

This document contains a summary of the public comments¹ received in response to the draft Work Stream 1 recommendations issued by the Cross Community Working on Enhancing ICANN Accountability (CCWG-Accountability). The comments are summarized in order of submission for each category as applicable. Even though this summary was drawn-up to reflect as accurately and objectively as possible the views expressed by participants, it does not substitute in any way the original contributions which are publicly available for full reference at: <http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/>

Contributions provided by:

<p>Australia's Domain Name Administrator (auDA) African Regional At-Large Organization (AFRALO) Association française pour le nommage Internet en coopération (Afnic) At-Large Advisory Committee (ALAC) Business Constituency (BC) Canadian Internet Registration Authority (CIRA) Carlos Raúl Gutierrez (CRG) Center for Democracy & Technology (CDT) Centre for Communication Governance (CCG) Council for European National Top Level Domain Registries (CENTR) CWG to Develop an IANA Stewardship Transition Proposal on Naming Related Functions Stewardship (CWG-St) Danish Business Authority (DBA) David Post – Danielle Kehl (DP-DK) DotConnectAfrica Trust (DCA-T) eco (eco) Federal Ministry for Economic Affairs and Energy (Govt-DE) Google (GG) Government of Brazil (Govt-BR) Government of India (Govt-IN) Government of Italy (Govt-IT) Government of Spain (Govt-ES) gTLD Registries Stakeholder Group (RySG) ICANN Board of Directors (ICANN) Information Technology Industry Council (ITI) Intellectual Property Constituency (IPC) International Trademark Association (INTA) Internet Architecture Board (IAB) Internet Association (IA)</p>	<p>Internet Infrastructure Coalition (I2Coalition) InternetNZ (.NZ) Internet Services Provider and Connectivity Provider Constituency (ISPCP) Jan Scholte (JS) comment 1 Jan Scholte (JS) comment 2 Japan Network Information Center (JPNIC) Jiah He (JH) Lee Andrew Bygrave (LAB) London Internet Exchange (LINX) Milton Mueller (MM) Ministère des Affaires étrangères (Govt-FR) Ministry of Foreign Affairs of Argentina (Govt-AR) Motion Picture Association of America (MPAA) Namibian Network Information Centre (.NA) Nigeria Internet Registration Association (NIRA) Nell Minow (NM) Nominet (.co.uk) Non Commercial Stakeholder Group (NCSG) Representing the ecosystem of Internet Bahrat-Model (CCAOI) Richard Hill (RH) Roberto Bissio (RB) Root Server System Advisory Committee (RSSAC) Sue Randel (SR) UNINETT Norid AS (NORID) US Chamber of Commerce (USCC) US Council for International Business (USCIB) US Rep. Mike Kelly HR2251 (HR2251) William Currie (WC) comment 1 William Currie (WC) comment 2</p>
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Comments on Specific Recommendations

General Comments			
#	Contributor	Comment	CCWG Response/Action
1	RH	<ul style="list-style-type: none"> - This is a step in the right direction but it suffers from reinventing the wheel. - Consider the proposals of the Internet Ad Hoc Group (IAHC) http://web.archive.org/web/19971211190257/http://www.gtld-mou.org/gTLD-MoU.html. - It would be easier to implement proper accountability if the several functions were separated, each with its own accountability mechanism, as proposed by the Just Net Coalition. - ICANN should not be incorporated in the USA, or in any other powerful state that might be tempted to interfere with ICANN for political or economic reasons. It should be incorporated in a neutral state that is unlikely to interfere, for example Switzerland. If ICANN remains incorporated in the USA it will be subject to US law, which could have undesirable consequences (e.g. force ICANN to comply with sanctions that are unilaterally imposed). 	
2	Jan Scholte (JS) comment 1	<ul style="list-style-type: none"> - Congratulations for the impressive achievement. That the group could in just six months produce such a comprehensive, creative, reflective, professional proposal is a real tribute to what a well-executed multistakeholder process can accomplish. - One can always find areas for further development, but the glass is already so very much more than half-full. 	
3	auDA	<ul style="list-style-type: none"> - auDA welcomes the work of the CCWG and, specifically, the significant efforts of the group to deliver an appropriate model for ensuring the ongoing accountability of ICANN's operations beyond the transition. 	

¹ The public comment period ran from 4 May 2015 to 3 June 2015. Due to the late availability of the translated versions of the proposal, those who were reliant on these translated

		<ul style="list-style-type: none"> - auDA does not support the CCWG's assertions regarding how these principles and goals should be implemented. - While auDA's supports the general principles for improved accountability, as well as a number of implementation mechanisms mentioned, our position diverges significantly from that of the CCWG in regard to many other implementation details proposed in the Draft Report. Our concerns are very serious and we believe that the flaws in the CCWG's draft proposals are significant and profound. auDA notes that the CCWG has focussed on a structure that can enforce accountability by delivering to the community the ability to sue ICANN / the ICANN Board. While auDA accepts that this is one way to bolster accountability, we question whether the proposed solution: 1) is worth the significant and seismic changes to ICANN's structure and to the nature of ICANN's Supporting Organisations and Advisory Committees; 2) might give rise to a series of new risks and weaknesses that run counter to both the goals of the CCWG and ICANN's own Bylaw commitments; and 3) might, on the whole, be inferior to an accountability solution involving changes to existing mechanisms and the introduction of fundamental bylaws that cannot be altered without the explicit support of SOs and ACs. - The CCWG has developed a solution that gives rise to a number of new complexities and questions, and which may not deliver the most effective and efficient outcome. Associated cost, risk and structural issues all need to be considered and weighed against any proposal and auDA is not satisfied that the need for a 'legal enforceability' solution (which would also serve to further concentrate power in the United States) is greater than the compromises and costs required to implement it. auDA strongly recommends that the CCWG and the ICANN community return to the fundamental principles identified as part of the preliminary stages of the CCWG's work, abandon the need for legal enforceability as a fundamental tenet of the accountability review and attempt to arrive at a solution that delivers acceptable levels of accountability and community empowerment. 	
4	DBA	<ul style="list-style-type: none"> - Denmark welcomes the decision by the NTIA to transition the stewardship of the IANA functions to the global multistakeholder community and to remain fully committed to completing the transition in a timely and responsible manner. - Our initial assessment of the Initial Draft Proposal, which focuses on developing accountability mechanisms necessary for the IANA transition to take place, is that the overall framework looks promising and ICANN's accountability towards the multistakeholder community would be enhanced when implemented. - In our view the combination of accountability mechanisms proposed provides a set of necessary of checks and balances for the global multistakeholder community to hold the ICANN Board and management accountable in the absence of the NTIA in its current role. - In light of the fact that the CWG Stewardship Transition Proposal on Naming Related Functions is dependent on these community powers, these dependencies must not be compromised. - It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safeguards against capture from any specific stakeholder group in any way, including in ICANN's policy development processes and decision making functions. - Finally, Denmark is committed to participating in the CCWG Accountability and in developing an accountable and multistakeholder-based proposal for the IANA transition process together with the global internet community. 	
5	WC comment 1	<ul style="list-style-type: none"> - The CCWG-Accountability proposal does an excellent job of creating an empowered community as the accountability forum which can hold the accountable actor, the Board, to account for its decision-making. By tightening up the principles, commitments and core values in ICANN's by-laws, the proposal makes clear what the standards are against which the Board is to be held to account. - The new community powers are finely balanced and limited in a way that will not hamper the Board's fiduciary duties towards ICANN, nor undermine the efficiency or effectiveness of the Board's decision-making processes. - What is missing is a space in which the community - as accountability forum - can hold the Board - as accountable actor - to account on a regular basis. Here the work of public accountability academic, Mark Bovens, may be of use. He sees accountability as a social relation and defines accountability as 'a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor can be sanctioned'. At its regular meetings, ICANN holds a Public Forum which already has many of these features. The Board gives an account of some of its activities and members of the community can make comments and pose questions to the Board. It may be of value to transform this Public Forum into a Public Accountability Forum. The way this could work is as follows: 1 The community, that is the supporting organisations and advisory committees, represented by their chairpersons and vice-chairs, meets and constitutes itself as the accountability forum. 2 The accountability forum then chooses a chairperson and vice-chair to convene the Public Accountability Forum at each tri-annual ICANN meeting, for the period of a year; 3 The Board and the CEO would constitute the accountable actor at the Public Accountability Forum; 4 The Chairpersons consult with the community, the Board and the CEO to determine the agenda for the Public Accountability Forum; 5 At the Public Accountability Forum, the Board, as accountable actor, gives an account of the agenda items and the 	

		<p>accountability forum, represented by the chairs and vice-chairs of each supporting organisation and advisory committee, pose questions and pass judgment. Passing judgment, in this instance, would be the equivalent of comments on the behaviour or actions of the accountable actor rather than a formal judgment by the accountability forum as a whole; 6 In a second round, members of the community have an opportunity to pose questions and pass judgment. Passing judgment here would be the perception or opinion of the individual community member on the behaviour or actions of the accountable actor; 7 Should any matters arise that touch on the new community powers to sanction the Board, these are noted by the chairs of the Public Accountability Forum for discussion by the accountability forum, which would meet on its own directly after the Public Accountability Forum is over; 8 The Chairs of the Public Accountability Forum briefly sum up the discussion and close the Public Accountability Forum. The idea would be to limit the agenda to a few key issues rather than to address every conceivable question. The emphasis would be on the accountable actor giving an account of its actions and the accountability forum questioning and passing judgment. The question of sanctions would only arise if the issues under discussion touched on one of the new community powers.</p>	
6	NM	<p>I begin by endorsing the comments of Jan Aart Scholte, which express my concerns with more eloquence and depth. With regard to our frequent mentions of the importance of transparency, we also need to be more specific. We're talking about organization that is core to the most transparency-friendly entity in the history of the world, and yet we don't have any specifics about what the organization needs to do when there are say, for example, proposed bylaw changes, to make sure that they are widely disseminated. We need to have some specifics about making sure that they take specific steps to make sure that everything they do and everything that the advisory groups do is as widely disseminated as possible, even to the extent of outlining the minimums for social media reach and unique visitors to make sure that transparency is not just offered but is actually implemented.</p>	
7	CRG	<p>- In my view the CCWG draft document has focused on the Board-Community relation only. So far there is little on the draft proposal related to the internal structure of ICANN, summarised sometimes as "management" & "staff", but limited to the budget veto mechanism (as per paragraph 40). I think a full section (or 5th Building Block) on "internal" checks and balances is quiet necessary, for the wider scope of parties that will be reviewing the CCWG-ACCT proposal.</p> <p>- Para 40, under #2 speaks of mechanisms to restrict actions of he board AND MANAGEMENT of the Corporation, but the present draft develops only Board decisions and no Management ones.</p>	
8	AFRALO	<p>The AFRALO community members express their support to the CCWG and think that the report needs further work to find the best ways to empower the community using the right means and avoiding ICANN the risk of being weakened or losing its independence, its inclusiveness and its multi-stakeholder nature.</p>	
9	Govt-AR	<p>Argentina will continue participating in the IANA transition process, and expects that those principles agreed in the Net Mundial Multistakeholder Statement will guide our work and will be respected.</p> <p>- discussion about mechanisms for guaranteeing the transparency and accountability of those functions after the US Government role ends, has to take place through an open process with the participation of all stakeholders extending beyond the ICANN community.</p> <p>- This transition should be conducted thoughtfully with a focus on maintaining the security and stability of the Internet, empowering the principle of equal participation among all stakeholder groups and striving towards a completed transition by September 2015</p> <p>- It is expected that the process of globalization of ICANN speeds up leading to a truly international and global organization serving the public interest with clearly implementable and verifiable accountability and transparency mechanisms that satisfy requirements from both internal stakeholders and the global community. The active representation from all stakeholders in the ICANN structure from all regions is a key issue in the process of a successful globalization.</p>	
10	Govt-IN	<p>- as ICANN is the current IANA operator, it must demonstrate accountability in its approach</p> <p>- subsequent to the IANA Transition irrespective of ICANN's role and degree of involvement with operational aspects of the IANA functions, ICANN must have improved robust accountability and transparency mechanisms: stronger accountability mechanisms are of paramount importance, specifically, in terms of operations relating to naming policy development and gTLDs.</p> <p>- in addition to strengthened internal community oversight and accountability, the accountability review must endeavour to incorporate external accountability and checks and balances in respect of the functions exercised by ICANN.</p> <p>- ICANN must be clear and transparent, particularly about its structure, mission, operations, staff, elections, collaborations, decision-making processes, plans, and budget, finances and earnings</p>	
11	DCA-T	<p>- ICANN's past has faced many question relating especially to the accountability of the organization, some users of</p>	

