

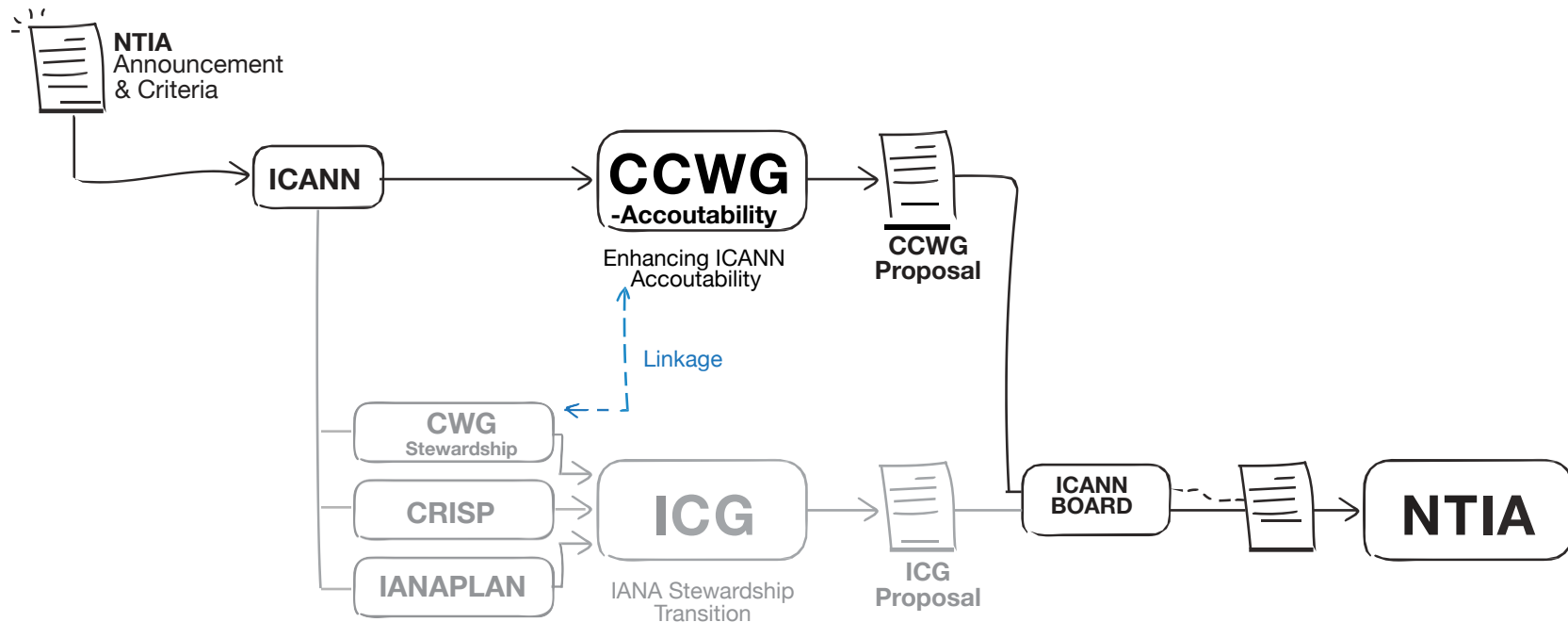
## WEBINAR

# Cross Community Working Group (CCWG) Accountability Initial Draft Proposal for Public Comment

11 May 2015

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# The Bigger Picture



Note: the information on this page is for illustrative purposes only. It is not intended to be exhaustive.

# Goal and Scope of the Group

## Goal

The CCWG-Accountability is expected to deliver proposals that would enhance ICANN's accountability towards all stakeholders.

The CCWG-Accountability will identify mechanisms that must be in place or committed to before the IANA Stewardship Transition in light of the changing historical contractual relationship with the U.S. Government (Work Stream 1), and those mechanisms for which a timeline for implementation may extend beyond the IANA Stewardship Transition (Work Stream 2).

## Scope

### **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.

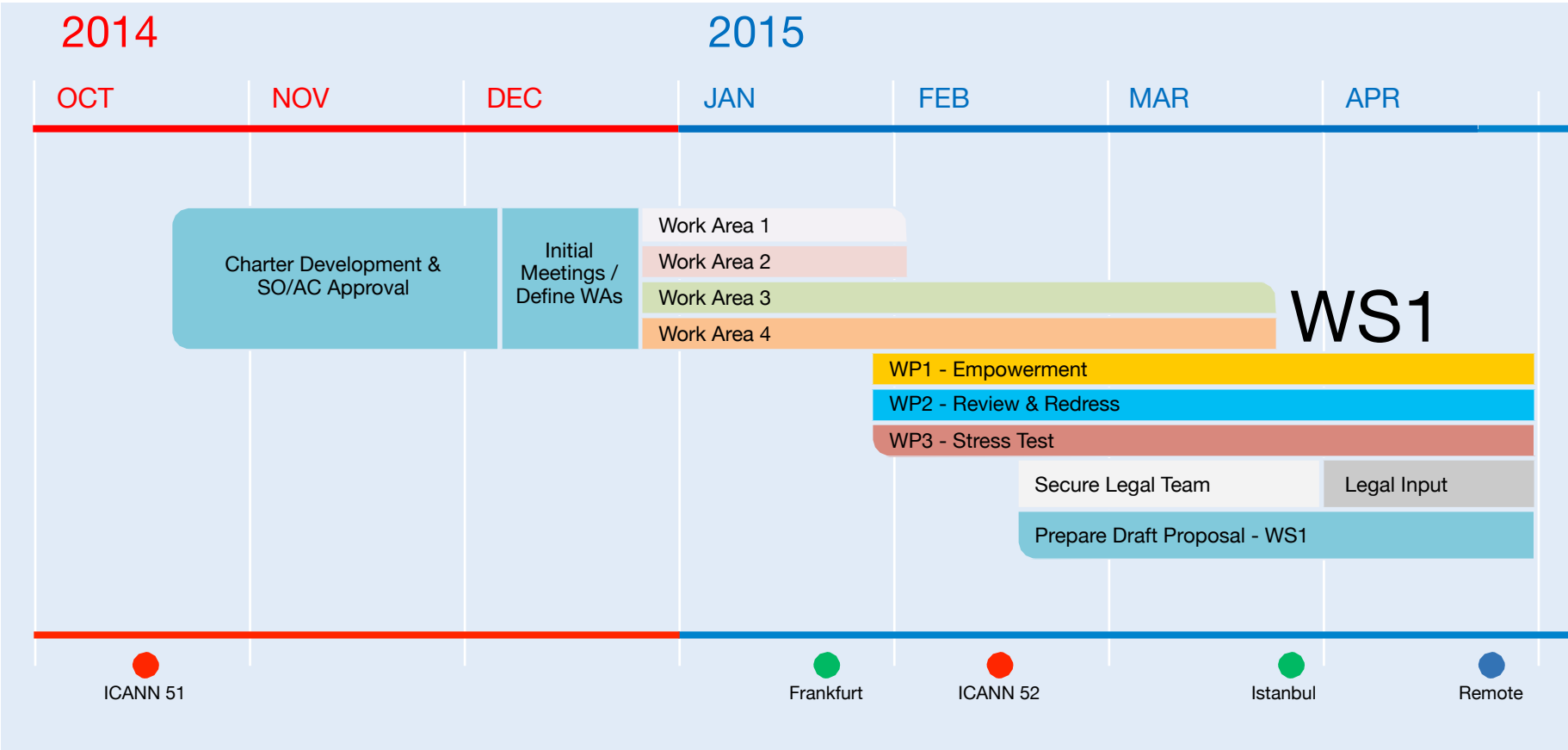
The ICANN-Accountability aims to give the community sufficient powers in Work Stream 1 so that the board and management cannot block implementation of Work Stream 2 items.

