searchable tool, with information on how the mandate within each resolution was achieved. The Board also makes public how it addresses the advice it receives from the Advisory Committees, with both a GAC Register of Advice as well as the new Advice tracking tool.

General ICANN Operational Information

Financial information includes an annual budgeting process developed with community input, the posting of quarterly financial reports (following the practice of listed companies), as well as the annual posting of ICANN's Audited Financial Statements, and the annual Form 990 tax filing. For tracking of ICANN's operational activities, information about current projects across the organization is posted. ICANN also maintains the Documentary Information Disclosure Policy (DIDP) for members of the public to request the release of information within ICANN that is not already publicly available.

ICANN Board Selection process

The selection of voting Board Directors occurs through different community processes. The Nominating Committee appoints eight Directors, ICANN's Supporting Organizations appoint six Directors (specifically, the Address Supporting Organization the Country-Code Names Supporting Organization (CCNSO) and the Generic Names Supporting Organization (GNSO) each appoint two Directors), and the At-Large Community appoints one Director. Directors serve staggered terms enabling some annual renewal of the Board. Mechanisms for the removal or Directors and Non-Voting liaisons are described in ICANN Bylaws. The President and CEO of ICANN, who is appointed by the Board, also serves a Board member.

5. Input Gathered from the Community - Required Community Powers

As indicated in section 2, the group reviewed the collection of public comments received during the development of the Enhancing ICANN Accountability and categorized these as work stream 1 and work stream 2. WS1 mechanisms were defined as those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

The mechanisms were divided in three sections:

1. Mechanisms giving the ICANN community ultimate authority over the ICANN corporation.   Most of these were initially designated as WS1, since community Members need the leverage of IANA transition to obtain these Bylaws changes.

2. Mechanisms to restrict actions of the board and management of the ICANN corporation.   Most of these are initially designated as WS2, since the Members could reverse board or management decisions if Members are empowered in WS1 (1, above).

3. Mechanisms to prescribe actions of the ICANN corporation. Most of these are initially designated as WS2, since the Members could reverse board or management decisions if Members are empowered in WS1 (above). For example, a bottom-up consensus process to change ICANN bylaws might be rejected by ICANN board, but the Members could then reverse that decision and force the change.

Work Stream 1 accountability mechanisms are presented in detail in Section 6.

6. Accountability Mechanisms

6.1 Description of Overall Accountability Architecture

PLACEHOLDER

6.2 Revised Mission, Commitments & Core values

CURRENT BYLAWS LANGUAGE	WORKING DRAFT (NEW/CHANGED TEXT APPEARS IN RED OR STRIKE OUT TEXT)	NOTES, COMMENTS, QUESTIONS

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: Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are Domain names (forming a system referred to as "DNS"); Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and Protocol port and parameter numbers. Coordinates the operation and evolution of the DNS root name server system Coordinates policy development reasonably and appropriately related to these technical functions.	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: Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are Domain names (forming a system referred to as "DNS"); Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and Protocol port and parameter numbers. Coordinates the operation and evolution of the DNS root name server system Coordinates policy development reasonably and appropriately related to these technical functions. *In this role, with respect to domain names, ICANN's mission is to coordinate the development and implementation of Consensus Policies (as defined in Specification 1) that (a) ensure the stable and secure operation of the Internet's unique names systems and (b) for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS.* *In this role, with respect to IP addresses and AS numbers, ICANN's mission is to [INSERT]* *In this role, with respect to protocol port and parameter numbers, ICANN's mission is to [INSERT]* *In this role, with respect to the DNS root server system, ICANN's mission is to [INSERT]* ICANN shall not undertake any other	*The additional language is intended **clarify, but not to either diminish or expand** ICANN's current Mission. The proposed mission statement also reflects ICANN's obligation under the* <u>*Affirmation of Commitments*</u> *(AoC) to:* *Maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet. (AoC Section 8.a.)* *Implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. (AoC Section 9.3.1)* *In addition to (a) and (b) in the proposed language,* <u>*Specification 1*</u> *in the Registry Agreement and Registrar Accreditation Agreement provides greater detail on the scope of "Consensus Policy" are related to:* *Functional and performance specifications for the provision of Registry and Registrar services;* *Security and Stability of the registry database for the TLD;* *Policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;* *Resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or* *Restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.* *And include, without limitation:* *Principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);* *Prohibitions on warehousing of or speculation in domain names by registries or registrars;* *Reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and* *Maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.* *The full text of Specification 1 is attached.*

| | mission not specifically authorized in these Bylaws. Without in any way limiting the foregoing absolute prohibition it is expressly noted that ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide. | |

6.3 Fundamental Bylaws

CURRENT BYLAWS LANGUAGE	WORKING DRAFT (NEW/CHANGED TEXT APPEARS IN RED OR ~~STRIKE-OUT~~ TEXT)	NOTES, COMMENTS, QUESTIONS
Bylaws re reconciling competing Core Values In performing its mission, the following core values should guide the decisions and actions of ICANN: [Core Values Listed] 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. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new	Fundamental Commitments and Core Values In ~~performing~~ carrying out its mission, ~~the following core values should guide the decisions and actions of~~ ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below. These Fundamental Commitments and Core Values are ~~deliberately expressed in very general terms, so that they may~~ intended to apply ~~provide useful and relevant guidance~~ in the broadest possible range of circumstances. ~~Because they are not narrowly prescriptive, the~~ The specific way in which they apply, individually and collectively, to each new situation ~~will necessarily~~ may depend on many	*ICANN's Mission Statement articulates WHAT is in scope and out of scope for ICANN. ICANN's "Core Values" articulate HOW ICANN is to carry out its Mission. The Working Party acknowledges that in some situations the Core Values may be in tension with one another, requiring a decision maker to reconcile the competing values to achieve ICANN's Mission. ICANN's current Bylaws describe this process and permit the decision maker to exercise its judgment in order to achieve "an appropriate and defensible balance among competing values." While some degree of flexibility is needed, the language in the current Bylaws provides no principled basis for reconciling the principles in any particular situation. The proposed language articulates the standard to be applied when an ICANN decision maker is required to reconcile competing values. To facilitate this process and to limit opportunities for abuse, the CCWG proposes to create a two-tiered values statement consisting of fundamental ICANN "Commitments" and "Core Values."* *To the extent that this kind of reconciliation would impinge on one or more of the fundamental Commitments, the proposed language would require the decision maker would be required to*

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. 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.

factors that cannot be fully anticipated or enumerated. ; and because they are statements of principle rather than practice, Situations may will inevitably arise in which perfect fidelity to all eleven Fundamental Commitments and Core Values simultaneously is not possible.

To the extent a Commitment must be reconciled with other Commitments and/or one or more Core Values in any particular situation, such reconciliation must be:

Justified by an important, specific, and articulated public interest goal that is within ICANN's Mission and consistent with a balanced application of ICANN's other Commitments and Core Values (a "Substantial and Compelling Reason in the Public Interest");
Likely to promote that interest, taking into account competing public and private interests that are likely to be affected by the balancing;
Narrowly tailored using the least restrictive means reasonably available; and
No broader than reasonably necessary to address the specified Substantial and Compelling Reason in the Public Interest.

In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further
an *important* public interest in a way that is substantially related to that interest.

meet a high bar, demonstrating that any balancing is necessary and likely to achieve an important public interest goal, and narrowly tailored to achieve that goal. The bar is set to be somewhat more flexible with respect to reconciliation of Core Values.
Note, the proposed reconciliation language reflects language included in Section 7.6 of the 2014 Registry Agreement and Section 6 of the 2013 Registrar Accreditation Agreement

Current Bylaws	Proposed - Working Draft	NOTES
Section 2. CORE VALUES. In performing its mission, the following core values should guide the decisions and actions of ICANN:	**Fundamental Commitments**. In performing its mission, ~~the following core values should guide the decisions and actions of ICANN:~~ ICANN must operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable law and international conventions and through open and transparent processes that enable competition and open entry in Internet-related markets, and the Fundamental Rights set forth below. Specifically, ICANN's action must:	This additional language is derived from ICANN's current Articles of Incorporation. This language also supports Affirmation of Commitments language, including Section 3, in which ICANN "commits to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination."
1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the 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.	Preserv~~ing~~ and enhanc~~ing~~ the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;	**In *AoC Section 8*, ICANN commits to maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work to maintain a single, interoperable Internet. In *AoC Section 9.2*, ICANN commits to preserve the security, stability and resiliency of the DNS.**
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.	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 requir~~ing~~ or significantly benefit from global coordination;	**In *AoC Section 8*, ICANN commits to "operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act."**
	Employ open, transparent and bottom-up, multistakeholder policy development ~~mechanisms~~ processes	**The changes in the current Bylaws for Core Value #8 reflect and incorporate current Bylaws Section 3. On NON-DISCRIMINATORY TREATMENT.** The OED defines "disparate" as "Essentially different in kind; not able to be compared." "Discriminatory" is