		<p>ICANN's services and especially the new gTLD applicant have faced many issues as regards a fair and just handling of the issues that cover accountability and transparency. As such ICANN's need for accountability and transparency in all its activities cannot be over stated. The need for independence must also be accompanied by proper structures and mechanisms to address accountability of Board and staff in equal measure.</p> <ul style="list-style-type: none"> - ICANN must therefore allow an independent and separate accountability and transparency body to be created to manage the issues that arise from actions or inactions of the Board and/or staff and any other contractor assigned specific duties in the day to day running. Such accountability mechanisms need to touch on all spheres of ICANN including the ICANN budgets - There is a need by the CCWG-Accountability to define the number of change proposals that can occur at a time in order to avoid the participant and the volunteer exhaustion and apathy that may have been witnessed in the current state. - The proposal should be set to reduce the number of PDP's and proposals to a certain minimum, this will enable the community to properly comment or respond diligently to the proposals. - The number of days allocated for comments must also be increased to ensure thorough input research. 	
1 2	Afnic	<ul style="list-style-type: none"> - CCWG-Accountability has laid the foundation for both a rapid and profound enhancement of ICANN accountability, necessary for the achievement of the IANA stewardship transition (Work stream 1), and the implementation of a sustainable accountability mechanism for the long term (Work stream 2). - Given the sometimes complex and, in any case, technical nature of this exercise, Afnic wants to commend all participants of this group for their implication and their involvement, as well as for the very intensive outreach work done. - Having participated to this outreach by organizing a French event on the ICANN accountability and IANA transition, Afnic can witness that moving from the accountability principle stage to the principles implementation stage, while trying to maintain a global consensus, is indeed very difficult. - [The] community empowerment proposal shows what is currently missing in ICANN, to make this organization a truly multistakeholder one. Without the powers given to the community, ICANN is more in a "representative democracy" model, and not even, because all Board members are not elected. 	
1 3	NORID	<p>NORID welcomes the opportunity to praise the significant work the group has done to deliver their view on improved accountability in ICANN within the restricted timeframe given and the openness in which the process has been conducted under. We support most of the principles outlined, but being a small registry we do not have the resources to go into detail. Therefore we instead support the very sensitive of our regional organization CENTR.</p>	
1 4	Govt-DE	<p>We would like to thank the Danish GAC representatives in particular for their comments which we fully support.</p> <ul style="list-style-type: none"> - Germany supports the multistakeholder approach inherent in the CCWG's working methods and draft report because the joint governance of internet resources and standards by the internet community has proven to be one of the key factors driving the success of the internet. - In this context we would like to recall the joint German Position Paper on Guidelines and Recommendations for Action for the IANA Stewardship Transition from 26 March which has been drafted in a multistakeholder process itself. Germany notes that many of the issues raised in this position paper have been addressed by the draft report. 	
1 5	DP-DK	<ul style="list-style-type: none"> - We strongly endorse these four critical goals: 1) Restating ICANN's Mission, Commitments, and Core Values, and placing those into the ICANN Bylaws; (2) establishing certain bylaws as "Fundamental Bylaws" that cannot be altered by the ICANN Board acting unilaterally, but over which stakeholders have prior approval rights; (3) creating a formal "membership" structure for ICANN, along with provisions designed to give the stakeholder-members greater influence on Board decisions; and (4) enhancing and strengthening ICANN's Independent Review Process (IRP). - We believe that the CCWG has made significant and substantial progress in designing a durable accountability structure for a post-transition ICANN. We also believe, however, that there are a number of important omissions and/or clarifications that need to be addressed before we can be confident that these mechanisms will, in practice, accomplish their mission. - The IANA transition is premised on the notion – one that we strongly endorse – that the DNS can best be managed going forward by a private, non-governmental, global, consensus-based, "multi-stakeholder" institution. No element of the transition plan is more important than the design of effective accountability mechanisms for that institution. The DNS has become a significant and immensely valuable global resource, and whoever controls DNS policy-making and policy-implementation wields considerable power. How can the US government, and the global Internet community, assure itself that that power will not be abused by a post-transition-ICANN ("PT-ICANN") that is no longer answerable to the US government for its actions? If the USG is not going to be exercising oversight over PT-ICANN's management of the DNS, who is? How is that oversight to be exercised, and how effective is it likely to be? These "accountability" concerns must be addressed before the transition proceeds. 	

- There are many examples of private global governance institutions whose accountability mechanisms are notoriously ill-developed – FIFA and the International Olympic Committee come immediately to mind – and in whose hands we would hardly be expected to place a resource of the magnitude and importance of the Internet’s DNS. There is also widespread agreement (and acknowledgement by ICANN itself) that as currently configured, ICANN has a substantial accountability deficit. Professors Weber and Gunnarson’s recent summary captures what we believe is a broad consensus among scholars and other observers of the history and practice of DNS policy-making: *ICANN’s corporate organization vest[s] virtually unconstrained power in its Board of Directors. The Board may be influenced or even pressured by particular stakeholders on particular issues at particular times. But it remains legally free to remove directors and officers; disregard community consensus; reject recommendations by the Board Governance Committee or the IRP regarding challenges to a Board decision; and reject policy recommendations from any source, including the GAC and its nation-state representatives.*

- The IANA transition represents an opportunity to get these accountability mechanisms right. The ICANN Board has indicated that it accepts, as a pre-condition for implementing the transition, the need to implement fundamental changes in the corporation’s governance structure; but once the transition takes place, that leverage disappears. And the opportunity, once lost, might well not come again, because the transition will be very difficult to undo. As we explained in a recent paper, the IANA transition involves nothing more, at bottom, than the expiration of a government procurement contract; because NTIA isn’t transferring anything to ICANN as part of the transition, there’s nothing for it to “take back” if the accountability mechanisms fail to effectively control ICANN’s misbehavior. In addition, it appears that many other components of the final transition proposal – involving the operational details of the transfer of the IANA functions (names, numbers, protocols) – are themselves expressly conditioned on the development of an adequate accountability structure for ICANN, giving added significance and importance to the Accountability portion of the transition plan.

- We are particularly concerned, and focus our comments below upon, the extent to which the proposal protects against two forms of abuse: *Capture* by an entity or an interest (public or private) seeking to use DNS resources for its own self-interested purposes, and *Mission Creep*, leveraging control over the DNS to exercise power over matters outside the confines of the DNS itself. These are not, we acknowledge, the only risks posed by the transition; but they are sufficiently important to warrant special attention, and we believe our comments will be most useful if they are focused on them.

- The CCWG correctly identifies the task it is undertaking – to ensure that ICANN’s power is adequately and appropriately constrained – as a “constitutional” one: that the CCWG Draft Proposal, and ICANN’s accountability post-transition, can be understood and analyzed as a constitutional exercise, and that the transition proposal should meet constitutional criteria. Constitutions exist to constrain and to channel and to check otherwise unchecked power – “sovereign” power that is subject to no higher (governmental) power. ICANN is not a true “sovereign,” but it can usefully be viewed as one for the purpose of evaluating the sufficiency of checks on its power. We believe that there is a broad consensus – reflected in the CCWG Draft – that a “constitution” for a re-formulated ICANN should provide, at a minimum, for: 1. A clear enumeration of the powers that the corporation can exercise, and a clear demarcation of those that it cannot exercise; 2. A division of the institution’s powers, to avoid concentrating all powers in one set of hands, and as a means of providing internal checks on its exercise; 3. Mechanism(s) to enforce the constraints of (1) and (2) in the form of meaningful remedies for violations; 4. Transparency and simplicity. No constitutional checks on an institution’s power, no matter how clearly they may be articulated in its chartering documents, can be effective to the extent that the institution’s actions are shielded from view. And it is particularly important, in the context of a truly *global* multi-stakeholder institution, that its structure, and the chartering documents that implement that structure and that guide its operations, are framed as simply and transparently as possible. ICANN’s Charter and Bylaws should speak to the global Internet community whose interests the corporation seeks to advance. The more complex those chartering documents are, the less likely it is that they will be comprehensible to that community (or even to the subset of English speakers within that community).

- Designing the mechanisms through which a post-transition ICANN can be held accountable for its actions to the global community is both a critical component of the overall IANA transition process and an extraordinarily difficult task. We applaud the efforts that the CCWG-Accountability group has made thus far, and we support the goals it has identified and the general thrust in which the Draft Proposal is pointing. There are, however, a number of elements that must fall into place to ensure that the global multistakeholder community has the means to correct any abuses or misuses of ICANN’s power after U.S. government oversight is removed. We believe that the concerns that we have raised in these comments need to be considered and addressed if ICANN’s power is to be adequately constrained. We look forward to continued engagement on these important matters.

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6 [IA](#) Once the plan is accepted, ICANN must implement the Bylaw changes in full prior to the USG terminating the IANA contract.

1 7	RB	<p>- On the first conference call of the advisors the issue was raised of the need to define under what jurisdiction ICANN would be incorporated. This is a key starting point, as the jurisdiction will ultimately define the law that applies and incorporation, which implies registering bi-laws (and the definition of a: who is a party, b: who takes decision and c: who the parties relate to the decision-making) but also who the "external authority" that ultimately defines the legitimacy and legality of the whole operation.</p> <p>- First, it must be pointed out that in replacing the role of the US government, the focus here is on external accountability of ICANN and not its internal accountability. External accountability is the larger political accountability, with regard to general public interest, and the internal accountability is vis a vis the groups and constituents - often called stakeholders - that directly deal with ICANN, and are in any case represented in various ways in its internal processes. While internal accountability is important, it must be remembered that this whole debate was triggered by the vacuum that arises in terms ICANN's *external accountability* as a consequence of the US government stepping out (in whatever limited way). The focus should therefore be on the responsibility to the larger public -what the document calls "the community" and which is not defined.</p> <p>Yet, in any analysis of what the Internet currently is and who benefits from ICANN services or could be affected by its malfunction, it is clear that "the community" is composed by the billions of users of Internet and potentially by all of humanity. Such a large public will never be able to exercise direct accountability. Two institutional devices are normally employed in democratic polities. (1) A body that is as representative as possible of the larger public is the one that extracts accountability, and (2) there is separation of powers whereby when one particular body (and groupings around it) is to be held accountable, we seek another body which has the least overlap with the first body in its constitution and interests and make the first one accountable to the second one - making the arrangement in a manner - as is their between the executive and the judiciary for instance - that both bodies have different kinds of power, and therefore neither can independently become tyrannical, at least not easily. At the same time, by the very separation of groups/ processes involved in constitution of the two bodies, the very dangerous possibility of collusion is minimised.</p> <p>- In the current case, neither of these key criteria and method-templates have been satisfied or employed. There has been no effort made to explore some kind of global structure that can be considered to have some kind of representativity vis a vis the global public - however less than perfect. Neither the lesser and easier criterion of seeking separation of power by looking at a body/ system with a very different kind of constitution than what makes the current power configuration in the ICANN being fulfilled. What one sees is that the same groups and systems that put the ICANN decision making structures in place in the first instance are being given some recall and interim powers vis a vis this power structure. Certainly an improvement as far as the ICANN's organisational structure is concerned but it says nothing about ICANN's accountability to the global public what this process was really mandated to seek, and put in place.</p> <p>- It should be reminded that NTIA asked for transfer of oversight to global multistakeholder community. Most of the external advisors to the group share the notion that this requires some form of internationally agreed legal incorporation and accountability to an external group that can somehow represent the whole of humanity. We were told that this would be "unrealistic". See http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00018.html for full comment.</p>	
1 8	Govt-FR	<p>The French government comprehend that temporary US jurisdiction over ICANN is necessary for purposes of stress testing the CCWG-accountability final proposal over a limited period of time. Yet the CCWG-accountability final proposal should be transposable on an international legal framework, which we ultimately consider to be the only neutral legal framework suited for ICANN.</p>	
1 9	.NA	<p>The CCWG Accountability has not only failed its mandate, but in a manner that can hardly be described accountable. In conclusion, as one of the ccNSO appointed member of the Cross Community Working Group on Enhancing ICANN Accountability, I do not support this document nor the recommendations made therein.</p>	
2 0	Govt-ES	<p>The IANA stewardship transition and the accountability process should strengthen ICANN responsiveness to the demands of the global Internet community, enhance mechanisms to keep it accountable to that community and prepare ICANN for its globalization, which should remain as a priority for the organization.</p>	
2 1	RySG	<p>- The RySG believes the set of Work Stream 1 proposals contained in the interim report, if implemented, would likely provide sufficient enhancements to ICANN's accountability framework to enable a timely and responsible transition of IANA functions stewardship (in conjunction with the ongoing work of the IANA Stewardship Transition CWG).</p> <p>- The RySG believes that ensuring that ICANN adheres to its mission, commitments, and core values are fundamental to ensuring ICANN accountability. As such, we strongly support that the Draft Proposal provides a clear statement of ICANN's Mission, as well as ICANN's commitments to the community and its Core Values that govern the manner in which ICANN carries out its Mission. Equally key is the ability of the global multi-stakeholder</p>	

		<p>community to challenge decisions or actions of the ICANN Board and management, where the Board itself is no longer the ultimate authority in review of its own decisions. Appropriate checks and balances on power are the critical requirement.</p> <ul style="list-style-type: none"> - The RySG strongly supports the recommended enhanced community powers. However, RySG is concerned that these proposed and necessary community powers would be unenforceable under ICANN's current organizational and corporate structure. - A number of additional concerns and questions raised by the Draft Proposal. These comments should not be taken to undermine our generally strong support for the accountability mechanisms proposed. 	
2 2	CCG	<ul style="list-style-type: none"> - The phrase "public interest" is repeated extensively through the proposal including: 1. The "public interest" goal in the revised Mission Statement; 2. The role of "public interest" when balancing competing cores/commitments; 3. When language of AOC is imported into the proposed ICANN Bylaws, "public interest" finds mention. The proposal acknowledges that public interest has not been defined. Is the additional text – emphasizing the process through which it is identified -- sufficient, must a substantive definition be added? Commitments that ICANN shall work to the benefit of the public cannot get around the problem of defining what public interest is, given the corporation's context-specific functions. - The ICANN Board is not bound by community feedback when it comes to changes in ICANN Bylaws, budget, strategic/operating plans (unlike the proposed Fundamental Bylaws). This is of concern. Community feedback should be binding on the board in instances involving budgetary decisions. Will the proposed voting structure of the EC etc. be included as a Fundamental Bylaw, making it difficult to change? - A formal definition of "private sector-led" is required. 	
2 3	JH	<p>The existing CCWG proposal is trying to solve two problems: (1) The membership mechanism is to empower the community; (2) The IRP Panel is to establish a mechanism of power separation: Empowered Communities make rule, ICANN board executive and IRP Panel make judgment. Those first two steps are very important and a good start. But the problem of ICANN Accountability and Transparency is still not fully solved yet. ICANN Accountability mechanism should answer: What to do if ICANN makes the wrong decision? This question related to three important parts: (1) What is a wrong decision? (2) Is it really wrong? (3) How to deal with the wrong decision? This proposal did not answer well yet. The reasons and my comments (words in black colors) will be followed with the questions in the Public Comment Input guideline of CCWG report (red color words).</p>	
2 4	BC	<ul style="list-style-type: none"> - BC supports the proposed rationale and definition for what must be in Work Stream 1 and believes that the proposed community powers in Work Stream 1 should be adequate to overcome any resistance from the ICANN Board and management to additional measures the community attempts to implement after the IANA transition is complete. - BC believes that the community needs to have enforceable powers: To challenge Board decisions via an enhanced independent Review Process; To reject Board-proposed budgets and strategic plans; To reject (or in some cases, approve) Board-proposed changes to Bylaws; To recall ICANN Board Directors, individually or in total as a last-resort measure and is gratified to see these powers among the Work Stream 1 measures proposed by CCWG. BC is concerned that these powers might not be enforceable if we fail to adopt an Supporting Organization/Advisory Committee (SO/AC) Membership Model that takes advantage of powers available under California law and therefore encourages the CCWG to explain how Membership status can be created and maintained without undue costs, complexity, or liability. - BC supports "mechanisms giving the ICANN community ultimate authority over the ICANN Corporation" and supports that "Mechanisms to restrict actions of the Board and management of the ICANN corporation" provided that Work Stream 1 powers are enforceable against the corporation. From legal advice provided to CCWG that may require us to adopt an SO/AC Membership Model to exercise statutory powers under California law. - Work Stream 1 measures should be implemented before NTIA relinquishes the IANA contract. Implementation should include, at least, changes to ICANN Bylaws that establish community powers. Some implementation details could be accomplished post-transition, provided that the community has powers to force ICANN to take a decision on recommendations arising from a Review Team required by the <i>Affirmation of Commitments</i>. If ICANN decides not to implement Review Team recommendations, the enhanced IRP process give the community standing and a low-cost way to challenge and potentially overturn that decision. 	
2 5	.co.uk	<p>Generally we welcome the approach followed by the CCWG. The practical mechanisms proposed give a good framework on which to build and we support the general approach.</p> <p>The draft has a heavy focus on legal structures and mechanisms for use where trust and confidence have already seriously broken down. While we recognise that it is important to have such clear safeguards, we would like to see a little more focus on building confidence and trust – processes that encourage better understanding between the communities and with the executive and the Board. This could include jointly agreeing remedial action and only if</p>	