In order to facilitate evaluation and adoption of its proposals, the CCWG-Accountability is expected to provide a detailed description on how its proposals would provide an adequate level of resistance to contingencies ("stress tests"), within the scope of each Work Stream.

The CCWG-Accountability will allocate issues to Work Stream 1 and Work Stream 2. Some issues may span both Work Streams.

# Timeline/Progress

Participation	<b>26</b> members	<b>154</b> participants	<b>75</b> calls/meetings	<b>4,026</b> mailing list exchanges	<b>4,350</b> working hours
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# Four Building Blocks



## Empowered Community

Refers to the powers that allow the community i.e. the people to take action should ICANN breach the principles.



## ICANN Board

Represents the executive entity the community may act against, as appropriate.



## Principles Form the Mission

Guarantees and core values of the organization i.e the Constitution.



## Independent Review Mechanisms

i.e. the judiciary, confers the power to review and provide redress, as needed.

# Fundamental Bylaws

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## What is a Fundamental Bylaw?

ICANN's Bylaws can generally be changed by resolution of the Board. The Board can change the Bylaws with a two third majority. A Fundamental Bylaw would be an ICANN Bylaw that is harder to change than others.

## Why are they relevant? What are these for?

CCWG-Accountability proposals include revising ICANN's Bylaws to establish a set of Fundamental Bylaws, which hold special protections and can only be changed based on prior approval by the Community. The CCWG-Accountability recommends that following items have the status of Fundamental Bylaws:

- The Mission, Commitments and Core Values
- The Independent Review Process
- The power to veto non-fundamental Bylaw changes and to approve changes to Fundamental Bylaws
- Any reviews required by the CWG-Stewardship (e.g. the IANA Function Review)
- New community powers such as recall of the Board

# Empowered Community

## What are the Community Powers?

The CCWG-Accountability recommends the community be empowered with five (5) distinct powers.

1. Reconsider/reject Budget or Strategy/Operating Plans
2. Reconsider/reject Changes to ICANN “Standard” Bylaws
3. Approve Changes to “Fundamental” Bylaws
4. Removing Individual ICANN Directors
5. Recalling the Entire ICANN Board

## Why are they relevant?

Initial legal advice has indicated that the set of powers proposed in this report can be reserved to the ICANN multistakeholder community. More specifically there are approaches we can take within ICANN to make these powers legally available and enforceable.

As overall comments, the CCWG-Accountability is largely agreed on the following:

To be as restrained as possible in the degree of structural or organizing changes required in ICANN to create the mechanism for these powers.

To organize the mechanism along the same lines as the community – that is, in line and compatible with the current SO / AC / SG structures (without making it impossible to change these in future).

## What are the key takeaways?

The task for the CCWG is to provide for an accountability architecture that replaces the historic relationship with the USD.

With the community powers and the changes to the ICANN bylaws, the community is in a position to influence and control ICANN.

**What legal mechanism can be used to operationalize the empowered community?**

# CP1 Reconsider/Reject Budget, or Strategic/Operating Plans

## Description

This 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.

## Who can initiate a petition?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating a petition process.

## On what grounds can they initiate?

The community can reject Board decisions on strategic/operating plans and budget where the Board has failed to appropriately consider community input.

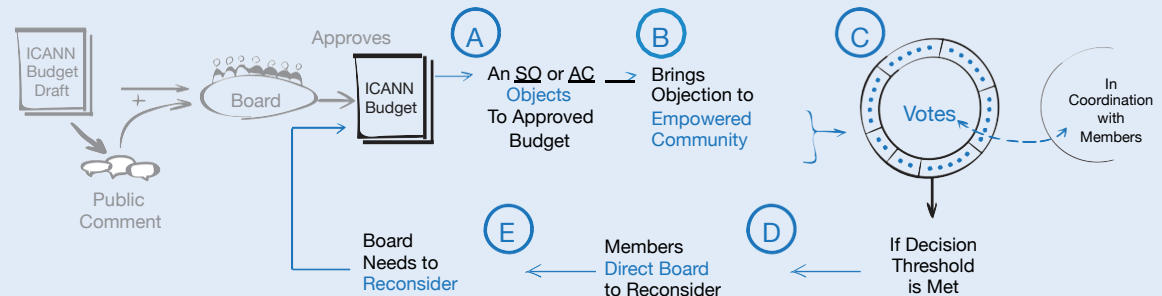
## Things required to initiate?

Timeframes would be included in the planning and budgeting process to ensure that a single rejection would not unduly disrupt the planning and budgeting process.

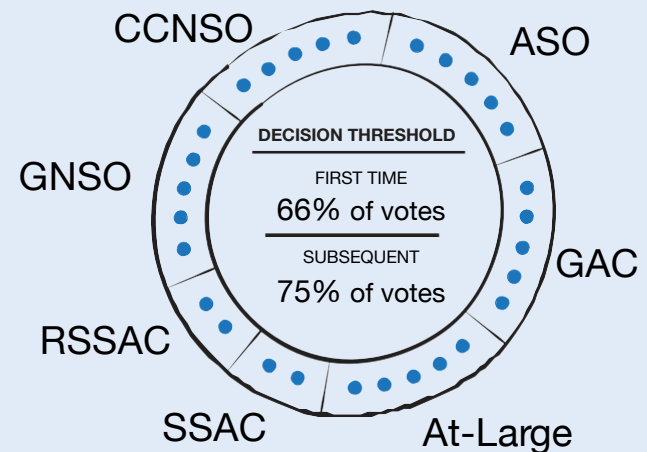
## Limits set to prevent abuse?

A process of reconsideration, it does not allow the community to re-write the budget. To prevent a cycle of blocking, a plan or budget cannot be sent back again with new issues raised, but the community can reject a subsequent version when it does not accept the Board's revisions.