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness. Bylaws Section 3: 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.	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. Make~~ing~~ decisions by applying documented policies consistently, neutrally, objectively, and fairly, ~~with integrity and fairness~~ without singling out any particular party for ~~disparate~~ discriminatory treatment ~~unless justified by substantial and reasonable cause, such as the promotion of effective competition~~;	defined as "making or showing an unfair or prejudicial distinction between different categories of people or things." This change was suggested by one of the CCWG's independent experts. In *AoC Section 9.1*, ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency."
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.	Remain~~ing~~ accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.	
Core Values: In performing its mission, the following core values should guide the decisions and actions of ICANN: 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. 3. To the extent feasible and appropriate, delegating	**Core Values**: In performing its mission, the following core values should also guide the decisions and actions of ICANN: 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 the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that	In *AoC Section 7*, ICANN commits to "fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration." In *AoC Section 9.3*, ICANN commits to

coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.	reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;	promote "competition, consumer trust, and consumer choice."
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.	Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market	In *AoC Section 9.3*, ICANN commits to promote "competition, consumer trust, and consumer choice."
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.	Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.	In *AoC Section* 7, ICANN "commits to adhere to transparent and accountable budgeting processes."
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.	Operate with efficiency and excellence, ~~acting~~ in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the Internet.	**In *AoC Section 8*, ICANN commits to "operate as a multi-stakeholder, private sector led organization."**
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.	While remaining rooted in the private sector, 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 in accordance with the Bylaws and to the extent consistent with these Fundamental Commitments and Core Values.	
	[Not advance] [Refrain from advancing] the interests of one or more interest groups at the expense of others	

6.4 Independent Review Panel Enhancements

Introduction

The consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN's existing Independent Review Process (IRP). Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith. Commenters called for a process that was binding rather than merely advisory. Commenters also strongly urged that the IRP be accessible, both financially and from a standing perspective, efficient, and that it be designed to produce consistent and coherent results that will serve as a guide for future actions.

The process described below calls for a standing, independent panel of skilled jurists/arbitrators who are retained by ICANN and can be called upon over time and across issues to resolve disputes regarding whether ICANN is staying within its limited technical Mission, whether it is abiding by policies adopted by the multistakeholder community, and whether in carrying out its mission and applying consensus policies it is acting in accordance with the Fundamental Commitments to the community and its Core Values, in all cases as required by the proposed Bylaws. (See, Statement of Mission, Fundamental Commitments, and Core Values.)

The proposal calls for a fully independent judicial/arbitral function – but not an external body. The purpose of a standing panel is to ensure that panelists are not beholden to ICANN or any of its constituent bodies – but they are to be ICANN "experts" in the sense that they must understand how ICANN's Mission is implemented, and its commitments and core values are applied –over time and across a variety of situations.

Purpose

a. Empower the community and affected individuals/entities to prevent "mission creep," enforce compliance with established multistakeholder policies, provide redress for due process violations, and protect the multistakeholder process through meaningful, affordable, access to expert review of ICANN actions.
b. Ensure that ICANN is accountable to the community and individuals/entities for actions outside its mission or that violate community-approved standards of behavior, including violations of established ICANN policies.
c. Reduce disputes going forward by creating precedent to guide and inform ICANN Board, staff, SOs/ACs, and the community in connection with policy development and implementation.

Description

A standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially harmed by ICANN's action or inaction in violation of commitments made in ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Fundamental Commitments & Core Values. This reflects proposed changes and enhancements to ICANN's existing Independent Review Process.

Accountability Category

Review, redress, and checks/balances. The overall purpose is to ensure that ICANN does not exceed the scope of its limited technical mission and, in carrying out that mission, acts in a manner that respects community-agreed fundamental rights, freedoms, and values.

Initiation of an IRP

Triggered (by filing of a complaint by aggrieved party) alleging that a specified action or inaction is not within ICANN's Mission or that is undertaken in manner that violates ICANN's Fundamental Commitments to the community and/or Core Values.

Possible Outcomes

Decision that an action/failure to act (a) is or is not within ICANN's Mission and/or (b) was undertaken in a manner that violates ICANN's Fundamental Commitments or Core Values. The intent is that IRP decisions should be binding on ICANN. The extent to which this is achievable, and the means by which this effect might be achieved, are topics of ongoing review and discussion with legal counsel to the CCWG.

Questions and Open Issues
- Some members of the working group feel that the Board or the community be permitted under certain circumstances to reject an IRP decision, for example, with the unanimous support of the Board and a designated community body? Others note that this is inconsistent with our intent to ensure that the IRP, and not the Board, is the final arbiter of whether or not the Board has acted properly.
- To the extent that the Board cannot be bound by an IRP decision (as noted, this remains a question in the legal review process) is the ability to recall some or all members of the Board a sufficient mechanism to ensure compliance with Panel decisions?

Finality

At least in some situations, the decision of the panel will be final, in that no appeals process will be available. The IRP is designed in the first instance as a means of holding ICANN to its limited technical mission and to its Fundamental Commitments and Core Values. We note that this mechanism could be used to challenge other actions or inactions. For example, direct customers of IANA services may want to use the mechanism for challenging compliance with IANA SLAs, delegations, revocations, etc. In such cases, it would be up to the

relevant stakeholders to determine whether this is appropriate and, if so, what standard(s) would be applied by the panel.

Questions and Open Issues:
- Should proceedings before the IRP be "last resort" (i.e., no appeals process) in all cases?
- Should ICANN or complainants have the ability to appeal panel decisions to a court of competent jurisdiction? In some cases or only in specified cases?

Standing

Any person/group/entity "materially affected" by Board/management/staff action that (a) exceeds the scope of ICANN's limited Mission and/or (b) has been undertaken in a manner that violates ICANN's Fundamental Commitments and/or Core Values.

Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff action where a complainant can demonstrate:
- Harm that cannot be cured once a decision has been taken or for which there is no adequate remedy once a decision has been taken;
- Either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits; and
- A balance of hardships tipping decidedly toward the party seeking the relief.

Questions and Open Issues:
- How would "material affect" be measured in the event that the "community" generally, or specific community groups sought independent review?
- Who should have the right to intervene in an IRP in order to support or oppose the merits of a complaint?
- Should ICANN have the right or obligation to "join" necessary parties to an independent review? What constitutes a "necessary party"? How do we prevent abuse of intervention rights?
- Application of standard to existing IRPs?

Standard of Review

A party challenging an action or inaction has the burden to demonstrate that the complained-of action violates either (a) substantive limitations on the permissible scope of ICANN's actions, or (b) decision-making procedures, in each case as set forth in ICANN's By-laws, Articles of Incorporation, or Statement of Mission, Fundamental Commitments, and Core Values.

Composition of Panel

Expertise: Significant legal expertise, particularly international arbitration expertise and 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.

While most of the working group was comfortable with this formulation, some participants prefer to require that the panelists themselves possess the requisite skill sets – of course, individual panelists need not possess every kind of expertise, rather, they suggest that taken together the panel should possess the requisite skills.

Diversity

Geographic diversity. English as primary working language with provision of translation services for claimants as needed.
Questions and Open Issues:
- How will geographic diversity be defined? For example, no more than X members from any one Region? Alternatively, no less than 1 member from each region?

Other diversity, e.g., gender?

Size of Panel

Standing Panel - 5 or 7
Decisional Panel – 1 or 3 Panelists

Independence

Members must be independent of ICANN, including ICANN SOs and ACs. Members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply, and post-term appointment to Board, Nomcom, or other positions within ICANN would be prohibited.

Questions and Open Issues:
- What is the term of the appointment? 3 or 4 years?
- Limit to a single term?

Selection and Appointment

Separation of powers for nomination and confirmation of panelists. For example: (i) members nominate and Board confirms; (ii) Board nominates and members confirm; or (iii) third party international arbitral bodies nominate and members, board, or both confirm.

Recall or other Accountability

Appointments made for a fixed term with no removal except for specified cause (corruption, misuse of position for personal use, etc.).
Questions and Open Issues:
- Process for removal of panelists for cause must be defined. Board or community initiated process? Ultimate decision maker – Board, community, other members of the IRP standing panel, or some combination?

Settlement Efforts

Reasonable efforts, as specified in a public policy, must be made to resolve disputes informally prior to/in connection with filing an IRP case.

Parties to cooperatively engage informally, but either party may inject independent dispute resolution facilitator (mediator) after initial CEP meeting. Either party can terminate informal dispute resolution efforts (CEP or mediation) if, after specified period, that party's concludes in good faith that further efforts are unlikely to produce agreement.

The process must be governed by clearly understood **and pre-published rules applicable to both parties** and be subject to strict time limits

Questions and Open Issues:
- The CCWG-ACCT is recommending changes to the Reconsideration process. Under what circumstances, if any, should the Reconsideration process be a necessary first step to filing an IRP request?
- What timeline is appropriate for CEP? Fourteen (14) days?
- What is the source for independent dispute resolution facilitators? Professional mediation services? A member of the standing IRP panel (who could not then serve as a IRP panelist in that case)? Community members acceptable to ICANN and the complainant?
- What non-disclosure obligations are appropriate? Can complainant wave confidentiality with respect to some or all issues.
- For transparency purposes, should a complainant have the right to post its written submissions, if any, publicly? To have any meetings recorded and transcribed?

Decision Making

In each case, a single or 3 member panel will be drawn from standing panels. In single member panel, ICANN and complaining party agree on panelist. In 3-member panel cases, each party selects one panelist, and those panelists select a third.

Questions and Open Issues:
- When is a single member panel appropriate, when is a 3-member panel appropriate?
- Can a complainant elect a 3-member panel in any case? If so, is cost shifting appropriate?

Standing Panel to draft, issue for comment, and revise procedural rules. Focus on streamlined, simplified processes with rules that are easy to understand and follow.