		<p>there were a failure to act would it then lead into an escalation process, should that be necessary.</p> <p>This is fundamental – ICANN itself is the community and, as an organisation made of different stakeholder groups, there should always be tensions between different interests. Processes need to be more consensual than adversarial, and more needs to be done between communities at an early stage in policy development to build shared understanding.</p> <p>We are concerned that many of the mechanisms identified in the proposal will be massively disruptive – nuclear options. One result of sanctions of such consequence is that they are considered unusable.</p>	
2 6	USCIB	<p>USCIB urges you to consider that the overall transition process would benefit from closer coordination of the development of the CWG-Stewardship and CCWG Enhancing ICAAN Accountability proposals. As the two documents are parts of a complete proposal and must be considered together by the community, their contents and reviews should be coordinated. For example, cross-references can be included in the respective sections of each document and availability of the documents and their respective review cycles can be coordinated to enable a holistic review of the proposals.</p> <p>Q1. Work Stream 1 proposals: We applaud the hard work by CCWG and all participants. Overall, we feel the draft Accountability proposal is high quality and inspires confidence that the final proposal will meet all requirements.</p> <p>Implementation: We feel the estimate for Work Stream 1 implementation (roughly nine months) is reasonable and prudent, and would allow for a safe and smooth transition from NTIA stewardship to the global multi-stakeholder community.</p>	
2 7	LINX	<p>- We have confidence that if implemented fully, incorporating the changes to the CCWG proposals that we suggest below, the total package would provide sufficient enhancement to ICANN's accountability for us to support IANA Stewardship transition. We would like to emphasise that this support relies upon the existence of effective, credible, independent and enforceable mechanisms to adjudicate claims that ICANN has acted contrary to its Bylaws and, in particular, that it has acted outside its Mission, and to ensure corrective action in the event of a finding against ICANN. We note that the mechanism to achieve ultimate enforceability, namely the creation of a membership model, members of which would have standing in court, is neither fully developed nor agreed in principle within the CCWG. Though we have our own doubts about whether the Reference Model is the best that can be achieved, this concern is not fundamental. What is fundamental is that the accountability changes must be legally binding and ultimately enforceable. If ICANN were able to disregard its own Bylaws, or disregard IRP rulings against it (whether arbitrarily, citing a broader public interest, or even in response to the Board's understanding of its own fiduciary duty diverging from the Bylaws), then there would be no accountability worth the name. We would not be able to support IANA Stewardship transition unless credible, independent, binding and enforceable accountability mechanisms are created.</p> <p>- Review and redress: We will only be able to support the end of NTIA's role as redress of last resort if we are satisfied that there is clear statement of the intended scope of ICANN's authority, and an effective, credible and enforceable mechanism to limit ICANN's activities to its intended scope.</p>	
2 8	ISPCP	<p>We welcome the efforts to define ICANN's mission more precisely, and to provide an enforceable, binding IRP so as to provide confidence that ICANN will remain within its properly authorised scope. We consider this element of the CCWG proposal to be an essential precondition for IANA transition.</p>	
2 9	JPNIC	<p>It is important to maintain the stability of ICANN, as an organization operating the management of the critical internet resources, as well as a forum of policy development for the names related policies.</p> <p>JPNIC would like to recommend the following general principles in considering ICANN Accountabilities.</p> <p>* Accountability proposal should ensures open, bottom-up and community based decision making process in policy development; * Proposed accountability mechanism should be simple to be comprehensible and pragmatically adoptable in reasonable timeframe; * Accountability proposal and its implementation should not be a delaying factor in the IANA Stewardship Transition.</p> <p>We would like to raise caution of over considering accountability measures which could lead to destabilizing the organization by putting excessive challenges to ICANN Board and/or secretariat decision, which are needed to carry out the activities under its mission. Further, overly complex system often leads to instability, with unintended affect which makes it harder to be identified when making changes, and it makes it harder for the parties to use such mechanisms when in needs.</p>	
3 0	Govt-IT	<p>There is a need to improve ICANN transparency, accountability and redress mechanisms. Furthermore, there is necessity for strengthening ICANN accountability and providing for effective and affordable means of redress, with adequate guarantees of independence.</p> <p>The role of the GAC is to provide ICANN with "advice on public policy aspects of specific issues for which ICANN has responsibility. This is an important dimension of ICANN's work". Nevertheless, in the current framework, the</p>	

		GAC held only a non-voting position in the Board of Directors of ICANN. In the new model, it might be considered that GAC could appoint at least a Voting Director in the Board.	
3 1	CWG-St	The CWG-Stewardship's proposal has dependencies on and is expressly conditioned upon, the work of the CCWG-Accountability and the outcomes we anticipate. We are encouraged by your understanding that the CCWG-Accountability initial proposals meet the CWG Stewardship expectations and moreover, that within your group's deliberations, the ability to meet these requirements has been rather uncontroversial. Including the ability for the community to have more rights regarding the development and consideration of the ICANN budget.	
3 2	IPC	<ul style="list-style-type: none"> - IPC remains concerned that sufficient impetus will remain post-transition to implement the WS2 recommendations, the powers proposed in WS1 appear sufficient to ensure the community can expand ICANN reform efforts if they so choose. In all likelihood, the proposed changes in WS2 will be subject to experimentation, review and update and will result in evolutionary change within ICANN. - However, the IPC notes that the power to enforce decisions by the community to review board decisions, reject budgets, scrutinize bylaw changes and recall the board (or individual members) is critical for these accountability mechanisms to be effective. Absent the membership structure or some equivalent, the ICANN community would find itself back where it began at the start of this exercise. - The IPC supports the notion that ICANN should ultimately be accountable to its community and believes the proposed measures in WS1, if enforceable, provide that ultimate accountability. That said, the IPC is anxious to see the process of reform continue after the IANA contract expiration to enable a more finely tuned framework of accountability that will serve the interests of all parts of the community. Operational accountability will be in the details, not the broad strokes outlined in WS1. - However, the IPC also believes that the focus on Board accountability is too narrow. Many of the issues that arise in ICANN's activities and cause concerns in the community stem from actions by senior management rather than the Board. We recognize that the Board is ultimately responsible for the actions of management, but this is indirect oversight and accountability at best, since many management actions occur without express Board approval. We urge the CCWG to consider mechanisms whereby the actions and inactions of management are also held accountable to the community. 	
3 3	Govt-BR	<ul style="list-style-type: none"> - Brazil believes it is crucial to make sure the this process is structured in a way that all stakeholders feel fully involved – including governments - in order to ensure that the final outcome of the exercise is also considered legitimate by all participants. - The U.S. government has provided the global community with an unparalleled opportunity to reflect on which steps should be taken to ensure that the post-2015 ICANN would be an organization with unchallenged legitimacy. That goal could only be achieved, in our view, if the "legal status" of the corporation would also be included in the "package" of items to be addressed in the transition proposal. - Brazil considers that enhancing the legitimacy of ICANN before all its stakeholders, including governments, requires the adoption of a "founding charter" agreed upon by all stakeholders in replacement of the present pre-determined status of ICANN as a private company incorporated under the law of the state of California. - The government of Brazil, in line with the model for Internet governance adopted domestically, is not advocating that ICANN should be governed by an intergovernmental agreement, this "founding charter" should be negotiated and agreed upon by the global multistakeholder community, including, but not limited to, governments. - Brazil's main concern is not correctly captured, on the other hand, by the notion that ICANN should move out of the U.S. - What we have defended throughout the process is that, unless the issue regarding the "legal status" of the corporation is adequately addressed, any attempt to reform its practices and to establish new governance or accountability mechanisms will be limited, at the end of the day, by the fact that any proposed changes will have to adapt to an existing legal status. From the Brazilian perspective the existing structure clearly imposes limits to the participation of governmental representatives, as it is unlikely that a representative of a foreign government will be authorized (by its own government) to formally accept a position in a body pertaining to a U.S. corporation. - In the spirit of the Tunis Agenda and the NETmundial's related provisions, Brazil certainly believes governments have a role and responsibility in regard to issues addressed by ICANN, in particular regarding their perspective on how public interest should be considered in the corporate's initiatives and decisions – an obligation which, by the way, ICANN is committed to uphold. - Brazil perceives the current IANA stewardship transition and the accountability review processes as important steps towards the internationalization of ICANN. - In the post-transition period, the corporation should become a truly international entity which is accountable not only to a limited group of stakeholders in specific regions, but rather to the worldwide multistakeholder community. - The Brazilian government understands the sense of urgency that is guiding the work of the CCWG-Accountability, 	

		the quality of the recommendations should have a higher priority than the accomplishment of deadlines.	
3 4	MPAA	<ul style="list-style-type: none"> - MPAA stresses the importance of transparency and believe the ICANN community must receive fair, complete and timely access to all materials relevant to the ICANN decision-making process. - Specifically we believe that additional transparency of ICANN's dealing with governments is required to prevent government capture or undue ICANN influence on public policies unrelated to ICANN's core mission. Governments could seek to control ICANN decision making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use its tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations. - Therefore, we suggest that an additional bylaw be added that requires ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their relationship with any government official, as well as activities, receipts and disbursements in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN. - MPAA fully supports the views of the CCWG-Accountability team requiring Work Stream 1 accountability changes must be committed to and implemented before any transition of IANA stewardship from NTIA can occur. 	
3 5	CDT	<p>CDT has long called for ICANN to have greater accountability to its community and for its mission to be appropriately circumscribed. The measures proposed by the CCWG go a long way to satisfying both of CDT's priorities. As the work on the CWG has focused increasingly on an ICANN affiliate structure for the post transition IANA (PTI) – a model that effectively makes ICANN the IANA steward, contracting party and operator (at least initially) - the dependencies on the work of the CCWG Accountability, and particularly Work Stream 1, have grown. A mechanism that empowers the ICANN community – as is outlined in the proposal – has therefore become central, indeed essential, to the neutrality, transparency and effectiveness of the IANA functions – and therefore the stability, security and resilience of the DNS.</p>	
3 6	CIRA	<ul style="list-style-type: none"> - I commend the CCWG for addressing the dependencies between the IANA stewardship transition and enhancing ICANN accountability processes identified by the CWG in its April 15, 2015 letter. As these two processes are inextricably linked, it is critical that the mechanisms and processes identified by the two working groups integrate seamlessly. - Overall, this document provides a comprehensive approach to enhance ICANN's accountability. The CCWG has done a good job of identifying the standards by which, and to whom, ICANN should be held accountable. However, while I believe enhancing the structures and mechanisms to ensure accountability and transparency are important, trust in an organization is only truly possible when accountability is 'baked in' to its very culture. I urge the CCWG to explore tools that would enable an ICANN culture that takes accountability and transparency as the starting point for its activities, and not added as a mandatory component to meet obligations set out by the community. - CIRA will submit a more detailed commentary on the revised draft during the second public comment period. 	
3 7	SR	<ul style="list-style-type: none"> - I applaud the work of the ccwg-accountability team and appreciate the opportunity to comment. Your proposal to replace the current US government backstop on IANA function oversight by empowering ICANN's current membership structure is both simple and efficient. - The past few years of mismanagement inside ICANN have demonstrated a necessity to place such overriding powers outside of the management and board. - Your framework offers a mechanism to not only fix the problems of inexperienced or mismatched (with mission/core values) management but to also shine a brighter light on internal operations to improve much needed transparency. - With the ability to recall the board or dismiss individual board members as well as directly effect board/management/staff decisions on strategic plans and budget, the community will finally have an effective recourse to such self-serving behavior. - Furthermore, enshrining a mechanism for the community to veto or approve ICANN's bylaws, mission, commitments and core values is an excellent way to ensure ICANN only attracts the right talent in the board and executive levels. - Your detailed work on the bylaws is most welcome as they have long needed updating to align with what ICANN actually does and be strengthened to limit mission creep...and to ensure ICANN's decisions are for public benefit - not just a particular set of stakeholders or ICANN itself. - I believe your proposals made in the Report will solve the numerous problems extending up and down the current and future management chains, ensuring accountability, and going a long way to making the multistakeholder 	