## How does it work?



## Voting of broader community in coordination with members





# CP2 Reconsider/Reject Changes to ICANN Bylaws

## Description

This power would give the community the ability to reject proposed Bylaws changes after they are approved by the Board but before they come into effect.

## Who can initiate a petition?

The bottom-up community process would be able to raise the question, with a Supporting Organization (SO) or Advisory Committee (AC) initiating a petition process.

## On what grounds can they initiate?

This would most likely be where a proposed change altered the Mission, Commitments and Core Values, or had a negative impact on ICANN's ability to fulfill its purpose in the community's opinion, but would be available in response to any proposed bylaws change.

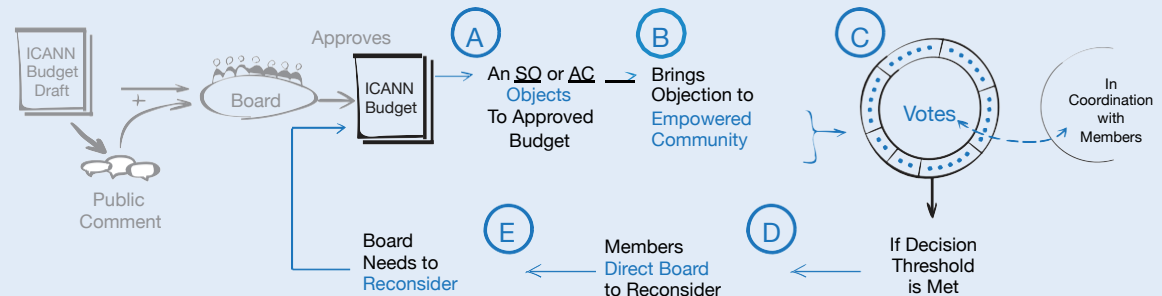
## Things required to initiate?

Exercising the power would be included in the bylaws adoption process (probably a two-week window following Board approval). Board response should be to absorb the feedback, make adjustments, and propose a new set of amendments to the bylaws.

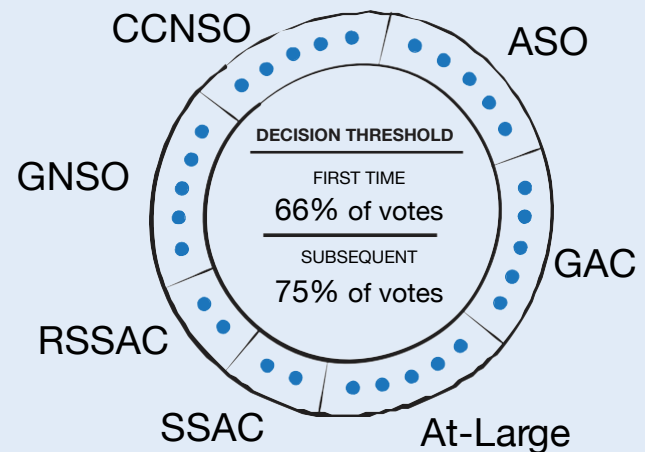
## Limits set to prevent abuse?

This power does not allow the community to re-write a proposed bylaws change: it is a rejection process, signalling the community is not happy. No limit to the number of times a proposed change can be rejected, but the threshold is a supermajority to limit potential for abuse of this power.

## How does it work?



## Voting of broader community in coordination with members



# CP3 Approve Changes to Fundamental Bylaws

## Description

This power would form part of the process set out for agreeing any changes of the “fundamental” bylaws. It requires that the community would have to give positive assent to any change, a co-decision process between the Board and the community.

## Who can initiate a petition?

No petition, a process of the Board and community. The Board may propose adding or removing a fundamental bylaw. This process requires a high degree of community support.

## On what grounds can they initiate?

To protect bylaws provisions the community considers to be essential, and automatic process is triggered whenever the process of adding or removing a fundamental bylaw is proposed.

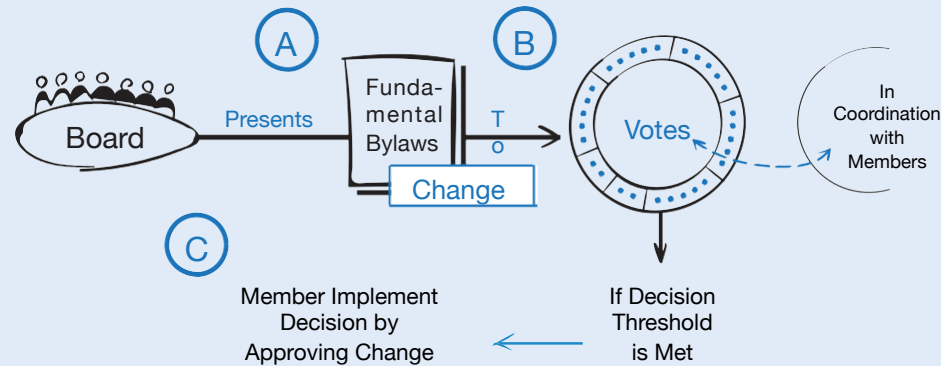
## Things required to initiate?

Timeframes would be included in the planning and budgeting process to ensure that a single rejection would not unduly disrupt the planning and budgeting process.

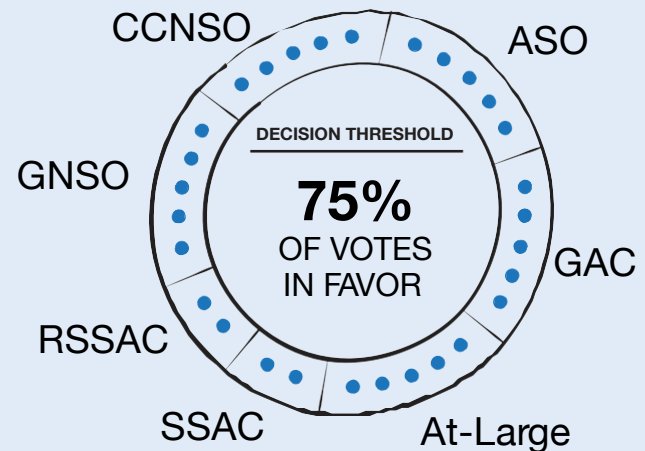
## Limits set to prevent abuse?

N/A

## How does it work?



## Voting of broader community in coordination with members



# CP4a Removing Individual Board Directors (SO/AC)

## Description

The community organization that appointed a given director could end their term and trigger a reappointment process. The general approach, consistent with the law, is that the appointing body is the removing body.

## Who can initiate a petition?

Each community organization that appoints a given director may end his or her service in office, prior to the expiration of the term, and trigger a reappointment process. For the seven directors appointed by the three SOs or by the At-Large community (or by subdivisions within them e.g. within the GNSO), a process led by the appointing organization or subdivision would lead to the director's removal.