Panel 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. All decisions will be documented and will reflect a well-reasoned application of the standard to be applied (i.e., the Statement of Mission, Fundamental Commitments, and Core Values.

Decision

By simple majority. Alternatively, this could be included in the category of procedures that the IRP itself should be empowered to set.

Accessibility and Cost

ICANN to bear administrative the costs of maintaining the system (including Panelist salaries); Panel to determine filing fees for claimants. 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 to pro bono representation for community, non-profit complainants.

Panel should complete work expeditiously; issuing a scheduling order early in the process, and in the ordinary course should issue decisions within a standard time frame.

Questions and Open Issues:
- 3-month/6 month decision requirement?
- Provision for complex cases, such as monthly reports?

Implementation

Adopted as "durable" Bylaws provision.

Transparency

The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust independent review process. We recommend reviewing and enhancing the DIDP as part of the accountability enhancements.

6.5 Reconsideration Process Enhancements

Standing

Amend "who" has proper standing to file a Reconsideration Request to widen its scope by including board/staff actions/inactions that contradict ICANN's *mission or core values* (was only *policies* before). It is noted that under the existing bylaws paragraph 2 significantly reduces the rights purportedly granted in paragraph 1 of the Reconsideration Request process.

  ICANN's Bylaws could be revised (added text in red below):

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
    2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
    a. one or more ICANN Board or staff actions or inactions that contradict established ICANN policy(ies), its mission, core values; or
    b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material relevant information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
    c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material relevant information.

Standard of Review

Broaden the types of decisions which can be re-examined to include board- staff action/inaction against ICANN's mission or core values (as stated in bylaws / Articles).

Provide more transparency in dismissal process.

Provide board with reasonable right to dismiss frivolous requests, but not on the grounds that one didn't participate in ICANN's public comment or on the claim one is vexatious or querulous, which is too subjective.

Propose amend Paragraph 9 on BGC summary dismissal as follows:

9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

Composition

We need less reliance on the legal department (who hold a strong legal obligation to protect the corporation) to guide the BGC on its recommendations. More board member engagement is needed in the overall decision-making process.

Requests should no longer go to ICANN's lawyers (in-house or out-house) for the first substantive evaluation. Instead, the Requests could go to ICANN's **Ombudsman** for a first look, who could make the initial recommendation to the BGC. The Ombudsman may have more of an eye for fairness to the community in looking at these requests. Note the bylaws charge the BGC with these duties, so BGC would utilize the Ombudsman instead of its current practice of ICANN's lawyers to aid the BGC's in its initial evaluation.

All final determinations of reconsideration requests are to be made by the entire board (not only requests about board actions as is the current practice).

Amend Paragraph 3:

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
    d. evaluate requests for review or reconsideration;
    e. summarily dismiss insufficient requests;
    f. evaluate requests for urgent consideration;
    g. conduct whatever factual investigation is deemed appropriate;
    h. request additional written submissions from the affected party, or from   other parties;
    i. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
    j. make a recommendation to the Board of Directors on the merits of the request, as necessary.

And delete Paragraph 15 since the board will make all final decisions regarding requests related to staff action/inaction:

15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

Selection

N/A

Decision-Making

Transparency improvements are needed regarding the information that goes into the board's decision-making process and the rationale for why decisions are ultimately taken. Recordings / transcripts should be posted of the substantive board discussions on the option of the requester.

Provide a rebuttal opportunity to the BGC's final recommendation (although requesters can't raise new issues in a rebuttal) before the full board finally decides.

Adding hard deadlines to the process, including final determinations of the board issued within 120 days from request.

Propose to amend reconsideration rules as follows (in red):

16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. In any event, the BGC's final recommendation to the board shall be made within 90 days of receipt of the Request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the Request. The Requestor may file a rebuttal to the recommendation of the BGC within 15 days of receipt of it, which shall also be promptly posted to ICANN's website and provided to the entire Board for its evaluation.
17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board and its rational shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that

delay the Board from acting within this timeframe must be identified and posted on ICANN's website. In any event, the Board's final decision shall be made within 120 days of receipt of the Request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the request. The Board's decision on the recommendation is final.

Accessibility

Extend the time deadline for filing a Reconsideration Request from <u>15 to 30 days</u> from when Requester learns of the decision/inaction.

Amend paragraph 5 as follows:

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen 30 days after:
   a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale; or
   b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
   c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

Implementation
n/a

Due Process

ICANN's Document and Information Disclosure Policy (DIDP) should be improved to accommodate the legitimate need for requesters to obtain internal ICANN documents that are relevant to their requests.

Provide all briefing materials supplied to the board to the Requester so that they may know the arguments against them and have an opportunity to respond (subject to legitimate and documented confidentiality requirements).

Final decisions should be issued sooner – hard deadline of 120 days.

Requesters provided more time to learn of action/inaction and to file the request.

Transparency improvements throughout the process called for, including more complete documentation and prompt publication of submissions and decisions including their rationale.

6.6 Community Empowerment

6.6.1 Mechanism to empower the community: >>>Name of Mechanism<<<

a) Initial legal advice has indicated that the set of powers in this report can be made available to the ICANN community. More specifically: there are approaches we can take within ICANN to make these powers legally available and durable. The CCWG continues to take legal advice and to debate the pros and cons of the specific options for this, which will feature in our Second Public Comment Report.

b) In the meantime, the CCWG is largely agreed on the following:
   - To be as restrained as possible in the degree of structural or organising changes required in ICANN to create the mechanism for these powers
   - The mechanism should be organised along the same lines as the community – that is, in line and compatible with existing SO / AC / SG structures
   - ***To ensure there is (as far as possible) an equality of voting power / representation between the three Supporting Organisations, the GAC and At Large, with lesser but present power/representation for SSAC and RSSAC***

An alternative to the above representation was suggested: that the voting power / representation should be the same as that in the Board[8].

The CCWG should **discuss** this matter.

---

[8] The Board has sixteen voting members. Eight are appointed by the NomCom. Two each for the ccNSO, GNSO, ASO, one for the At Large Community and the President / CEO. Ref: ICANN Bylaws Article VI Section 2(1).

c) In our Second Public Comment report, _**we will set out the proposed mechanism or two alternatives, and if alternatives are proposed will explain the decision factors the community could consider before deciding which it prefers.**_

6.6.2 Power: reconsider/reject budget or strategy / operating plans

a) The right to set budgets and strategic direction is a critical governance power for an organisation. By allocating resources and defining the goals to which they are directed, strategic/operating plans and budgets have a material impact on what ICANN does and how effectively it fulfils its role.

b) Today, ICANN's Board makes final decisions on strategy, operations plans and budgets. While ICANN consults the community in developing strategic/business plans, there is no mechanism defined in the bylaws which requires ICANN to develop such plans in a way that includes a community feedback process. Even if feedback was unanimous, the Board could still opt to ignore it today.

c) This new power would give the community the ability to consider strategic & operating plans and budgets after they are approved by the Board (but before they come into effect) and reject them - generally, based on perceived inconsistency with the purpose, mission and role set out in ICANN's articles/bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community.

> This is an open set of grounds. A suggestion is that the grounds should be specified in advance. The CCWG should **discuss** this matter.

d) Time would be included in planning and budgeting processes for the community to consider adopted plans and decide whether to reject (timeframe to be determined). These processes would also need to set out the required level of detail for such documents.

e) If the community exercised this power, the Board would have to absorb the feedback that came with the decision, make adjustments and pass amended plans. The planning process should be structured so this can be done before there was any day-to-day impact on ICANN's business arising from the power being exercised.

f) In a situation of significant and sustained disagreement between the community and the Board regarding a proposed annual budget, ICANN would temporarily continue to operate according the previous year's approved budget. The Board must however resolve the situation of not operating with

an approved budget – eventually it will have to reconcile itself to the community's view. If the Board is unable or unwilling to do so, other mechanisms (as set out in this part of the First Public Comment Report) are available if the community wanted to take the matter further.

g) This power does not allow the community to re-write a plan or a budget: it is a process that requires reconsideration of such documents by the Board if the community feels they are not acceptable. ***Where a plan or budget has been sent back, all the issues must be tabled on that first return. That plan or budget cannot be sent back again with new issues raised, but the community can reject a subsequent version where it does not accept the Board's response to the previous rejection.***

h) As this power would become part of existing planning processes (incorporated into the bylaws as required), it does not raise questions of standing in respect of someone raising a complaint.

i) ***At the appropriate point in the planning cycle the challenge period would be open, and any participant in the community powers mechanism would be able to raise the question. A 2/3 level of support in the mechanism would be required in the mechanism to reject a first time: a 3/4 level of support for subsequent rejection/s.***

6.6.3 Power: reconsider/reject changes to ICANN bylaws

a) ICANN's bylaws set out many of the details for how power is exercised in ICANN, including by setting out the company's mission and core values. Changes to those bylaws are generally the right of the Board. It is possible for the Board to make bylaws changes that the community does not support. For example, the Board could unilaterally change ICANN's mission and core values in a way that is not consistent with its intended role.

b) This power would give the community the right to reject proposed bylaws changes ***after they are approved by the Board (but before they come into effect)***. This would most likely be where a proposed change altered the mission and core values, or had a negative impact on ICANN's ability to fulfil its purpose in the community's opinion, but would be available in response to any proposed bylaws change.

c) The time required for this power to be exercised would be included in the bylaws adoption process (***probably a two-week window following Board approval***). If the community exercise this power, the

Board would have to absorb the feedback, make adjustments, and propose a new set of amendments to the bylaws.

d) ***It would require a 3/4 level of support in the community mechanism to reject a proposed bylaw change***. Note that for the Board to propose a bylaws change requires a 2/3 vote in favour.

e) This power does not allow the community to re-write a proposed bylaws change: it is a rejection process where the Board gets a clear signal the community is not happy. ***There is no limit to the number of times a proposed change can be rejected, but the threshold for sending one back is a supermajority in the community mechanism set out in 6.5.1 above, to limit any potential for abuse of this power***.