		experiment succeed and become a model for others.	
3 8	USCC	In particular we are pleased that a plan for accountability has procedures in place to ensure real accountability through legal enforceability. The Chamber recognizes that there has been discussion in the CCWG around the use of the term “private sector” (see e.g. paragraph 66). For simplicity, we recommend affirming that private sector refers to any non-governmental entity (see paragraph 841), which includes business, academia, civil society, and any other groups that are neither government nor fully government controlled. This affirmation will prevent unnecessary confusion and uphold long standing usage and global interpretation of the phrase “private sector.”	
3 9	INTA	<ul style="list-style-type: none"> - INTA strongly believes that ICANN must be accountable to the Internet community as a whole (“Community”) and that the proposals set forth in Work Stream 1 provide an excellent starting point. However there is much work to be done. - INTA supports keeping ICANN as a public benefit (non-profit) corporation domiciled in California. ICANN’s status as a public benefit corporation in California allows the members to have greater input within ICANN and improve ICANN’s overall accountability. - The Community as a whole has worked with ICANN in its present form for many years now and is familiar with ICANN’s abilities (and inabilities) as governed by California law. Any change to that status at the present time would bring more uncertainty to a system and process that needs stability. 	
4 0	.NZ	<ul style="list-style-type: none"> - .NZ Supports the SO/AC Membership model as the best way to empower the whole community, and broadly supports the specific initiatives proposed by the CCWG. To make this accountability a reality, the CCWG must develop a proposal that delivers meaningful accountability to that community. Such accountability must be, as the current mechanism is, legally watertight and, should matters require it, enforceable in a court of competent jurisdiction. - Its nature as an unbroken chain of accountability is one underlying reason why InternetNZ supports the membership model proposed by the CCWG. Another reason is that InternetNZ is a membership organisation, and as such is well familiar with the governance framework that the membership model would allow We note that there has been considerable discussion on the CCWG email list regarding the importance of enforceability. - InternetNZ regards enforceability as an essential ingredient in accountability: accountability does not exist if the tools that purport to allow it can be ignored by the party being held accountable. - [the WS1] proposals are sufficient to allow the IANA Stewardship transition to occur, as long as they are in essence implemented, and as long as the framework within which the proposals are implemented is one that is enforceable. 	
4 1	ITI	<p>While there are still important areas yet to be addressed, we support the direction reflected in the draft proposal. If adopted, as we believe it should be, we are confident that the proposed accountability enhancements will help engender and strengthen trust and confidence in ICANN.</p> <p>We applaud the CCWG-Accountability for its work on this important initiative, and look forward to the opportunity to evaluate a more complete proposal during the next round of review and comments.</p>	
4 2	HR2251	<ul style="list-style-type: none"> - I have been observing with interest the multi-stakeholder community process to develop a proposal for a transition in Internet governance, particularly the work of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), and I support your efforts to enhance accountability within ICANN in the absence of U.S. oversight. - ICANN shall remain subject to United States law (including State law) and to the jurisdiction of United States courts (including State courts). - The United States Government has been granted ownership of the .gov and .mil top-level domains. 	
4 3	NCSG	NCSG supports the empowerment of the ICANN community through the 6 powers identified in the proposal. These powers are central to enhancing ICANN’s accountability and appropriate tools for community empowerment.	
4 4	MM	The CCWG has strived to confront many of ICANN’s key accountability problems and on the whole it is making tremendous progress toward that goal. In these comments, I address the proposal’s treatment of ICANN’s mission and scope, its amendments to the independent review process, and its membership proposal. On the first two points, I largely agree with what the CCWG proposes; on the third (membership) I think you need to make some major revisions.	
4 5	GG	<ul style="list-style-type: none"> - For the IANA transition to be successful, it is essential that the organization carrying out those functions be accountable to its customers and the multistakeholder community. Among other things, the community must have confidence that the organization makes decisions in a fair, impartial, and transparent fashion; that the organization has a mechanism in place for relevant stakeholders to appeal decisions if necessary; and that the organization remains focused on its core mission and executes that mission efficiently. With these goals in mind, Google appreciates the work of the Cross Community Working Group on Accountability (CCWG-Accountability) to develop 	

		<p>an Accountability Initial Draft Proposal (Proposal) to enhance the accountability of ICANN, the organization currently carrying out the IANA functions pursuant to a contract with NTIA. We agree with much of the Proposal; the suggested reforms, if enacted, will be important enablers of a successful and durable IANA transition. Moreover, the Proposal and the reforms contained therein are evidence of the multistakeholder community's ability to reform itself from within, based on a clear-eyed understanding of areas that need improvement.</p> <ul style="list-style-type: none"> - With these goals in mind, Google appreciates the work of the Cross Community Working Group on Accountability (CCWG-Accountability) to develop an Accountability Initial Draft Proposal (Proposal) to enhance the accountability of ICANN, the organization currently carrying out the IANA functions pursuant to a contract with NTIA. We agree with much of the Proposal; the suggested reforms, if enacted, will be important enablers of a successful and durable IANA transition. Moreover, the Proposal and the reforms contained therein are evidence of the multistakeholder community's ability to reform itself from within, based on a clear-eyed understanding of areas that need improvement. - We believe that the majority of the changes described in the Proposal strike the right balance: they provide a meaningful check on ICANN without compromising administrative efficiency. - We believe that the Proposal could be improved in a few key respects. We detail each of these areas below, but in general, Google believes that some of the proposed measures may unnecessarily create operational inefficiencies and undermine confidence in the finality and predictability of ICANN's decision-making process -- without necessarily improving accountability along the way. - Google recognizes the importance of enhancing ICANN's accountability to its customers and the broader multistakeholder community. In our view the suggestions outlined in the Proposal represent an important first step in achieving this goal. We look forward to working with the CCWG-Accountability in refining these proposals and ensuring that ICANN conducts its important work in an accountable, competent, and efficient way. 	
4 6	Board	<ul style="list-style-type: none"> - The ICANN Board thanks the CCWG-Accountability for all of its work leading to the first draft proposal of mechanisms to enhance ICANN accountability in light of the changing historical relationship with the US Government. As the CCWG Accountability prepares its proposal, the Board has some comments, observations and questions for the CCWG to consider. We provide these below, and look forward to continued discussions, including at the upcoming ICANN 53 meeting. - As discussed at ICANN52 in Singapore, the Board reiterates that the main areas of proposed enhancements are items that the Board supports. We understand and appreciate how important these changes are to the CCWG-Accountability, and agree that there is a path forward to achieve the community powers and enhancements identified in the CCWG-Accountability's first report. We recognize the importance of affording the ICANN community a voice in assuring that the Strategic Plans of ICANN are within ICANN's mission, that budgets support the mission, and that the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community. We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior. We agree that the Independent Review Process needs to be refined; with the standard better defined to meet the needs of the community, and that it is important to have binding decisions arising out of that process, as appropriate. As we noted in Singapore, we are far more closely aligned with the CCWG-Accountability than many in the community might realize. 	
4 7	CENTR	<ul style="list-style-type: none"> - CENTR welcomes the opportunity to comment on the first public draft of the CCWG-Accountability paper relating to Work Stream 1 that aims to improve and refine ICANN accountability mechanisms prior to the IANA Stewardship transition. We would like to acknowledge the complexity of the work and compliment the working group for having managed to produce a list of recommendations that represents a good first step even though they are not supported by the consensus of the working group. - The CENTR Board would like to acknowledge the valuable work done by the CCWG. Recommends that the CCWG further investigates the membership model from a legal perspective and present an ad-hoc paper about it to the community to explain who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members as well as possible financial and administrative provisions of such a body; - CENTR reiterates the request that ICANN be more transparent in terms of IANA's function costs and their itemization. - CENTR is supportive of the IANA Function review to take place no more than two years after the transition is completed, but believes that subsequent reviews should occur more regularly and not every five years. 	
4 8	I2Coalition	<p>The i2Coalition appreciates the work of the CCWG, and we broadly support the proposal's direction. In particular, we appreciate that the CCWG shares two of our key goals: (1) ensuring that ICANN remains focused on its core</p>	

		mission of coordinating the global Internet's systems of unique identifiers and ensuring the stable and secure operation of the Internet's unique identifier systems, and (2) creating a binding mechanism and enforceable community empowerment by which actions outside of or in contravention of ICANN's bylaws can be challenged. I2Coalition believes it represents a strong starting point for continued discussions on improving ICANN's accountability. We look forward to continuing the work with the group as it moves toward finalizing the proposals.	
49	CCAOI	CCAOI wishes to thank the CCWG for providing the opportunity to comment on the Initial draft on Proposed Accountability Enhancements (Work Stream 1). Accountability and Transparency of ICANN to the global community, we believe is critical for the smooth running of the IANA Functions.	
50	NIRA	<p>- NIRA welcomes the work done by CCWG-Accountability since its creation. In addition to supporting the announcement by NTIA to transition its stewardship role in the IANA Functions to the global multi-stakeholder internet community, NIRA supports the proposal of strengthening ICANN Accountability by empowering the ICANN community to have an oversight role in processes and activities of the ICANN Corporate. However, given that ICANN is still under the Californian law, there may be need to explore other jurisdictional legal requirements that can provide flexibilities being sought for/recommended by the CCWG. The globalization of ICANN should be pursued further.</p> <p>- If implemented or committed to, would provide sufficient enhancements to ICANN's accountability to proceed with the IANA Stewardship transition.</p> <p>- In general, NIRA supports the work done so far. However, NIRA thinks the implementation should be clearly stated for the community to be well informed and aware of the legal implications of the proposal. The review mechanisms being proposed should be harmonized with any such reviews being proposed by the three operation communities who are direct customers of IANA.</p>	
51	ALAC	In general the ALAC is supportive of the direction being taken by the CCWG and will provide guidance on a number of issues, some of which the CCWG is explicitly seeking, and others where the ALAC believes that reconsideration may be required.	
52	LAB	<p>- I commend the CCWG-Accountability for producing a set of draft proposals that, if adopted, will substantially strengthen accountability mechanisms within ICANN. Concomitantly, I support the thrust and mechanics of the reforms being proposed.</p> <p>- I concur, for the most part, with the views of my fellow Advisors, Jan Aart Scholte and Willie Currie, as set out in their respective comments on the draft proposal. In particular, I find the suggestions by Currie of establishing a "Public Accountability Forum" and a "Mutual Accountability Roundtable" well worth considering. Although I am not convinced that the latter will fully resolve the issue of who will "guard the guardians", it seems a step in the right direction.</p>	
53	RSSAC	RSSAC has reviewed the CCWG-Accountability Work Stream 1 Draft Report. We have no consensus comments on the substance of the CCWG proposal at this point, as we understand the purpose of the CCWG-Accountability group's efforts but find the impacts of the current proposal difficult to evaluate.	

Methodology

#	Contributor	Comment	CCWG Response/Action
54	Jan Scholte (JS) comment 1	<p>- The proposal relies quite heavily on 'the (global) public interest' as an ultimate criterion of policy evaluation. Yet, the concept 'public interest' can be quite problematic in practice. 'The public interest' can very much lie in the eye of the beholder. Moreover, the concept can be abused by the powerful to claim that their advantages are for the collective good. The (global) public interest could be 'identified through the bottom-up multistakeholder policy development process'; however, this would make it all the more imperative to ensure that the multistakeholder mechanisms are not dominated by powerful special interests and equitably involve all affected circles.</p> <p>- Is some more precise definition of 'independence' wanted? The concept is given no specification. If someone were to challenge the 'independence' of a proposed panelist on the IRP, how would the validity or otherwise of the objection be determined? Is it sufficiently specific to say the person is not 'beholden to ICANN' (para 125); how would that beholden-ness be concretely assessed?</p> <p>- Motivate why 'the community' should have more influence on certain Board decisions. Currently para 12 simply affirms this point, without giving any rationale.</p> <p>- The jurisdiction issue – which for many observers lies at the heart of ICANN accountability challenges – is mentioned only once (para 688/2) and then in order to defer the issue. Will critics pick up on this point?</p>	
55	auDA	- auDA welcomes the CCWG's methodical efforts in attempting to meet its goals. auDA agrees that it was appropriate for the CCWG to: 1) identify an inventory of existing accountability mechanisms; 2) list contingencies ICANN must be safeguarded against; and 3) develop a set of stress tests to assess whether the CCWG's proposed architecture protects against these contingencies.	