## On what grounds can they initiate?

The grounds to initiate a removal process lies within the organization that appointed the director; voting thresholds to be determined by the respective groups.

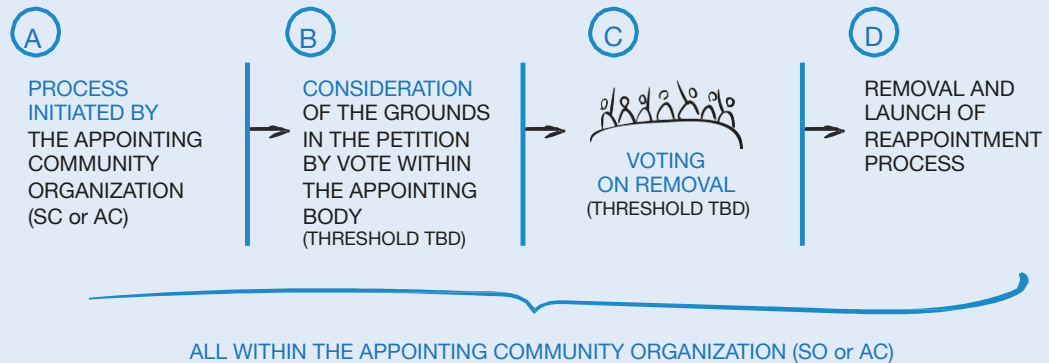
## Things required to initiate?

The appointing organizations would establish their own processes and establish voting thresholds to cause removal.

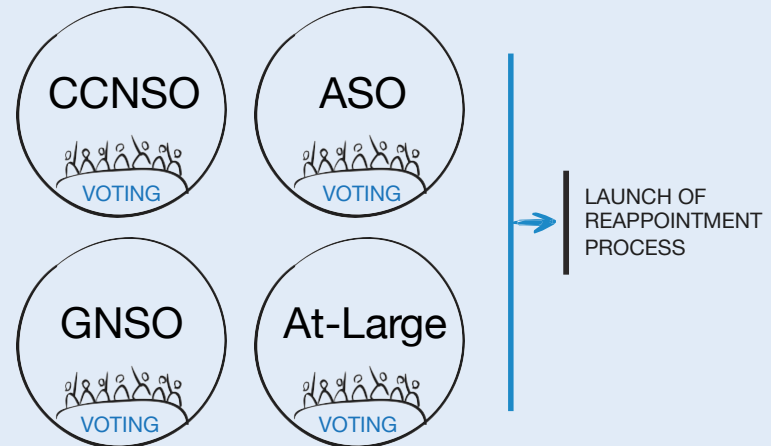
## Limits to prevent abuse?

SO/AC members who elect directors would be the removing body. Removal would trigger a pre-defined appointment process

## How does it work?



## Who gets to vote: SO/AC Model



# CP4b Removing Individual Board Directors (NomCom)

## Description

The general approach, consistent with the law, is that the appointing body is the removing body. This also applies to the NomCom.

## Who can initiate a petition?

The bottom-up community process would be able to raise the question. A removal process should be triggered by petition of at least two SOs or ACs (or a Stakeholder Group from the GNSO). Such a petition would set out the reasons removal was sought.

## On what grounds can they initiate?

The grounds for removal presented in the petition would be discussed within the organizations of the community mechanism. The CCWG seeks the community's input on this and offers two options for consideration:

1. NomCom members at the time of a petition being lodged would decide.
2. A special committee of the NomCom could be established to deal with removal petitions.

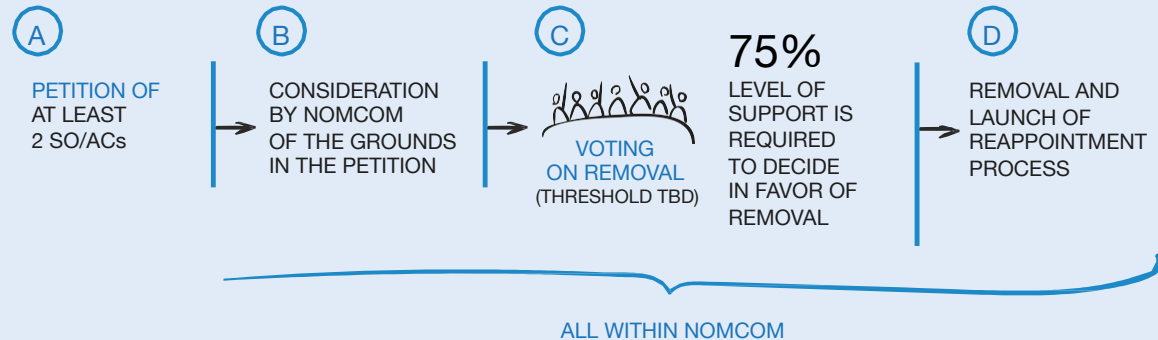
## Things required to initiate?

Whether the decision-making body is the SOs, ACs or the Nominating Committee, removal would require a [75%] level of support (or equivalent) to decide in favor of removal.

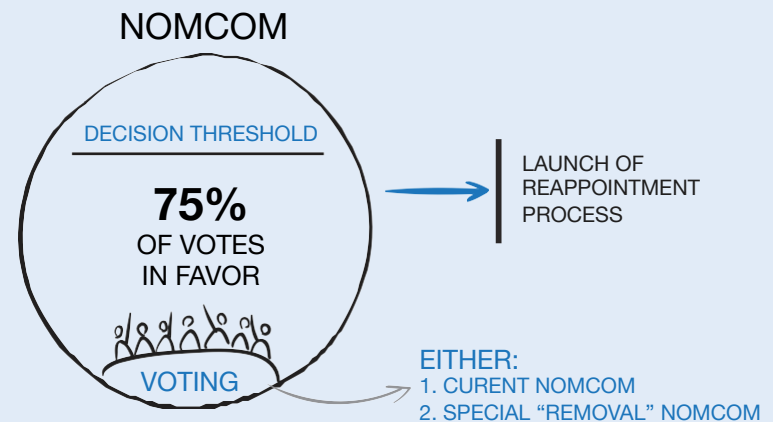
## Limits set to prevent abuse?

The voting thresholds for any removal process need to be set high to prevent a frivolous use of the process and to ensure a mechanism of last resort.

## How does it work?



## Who gets to vote: Nominating Committee Model



# CP5 Recalling the Entire ICANN Board

## Description

This power would allow the community to cause the removal of the entire ICANN Board.

## Who can initiate a petition?

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.

## On what grounds can they initiate?

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.