6.6.4 Power: approve changes to "fundamental" bylaws

a) As outlined elsewhere in this First Public Comment Report, the CCWG is proposing that some core elements of the bylaws be defined as "fundamental". Bylaws that are created as "fundamental" will be harder to amend or replace, and through a different process, than the rest of the bylaws. The intention is to make sure that matters like critical aspects of the powers and processes required to maintain ICANN's accountability to the community, and the organisation's purpose and core values, are highly unlikely to change.

> We need to ensure that the First Public Comment Report includes details of who can propose new "fundamental" bylaws, who can propose changes to "fundamental" bylaws, what is the process for such changes and so on. We presume Work Party 2 is defining this.

b) This power would form part of the process set out for agreeing any changes of the "fundamental" bylaws. Through the community mechanism, the community would have to give positive *assent* to any change *before* it was finalised, as part of a co-decision process between the Board and the community.

c) Such changes would require a very high degree of community assent, as the purpose of this power is to make changing items in such bylaws possible only with very wide support from the community.

d) The threshold of support in the community mechanism to approve changes to "fundamental" bylaws is set out in section >>>x.x<<< of this First Public Comment Report, where we set out what the "fundamental" bylaws are alongside the process for their creation and amendment.

6.6.5 Power: Recalling individual ICANN directors

a) The Board is the governing body of ICANN, employing the CEO, overseeing organisational policies, making decisions on key issues, defining the organisation's strategic and operating plans and holding the staff to account for implementing them.

b) Directors are currently appointed for a fixed term and generally are in office for the whole term they are appointed - by their SO/AC, by the Nominating Committee or by the Board (in the case of the Chief Executive and relating to their status as an employee). The power to remove individual directors of the ICANN Board is at present only available to the Board itself, and can be exercised through a 75% vote of the Board. There is no limitation[9] on the types of situation for which the Board can remove a director.

c) This power would allow the community to end the term of a director, and trigger a reappointment process. For directors appointed by supporting organisations or advisory committees, or subdivisions within them (e.g. within the GNSO), a process led by that organisation or subdivision could lead to the director's removal. The principle is that the appointer is also the remover, and that is where the decision is made.

d) ***For the removal of non-SO/AC directors appointed by the Nominating Committee,*** an SO, AC or SG could escalate issues with the director to the point where there was consideration of the director's removal by the community mechanism noted in 6.5.1 above.

An alternative proposal for dealing with NomCom appointed board members has been presented by Avri Doria for consideration.

In order to remove an individual director(s) appointed by the Nominating Committee, a Nomcom recall process will be added to the Bylaws section on Nomcom. The recall process would be initiated by a petition by 3 AC/SO, including at least 1 SO and 1 AC. The petition must include a description of the case for removal. The Recall process would be chaired by an emeritus chair of a previous Nominating Committee selected by the ICANN Board. The Recall Committee will be made up of appointees from the various AC/SO according to the same formula used to populate the Nominating Committee and will use the same processes and procedures. The members of the current nominating committee will not be qualified for participation. The single focus of the Recall Committee will be to review the case for removal presented by the petitioners and decision on removal of Board Member(s)

---

[9] There are escalation paths, up to and including removal from the Board, for Board member violations of the Code of Conduct and Conflict of Interest Policies, but the Bylaws do not currently require such a violation occur prior to Board removal.

e) Whether the decision-making body is the SO/AC or the community mechanism, removal would require a **[66%] [75%]** level of support (or equivalent) to decide in favour of removal.

f) ***The petitioning threshold to start the consideration of removing a director is to be agreed once we have greater clarity on what the mechanism is to do so, but should be set at least at a majority of those who would make the decision.***

6.6.6 Power: Recalling the entire ICANN Board

a) There may be situations where removing individual ICANN directors is not seen as a sufficient remedy for the community: where a set of problems have become so entrenched that the community wishes to remove the entire ICANN Board in one decision.

b) Beyond the power set out above to remove individual directors, this power would allow the community to cause the removal of the entire ICANN Board. The community would initiate use of this power on the petition of ***two thirds of the SOs or ACs in ICANN, with at least one SO and one AC petitioning***.

c) After a petition is raised, there would be a set period of time for SOs / ACs to individually and collectively deliberate and discuss whether the removal of the Board is warranted under the circumstances. Each SO and AC, following its internal processes, would decide how to vote on the matter.

d) It would be preferable for a decision of this sort to be the result of cross-community consensus. Where this consensus is not apparent, a suitably high threshold for the exercise of this power, **[75%] [85%]** _**of all the support available within the community mechanism would have to be cast in favour to implement it.**_ This ensures that non-participation does not lower the threshold required to remove the Board.

> In deciding the threshold, the CCWG should **discuss what it wants to achieve**.
> This was chosen to prevent any particular SO or AC being able to prevent the removal of the Board, but to be as high as possible without allowing that to occur. The requirement on all recordable support/opposition to be counted was to avoid non-participation reducing the effective threshold for decision.

e) Ongoing work in the CCWG will flesh out how to deal with transitional matters raised, including at least the following:
   - the need to ensure ICANN does have a board in place after the removal (whether there is:
     - a phase of "caretaker" behaviour by the outgoing Board while new members are elected, or
     - a need to elect alternate Board members in each board selection process, or
     - a pre-defined subset of the community that could function as an interim Board;
   - continuity in the role of Chief Executive were the Board to be removed;
   - "caretaker" conventions for the CEO to follow in a situation where the Board had been removed.

6.7 Incorporating AoC into the ICANN Bylaws

a) The Affirmation of Commitments (AoC) is a 2009 bilateral agreement between the US government and ICANN[10]. After the IANA agreement is terminated, the AoC will become the next target for elimination since it would be the last remaining aspect of a unique United States oversight role for ICANN.

b) Elimination of the AoC would be simple matter for a post-transition ICANN, since the AoC can be terminated by either party with just 120 days' notice. The CCWG Stress Test Work Party addressed this contingency since it was cited in prior public comments[11]. The CCWG evaluated the contingency of

---

[10] Affirmation of Commitments, Sep-2009, at https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en

[11] See https://community.icann.org/display/acctcrosscomm/ST-WP+--+Stress+Tests+Work+Party

ICANN unilaterally withdrawing from the AoC against existing and proposed accountability measures, including:

1. Preserving ICANN commitments from the AoC, including sections 3,4,7, and 8 as well as commitments cited in the section 9 reviews.
2. Bringing the four AoC review processes into ICANN's bylaws.

c) All of the other sections in the AoC are either preamble text or commitments of the US Government. As such they don't contain commitments by ICANN, and so they cannot usefully be incorporated in the bylaws.

d) Each of the above measures is addressed below.

e) The AoC-based reviews and the commitments ICANN has made are being added to the ICANN bylaws as part of the IANA Stewardship transition process. It is possible that once adopted as fundamental bylaws, ICANN and the NTIA could consider mutually agreed changes to or ending of some or all of the AoC, since in some respects it will no longer be necessary.

f) In reviewing this suggested approach to incorporating the AoC commitments in the bylaws, the community should consider the degree to which it finds the suggestions implementable and reasonable. The concepts outlined through these changes, rather than the specific drafting quality or precision, are the points to consider at this stage in the CCWG's work.

6.7.1 Preserving ICANN Commitments from the AoC

Note: The interaction between this drafting and the work done by Work Party 2 on the "Fundamental Commitments and Core Values" has not yet seen reconciliation done. This is something the CCWG will need to **discuss**.

ICANN COMMITMENTS IN THE AOC	AS EXPRESSED IN ICANN BYLAWS
3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.	in revised Core Values: *Proposed core value 6* (with **additional text**) Ensure that decisions made related to the global technical coordination of the DNS are made in the **global** public interest and are accountable, transparent **and should respect the bottom-up multistakeholder nature of ICANN.** *Proposed core value 5* (with **additional text**): Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment **that enhances consumer trust and choice.**

ICANN COMMITMENTS IN THE AOC	AS EXPRESSED IN ICANN BYLAWS
4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.	in revised Core Values: *Proposed new Section 9 in bylaws Article III Transparency* (with **additional text**) ICANN will perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial **or non-commercial** impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

ICANN COMMITMENTS IN THE AOC	AS EXPRESSED IN ICANN BYLAWS
7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.	in revised Core Values: *Proposed insertion of new section 8 in Article III Transparency* (this is AoC para 7 in its entirety including **additional text**): ICANN commits to adhere to transparent and accountable budgeting processes, **providing [reasonable] [adequate] <u>advance notice to facilitate stakeholder engagement in policy decision-making</u>**, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

ICANN COMMITMENTS IN THE AOC	AS EXPRESSED IN ICANN BYLAWS
8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.	in revised Core Values: *Proposed inserting (a) in full as a new core value in the bylaws* (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet. In Feb-2015, the ICANN CEO told a US Senate Committee, "the jurisdiction of ICANN shall remain in the United States of America, and we stand by this". This established an expectation, so the absence of 8(b) would be noted when Congress reviews the transition proposal. *Proposed inserting (c) in full as a new core value in the bylaws* (including **additional text**): Operating as a multi-stakeholder, **bottom-up** private sector led organization with input from the public, for whose benefit ICANN shall in all events act.
9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below :	See Section 6.6.2 of this document for bylaws text to preserve commitments to perform these ongoing reviews.