		<ul style="list-style-type: none"> - auDA agrees with the CCWG's assertion that "accountability" is comprised of a series of dimensions: transparency, consultation, review and redress. - auDA agrees with the key "building blocks" that the CCWG has identified as the basis for ICANN's future accountability. - auDA believes that the most efficient and effective method of implementing the principles and goals identified by the CCWG would be the refinement and strengthening of mechanisms that already exist. Many have been developed by the community (or received input from the community) and have been used by ICANN for a number of years as part of existing commitments to accountability and transparency. They are well-established and well-developed and therefore form a logical basis for future work. auDA notes that the CCWG proposes a number of improvements to these mechanisms and functions and encourages the group to make these areas its primary focus as it finalises its recommendations. 	
5 6	DBA	<ul style="list-style-type: none"> - It is positive that GAC's input (principles) to the CCWG Accountability appears to have been taken into consideration. However, there are still substantial issues (political and juridical) to be addressed before the transition of the IANA Functions to ICANN and the global multistakeholder community could take place. This includes how to organize the Community and ensure an appropriate role for governments in its advisory role. - We are, however, concerned about the complexity of the document as this will make it more difficult to ensure effective participation in the process. This makes the communication and outreach strategy even more important and efforts should be made to engage the broader global community and reach out to stakeholders outside of ICANN. 	
5 7	Govt-AR	Argentina has already expressed concern in relation with the outreach strategy and involvement of countries and communities that are not present in the ICANN process. Efforts must be made to ensure the involvement of the whole Internet community, with special focus on developing economies.	
5 8	Govt-IN	Currently there is a lack of clarity as to the interpretation of crucial terms such as 'community', 'public' and 'public interest'. Further clarity on these terms would assist in determining who ICANN is accountable to.	
5 9	Govt-DE	- The complexity of the CCWG's work and the large number of stakeholders make it seem necessary to raise awareness of this drafting process beyond the ICANN community to ensure a well-balanced approach for ICANN's future.	
6 0	IA	- IA suggests that CCWG-Accountability provide in its next draft a document that contains all proposed changes to the Bylaws with changes to the existing Bylaws marked in redline. The Internet Association further encourages CCWG-Accountability to develop a timeline for ICANN to implement the final plan.	
6 1	eco	<ul style="list-style-type: none"> - eco recognizes the outreach efforts by the CCWG, including webinars and the translation of the report into multiple languages as well as ICANN's outreach efforts on the IANA Stewardship Transition at the global level. As the draft report does not represent consensus positions, these outreach efforts need to be continued and intensified to ensure the process is as inclusive as possible. - Regarding the membership model, eco fully supports the working method used by the CCWG based on requirements. 	
6 2	RB	As a member of the honorary advisory group I regret that key recommendations and observations made during the conference calls of the group were not taken into account or properly responded to in the Draft Recommendations.	
6 3	.NA	<ul style="list-style-type: none"> - A convoluted report at 143 pages, making a graphical supplement necessary for ease of understanding, which was expensive to produce. Clearly the result of a rushed process, where content was subordinated to an arbitrary deadline - Numerous concerns were raised in different levels of vehemence by appointed members of every chartering organizations against this, mine being most vocal and numerous, but were ignored - Poor quality of the process made evident when 3 additional questions were posted to the comments web site. A clear violation of the charter, as the comment period for these questions just 2 days. - The report also violates the rules of engagement in the charter as a mandatory Consensus Call not held, and in fact refused, including the submission of minority viewpoint(s) to be included in the report. - It was not helpful that a SubTeam created purely for funneling legal questions to what is termed Independent Counsel, or rather a single participant (not even a member) of this SubTeam, decides which questions are relevant and it was particularly unhelpful that requests to look at this accountability (i.e. from a "higher level") were rejected or ignored by the Co-Chairs. 	
6 4	RySG	Several RySG members have noted concern with the relatively short time available for consideration of the draft CCWG proposal and development of feedback. As such, RySG support is conditional on further development of the details. Accordingly, we reserve the right to amend our position.	
6	JH	Given that CCWG report has a significant reformation of ICANN system, it is necessary to have a deep thinking and	

5		a broad discussion. While, the Chinese translated draft report has not been provided yet, which brings some difficulties for some Chinese experts to have a deep understand and think about the report. This comment is from my individual point of views. So is it possible to prolong 7 days?	
6 6	CWG-St	<p>- We would like to confirm the quality of the ongoing coordination between co-chairs of our respective groups that has been taking place since the launch of your group. Each of our groups has been updated regularly on progress made as well as issues faced, including the interdependency and interrelation between our works and this has led to key correspondence being exchanged on a regular basis to develop and formalize the linkage. As CWG-Stewardship co-chairs, we have been provided with the opportunity to speak directly with the CCWG-Accountability group in addition to the regular discussion of key aspects of the work of both groups amongst the co-chairs.</p> <p>- Looking forward, we remain committed to retaining both the focus of the CWG Stewardship and the link between the works of the two groups. To this end, the assistance and professional advice from the independent legal advisors has been critical and will remain so as we seek to comprehensively formalise the links and dependence.</p>	
6 7	IPC	<p>- There is no justification for a truncated public comment period, even though this truncation was approved by two "ICANN Global Leaders," and even though a somewhat longer public comment period is contemplated for later in the process.</p> <p>- The statement in paragraph 7 of the Draft Proposal that it is based in part on "requests and suggestions that have been provided by the community during a public comment period conducted last year following the NTIA announcement" is somewhat misleading, since the most recent such public comment period was explicitly limited to "addressing questions about the design of the Enhancing ICANN Accountability Process – not about the potential solutions or outcomes of the review." See https://www.icann.org/public-comments/enhancing-accountability-2014-09-05-en. This is actually the first opportunity the ICANN community has had to comment on specific proposals to enhance ICANN's accountability in the context of the IANA transition. Accordingly, the IPC reserves the right to supplement these comments at a later time.</p>	
6 8	CIRA	In terms of process, I expect that the second draft proposal that will be posted for public comment will include timelines, and that those timelines will align with the work of the CWG. I look forward to reviewing the second draft CCWG proposal.	
6 9	USCC	As a threshold issue we believe that the 30 day comment period is much too limited time to review and provide substantive feedback on such a substantial plan, in particular for our members who may not be seeped in the day-to-day CCWG or ICANN conversations. While we recognize the desire to have a discussion around community comments at the upcoming Buenos Aires ICANN meeting, we think it is imperative that any future major inflection points provide a longer comment period and that no issues (except for those with broad community consensus) be settled following such a short turnaround time.	
7 0	INTA	<p>- Requests that ICANN provide additional time to allow for meaningful Community input on complex issues such as the IANA transition and ICANN accountability. Between the CCWG and the CWG reports, the Community had just over one month to review and analyze 233 pages of extremely dense material. This is not sufficient time to critically analyze how the 2 documents work together and whether the pressing concerns of accountability have been fully addressed. The work is too important to rush.</p> <p>- Moreover, as with the CWG report, many of the concepts and questions discussed in the CCWG report are dependent upon other policies or require much more specification before any Community member could rationally indicate their support.</p> <p>- Concerned by the leading nature of the questions set forth herein and the fact that the answering party is forced by the form of the question to indicate agreement or opposition. Any such statements should only be taken as representing a position that INTA may currently possess in light of limited time it has had to analyze this report.</p> <p>- Object to the posting of 3 additional questions after the commencement of the comment period. We have opted not to respond to the additional questions at this time.</p>	
7 1	.NZ	We note that the details of implementation, including the role of unincorporated associations as legal 'packages' through which the SOs or ACs act, are still being developed and we look forward to the conversation on that, as well as the overall settlement, in Buenos Aires later this month.	
7 2	NCSG	<p>The proposal needs more work on transparency - both in the working of the CCWG (for example chairs mtgs should be transcribed) and also in the substance of the CCWG work.</p> <p>- The NCSG supports a clear statement of ICANN's limited technical mandate. We agree that ICANN's mission should be limited to the coordination and implementation of policies and procedures required to facilitate the stable and secure operation of the DNS.</p> <p>- We applaud the recognition that ICANN's Mission does not include the regulation of services that use the DNS or</p>	

	<p>regulation of the content that these services carry or provide.</p> <ul style="list-style-type: none"> - We also applaud the CCWG’s recognition that the existing bylaw language describing how ICANN should apply its Core Values is weak and permits ICANN to exercise excessive discretion. - In paragraphs 69-100 NCSG believes the CCWG should avoid overly broad references to furthering “the public interest;” such references should be more specific and refer to a “public interest goal within ICANN’s mandate.” ICANN does not have a mandate to pursue the general public interest; it is intended to serve the public interest only within its narrow DNS-related scope of activity. - Paragraph 105 There is horribly redundant wording here: “ensure that decisions are made in the global public interest identified through the bottom-up, multistakeholder policy development process and are accountable, transparent, and respect the bottom-up multistakeholder process.” This should be simplified to: “Ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.” - Paragraph 107 We prefer the original wording, with the exception of adding “in the DNS market.” The current revision muddles and undermines the clear intent of this passage, which was to encourage ICANN to rely on competition and market mechanisms. The addition of the words “healthy” and “enhances consumer trust” introduce vague criteria that in many ways contradict competitive market criteria. The addition of “consumer choice” is unnecessary as that value is already encompassed by a commitment to competition. - Paragraph 110 This paragraph is incorrect as it currently stands; it says “governments and public authorities are responsible for public policy.” As ICANN deals with a global arena, it should say that “governments and public authorities are responsible for public policy in their jurisdictions.” We also believe that the phrase “duly taking into account the public policy advice of governments” should be changed to “duly taking into account the advice of the GAC,” as it is GAC - not “governments” - that formally provide advice to the board under the bylaws and not all of its advice deals with public policy. - We fully support the changes to the Core Values and the designation that certain Core Values are considered Commitments - values that should rarely (if at all) be balanced against each other - and the incorporation of various provisions from the Affirmation of Commitments. We support the addition of respect for Human rights to the core values and support the addition of an obligation for human rights impact analyses for ICANN decisions to the mission. <u>NCSG has consistently recommended that ICANN adopt the “Respect, Protect, and Remedy” framework which was developed for private corporations and that ICANN benchmark its human rights compliance by joining the Global Network Initiative. These would provide simple ways to further strengthen this core value.</u> 	
<p>7 3</p> <p>Board</p>	<ul style="list-style-type: none"> - Starting from the baseline that we are supportive of the CCWG-Accountability’s main goals, we then have to turn to considerations of implementation – how do we make sure that the goals are implemented in ways that do not pose undue risks to how the ICANN community interacts within the ICANN multistakeholder model? One of the analyses that we do not see within the report is a something akin to a regulatory impact analysis, where the costs, benefits and alternatives to proposals are weighed to assure that the design of the solution for each issue is the most efficient, least burdensome on the community, and most cost-effective solution. This seems a separate exercise from the stress test work that is reflected in the report. That stress test, or contingency planning, work builds from the identification of stressors or situations that ICANN may face, and then considers how the proposed solutions assist ICANN in being more accountable when those situations arise, however unlikely. This is valuable work in considering that the CCWGAccountability is working towards the crucial issues. What seems to be the necessary next step, however, is considering whether the mechanisms that are proposed as solutions are themselves capable of withstanding contingencies and stressors. In this regard, the Board presumes there will be an impact analysis. It is currently working on a series of questions to assist in performing that impact analysis. The membership model that is described within the CCWG-Accountability report is one of those main areas for which impact testing seems to be needed. We do have a concern that the extent of the governance changes that could be required through the CCWG-Accountability creates the possibility for too much change to be introduced into the ICANN system at once. As one of the participants in the recent Board workshop panel on the IANA Stewardship Transition cautioned, sound engineering practices are based in incremental change and following with additional reforms as needed, as opposed to changing everything at once. When you change too much at once, and there is later an issue, it’s very hard to figure out what part of the change caused the issue. A shift to a membership model, which may introduce a large number of changes into the whole governance model, is indeed an area where there is potential for unintended consequences. We believe that it’s important to keep this principle in mind as impact analysis is performed. - We also support one of the advisors to the CCWG-Accountability, Jan Aart Scholte, in his continued reminder to make sure that the solutions and governance changes that are being introduced today include considerations of how the different parts of the ICANN community remain accountable to each other, and allow for those who are not 	

		<p>affiliated with any of the current structures to have meaningful participation options in the future. We recommend that this be part of any impact analysis as well.</p> <p>- As we strive to look at the timeframes, clearly some of the proposals can be achieved more rapidly than others, building on existing mechanisms. New proposals, in particular those changing the governance structure of the organization, require additional time for implementation and testing. Once the proposals become more concrete it would be useful for the CCWG to work with staff on a draft project plan for implementation.</p>	
7 4	CENTR	<p>- The draft paper presents various recommendations for whose implementation ICANN bylaws need to be amended. We fail to see a clear timeframe for these amendments to enter into force prior to the IANA Stewardship transition. We suggest to the CCWG that any part of the proposal is assessed from a detailed time perspective (best case and worst case time scenarios) to make sure its implementation is feasible considering the time constraints. The timeline as presented in section 10 seems to be based on best-case scenarios where the intervals between CCWG working periods, public comments and deliverables are based on tight, consequential timings that might be subject to delays. It would be valuable to understand what would happen if a section of the proposal does not move forward because of lack of consensus. Will it be withdrawn and reconsidered at a later stage?</p> <p>- We express our concern at seeing that most of the proposed accountability enhancements are linked to the introduction of safeguard mechanisms. While we believe this might be necessary at a certain stage, we would like to underline that any enhancement of any accountability process must be linked and strongly supported by actions that improve the accountability literacy, culture and attitudes of those who are expected being held accountable. Therefore, we warmly recommend that the entire ICANN Board, and, most of all, ICANN staff – especially those daily involved in community engagement and operation management – go through regular accountability training programmes as well as a by-yearly audit process - done by an independent body - of their daily modus operandi (e.g. a proper, careful and regular review of the ICANN Documentary Information Disclosure Policy which in our opinion should occur as part of the accountability enhancements of Work Stream 1 instead of 2 as proposed by the CCWG).</p> <p>- In order to make this process as transparent and inclusive as possible, we would recommend that any future draft for public comment is always accompanied by graphics that help the broader DNS community – generally made of time-starved executives – to better understand the implications of certain proposals at ICANN internal and external level. As a matter of fact one measurement for the success of such a process is the extent of community engagement which, to date, has been extremely low. Furthermore, we would recommend that any draft and/or graphics go through a proper language editing and consistency check to avoid that certain proposed mechanisms are named in a different way throughout the paper and graphics.</p> <p>- We are concerned by the paragraph that underlines the uncertainty relating to the efforts required for Work Stream 1 implementation. Furthermore, we believe that several of the estimated timelines represent the best case scenario and invite the CCWG to present the community with a more detailed timeline under best and worst case scenarios.</p> <p>- CENTR recommends 1) the CCWG further detail the proposal implementation timeline to foresee worst case scenarios and/or scenarios where the deployment of one or more sections of the proposal might be postponed due to the lack of community consensus; 2) that any enhancement of any accountability process be linked and strongly supported by actions that improve the accountability literacy, culture and attitudes of the ICANN Board and staff.</p>	
7 5	CCAOI	<p>The CCWG Accountability draft seems quite complex and this might make it more difficult for stakeholders to participate in the process. For more engagement of the global community outside ICANN, the latter must promote greater engagement through more face to face meetings across the world and outreach activities. There seems to be a lack of in-depth discussion of jurisdiction of ICANN-Especially, US jurisdiction of ICANN. There should also be emphasis on accountability track including financial accountability of ICANN, and use of proceeds from new gTLD auctions. The focus on accountability should not be limited to ICANN, but also contributors such as IETF, RIRs, National Names and Number Registries and other players including respective staff and secretariats.</p>	
Stress Tests			
#	Contributor	Comment	CCWG Response/Action
7 6	RH	<p>Stress test category III, Legal/Legislative Action: as the proposal correctly states the "proposed measures ... might not be adequate to stop interference with ICANN policies". In particular, they cannot stop interference from the country where ICANN is incorporated. Hence, as stated above, ICANN should be incorporated in a neutral country that is unlikely to interfere, for example Switzerland. Or ICANN should negotiate immunity of jurisdiction.</p>	
7 7	DBA	<p>We would like to underline that stress testing the proposal is of highest importance and we appreciate the work done by the CCWG Accountability in this regard. It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safe- guards against capture from any specific</p>	