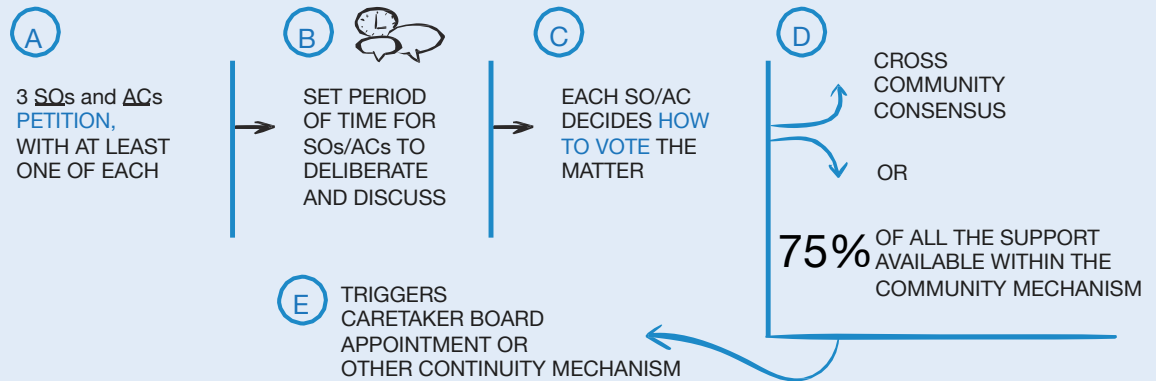
## Things required to initiate?

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%] of all the support available within the community mechanism would have to be cast in favor to implement it.

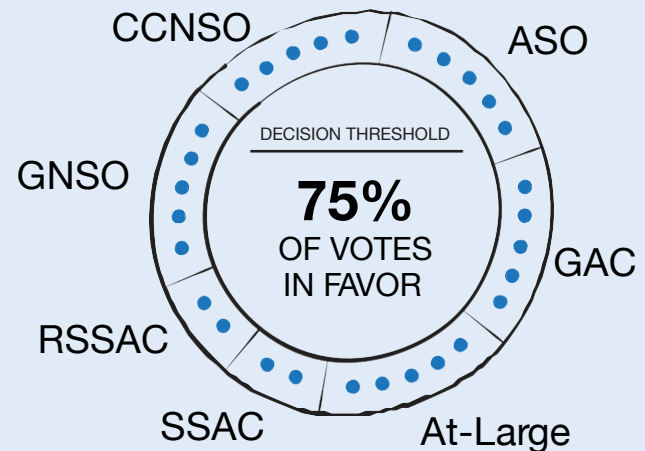
## Limits set to prevent abuse?

The high threshold for initiation was chosen to prevent any particular SOs or ACs from being able to prevent the recall of the Board, but also as high as possible without making it impossible to occur. The requirement on all recordable support/opposition to be counted is to avoid non-participation reducing the effective threshold for decision.

## How does it work?



## Voting of broader community in coordination with members



# SO/AC Membership Model

## What is it?

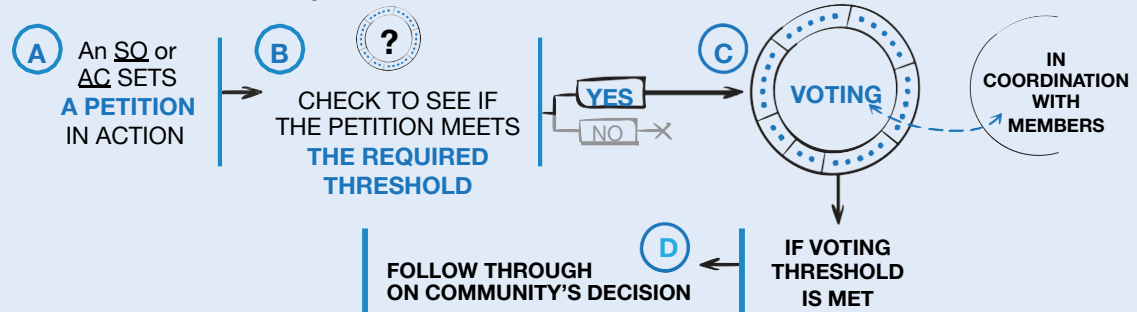
**The Community Mechanism describes the legal structure by which the ICANN Community can organize under California law to legally enforce the community powers recommended by the CCWG-Accountability.**

In short, the Supporting Organizations (SOs) and certain Advisory Committees (ACs) would each form unincorporated associations to become Members\* (or alternatively, "Designators") of ICANN, giving them a range of powers guaranteed under California law, and the tools to enforce their rights against ICANN.

Making this change would not impact how participants of those groups operate, or introduce new risks to them.

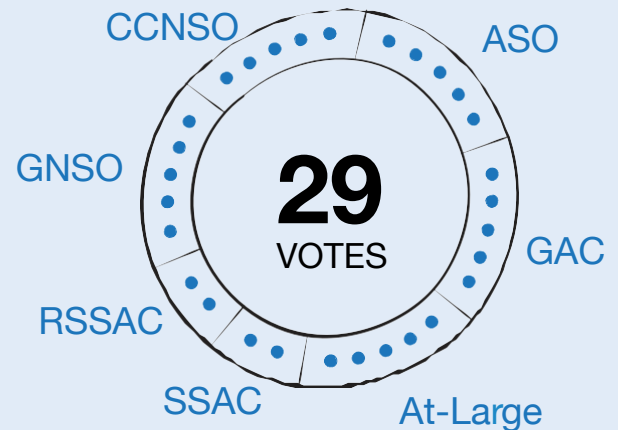
## What is it?

The bottom-up community process would be able to raise the question, with one Supporting Organization (SO) or one Advisory Committee (AC) initiating the petition process. This might look like:



## Influence in the Community Mechanism

The votes come from ICANN's SOs, ACs. Each SO and AC has a number of "votes" in the community mechanism, deciding on the powers established for the community.



# Unincorporated Association

## What is an unincorporated association?

Unincorporated associations are the means by which the “legal personality” required to be a Member is established. They would be a vehicle for the SOs and ACs to exercise these membership powers. They are lightweight structures.

## Why are they relevant? What are these for?

The ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) would each form unincorporated associations, and through these associations would exercise the rights they would gain as a “Member” of ICANN. The SO and AC unincorporated associations would be Members, completely linked to & under the control of the SO or AC they represent. No third party and no individuals would become Members of ICANN.

## What are the key takeaways?

### **No change to the individual ICANN volunteer**

There would be no need for individuals or organizations to change the ways in which they participate in ICANN or in the SOs or ACs as a result of creating the new “Members” or “unincorporated associations.” Current functions would be exercised as they are today.

### **Community can exercise the rights of a “Member” through their SO/AC**

The ICANN Supporting Organizations and the Advisory Committees who currently have the right to elect directors (as opposed to non-voting observers) to the ICANN Board would each form unincorporated associations, and through these associations would exercise the rights they would gain as a “Member” of ICANN.