In paragraph 8 above, there is the need to carefully consider whether a) or b) need to be included.

The CCWG should **discuss** this.

6.7.2 AoC Reviews

a) Suggestions gathered during 2014 comment periods on ICANN accountability and the IANA stewardship transition suggested several ways the AoC Reviews should be adjusted as part of incorporating them into ICANN's bylaws:
   - Ability to sunset reviews and create new reviews
   - Community stakeholder groups should appoint their own members to the review teams
   - Give review teams access to all ICANN internal documents
   - Require the ICANN board to approve and implement review team recommendations, including recommendations from previous reviews.

b) In Bylaws Article IV, add a new section for **Periodic Review of ICANN Execution of Key Commitments,** with an overarching chapeau for the way these reviews are conducted and then one subsection for each of the four current Affirmation Reviews.

c) These proposals are presented beginning on the next page.

Possible Bylaw that provides a chapeau for all periodic reviews

All of the reviews listed in this section 6.6.2 would be governed by the following:

PROPOSED BYLAW TEXT	COMMENT
ICANN will produce an annual report on the state of improvements to Accountability and Transparency.

ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the review teams defined in this section. | This is new. It is a recommendation based on one in ATRT2 and becomes more important as reviews are spread further apart. |
| All reviews will be conducted by a volunteer community review team comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board. | |

PROPOSED BYLAW TEXT	COMMENT
Review teams may also solicit and select independent experts to render advice as requested by the review team, and the review team may choose to accept or reject all or part of this advice.	
To facilitate transparency and openness in ICANN's deliberations and operations, the review teams shall have access to ICANN internal documents, and the draft output of the review will be published for public comment. The review team will consider such public comment and amend the review as it deems appropriate before issuing its final report and forwarding the recommendations to the Board.	
The final output of all reviews will be published for public comment. The Board shall consider approval and begin implementation within six months of receipt of the recommendations.	

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	Notes
1. **Accountability & Transparency Review**. The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders. In this review, particular attention will be paid to: (a) assessing and improving ICANN Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of GAC interaction with the Board	This commitment is reflected in Bylaws Core Values Rephrased to avoid implying a review of GAC's effectiveness

and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.; and (f) assessing the extent to which the Board and staff have implemented the recommendations arising from the reviews required by this section. The review team may recommend termination of other periodic reviews required by this section, and may recommend additional periodic reviews. This periodic review shall be conducted no less frequently than every five years, measured from the date the Board received the final report of the prior review team.	Moved from AoC text into this list AoC required every 3 years.

	Notes
PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	
2. **Preserving security, stability, and resiliency.** The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS. In this review, particular attention will be paid to:	This commitment is reflected in Bylaws Core Values

(a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. This periodic review shall be conducted no less frequently than every five years, measured from the date the Board received the final report of the prior review team.	Change: AoC required every 3 years.

	Notes
PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	
4. **Reviewing effectiveness of WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.** ICANN commits to enforcing its existing policy relating to WHOIS/Directory Services, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. Such existing policy also includes the requirements that legal constraints regarding privacy, as defined by OECD in 1980 as amended in 2013. The Board shall cause a periodic review to assess the extent to which	http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm http://www.oecd.org/internet/ieconomy/privacy-guidelines.htm

WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. This periodic review shall be conducted no less frequently than every three years, measured from the date the Board received the final report of the prior review team.	AoC also required every 3 years.

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	Notes
3. **Promoting competition, consumer trust, and consumer choice.** ICANN will ensure that as it expands the top-level domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The Board shall cause a review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year. This review will examine the extent to which the expansion of gTLDs has promoted competition, consumer trust, and consumer choice, as well as effectiveness of: (a) the gTLD application and evaluation process; and (b) safeguards put in place to mitigate issues involved in the expansion. Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section have been implemented. These periodic reviews shall be conducted no less frequently than every four years, measured from the date the Board received the final report of the relevant review team.	This commitment could be added to Bylaws Core Values Re-phrased to cover future new gTLD rounds. New AoC also required a review 2 years after the 1 year review.

Periodic review of the IANA Functions	new
tbd	

6.8 Bylaws changes suggested by Stress Tests

a) The CCWG Charter calls for stress testing of accountability enhancements in both work stream 1 and 2. Among deliverables listed in the charter are:

> ***Identification of contingencies to be considered in the stress tests.***
> *Review of possible solutions for each Work Stream including stress tests against identified contingencies.*
> *The CCWG-Accountability should consider the following methodology for stress tests*
> - *analysis of potential weaknesses and risks*
> - *analysis existing remedies and their robustness*
> - *definition of additional remedies or modification of existing remedies*
> - *description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies*
>
> *CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition.*

b) The CCWG Stress Test Work Party documented contingencies identified in prior public comments. The Stress Test Work Party then prepared a draft document showing how these stress tests are useful to evaluate existing and proposed accountability measures.

c) The exercise of applying stress tests identified changes to ICANN bylaws that might be necessary to allow the CCWG to evaluate proposed accountability mechanisms as adequate to meet the challenges uncovered.

6.8.1 Forcing the board to respond to Advisory Committee formal advice

a) Several stress tests indicate the need for a community power to force ICANN to take a decision on previously-approved Review Team Recommendations, consensus policy, or formal advice from an Advisory Committee (SSAC, ALAC, GAC, RSSAC).

b) The CCWG is developing enhanced community powers to challenge a board decision, but this may not be effective in cases where the board has taken no decision on a pending matter. In those cases, the community might need to force the board to make a decision about pending AC advice in order to trigger the ability for community to challenge the decision via Reconsideration or IRP processes.

c) Recommendation 9 from ATRT2[12] may answer this need:

9.1. ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice:

> *The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.*

d) This ATRT2 recommendation, however has not yet been reflected in ICANN bylaws, so this change should be required before the IANA stewardship transition.   In addition, there is a question as to whether a board "response" would be sufficient to trigger the RR and IRP review mechanisms in this proposal. The CCWG and CWG are waiting on legal advice as to that question.

6.8.2 Require consultation and mutually acceptable solution for GAC advice that is backed by consensus

a) Stress Test 18 addresses ICANN's response to GAC advice in the context of NTIA's statement regarding the transition: "NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution". This Stress Test was applied to existing and proposed accountability measures, as seen below:

---

[12] See page 11 of this PDF: https://www.icann.org/en/system/files/files/draft-recommendations-15oct13-en.pdf

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
18. Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's board. Consequence: Under current bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free expression, for example.	Current ICANN Bylaws (Section XI) give due deference to GAC advice, including a requirement to try to find "a mutually acceptable solution." This is required for any GAC advice, not just for GAC consensus advice. Today, GAC adopts formal advice according to its Operating Principle 47: "*consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection*."[13] But the GAC may at any time change its procedures to use majority voting instead of its present consensus.	One proposed measure is to amend ICANN bylaws (Article XI Section 2, item 1j) to give due deference only to GAC consensus advice, and indicate the definition of consensus that the GAC uses presently. The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN bylaws would require due deference only to advice that had GAC consensus. GAC can still give ICANN advice at any time, with or without consensus.

b) The CCWG proposes a response to Stress Test 18 to amend ICANN bylaws such that only consensus advice would trigger the obligation to try to find a mutually acceptable solution. The proposal is to amend ICANN Bylaws, Article XI Section 2 clause j as seen below. (addition here ***bold, italic and underlined***) Clause k is also shown for completeness but is not being amended.

> *j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to*

---

[13] ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

*follow that advice. **With respect to Governmental Advisory Committee advice that is supported by consensus**, the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

c) Note that the proposed bylaws change for stress test 18 does not interfere with the GAC's method of decision-making. If the GAC decided to adopt advice by majority voting or methods other that today's consensus, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."

d) Moreover, ICANN would still have to explain why GAC advice was not followed: "In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice"

e) The only effect of this bylaws change is to limit the kind of advice where ICANN is obligated to "try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution". That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus – exactly the way GAC advice has been approved since ICANN began.

f) NTIA gave specific requirements for this transition, and stress test 18 is the most direct test of the requirement to avoid significant expansion of the role of governments in ICANN decision-making. Unless and until there are other proposed measures that address this stress test, the proposed bylaws change should remain in consideration as an important part of the community's proposal.

7. Stress Tests

An essential part of our CCWG Charter calls for stress testing of accountability enhancements in both work stream 1 and 2. 'Stress Testing' is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. In the

financial industry for example 'stress testing' is routinely run to evaluate the strength of institutions.

Purpose & Methodology

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

 Among deliverables listed in the CCWG-Accountability Charter are:
Identification of contingencies to be considered in the stress tests
Review of possible solutions for each Work Stream including stress tests against identified contingencies. The CCWG-Accountability should consider the following methodology for stress tests
- analysis of potential weaknesses and risks
- analysis existing remedies and their robustness
- definition of additional remedies or modification of existing remedies
- description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies

CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition.