		stakeholder group in any way, including in ICANN's policy development processes and decision making functions.	
7 8	WC comment 1	The stress tests are comprehensive and indicate that the proposed changes should be able to withstand pressures from the environment, external and internal, to the ICANN ecosystem.	
7 9	CRG	Are there any stress tests yet about conflicts of interest internal to the corporation (Board- Management, Management-Management)?	
8 0	Govt-IN	It is noted that the stress test regarding appeals of ccTLD revocations and assignments (ST 21) has not been adequately addressed as the CCWG-Accountability awaits policy development from the ccNSO. Any subsequent accountability architecture should also take into account the results from this stress test.	
8 1	DP-DK	<p>We also propose adding the following "Stress Tests" to test the adequacy of this formulation (see proposed fundamental Bylaw in Revised Mission, Commitments & Core Values):</p> <p><u>Stress Test 1:</u></p> <p>At urging of the GAC, the Board directs ICANN's contract compliance department to take the view that, in order to comply with the mandatory PIC requiring a flow down clause in the registry-registrar contract that contemplates the termination of domain names for "abuse," the registries must provide assurances that registrars with whom they are doing business are actually enforcing that clause by terminating names whenever they receive any complaint of violation of applicable law. The Board insists that this mandatory flow down provision be included in all new contracts for legacy gTLDs upon renewal.</p> <p>Current situation: no real recourse.</p> <p>Proposed situation: Registry could challenge ICANN's actions as outside its Mission (development of consensus policies on issues uniform global resolution of which is necessary to assure stable operation of the DNS) on the grounds that this was not a consensus policy, nor one that was developed stable and secure operation of the DNS, and for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS. The IRP would likely find that imposition of this obligation, in the absence of consensus, is not within ICANN's powers.</p> <p><u>Stress Test 2:</u></p> <p>ICANN terminates registrars on the ground that they do not terminate domain names claimed to have been used to provide access to materials that infringe copyright. ICANN takes the position that, despite the absence of any court orders or due process, and even when the registrar does not host the content in question, it would be "appropriate" to delete the domain name where registrars have received infringement complaints (of a specified kind, in specified numbers) from rightsholders, and that, therefore, the registrar is required by section 3.18 of the Registrar Accreditation Agreement, to delete the accounts or lose its accredited status.</p> <p>Current situation: No real recourse.</p> <p>Proposed situation: An aggrieved party could bring an IRP claim arguing that imposition of this requirement, by mandatory contract, is invalid as a violation of ICANN's Mission on the grounds that: (1) Neither the contract clause nor the policy of enforcing it in this manner was developed by consensus, but unilaterally by ICANN staff; (2) The policy being implemented is unrelated to "ensur[ing] the stable and secure operation of the DNS" but rather relates to an entirely different set of policy goals; (3) Nor is it a policy "for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS"; and finally (4) it represents an attempt by ICANN to "use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide." We believe such an action would be likely to succeed.</p>	
8 2	IA	IA strongly supports the results of stress test 18 regarding the Board's response to GAC advice. However, disagrees with paragraph 636, which states that the threat posed by stress test 18 "is not directly related to the transition of IANA stewardship." We view this issue as directly related to the transition and believe that it is essential that relevant actions be taken to implement this change before the transition is complete	
8 3	Govt-ES	<ul style="list-style-type: none"> - Test 21: opposed to this stress test. It is based on contentious policy (RFC 1591) and thus, should not be used to test the robustness of new accountability mechanisms. Furthermore, appeal mechanisms to delegation and re-delegation of ccTLDs have been left aside of the accountability enhancements proposed by the CCWG. - Note Singapore GAC Communiqué states the following regarding the Frame of Interpretation WG outcome: "The GAC notes the work of the ccNSO FOIWG, and its efforts to provide interpretive clarity to RFC1591. The GAC welcomes the FOIWG's recognition that, consistent with the GAC's 2005 Principles, the ultimate authority on public policy issues relating to ccTLDs is the relevant government. As such, nothing in the FOIWG report should be read to limit or constrain applicable law and governmental decisions, or the IANA operator's ability to act in line with a request made by the relevant government." - Test 4: We fail to see how accountability mechanisms can be used to defy a decision not taken by ICANN, but by a third party, i.e., a Government. Thus, we recommend doing without this stress test. - Test 12: It grabs our attention that a stress test named "Capture by one or several groups of stakeholders" is so focused on governments and the GAC. Even in the case of the other SO/ACs, it is stated that they need accountability and transparency rules to prevent capture from outside each community, but little is said about 	

		<p>ICANN's capture by an internal community other than the GAC.</p> <ul style="list-style-type: none"> - Measures to prevent capture by other groups should be proposed. Otherwise, this stress test overlaps with stress test 18. - Test 18: We cannot agree with this stress test being included in the final report. ICANN Bylaws state that the Board shall duly take into account Governments' advice "on public policy issues". - This is the key point: the GAC brings the public policy perspective into ICANN. The GAC advice to the Board is not anything further than an advice that is not binding on ICANN. If the Board doesn't agree with a particular piece of GAC advice, it has to enter into a process with the GAC to try and find a "mutually acceptable solution". Again, if this cannot be found, the Board is still free to do what it feels appropriate, including simply not following GAC advice. We fail to see where the contingency or the risk of government capture lays. Advice adopted by a majority of GAC members would still qualify as "public policy advice" which ICANN should afford to ignore. In short, we call on the CCWG to respect GAC's ability to approve its own working methods (Article XI. Section 2.1 c) of the Bylaws) and require the Board to fully consider advice agreed according to GAC internal procedures. - Test 14: We find it is pointless to keep this particular stress test at this moment in time, when the community is actually dealing with the termination of the AoC - Test 15: While the AoC actually states that ICANN should be headquartered in the USA, and the Articles of Incorporation set forth that ICANN is a non-profit public benefit corporation under the California law, we do not believe this should be incorporated into a core or fundamental value of ICANN (page 21), for the reason that the remaining of ICANN subject to Californian Law is not fundamental to the global Internet community. 	
<p>8 4</p>	<p>RySG</p>	<ul style="list-style-type: none"> - RySG agrees that the so-called "Stress Tests" have been valuable as a tool to weigh the risks and reward of various proposals. As such, we believe the incorporation of the bylaws changes recommended by the CCWG interim proposal would help to enhance ICANN's accountability to the community and NOT doing so would undermine it. We are interested in whether and how the CCWG-Accountability intends to handle Stress Tests where the proposed Accountability Mechanisms are identified as "inadequate" or "partially inadequate". Stress Tests 5, 6, 7, and 8: in the assessment of proposed accountability measures in the case of financial crisis or other loss of revenue: we do not believe that simply leveraging increased fees is a viable solution to this Stress Test and recommend that instead the stress test looked at how ICANN's expenditures could be constrained to reflect the decline in revenue, while minimizing the negative impacts on the key services that it provides. This assessment also raises a more general issue of how the proposed community powers will interact with the contracts between ICANN and its contracted parties. We are concerned about the ability for these agreements to be revised other than through the existing procedures in the Registry Agreement and Registrar Accreditation Agreement. If this is within the intended scope of the community powers, we request that further clarity is provided to permit more substantive comment in the next comment round. Stress Test 16: ICANN engages in programs not necessary to achieve its technical mission, is described as being directly related to the IANA Stewardship Transition. We believe that this is a general issue not directly related to the IANA Stewardship Transition. We request that this statement be revised to reflect this general nature or that greater clarity be provided as to why this Stress Test is directly tied to the IANA Stewardship Transition. Stress Test 20: "Preventive: During policy development, the community would have standing to challenge ICANN Board decisions about policy and implementation." There is a temporal issue in this statement in that the board should not be making policy or implementation decisions before a policy development process was complete, except in limited, emergency circumstances. We suggest that this statement be revised and revised to reflect the processes for Policy Development as defined in the ICANN Bylaws. Stress Test 26: The assessment of proposed accountability mechanism refers to how this would be handled if the action of concern resulted from the board decision. Additional discussion should be included to consider whether these mechanisms would be sufficient if the issue followed from staff decisions and actions that did not directly follow from a board decision, as overturn of the Board decision would not be the appropriate fix. 	
<p>8 5</p>	<p>Govt-BR</p>	<p>With regards to stress tests, Brazil considers that the definition of contingencies is an important tool to test the resilience of the proposed accountability structure.</p>	
<p>8 6</p>	<p>SR</p>	<ul style="list-style-type: none"> - para 406 Although it may be out of scope, a 6th stress test category might be capture of root zone by ITU or other body. As there is no legal or technical barrier to such an event - only reputation and political (e.g. arising from para 499). Thus far the US government has provided political cover from this. I see para 596 attempts to address but may be insufficient. - para 452-454 PTI should be forced to publish any audit results in full (e.g.SOC2) and have separate legal advisors from ICANN. e.g., para 549. - para 581, 657 - and reputation loss that could lead to capture. - para 585 YES! - para 613 From past community discussions, if community driven, an "ICANN foundation" may be a desirable outcome. - 663 YES! - 707,708 YES! 	

Revised Mission, Commitments & Core Values

Question 1: Do you agree that these recommended changes to ICANN's Mission, Commitments and Core Values would enhance ICANN's accountability?

Question 2: Do you agree with the list of requirements for this recommendation? If not, please detail how you would amend these requirements.			
#	Contributor	Comment	CCWG Response/Action
8 7	Jan Scholte (JS) comment 1	- Could tensions arise in practice between para 35 ('ICANN accountability requires compliance with applicable legislation in jurisdictions where it operates') and para 51/2/iii/2 ('any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values')?	
8 8	DBA	- Strengthened principles for ICANN, including a new Mission Statement, Commitments and Core Values, which i.e. aim at keeping ICANN within its technical mandate and focuses on its core mission.	
8 9	WC comment 2	Has the working group, when it comes to tightening up the Principles section discussed whether to include a commitment towards freedom of expression? And the reason I raise this is that one of the accountability issues is the question of who the community as accountability forum is accountable to. And one of the answers is to say that ICANN as a whole is accountable to democratic standards. An important aspect of the logical infrastructure as a system of unique identifiers, that ICANN is to be the steward for, is that it is an infrastructure which underpins humanity's freedom of expression. And I was wondering if that has been discussed for inclusion in the revised Bylaws.	
9 0	DCA-T	Additional text for para 89 Employ open, transparent and bottom-up, [private sector led multistakeholder] policy development processes that (i) seeks input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice TO WHOM DUE DILIGENCE ON CONFLICT OF INTEREST HAS BEEN PERFORMED UPON, and (iii) ensure that those entities most affected can assist in the policy development process	
9 1	NM	We provide for changes in the by-laws, but it may be that we would be better off making clear that core principles are not subject to change. The ultimate goal of the organization is to act in the interest of the public as a whole, without special treatment of any business, private entity, individual, or government. The inherent founding principle that this entity exists for the overall public good and not for the commercial benefits of any individual or group should be a core principle that cannot be changed, no matter how many people go for it.	
9 2	Afnic	The revised Mission, Commitments and Core Values are more specific in the current draft that they were before. Clearer bylaws are an obvious enhancement for accountability.	
9 3	DP-DK	<p>- We have alternative proposals that strengthen the statement of ICANN's Mission so that it can serve effectively as an <i>enforceable</i> limitation on ICANN's powers (and we propose several "Stress Tests" to test the adequacy of our formulation).</p> <p>- One central risk of the transition is that a largely unregulated and unconstrained ICANN will leverage its power over the DNS to exercise control over non-DNS-related Internet conduct and content. ICANN has (and has always been conceived of as having) a limited technical mission: in the words of its current Bylaws, that mission is to "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 [those] systems." It should exercise those powers (but <i>only</i> those powers) necessary to carry out that mission effectively. Articulating precisely what that mission is and what and those powers are, and doing so in a manner that will effectively circumscribe the exercise of the corporation's powers and constrain its ability to exercise other powers, or to stray into policy areas outside of or unrelated to that mission, is a critical and indispensable task of the transition. The CCWG Draft Proposal recognizes this risk, and we strongly endorse its stated goals: (a) "that ICANN's Mission is limited to <i>coordinating and implementing</i> policies that are designed to ensure the stable and secure operation of the DNS and are reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS,"; (b) that its Mission "does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide," and that (c) "ICANN's powers are 'enumerated' – meaning that anything not articulated in the Bylaws are outside the scope of ICANN's authority." (emphases added).</p> <p>- The goals the CCWG is pursuing in this section of the CCWG Draft Proposal, and in the re-stated Mission, are critically important ones. We strongly support the central thrust of the CCWG recommendations, and believe it can be articulated even more directly than in the draft. ICANN's Bylaws should explicitly recognize that the corporation's role in DNS policy-making is limited to: "coordinat[ing] the development [of] and implementation of policies" that are (a) "developed through a bottom-up, consensus-based multistakeholder process," (b) designed to "ensure the stable and secure operation of the DNS," and for which (c) "uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS." This helps to clarify that ICANN's role (and, therefore, the primary role of its Board of Directors) is to <i>coordinate a consensus-based policy-development process, and to implement the policies that emerge from that process.</i></p> <p>- A constitutional balance for the DNS must preserve and strengthen the separation between DNS <i>policy-making</i> and <i>policy-implementation</i>. ICANN's position in the DNS hierarchy gives it the <i>power</i> to impose its policies, via the</p>	