# IRP

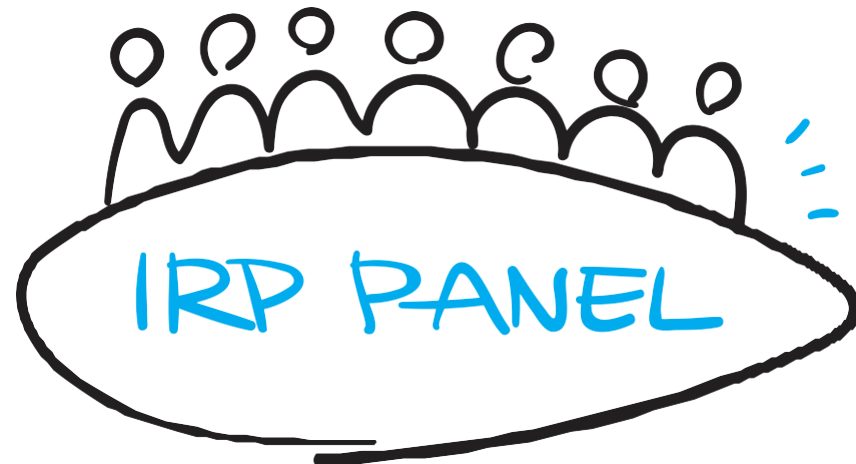
Recommended Enhanced ICANN Independent Review Process

## What is new?

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### The new IRP

- has decisions that are binding
- allows for review for both substantive and procedural compliance
- is more accessible in terms of who has standing to initiate an IRP
- has lower cost
- has a new standing Panel of seven

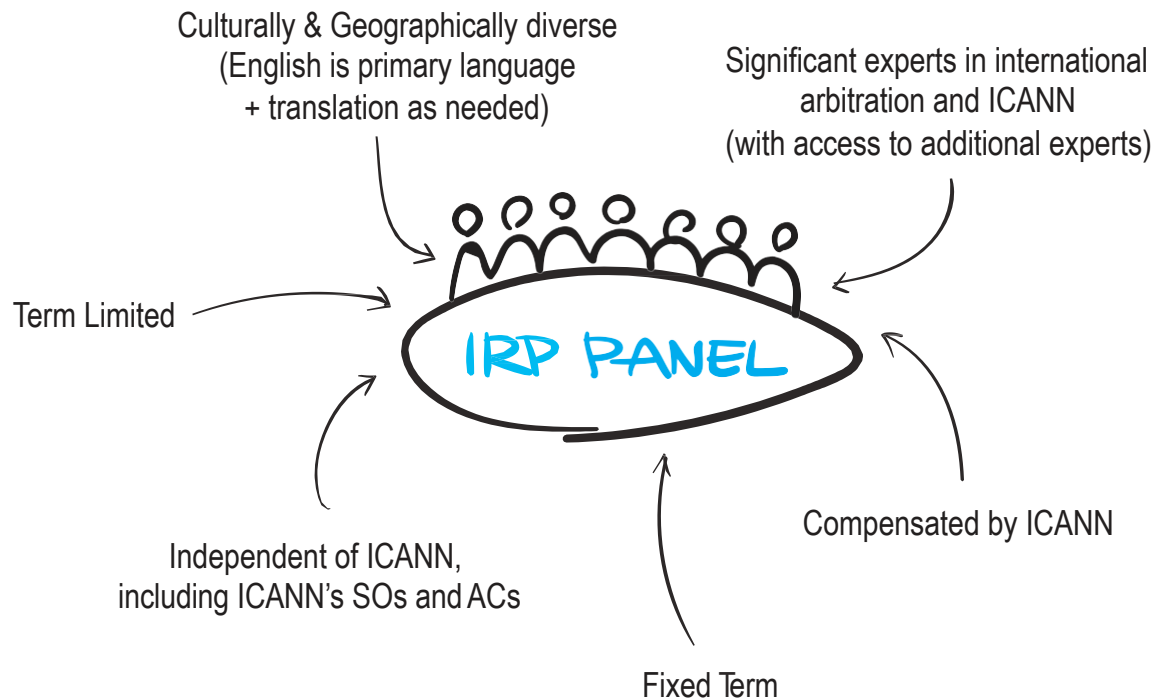




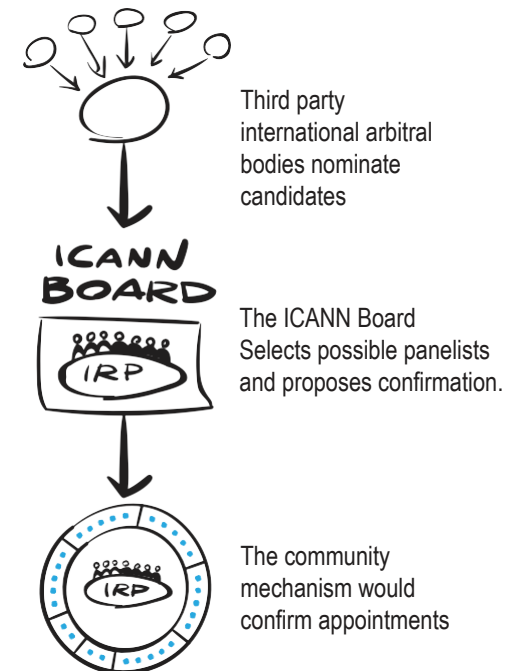
# IRP Recommended Enhanced ICANN Independent Review Process The New IRP Panel

The core of the recommendation is a standing, 7-member panel to serve as a fully independent judicial/arbitral function for the ICANN Community.