In addition, the CCWG chairs has asked our work party to consider this yes/no question:
While this is not a gating factor, is the threat directly related to the transition of the IANA stewardship?

Also, note that the CCWG charter does not ask that probability estimates be assigned for contingencies. The purpose of applying tests to proposed accountability measures is to determine if the community has adequate means to challenge ICANN's reactions to the stress test.

CCWG Work Team 4 gathered an inventory of contingencies identified in prior public comments.   That document was posted to the wiki at https://community.icann.org/display/acctcrosscomm/ST-WP+--+Stress+Tests+Work+Party

We consolidated these into five 'stress test categories' listed below, and prepared draft documents showing how these stress tests are useful to evaluate ICANN's existing and CCWG's proposed accountability measures.
I. Financial Crisis or Insolvency (Scenarios #5, 6, 7, 8 and 9)
ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the domain name industry, or the general global economy. It could also result from a legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes domain name registrations obsolete.
II. Failure to Meet Operational Obligations (Scenarios #1,2,11, 17, and 21)

ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation over the objections of stakeholders, such as those defined as 'Significantly Interested Parties' [http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf]

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

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

*IV. Failure of Accountabilit*y (Scenarios #10, 12, 13, 16, 18, 22, 23, 24 and 26)

Actions (or expenditure of resources) by one or more ICANN Board Members, CEO, or other Staff, are contrary to ICANN's mission or bylaws. ICANN is "captured" by one stakeholder segment, including governments via the GAC, which is either able to drive its agenda on all other stakeholders, or abuse accountability mechanisms to prevent all other stakeholders from advancing their interests (veto).

V. Failure of Accountability to External Stakeholders (Scenarios #14, 15, and 25)

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

Note that we cannot apply stress tests definitively until CCWG and CWG have defined mechanisms/structures to test. This draft applies stress tests to a 'snapshot' of proposed mechanisms under consideration at this point in the process.

Also, note that several stress tests can specifically apply to work of the CWG regarding transition of the IANA naming functions contract (see Stress Tests #1 & 2, 10, 11, 14, 15, 16, 17, 19, 22, 24, 25)

The following table shows the stress test scenarios for each of our five categories of risk, alongside existing accountability mechanisms and measures and proposed accountability measures. Conclusions have been drawn after discussion and exploration of each hypothetical situation, and the table also lists whether a) if the 'threat' is or is not directly related to the transition of IANA stewardship; b) if and to what extent existing measures and mechanisms are deemed adequate; and c) the adequacy and effectiveness of any proposed measures or mechanisms.

Stress test category I. Financial Crisis or Insolvency

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
5. Domain industry financial crisis. Consequence: significant	ICANN could propose revenue increases or spending cuts,	One proposed measure would empower the community to veto ICANN's

reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN's ability to operate. 6. General financial crisis. 7. Litigation arising from private contract, e.g., Breach of Contract. 8. Technology competing with DNS. Consequence: loss affecting reserves sufficient to threaten business continuity.	but these decisions are not subject to challenge by the ICANN community. The Community has input in ICANN budgeting and Strat Plan. Registrars must approve ICANN's variable registrar fees. If not, registry operators pay the fees. ICANN's reserve fund could support operations in a period of reduced revenue. Reserve fund is independently reviewed periodically.	proposed annual budget. This measure enables blocking a proposal by ICANN to increase its revenues by adding fees on registrars, registries, and/or registrants. Another proposed mechanism is community challenge to a board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a revenue or expenditure decision outside the annual budget process, the IRP mechanism could reverse that decision.
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures would be adequate, unless the revenue loss was extreme and sustained.	c) Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
9. Major corruption or fraud. Consequence: major impact on corporate reputation, significant litigation and loss of reserves.	ICANN has annual independent audit that includes testing of internal controls designed to prevent fraud and corruption. ICANN maintains an anonymous hotline for employees to report suspected fraud.	One proposed measure is to empower the community to force ICANN's board to implement a recommendation arising from an AoC Review – namely, ATRT recommendations to avoid conflicts of interest. Another proposed measure would empower the community to veto ICANN's proposed annual budget. This measure enables blocking a budget

	ICANN board can dismiss CEO and/or executives responsible. The community has no ability to force the board to report or take action against suspected corruption or fraud.	proposal that is tainted by corruption or fraud.
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures would not be adequate if litigation costs or losses were extreme and sustained.	c) Proposed measures are helpful, but might not be adequate if litigation costs and losses were extreme and sustained.

Stress test category II. Failure to Meet Operational Expectations

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
1. Change authority for the Root Zone ceases to function, in part or in whole. also 2. Delegation authority for the Root Zone ceases to function, in part or in whole. Consequence: interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.	Under the present IANA functions contract, NTIA can revoke ICANN's authority to perform IANA functions and re-assign to different entity/entities. After NTIA relinquishes the IANA functions contract, this measure will no longer be available.	The CWG proposals includes various escalation procedure to prevent degradation of service, as well as a plan (operational) for the transition of the IANA function. The CWG also proposes that IANA becomes a subsidiary of ICANN. The community powers (such as Board recall) might also be triggered by such a dramatic event. To manage the revocation of IANA functions, the CWG contract would require contingency and continuity of operations plan (CCOP). Suggestions for Work Stream 2: Require annual external security audits

		and publication of results. Require certification per international standards (ISO 27001) and publication of results.
Conclusions: a) This threat is directly related to the transition of IANA stewardship	b) Existing measures would be inadequate after NTIA terminates the IANA contract.	c) At this point, CWG's recommendations are still in development.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
11. Compromise of credentials. Consequence: major impact on corporate reputation, significant loss of authentication and/or authorization capacities.	Regarding compromise of internal systems: Based upon experience of the recent security breach, it is not apparent how the community holds ICANN management accountable for implementation of adopted security procedures. It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report. Regarding DNS security: Beyond operating procedures, there are credentials employed in DNSSEC. ICANN annually seeks	Regarding compromise of internal systems: No measures yet suggested would force ICANN management to conduct an after-action report and disclose it to the community. Nor can the community force ICANN management to execute its stated security procedures for employees and contractors. Regarding DNS security: One proposed measure empowers the community to force ICANN's board to implement a recommendation arising from an AoC Review – namely, *Security Stability and Resiliency*. A proposed bylaws change would require ICANN board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the board took a decision to reject or

	SysTrust Certification for its role as the Root Zone KSK manager. The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities. Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.	only partially accept formal AC advice, the community could be empowered to challenge that board decision to an IRP. Suggestions for Work Stream 2: Require annual external security audits and publication of results. Require certification per international standards (ISO 27001) and publication of results.
Conclusions: a) This threat is directly related to the transition of IANA stewardship	b) Existing measures would not be adequate.	c) Proposed measures would be helpful to mitigate and remedy the scenario, but not to prevent it.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
17. ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by technical community or other stakeholder groups. Consequence: DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.	In 2013-14 the community demonstrated that it could eventually prod ICANN management to attend to risks identified by SSAC. For example: dotless domains (SAC 053); security certificates and name collisions such as .mail, .home (SAC 057) NTIA presently gives clerical approval for each delegation to indicate that ICANN has followed its processes. NTIA	One proposed measure is to empower the community to force ICANN's board to respond to recommendations arising from an AoC Review – namely, 9.2 Review of Security, Stability, and Resiliency. A proposed bylaws change would require ICANN board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the board took a decision to reject or only partially accept formal AC advice, the community could be empowered to

	could delay a delegation if its finds that ICANN has not followed its processes. Not clear if that would/could have been a finding if ICANN attempted to delegate a new TLD such as .mail or .home.	challenge that board decision to an IRP.
Conclusions: a) This threat is partially related to the transition of IANA stewardship	b) Existing measures were adequate to mitigate the risks of this scenario.	c) Proposed measures enhance community's power to mitigate the risks of this scenario.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
21. A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD Manager. However, the IANA Function Manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD Manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a Designated Manager. But the IANA Function Manager does not document that: Significantly Interested Parties agree; that other Stakeholders had a voice in selection; the Designated Manager has demonstrated required capabilities; there are not objections of many Interested Parties and/or Significantly Interested Parties. This stress test examines the community's ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place. Consequence: Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.	Under the present IANA contract with NTIA, the IANA Department issues a boiler-plate report to the ICANN Board, which approves this on the Consent Agenda and forwards to NTIA, which relies on the Board's certification and approves the revocation, delegation or transfer. There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN's certification that process was followed properly. [add link to GAC Principles for delegation and administration of ccTLDs presented by GAC, 23-Feb-2000] [add link to Framework of Interpretation, 20-Oct-2014]	We will evaluate CWG proposed mechanisms regarding ccTLDs if and when they are published. Regarding CCWG proposed measures: One proposed CCWG measure could give the community standing to request Reconsideration of management's decision to certify the ccTLD change. Would require a standard of review. Another proposed CCWG mechanism is community challenge to a board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN took action to revoke or assign management responsibility for a ccTLD, the IRP mechanism might be enabled to review that decision. Would require a standard of review.

Conclusions: a) This threat is directly related to the transition of IANA stewardship	b) Existing measures would not be adequate.	c) At this point, CWG's recommendations are still in development.