		<p>web of contracts with and among registries, registrars, and registrants, on all users of the DNS. One critical constraint on the exercise of that power is that it is <i>not</i> free to impose on those third parties whatever policies it chooses – even those it believes in good faith to be in the “best interest” of those Internet users. It is the Internet stakeholder community, acting by consensus, that has the responsibility to formulate DNS policy. ICANN’s job is a critical though narrow one: to <i>organize and coordinate</i> the activities of that stakeholder community – which it does through its various Supporting Organizations, Advisory Committees, and Constituencies – and to <i>implement</i> the consensus policies that emerge from that process.</p> <ul style="list-style-type: none"> - Power checks power. Although this separation has gotten muddier over the last 15 years, it has always been an essential component of ICANN’s consensus-based, bottom-up policy development scheme – modeled, as it was, on the consensus-based, bottom-up processes that had proved so effective in managing the development and global deployment of the DNS and related Internet protocols in the period prior to ICANN’s formation. It is a critical safeguard against ICANN’s abuse of its power over the DNS. Effective implementation of this limitation will go a long way towards assuring the larger Internet community that ICANN will stick to its knitting – implementing policies which relate to the openness, interoperability, resilience, and/or stability of the DNS, arrived at by consensus of the affected communities. - We believe that the implementation of this principle in the CCWG Draft Proposal can be substantially improved and strengthened. To begin with, it is not as clear and it could and should be that the statement of ICANN’s Mission is meant to serve as an <i>enforceable limitation on ICANN’s powers</i> – <i>i.e.</i>, that it is a means of enumerating those powers, and thereby of declaring what the corporation can, and cannot, do. The Proposal’s demarcation between and among ICANN’s Mission, its “Core Values,” and its “Commitments” is overly complex and confusing. It is not clear which are meant to be enforceable enumerations of the corporation’s power – to be included in a Fundamental Bylaw and enforceable by the Independent Review Board - and which are more generally advisory or aspirational, “statements of principle rather than practice” that are “deliberately expressed in very general terms.” By covering so much ground between them, the structure detracts from, rather than enhances, the force of those provisions that <i>are</i> designed to serve as actual limits on the corporation’s powers (as opposed to those that are merely aspirational). There are many good reasons to state aspiration and advisory guides to future corporate action, but we suggest that they be more clearly separated from the enumerated powers. - We also suggest that the relevant CCWG-proposed Bylaw provision – that “ICANN shall not undertake any other Mission not specifically authorized in these Bylaws” – may not function effectively to limit ICANN to activities within the narrowly-stated limits of its Mission. Precisely because the Mission, Core Values, and Commitments cover so much overlapping ground, there is a vast range of action that ICANN might take that could be justified with reference to some element or elements appearing on those lists, and thereby deemed to have been “specifically authorized in these Bylaws.” We believe this could detract, importantly, from the effectiveness of the Mission statement as a meaningful limit on what ICANN can and cannot do. - We propose the following alternative as a Fundamental Bylaw, which we suggest would be a clearer and more direct statement of the principle to be implemented and therefore more likely to be adequately enforceable: “(a) ICANN’s Mission is to coordinate the development and implementation of policies that are developed through a bottom-up, consensus-based multistakeholder process, designed to ensure the stable and secure operation of the DNS, and for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS; “(b) ICANN shall have no power to act other than in accordance with, and as reasonably necessary to achieve, its Mission. Without in any way limiting the foregoing absolute prohibition, 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.”” 	
9 4	IA	<ul style="list-style-type: none"> - IA agrees that ICANN’s Mission Statement, Commitments, and Core Values are instrumental to ensuring and enforcing ICANN accountability, and supports the concept that they should form ICANN’s “constitutional core.” ICANN’s conduct should be measured against these provisions and ICANN must be accountable for meeting these standards, as well as for not exceeding its scope of responsibilities. - IA supports changes to ICANN’s Bylaws to impose binding obligations on ICANN to operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law, and international law and conventions through an open and transparent process. - The scope of ICANN’s authority should be specifically enumerated. - IA supports the clarification to ICANN’s Mission Statement that the scope of its authority does not include the regulation of services that use the DNS or the regulation of content these services carry or provide. - IA supports the clarification to the Core Values that any decision to defer to input from public authorities must be consistent with ICANN’s Commitments and Core Values - IA suggests the continued use of the phrase “private sector led” in the Bylaws and other documentation. The term 	

		<p>has been used since ICANN’s inception to mean “non-governmental,” and not commercial. If any alternative term is used, it must be clear that it is meant that ICANN will remain non-governmental led.</p> <ul style="list-style-type: none"> - IA, however, seeks clarification on the inclusion of new criteria associated with balancing commitments and core values. The new language appears to import concepts from U.S. constitutional law jurisprudence. But under U.S. law, these tests are typically applied when one fundamental value (e.g., equal protection or freedom of speech) is infringed, not when the courts are seeking to balance competing fundamental interests. And the proposed tests, while useful for the context in which they were originally developed, do not provide any guidance as to how ICANN should actually balance competing interests. Unless CCWG can provide more information about how the new text would assist in decision-making, the Internet Association suggests retaining the existing language. 	
9 5	Govt-ES	<p>The proposed text “<i>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.</i>” Request the underlined text be deleted. Neither the current Bylaws nor the Articles of Incorporation limit the ability of governments to issue advice to the ICANN Board. This is because it would be ineffective as governments’ would still be obliged to protect general public interests (paragraphs 68 and 69 of the Tunis Agenda and page 6 of the Net Mundial Statement). Moreover, this is not in the best interest of the global Internet community ICANN pledges to serve as managing the Internet system of unique identifiers in the public interest is the first and foremost mission of ICANN (sections 2 and 3 of the AoC and sections 3 and 4 of the Aol)</p> <ul style="list-style-type: none"> - In this respect, acting for the benefit of the global Internet users and ensuring its decisions are made in the public interest should feature higher in the Bylaws, either in the definition of its mission or as one of its first core values. - Core values para 69. There is no justification to strike out the explicit mention to local law when reflecting this provision of the Aol into the Bylaws. Local law plays an essential role in ICANN’s legal environment, as for instance data retention period or Whois accuracy issues easily prove. 	
9 6	RySG	<ul style="list-style-type: none"> - RySG notes a difference of opinion on language pertaining to ICANN “remaining rooted in the public sector.” We support the definition of Public Sector proposed in the draft proposal and do not believe that this clarifying language is inconsistent with the multi- stakeholder model. With respect to the obligation to avoid capture, it is not clear whether the CCWG-Accountability intends to address this through specific language or through community balancing mechanisms built into the proposed community empowerment structure. We advise that this be achieved through the latter; otherwise defining and identifying instances of capture may be difficult and introduce subjectivities. We believe that the checks and balances described in the draft proposal, which will be reflected in the revised bylaws, help to avoid capture. - If implemented, the RySG believes the recommended changes to ICANN’s mission, commitments and core values would help to enhance ICANN’s accountability to the global multi-stakeholder community. They are more clearly and strongly articulated than in the existing bylaws. - We are especially supportive of the recommended clarification that ICANN’s powers are enumerated. - RySG supports the list of requirements included in the recommendation, provided that the community has the ability to approve or reject any future changes initiated or advanced by the ICANN Board 	
9 7	CCG	<p>The proposed Mission provides that ICANN will be subject to international law. The only reference made to any particular convention in the proposal is with respect to WHOIS database adhering to privacy conventions. An exhaustive, or at the very least, an indicative list of applicable international treaties/conventions should be provided.</p>	
9 8	BC	<ul style="list-style-type: none"> - BC, in general, supports the changes to ICANN’s Bylaws in the areas of Mission, Commitments, and Core Values. When coupled with legally enforceable community power to block, or in some cases approve, Board-proposed amendments to the Bylaws, these changes would enhance ICANN’s accountability. - BC looks forward to IETF language on ICANN’s mission with respect to protocol, port, and parameter numbers, which is still a missing element. - BC supports the CCWG proposal to limit the scope of ICANN’s mission via the Bylaws: “ICANN shall not undertake any other Mission not specifically authorized in these Bylaws.” (paragraph 60 on p.20) However, the BC proposes a change to the next sentence in paragraph 60, which now reads: “...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”. - BC strongly support the proposition that ICANN should not attempt to establish obligations on non-contracted parties. Paragraph 60 should be clarified and we propose that it should read as follows: “ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties.” 	

		<p>- Regarding the balancing test among competing Commitments and Core Values, the BC seeks clarification as to why changes are needed to existing language. Any amendments to the existing language should promote prompt resolution of issues – not the lack of action. The BC strongly urges the CCWG to address this in the next iteration of the proposal.</p> <p>- BC supports the use of the phrase “private sector led” in the Bylaws.</p> <p>- BC supports ICANN’s commitment stated in paragraph 336 (p.59), arising from the <i>Affirmation of Commitments</i> required review of gTLD expansions: “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.” While paragraph 337 indicates this language will be added to the Bylaws core values section, it is only partially reflected in paragraph 107 (p.26), which adds the phrase “enhances consumer trust and choice”. The BC therefore urges the CCWG to implement the entire commitment from the <i>Affirmation of Commitments</i>, including “malicious abuse issues, sovereignty concerns, and rights protection”</p>	
99	.co.uk	<p>While we welcome the approach in this proposal, some of the wording needs more thought. (Wording like “to the extent feasible” and “where feasible,” for example, rather negates ideas considered to be fundamental.) Given the significant role of the mission, commitments and core values in underpinning the new accountability structure, we would question why they should not be considered at the level of fundamental bylaws for allowing changes. Changes here should be at a minimum subject to rigorous debate and command good community support.</p> <p>Paragraph 56: This appears to duplicate text from paragraph 55, but with a different emphasis. We would note that ICANN does not coordinate the development and implementation of policy for ccTLDs except in exceptional circumstances.</p>	
100	IAB	<p>- We suggest a clarification to the following existing bylaws text in paragraph 56: “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: 1. 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; 2. Coordinates the operation and evolution of the DNS root name server system; 3. Coordinates policy development reasonably and appropriately related to these technical functions.” We believe the verb “coordinates” gives the wrong impression about ICANN’s core function, particularly for those outside of the ICANN community who are not familiar with the ecosystem of entities involved in developing and managing policies and identifier assignments related to core Internet registries. Furthermore, since there are many sets of unique identifiers that ICANN is not involved in administering, it would be more accurate to use the term “core Internet registries” rather than referring to the Internet’s unique identifier systems. We suggest the edited text below to make both of these points more clear: “The mission of The Internet Corporation for Assigned Names and Numbers (“ICANN”) is to support, at the overall level, core Internet registries, and in particular to ensure the stable and secure operation of those registries. In particular, ICANN: 1. Supports the allocation and assignment of values in three categories of registries as directed by the consensus processes in the responsible operational communities. These categories are Domain names (forming a system referred to as “DNS”); Internet protocol (“IP”) addresses and autonomous system (“AS”) numbers; and Protocol parameters; 2. Supports the operation and evolution of the DNS root name server system; 3. Supports policy development reasonably and appropriately related to the DNS.” With these edits, we believe the paragraphs that further articulate ICANN’s role (57-60) would not be necessary because item (1) circumscribes ICANN’s mission to carrying out identifier allocation and assignment at the direction of the relevant communities. At the very least, it obviates the need for paragraph 59, which we view as unnecessarily constraining the relationship between the IETF and ICANN. That relationship has benefited from fluidity over the years and that characteristic should be preserved going forward.</p>	
101	USCIB	<p>- Para 50, 71-76: The need to balance competing interests exists in ICANN’s current Bylaws. USCIB seeks clarification as to why changes are needed to existing language. Any amendments to the existing language should promote prompt resolution of issues and not inactions. USCIB strongly urges the CCWG to address this in the next iteration of the proposal.</p> <p>- Para 58: The current draft does not contain ICANN’s mission with respect to protocol, port, and parameter numbers (which is to be provided by IETF). We wait for this important element.</p> <p>- Para 60, para 337: We strongly support the proposition that ICANN should not attempt to establish obligations on non-contracted parties. Indeed, ICANN’s entire multi-stakeholder structure is built on a self-regulatory system implemented through contractual obligations and thus ICANN can only establish contractual obligations on parties with which it has privity through a negotiated and mutually agreeable contract/amendment with such parties.</p>	