## Panel characteristics



## Panel member selection process



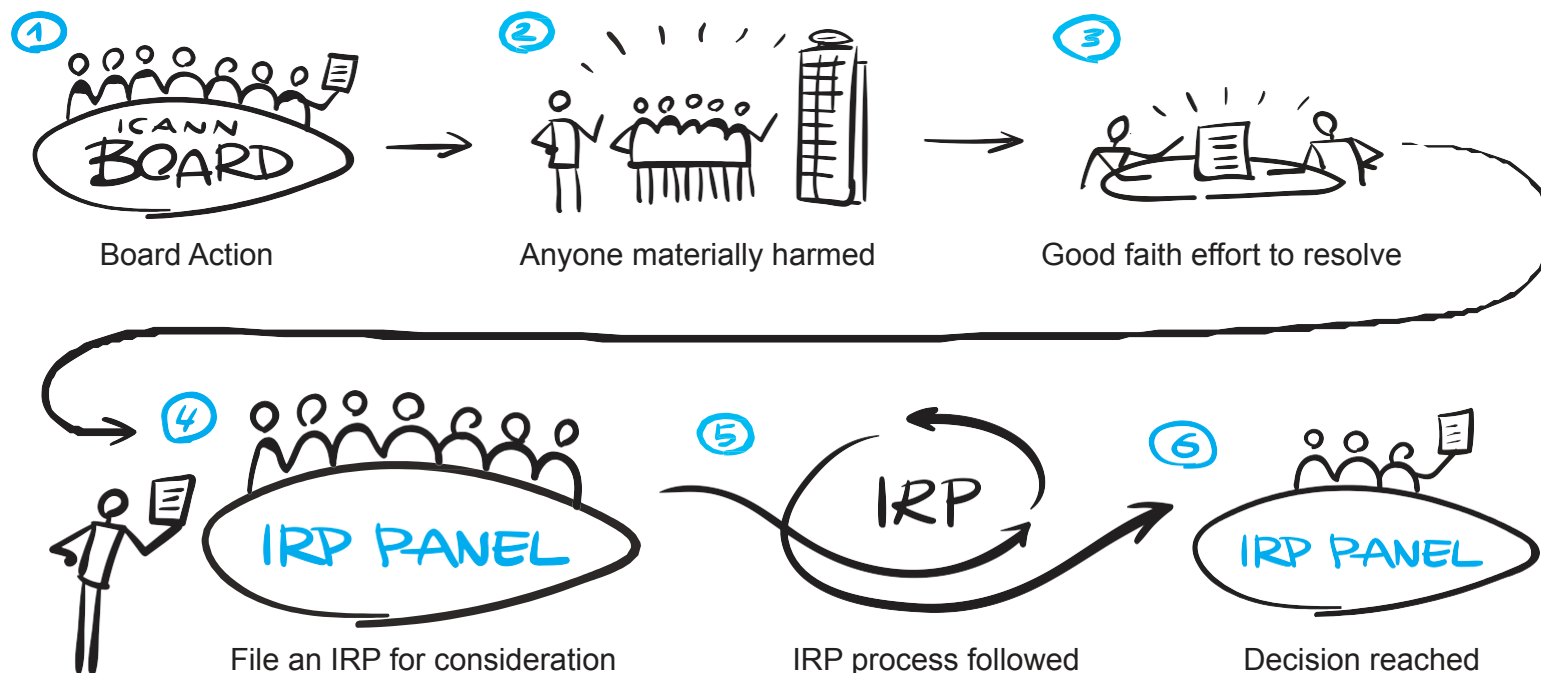
# IRP Recommended Enhanced ICANN Independent Review Process

## Filing an IRP

### Who can request an IRP?

Anyone can initiate an IRP if they are materially affected by ICANN actions or inactions in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values, and ICANN Policies.

### IRP Process

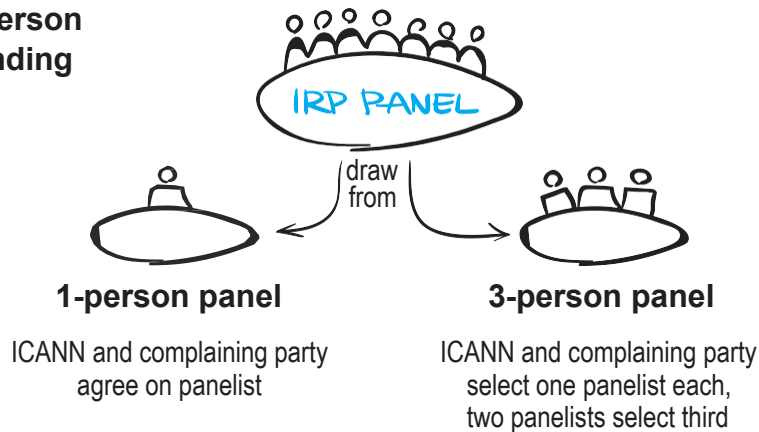


# IRP Recommended Enhanced ICANN Independent Review Process

## IRP Decisions

### Reaching Decisions

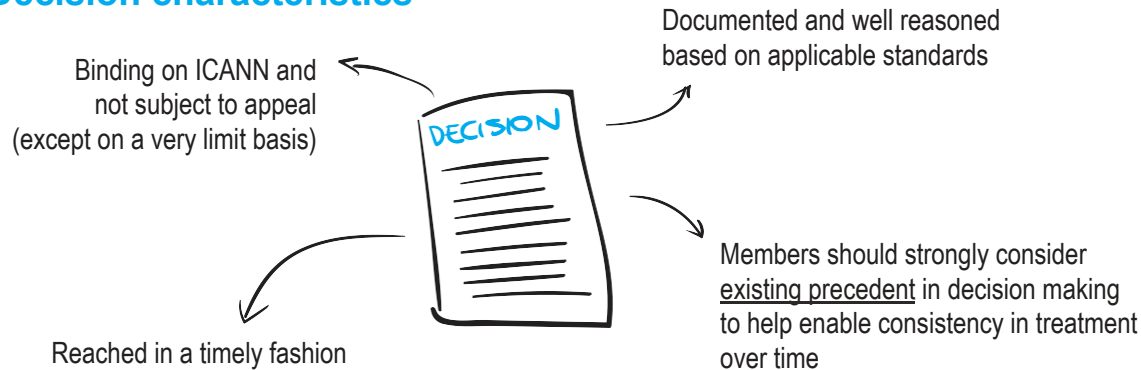
IRPs reach a decision by creating a 1- or 3-person panel from the standing 7-person panel.



### Possible decisions

Possible decisions are that an action (or inaction) was in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values.

### Decision characteristics



# Request for Reconsideration Process Reform

## What is the Reconsideration Process reform?

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

## What are the key takeaways?

The shortcomings of the existing IRP are addressed to make the IRP an effective means of increasing ICANN's accountability.

## Why are they relevant? What are these for?

The key reforms proposed include:

- **Standing:** The expansion of the scope of permissible requests to include Board/staff actions or inactions that contradict established policy, ICANN's Mission, Commitments, or Core Values;
- **Goals:** Broaden the types of decisions, provide more transparency in the dismissal process and provide the Board with reasonable right to dismiss frivolous requests;
- **Composition:** More Board member engagement, less legal department;
- **Decision-Making:** Transparency improvements, rebuttal opportunity;
- **Accessibility:** The extension of the time for filing a Request for Reconsideration from 15 to 30 days.

# Affirmation of Commitments (AoC) Reviews

## Affirmation of Commitments and CCWG

ICANN can terminate its obligations under the AoC at any time. The CCWG-Accountability proposes to bring the AoC reviews into the ICANN bylaws.

Suggestions gathered during 2014 comment periods on ICANN accountability suggested several ways the AoC Reviews should be adjusted when incorporated into ICANN's Bylaws:

- Ability to sunset reviews and create new reviews.
- Community stakeholder groups should appoint their own Members to review teams.
- Give review teams access to all ICANN internal documents.
- Require the ICANN Board to consider approval and begin implementation of review team recommendations, including from previous reviews.
- The Board's decision would be subject to challenge through enhanced Reconsideration and IRP processes.