Stress test category III. Legal/Legislative Action

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
3. Litigation arising from existing public policy, e.g., Antitrust suit In response, ICANN board would decide whether to litigate, concede, settle, etc. Consequence: significant interference with existing policies and/or policy development relating to relevant activities	The community could develop new policies that respond to litigation challenges. An ICANN board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP. Reconsideration looks at process but not substance of a decision. ICANN must follow orders from courts of competent jurisdiction.	After ICANN board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options: The community could develop new policies that respond to litigation challenges. Another measure would give the community standing to file for Reconsideration or IRP. Would require a standard for review. Another measure would allow an ATRT to recommend ICANN implement a recommendation of a prior AoC Review.
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures are inadequate.	c) Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.

Stress Test	Existing Accountability Measures	Proposed Accountability Measures
4. New regulations or legislation.	The community could	After ICANN board responded to the

	develop new policies that respond to new regulations. An ICANN board decision on how to respond to the regulation (litigate or change policy/implementation) could not be challenged by the community at-large, which lacks standing to use IRP. Reconsideration looks at process but not substance of a decision. ICANN must follow orders from courts of competent jurisdiction.	regulation (litigate or change policy/implementation), the community would have several response options: The community could develop new policies that respond to regulation. Another measure would give the community standing to file for Reconsideration or IRP. Would be the standard of review. Another measure would allow an ATRT to recommend ICANN implement a recommendation of a prior AoC Review.
For example, a government could cite anti-trust or consumer protection laws and find unlawful some rules that ICANN imposes on TLDs. That government could impose fines on ICANN, withdraw from the GAC, and/or force ISPs to use a different root, thereby fragmenting the internet. In response, ICANN board would decide whether to litigate, concede, settle, etc. Consequence: significant interference with existing policies and/or policy development relating to relevant activities		
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures are inadequate.	c) Proposed measures would be an improvement but might still be inadequate.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
19. ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court. In response, ICANN board would decide whether to litigate, concede, settle, etc. Consequence: The entity charged with root zone maintenance could face the question of whether to follow ICANN re-delegation request or to follow the court order.	Under the present agreement with NTIA, the entity performing root zone maintenance is protected from lawsuits since it is publishing the root per contract with the US Government. [pending verification] However, the IANA stewardship transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits. A separate consideration: An ICANN board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP. Reconsideration looks at process but not substance of a decision. ICANN must follow orders from courts of competent jurisdiction.	We will evaluate CWG proposed mechanisms in this area when they are published. CWG is expected to propose that delegation of gTLDs would be subject to IRP appeal with binding decision, after going through the CWG escalation complaint procedure. While it would not protect the root zone maintainer from lawsuits, one CCWG proposed mechanism is community challenge of ICANN decision to re-delegate or its decision to acquiesce or litigate the court order. This challenge would take the form of a Reconsideration or IRP. After ICANN board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have response options: One measure would give the community standing to file for Reconsideration or IRP. Would require a standard of review.
Conclusions: a)This threat is directly related to the transition of IANA stewardship	b) Existing measures might not be adequate.	c) At this point, CWG's recommendations are still in development.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
20. A court order is issued to block ICANN's delegation of a new TLD, because of complaint by existing TLD operators or other aggrieved parties. For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string. In response, ICANN board would decide whether to litigate, concede, settle, etc. Consequence: ICANN's decision about how to respond to court order could bring liability to ICANN and its contract parties.	Before delegation, the community lacked standing to object to string similarity decisions. Reconsideration requests looks at process but not at *substance* of the decision. An ICANN board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP. Reconsideration looks at process but not substance of a decision. ICANN must follow orders from courts of competent jurisdiction, and may consider factors such as cost of litigation and insurance.	Preventive: During policy development, the community would have standing to challenge ICANN board decisions about policy and implementation. A future new gTLD Guidebook could give the community standing to file objections. Remedial: After ICANN board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options: Another measure would give the community standing to file for Reconsideration or IRP. Would require a standard of review. Another measure would allow an ATRT to recommend ICANN implement a recommendation of a prior AoC Review.
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures would be inadequate.	c) Proposed measures would be an improvement but might still be inadequate.

Stress test category IV. Failure of Accountability

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
10. Chairman, CEO or officer acting in a manner inconsistent with the organization's mission. 24. An incoming Chief Executive institutes a "strategic review" that arrives at a new, extended mission for ICANN. Having just hired the new CEO, the Board approves the new mission / strategy without community consensus. Consequence: Community ceases to see ICANN as the community's mechanism for limited technical functions, and views ICANN as an independent, *sui generis* entity with its own agenda, not necessarily supported by the community. Ultimately, community questions why ICANN's original functions should remain controlled by a body that has acquired a much broader and less widely supported mission.	As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand scope too broadly. The Community has some input in ICANN budgeting and Strat Plan, and could register objections to plans and spending on extending ICANN's mission. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation.	One proposed measure is empowering the community to veto ICANN's proposed annual budget. This measure could block a proposal by ICANN to increase its expenditure on extending its mission beyond what the community supported. Another proposed measure is empowering the community to challenge a board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. Would require a standard for review. Another proposed measure is a proscriptive restriction on ICANN's activities, as part of the bylaws or Articles of Incorporation.
Conclusions: a) This threat is directly related to the transition of IANA stewardship	b) Existing measures are inadequate after NTIA terminates the IANA contract.	c) Proposed measures in combination are adequate.

Stress Test	Existing Accountability Measures	Proposed Accountability Measures

| 12. Capture by one or several groups of stakeholders.

Consequence: major impact on trust in multistakeholder model, prejudice to other stakeholders. | Regarding capture by governments, the GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN bylaws would require due deference only to advice that had GAC consensus. | CCWG proposals for community empowerment rely upon supermajority to veto ICANN budgets, or to trigger reconsideration or IRP. A supermajority requirement is an effective prevention of capture by one or a few groups, provided that quorum requirements are high enough.

Each AC/SO/SG needs accountability and transparency rules to prevent capture from those outside that community.

To prevent capture by governments, another proposed measure would amend ICANN bylaws (Article XI, Section 2, item 1j) to give due deference only to GAC consensus advice. |
| Conclusions:
a) This threat is not directly related to the transition of IANA stewardship | b) Existing measures would be inadequate | c) Proposed measures would be adequate. |

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
13. One or several stakeholders excessively rely on accountability mechanism to "paralyze" ICANN. Consequence: major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff	Current redress mechanisms might enable one stakeholder to block implementation of policies. But these mechanisms (IRP, Reconsideration, Ombudsman) are expensive and limited in scope of what can be reviewed. There is no present mechanisms for a ccTLD	CCWG proposals for *community* empowerment rely upon supermajority of community representatives to veto ICANN budgets, or to trigger reconsideration or IRP. A supermajority requirement is an effective prevention of paralysis by one or a few groups, provided that quorum requirements are high enough. Each AC/SO/SG needs accountability and transparency rules to prevent

	operator to challenge a revocation decision.	capture from those outside that community.
		Consider means for ccTLD operator to challenge revocation decisions.
		However, some CCWG proposals may make redress mechanisms more accessible and affordable to individual stakeholders, increasing their ability to block implementation of policies and decisions. The standards of review may need to be adjusted based on whether the community or an individual sought the review /redress.
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures seem to be adequate.	c) Proposed measures may need to distinguish community powers from those available to individuals.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
16. ICANN engages in programs not necessary to achieve its limited technical mission. For example, uses fee revenue or reserve funds to expand its scope beyond its technical mission, giving grants for external causes. Consequence: ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.	As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to expand scope without community support. But as a result of IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain IANA contract with NTIA. Community was not aware of ICANN Board's secret resolution to initiate negotiations to create NetMundial. There was no apparent way for community to challenge/reverse this decision. The Community has input in ICANN budgeting and Strat Plan. Registrars must approve ICANN's variable registrar fees, though Registrars do not view this as an accountability measure. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation.	One proposed measure is empowering the community to veto ICANN's proposed annual budget. This measure could block a proposal by ICANN to increase its expenditure on initiatives the community believed were beyond ICANN's limited mission. However, this would be an extreme measure since the entire budget would have to be vetoed. Another proposed mechanism is a challenge to a board decision, made by an aggrieved party or the Community as a whole. This would refer the matter to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a commitment or expenditure outside the annual budget process, the IRP mechanism enables reversal of that decision. Another proposed measure is to amend ICANN bylaws to prevent the organization from expanding scope beyond what is needed for SSR in DNS operations and to meet mission and core values of ICANN. If ICANN's board proposed to amend/remove these bylaws provisions, another proposed measure would empower the community to veto that proposed bylaws change.
Conclusions: a) threat is directly related to the	b) Existing measures are	c) Proposed measures in combination

transition of IANA stewardship	inadequate.	may be adequate.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
18. Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's board. Consequence: Under current bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free online expression, for example.	Current ICANN Bylaws (Section XI) give due deference to GAC advice, including a requirement to try and find "a mutually acceptable solution." This is required for any GAC advice, not just for GAC consensus advice. Today, GAC adopts formal advice according to its Operating Principle 47: "*consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection*."[14] But the GAC may at any time change its procedures to use majority voting instead of consensus.	Another proposed measure is to amend ICANN bylaws (Article XI, Section 2, item 1j) to give due deference only to GAC consensus advice, and indicate the definition of consensus that the GAC uses presently. The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN bylaws would require due deference only to advice that had GAC consensus. GAC can still give ICANN advice at any time, with or without consensus.
Conclusions: a) This threat is not directly related to the transition of IANA stewardship	b) Existing measures are inadequate.	c) Proposed measures are adequate.

[14] ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at
https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
22. ICANN Board fails to comply with bylaws and/or refuses to accept the decision of a redress mechanism constituted under the bylaws. Consequence: Community loses confidence in multistakeholder structures to govern ICANN.	As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to ignore bylaws. But as a result of IANA stewardship transition, ICANN would no longer need to follow bylaws in to retain IANA contract with NTIA. Aggrieved parties can ask for Reconsideration of board decisions, but this is currently limited to questions of whether process was followed. Aggrieved parties can file for IRP, but decisions of the panel are not binding on ICANN. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation.	One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged. Another measure would allow an ATRT to recommend ICANN implement a recommendation of a prior AoC Review. One proposed measure is empowering the community to challenge a board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN failed to comply with its bylaws, the IRP mechanism enables a reversal of that decision. If the ICANN board were to ignore binding IRP decisions, another proposed measure would empower the community to force resignation ICANN board member(s).
Conclusions: a) This threat is directly related to the transition of IANA stewardship	b) Existing measures are inadequate.	c)Proposed measures in combination are adequate because the community has power to spill the board.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
23. ICANN uses RAA or other agreements to impose requirements on third parties, outside scope of ICANN mission. (e.g. registrant obligations) Affected third parties, not being contracted to ICANN, have no effective recourse. Contracted parties, not affected by the requirements, may choose not to use their ability to challenge ICANN's decision. This issue occurs in policy development, implementation, and compliance enforcement. Consequence: ICANN seen as a monopoly leveraging power in one market (domain names) into adjacent markets.	During policy development, affected third parties may participate and file comments. Affected third parties may file comments on proposed changes to registry and registrar contracts. Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies. Affected third parties (e.g. registrants and users) have no standing to challenge ICANN management and board on how it has *implemented* approved policies. If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.	Affected third parties (e.g. registrants and users) could lobby for these community powers of review and redress: A proposed measure to empower the community to challenge a board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. Would require a standard for review. Another proposed measure is to amend ICANN bylaws to prevent the organization from expanding scope beyond what is needed for SSR in DNS operations and to meet mission and core values of ICANN.
Conclusions: a) This threat is not directly related to IANA transition	b) Existing measures are inadequate.	c) Proposed measures would, in combination, be adequate.

On 12-March, this additional stress test was added to category IV: Failure of Accountability

Stress Test	Existing Accountability Measures	Proposed Accountability Measures
26. During implementation of a properly approved policy, ICANN staff substitutes their preferences and creates	The reconsideration review mechanism allows for appeal to the Board of staff actions that contradict established	If the staff action involved a board decision, there are proposed improvements to challenge a board decision by reconsideration or referral

processes that effectively change or negate the policy developed. Whether staff do so intentionally or unintentionally, the result is the same. Consequence: Staff capture of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.	ICANN policies. However, reconsideration looks at process but not substance of a decision. An ICANN board decision could not be challenged by the community at-large, which lacks standing to use IRP.	to an Independent Review Panel (IRP) with the power to issue a binding decision.
Conclusions: a) This threat is not directly related to IANA transition	b) Existing measures are inadequate.	c) Proposed measures would, in combination, be adequate.

Stress test category V. Failure of Accountability to External Stakeholders

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
14. ICANN or NTIA choose to terminate the Affirmation of Commitments. (AoC) Consequence: ICANN would no longer be held to its Affirmation commitments, including the conduct of community reviews and required implementation of review team recommendations.	The AoC can be terminated by either ICANN or NTIA with 120 days notice. As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the AoC. But as a result of IANA stewardship transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain the AoC .	One proposed mechanism is community standing to challenge a board decision by referral to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN canceled the AoC, the IRP mechanism could enable reversal of that decision. Another proposed measure is to import AoC provisions into the ICANN bylaws, and dispense with the bilateral AoC with NTIA. Bylaws would be amended to include AoC commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in

| | | paragraph 9, or other provisions that are deemed essential by the community.

If ICANN's board proposed to amend the AoC provisions added to the bylaws, another proposed measure would empower the community to veto that proposed bylaws change.

Note: none of the proposed measures could prevent NTIA from canceling the AoC. |
|---|---|---|
| Conclusions:
a) This threat is directly related to IANA transition | b) Existing measures are inadequate after NTIA terminates the IANA contract. | c) Proposed measures in combination are adequate. |

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
15. ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN's failure to enforce contracts, or other actions. Consequence: affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.	As long as NTIA controls the IANA contract, ICANN could risk losing IANA functions if it were to move in order to avoid legal jurisdiction. Paragraph 8 of the AoC requires ICANN to remain headquartered in the US, but the AoC can be terminated by ICANN at any time. As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the AoC.	One proposed measure is to import AoC provisions into the ICANN bylaws, and dispense with the bilateral AoC with NTIA. Bylaws would be amended to include AoC commitment 8, requiring it to maintain headquarters [legal presence] in the US, where it is subject to legal redress by any aggrieved party. If ICANN's board proposed to amend the AoC provisions added to the bylaws, another proposed measure would empower the community to veto that proposed bylaws change.
Conclusions:		

a) This threat is directly related to the transition of IANA stewardship	b) Existing measures are inadequate once NTIA terminates IANA contract.	c) Proposed measures improve upon existing measures, and may be adequate.

STRESS TEST	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
25. ICANN delegates or subcontracts its obligations under a future IANA agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization. Consequence: Responsibility for fulfilling the IANA functions could go to a third party that was subject to national laws that interfered with its ability to execute IANA functions.	The present IANA contract (link) at C.2.1 does not allow ICANN to sub-contract or outsource its responsibilities to a 3rd party without NTIA's consent. NTIA could exert its control over ICANN's decision as long as it held the IANA contract. But not after NTIA relinquishes the IANA contract. Nor would NTIA's required principles for transition be relevant after transition occurred.	The CWG planning the IANA stewardship transition might require community consent before ICANN could sub-contract or outsource its IANA responsibilities to a 3rd party. Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.
Conclusions: a) This threat is directly related to the transition of IANA stewardship	b) Existing measures would not be adequate after NTIA relinquishes the IANA contract.	c) At this point, CWG's recommendations are still in development.

8. Items for Consideration in Work Stream 2

The CCWG Charter states that:
In the discussions around the accountability process, the CCWG-Accountability will proceed with two work streams:

> • Work Stream 1: focused on mechanisms enhancing 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.

While work stream 2 is not necessary to be implemented or committed to before the transition takes place, the Charter insists that they should remain firmly within the scope of the CCWG. The items listed below should therefore be considered as no less important than the work stream 1 items.

Commitment to work stream 2 proposal consideration.

However, concerns were raised within the CCWG about the incentives for ICANN to implement WS2 proposals when they are finalized after the transition has taken place. The group's recommendation to achieve sufficient commitment from ICANN is to rely on an interim Bylaw provision, noting that such provisions have been successfully used in the past.

ICANN has, where appropriate, used transitional articles within its Bylaws to identify issues that are necessary to address on a transitional basis, but will expire upon the occurrence of another event. The broadest use of a transitional article was in 2002, after the large ICANN Evolution and Reform effort, which made commitments to future occurrences such as a new MoU between ICANN and a group of Regional Internet Registries at the

time when new obligations would come into force for the ASO, or obligations that would be taken on by the ccNSO once formed. See https://www.icann.org/resources/unthemed-pages/bylaws-2002-12-15-en#XX.

There is also precedent for the use of transitional terms after the GNSO was restructured, and the Board seat selected by the At-Large Community was implemented.

To account for something such the Board's due consideration and implementation of the outcomes of work stream 2 accountability mechanisms, the proposal wouldn't require anything of the complexity after the 2002 reform effort.

RECOMMENDATION : The CCWG recommends that the Board adopts a transitional article in its Bylaws which would commit ICANN to confirm the relevant CCWG recommendations, and task the group with investigating potential enhancements to ICANN's accountability in the following list of areas <List of items to be detailed> (see section below).

Items for consideration within Work stream 2

During the course of its deliberations, the CCWG encountered several items which it considered as work stream 2. The list of items considered for work stream 2 is the following :

[Note: These items were selected when they met two cumulative criteria: presence in the WA2 document AND having been discussed during the CCWG meetings. This list NEEDS to be reviewed by the CCWG]

- enhancements to ICANN's accountability based on the law(s) applicable to its actions

- Alternative options for ICANN's jurisdiction (understood as 'place of legal establishment') based on possible accountability limitations related to the current jurisdiction of the Corporation ;

- enhancements to the Ombudsman's role and function
- Limiting ICANN's ability to deny transparency / disclosure requests
- improvements to ICANN's budgeting and planning process that guarantee the ability for the community to have input, and for that input to be given due consideration
- Define security audits and certification requirements for Icann's IT systems

9. Implementation Plan Including Timing

9.1 Timeline

9.2 Next Steps

9.3 Implementation

The following tables suggests implementation milestones and dates for Work Stream 1 recommendations			xx Complete √ or 🟢 xx In Progress ○ or 🔵 xx In Planning ◊ or 🟣
CCWG-ACCT Rec #	**Description/Implementation Summary**	**Milestones, Completion Dates (See Executive Summaries for additional details)**	**Expected Implementation Date after Approval**
Community Empowerment			
Review & Redress			

10. Set of Questions for Public Comment