## What are the key takeaways?

Reviews are an important mechanism to ensure ICANN is continuously working on improving as an organization. This idea shall be perpetuated beyond the existence of the AoC.

# Stress Tests

## What is a stress test?

An essential part of the CCWG-Accountability Charter calls for stress testing of accountability enhancements. 'Stress Testing' is a simulation exercise where a set of plausible scenarios are used to gauge effects on a system or entity. CCWG's 26 stress tests assessed whether the community has adequate powers to challenge ICANN decisions in reacting to the scenario and hold ICANN accountable for its actions.

## Why are they relevant? What are these for?

The CCWG-Stewardship has identified 26 risks consolidated into 5 categories of stress tests:

- Financial crisis or insolvency: ICANN becomes fiscally insolvent, and lacks resources to adequately meet obligations
- Failure to meet operational obligations: ICANN fails to process change or delegation requests to the IANA Root Zones, or executes a change of delegation over objections of stakeholders
- Legal/legislative action: ICANN is subject of litigation under existing or future policies, legislation or regulation. ICANN attempts to delegate a new TLD or redelegate a non-compliant existing TLD
- Failure of accountability: Action by one or more Board members, CEO, staff are contrary to mission or bylaws. ICANN is captured by one stakeholder segment
- Failure of accountability to external stakeholders: ICANN modifies its structure to avoid obligation to external stakeholders. ICANN delegates, subcontracts, or abdicates obligations to third party. ICANN merges or is acquired by unaccountable third party

## What are the key takeaways?

### **Demonstrate the improvements to ICANN's accountability**

The stress test exercise demonstrates that Work Stream 1 recommendations enhance the community's ability to hold ICANN Board and management accountable, relative to present accountability measures.

# Linkage with the CWG-Stewardship

The CCWG-Accountability recognized that continued and close engagement with the CWG-Stewardship was essential. Key aspects of the CWG-Stewardship proposal are considered to be conditional on the output of the CCWG-Accountability.

The CWG-Stewardship formally submitted a letter to the CCWG-Accountability on 15 April providing details of the et dependencies in its proposal:

## **ICANN Budget**

- CWG requested transparency around cost allocation in relation to the IANA functions, and supported the CCWG's proposal for the community to have the power review and reject the ICANN budget.

## **Community empowerment mechanisms**

- CWG noted it will be relying on the community empowerment and accountability mechanisms, particularly the ability to review ICANN Board decisions.

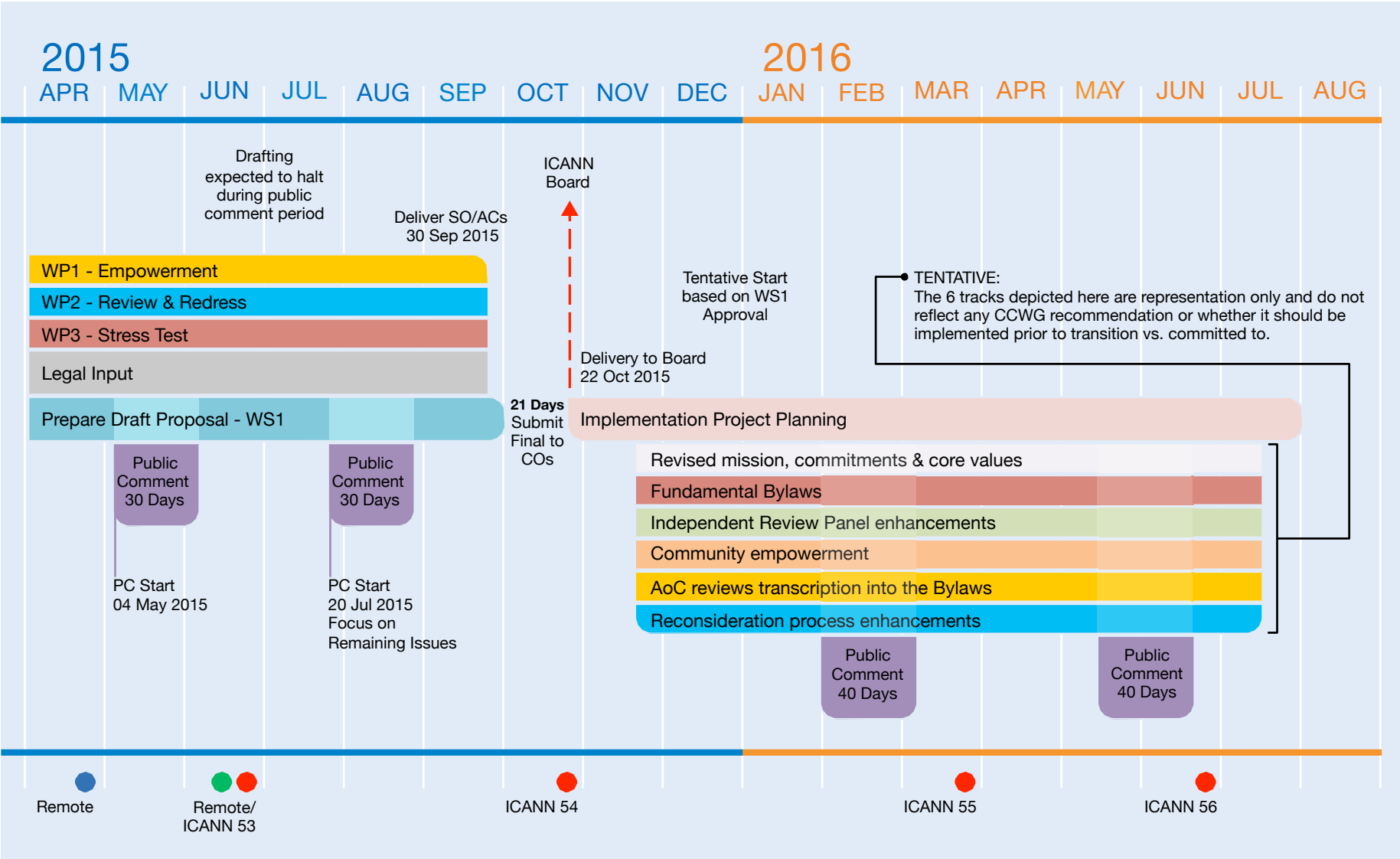
## **Review and redress mechanisms**

- CCWG-Accountability has recommended the CWG's proposed IANA review function be brought into the ICANN bylaws as a fundamental bylaw.

## **Appeal mechanisms**

- CWG considers the IRP and other strengthened review processes to be important for its proposals and any other issues that may involve IANA. CWG asked the CCWG to not develop appeals mechanisms to cover ccTLD delegation/re-delegation issues.

# Timeline and Road Ahead





# Questions & Answers