		<p>Therefore, para 60 should be clarified and we propose that it should read as follows: "ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."</p> <p>- We also note and support ICANN's obligation at paragraph 337, "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." Paragraph 337 says this language will be added to the bylaws core values section, which USCIB supports. However, the entirety of this section does not appear in the proposed bylaw core value changes proposed by the CCWG and we request that the entirety of this language be added.</p> <p>- para 89: We support the retention of the term "private sector." It is both historically accurate and an important element to retain.</p>	
1 0 2	LINX	<p>- We consider it essential that ICANN adopt a Mission in its Bylaws that is sufficiently clear to be justiciable – that is, for an independent body to objectively rule on whether a particular action is authorised by the Mission or is ultra vires.</p> <p>- LINX emphasises the importance of the following points: a. We support the clarification that ICANN's Mission is limited to the enumerated powers, and we agree with the CCWG's proposed statement of what the Mission is; b. We support the inclusion of an explicit statement that ICANN's Mission does not include the regulation of services that use the DNS, or the regulation of the content these services carry or provide; c. We congratulate the CCWG on finding an imaginative way to identify certain Core Values as "Commitments" that should be adhered to absolutely, without need to balance against each other, while others may involve trade-offs. We support the chosen Commitments.</p> <p>- LINX is concerned by the reference to the "global public interest" in paragraph 105: a. We would strongly object to the inclusion of a general, unqualified commitment to the "global public interest" as this amounts to a general authorisation for the decision-maker to do whatever they feel is best in their almost unconstrained discretion. That would be inappropriate; b. Paragraph 105 qualifies the "global public interest" with "identified through the bottom-up, multistakeholder policy development process and are accountable, transparent, and respect the bottom-up multistakeholder process"; c. In our view this improves the term, but still risks asking the ICANN community, through the PDP, to seek to fix all the troubles in the world, and inviting them to take ICANN beyond its defined mission in pursuit of the global public interest as the ICANN community sees it. We would therefore remove the reference to "the global public interest" in Paragraph 105.</p>	
1 0 3	JPNIC	<p>Yes. We believe it enhances ICANN's accountability by clearly defining the scope of ICANN's missions, to ensure ICANN focuses to conduct its activities within this scope. We especially find it important, that "ICANN's Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide" We also agree to designate certain Core Values as Commitments listed below, which are all essential principles in ensuring ICANN remains accountable in maintaining the stability of the Internet and how the Internet and bottom up, transparent, open form should be facilitated.</p> <ol style="list-style-type: none"> 1. Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet 2. Limit its activities to those within ICANN's Mission that require or significantly benefit from global coordination; 3. Employ open, transparent, bottom-up, multistakeholder processes; and 4. Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment. <p>Yes, agree with the requirements listed help ensure that ICANN's mission is more clearly described, based on what has been commonly shared and agreed by the ICANN community, that ICANN conducts its activities under its scope, ensures stability and reliability of its services. We also agree that ICANN should defer to input from public authorities to be consistent with ICANN's Commitments and Core Values. This is an important point to cover.</p>	
1 0 4	IPC	<p>- Generally agrees with the recommended changes to ICANN's Mission, Commitments, and Core Values. These changes help create a culture of accountability within the organization.</p> <p>- IPC is concerned that the proposal in paragraph 60 to add to the Bylaws a statement 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" could be read too broadly. We assume there is no intent here to constrain ICANN's ability to enter into or enforce contractual provisions that require those making these identifiers available to take into account how they are used in specified circumstances – for example, to require domain name registration services to adopt and enforce policies against prohibited or abusive uses of domain names. We urge that this very broad proposed language be reviewed and refined to reduce the risk of any interpretation that would</p>	

		<p>constrain ICANN's ability to enforce its contractual obligations.</p> <p>-agrees with the requirements for this recommendation. Given recent events it is clear that maintaining a strict definition of ICANN's mission and scope is essential to organizational performance and operational accountability.</p>	
105	Govt-BR	<p>Brazil fully supports the suggestion of incorporating ICANN's specific mission into its bylaws (p.19 -20). Moreover, we support that the global multistakeholder community should be provided with accountability mechanisms to ensure that the corporation acts strictly in accordance with its mission.</p>	
106	MPAA	<p>- Paragraph 337 notes that the language in paragraph 336 will be added to the Bylaw Core Values, however this language doesn't appear in the proposed Bylaw Core Values updates proposed by the CCWG. MPAA supports the obligation reference in 336 and we suggest the language, in its entirety, be added.</p> <p>- The proposed language in paragraph 60 is too broad. While we strongly support the notion that ICANN must not attempt to regulate non- contracted parties, we also assume it is not the intent to constrain ICANN's ability to enter into, interpret or enforce contractual obligations. The new accountability mechanisms must not minimize ICANN's ability to enforce contractual obligations and these obligations should be negotiated as they have been in the past, with ample input from the global multi-stakeholder community.</p>	
107	CDT	<p>- CDT fully support the proposed changes to ICANN's Mission, Commitments and Core values. We believe that these changes – and particularly the notion of enumerated powers – should ensure that ICANN respects and acts in conformance with its mission and that any attempts to change that mission must be subject to greater thresholds and to community assent.</p> <p>- CDT supports the more detailed elaboration of the core values and commitments and agree with the strict limitations that the proposal suggests with regard to “balancing” one core value with another.</p> <p>- CDT support the incorporation of the Affirmation of Commitments (AoC). The AoC's reviews and other provisions that specifically lay out a series of expectations of behavior and similar commitments are key components of the overall enhancement of ICANN's accountability. Their inclusion is essential.</p>	
108	USCC	<p>- Yes, the recommended changes do represent a positive move towards enhancing ICANN's accountability. We want to encourage the CCWG to stay the course on creating assurances that accountability mechanisms are binding.</p> <p>- Yes we support the list of requirements included in the recommendation, but this support is contingent on the community having the ability to approve or reject any changes that the ICANN Board seeks to implement in the future.</p> <p>- however, wish to raise concerns with one bylaws change regarding modifying the “balancing” language describing how ICANN will evaluate situations when one commitment must be reconciled with another commitment or core value. This new language, closely tracks language on “strict scrutiny” and “intermediate scrutiny” tests that are a part of U.S. legal jurisprudence. These standards were not developed to be used to weigh multiple competing interests or values. Therefore, the original language covering balance and reconciliation of competing values ought to be retained.</p> <p>- However, in order to avoid confusion and ensure ICANN is able to best serve its core mission, we suggest the language in 337 be added to the bylaws. We further suggest paragraph 60 be amended to indicate that without prejudice to ICANN's ability to interpret or efforts to ensure compliance with its contracts, ICANN does not enjoy broad regulatory authority and will not engage in or use its power to regulate entities with which it does not have a contractual relationship, and shall not attempt to establish additional requirements on parties beyond those to which the parties agree.</p>	
109	INTA	<p>- agrees with these recommendations but would like to see the Community have the ability to challenge a decision made by ICANN on the basis that it contravenes one or more of the mission statements, Affirmation of Commitments (“AoC”), or core values. Such a challenge should be arbitrated by a third party and the procedure for any arbitration procedures should be outlined in advance.</p> <p>-agrees in principle with enumerated goals and recommendations. However, there must be accountability to the Internet community of governments, NGOs, and individual stakeholders, each of whom should have available a mechanism to challenge a decision by ICANN.</p>	
110	.NZ	<p>The changes would improve the clarity of ICANN's mission and make it easier for the community to ensure that the organisation doesn't engage in scope creep.</p> <p>The reconciliation test set out on page 17 of the report is also an improvement on the current language in the Bylaws.</p> <p>Making these parts of the bylaws hard to change without broad community support would also help give assurance that ICANN won't engage in scope creep.</p>	
111	HR2251	<p>- Control over the management of the Internet domain name system will not be exercised by a governmental or</p>	

1		<p>intergovernmental body.</p> <ul style="list-style-type: none"> - The bylaws of ICANN have been amended to provide for the following: No director or officer of ICANN may be selected by or represent a governmental or intergovernmental body. - The board of directors of ICANN is prohibited from voting on advice or a policy proposal offered by the Governmental Advisory Committee unless such Committee reaches consensus regarding such advice or proposal. For purposes of the preceding sentence, the term "consensus" means general agreement in the absence of any formal objection. - ICANN is committed to upholding freedom of speech, freedom of the press, freedom of assembly, and freedom of association and has adopted and implemented standards that are at least as protective of such freedoms as is the First Amendment to the Constitution. - ICANN is prohibited from engaging in activities unrelated to ICANN's core mission or entering into an agreement or modifying an existing agreement to impose on a registrar or registry with which ICANN conducts business any condition (such as a condition relating to the regulation of content) that is unrelated to ICANN's core mission. 	
1 1 2	NCSG	<p>No ICANN action should violate fundamental human rights. We therefore welcome and note with approval that the call to forebear from content regulation in the mission statement section shows a positive concern for human rights.</p>	
1 1 3	MM	<p>Clearly defining ICANN's mission and putting into place efficient and effective institutional mechanisms for enforcing those limitations is the most important element of the ICANN accountability reforms.</p> <p>I applaud the recognition that ICANN's Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide. I hope this can serve as a strong constraint on existing and future ICANN contracts, some of which already violate that principle. I also agree with the CCWG's recognition that the existing bylaw language regarding the application of ICANN's Core Values is weak and permits ICANN to exercise excessive discretion. That being said, there are still elements in the draft that lend themselves to an expansive mission. In paragraphs 69-110, there are many references to furthering "the public interest." These references need to be modified to refer only to a "public interest in the openness, interoperability, resilience, security and/or stability of the DNS" or a "public interest goal within ICANN's mandate." Paragraph 107, which was intended to encourage ICANN to rely on competition and market mechanisms rather than top-down regulation, has also been altered in a way that suggests a more expansive vision of ICANN's remit. The addition of the concepts "healthy" and "enhances consumer trust" introduce vague criteria that differ from and may contradict competitive market criteria. The addition of "consumer choice" is unnecessary as that value is already encompassed by a commitment to competition. In general, I prefer the original wording, with the exception of adding "in the DNS market."</p> <p>Paragraph 110 fundamentally misrepresents the role of governments in ICANN. Currently it says that "governments and public authorities are responsible for public policy." As ICANN deals with a global arena, it should say that "governments and public authorities are responsible for public policy <i>in their jurisdictions</i>." We also believe that the phrase "duly taking into account the public policy advice of governments" should be changed to "duly taking into account the advice of the GAC," as it is GAC and not "governments" that formally provide advice to the board under the bylaws, and not all of its advice deals with public policy.</p>	
1 1 4	GG	<p>Google does not support the CCWG-Accountability's proposed revisions to bylaws language addressing balancing and reconciliation of competing core values. In its Proposal, the CCWG-Accountability proposes modifying the "balancing" language in the bylaws to describe how ICANN will evaluate situations when one commitment must be reconciled with another commitment or core value. This new language, which among other 2 things requires some reconciliations to be "justified by an important, specific, and articulated public interest goal . . . [and] narrowly tailored using the least restrictive means reasonably available," appears to be taken from so-called "strict scrutiny" tests that U.S. courts use to 3 evaluate First and Fourteenth Amendment challenges. The proposal suggests that in reconciling core values, ICANN should use a version of the U.S. Supreme Court's intermediate scrutiny tests/. These standards are not appropriate for ICANN. In situations where U.S. courts employ strict or intermediate scrutiny tests, there is usually only one core value to be upheld (e.g., free speech, equal protection). These tests are not designed to provide guidance when balancing multiple compelling interests that lead to different conclusions. For that reason, the tests often favor governmental inaction. But in the face of competing core values, the Internet ecosystem depends on ICANN continuing to act, albeit in a way as faithful as possible to the many interests at stake. The strict scrutiny test does not provide ICANN with any guidance for how to address this conundrum, nor does it provide any predictability for the community that depends on ICANN's decision. We recognize, however, that the current test is vague: it, too, provides little guidance to the ICANN board and staff and little predictability to parties affected by ICANN's actions. At its core, the bylaws provision amounts to an exhortation that ICANN bodies to "exercise [their] judgment." We urge the CCWG-Accountability to develop a proposal that provides 5</p>	

		meaningful guidance in balancing ICANN’s commitments and core values, while avoiding a bias in favor of preserving the status quo, even if the status quo itself does not represent the best effort to balance competing commitments and core values.	
1 1 5	Board	How will the principles proposed to enhance and improve the Mission and Core Values of ICANN be tested against the bylaws in their entirety? Given that modifying the Mission and Core Values was not part of the community discussion at the Singapore meeting, what is the CCWG-Accountability doing to highlight this change as part of the suite of recommendations? In asking this question, we are supportive of the idea that the mission statement and core values should be refined.	
1 1 6	CENTR	<p>- The recommendations in the draft include revising ICANN’s Bylaws to clarify the scope of ICANN’s policy authority, reflect key elements of the Affirmation of Commitments, and establish a set of “Fundamental Bylaws” which can eventually be amended based on prior approval by the Community. While we agree that ICANN’s Mission statement might require language refinement against the scope of ICANN’s policy authority, that the current Bylaws might also be reviewed to reflect the key elements of the Affirmation of Commitments and that the Board should have a limited ability to change the key accountability provisions, we support the list of requirements that represent the basis of the recommendation but we do not believe that these changes alone will improve accountability at ICANN Board and staff level. As a matter of fact and as stated earlier, we recommend that – once the accountability enhancements are enforced – both ICANN staff and Board go through regular training programmes to increase their accountability literacy and culture which are of paramount importance if the community likes to have the accountability spirit at the next level. Moreover, we think that introducing a distinction between “ICANN Commitments” and “ICANN Core Values” may just add unnecessary complexity within an already over-structured statutory framework. We would also like to point out that one of the first elements to be clarified is to make sure that any Bylaws do not contain “competing values”, but rather “complementary values”.</p> <p>- CENTR believes that introducing a distinction between “ICANN Commitments” and “ICANN Core Values” may just add unnecessary complexity within an already over-structured statutory framework;</p>	
1 1 7	I2Coalition	The i2Coalition strongly supports the inclusion of language limiting ICANN’s activities to those that further its mission, as well as changes to ICANN’s Bylaws requiring ICANN to carry out its activities in accordance with applicable law and international law and conventions through an open and transparent process. In particular, it supports clarifying ICANN’s Mission Statement to state explicitly that the scope of ICANN’s authority does not include the regulation of services that use the domain name system (DNS) or the regulation of content these services carry or provide. However, the i2Coalition has concerns regarding the inclusion of new criteria associated with balancing commitments and core values. The new language suggests that “strict scrutiny” and “intermediate scrutiny” concepts imported from U.S. constitutional law should guide ICANN in making decisions that implicate multiple commitments or core values. But under U.S. law, these tests are typically applied when one fundamental value (e.g., equal protection or freedom of speech) is infringed. They are not designed to provide guidance when balancing multiple compelling interests that lead to different conclusions. For that reason, the tests often favor governmental inaction. But in the face of competing core values, the Internet ecosystem depends on ICANN continuing to make decisions, rather than refrain from acting. The strict scrutiny and intermediate scrutiny tests do not provide ICANN with any guidance for how to address this conundrum. For these reasons, we believe that the existing language regarding balancing and reconciliation of competing core values ought to be retained. The i2Coalition supports the clarification to the Core Values that any decision to defer to input from public authorities must be consistent with ICANN’s Commitments and Core Values. This is important to the goal of accountability; public authorities would have the ability to provide input into ICANN decisions, while ensuring that all ICANN actions are compliant with its Bylaws.	
1 1 8	NIRA	- NIRA agrees with recommended changes and requirements.	
1 1 9	ALAC	<p>Para 50, Section 3.1.1.a: The ALAC believes that in accordance with the Affirmation of Commitments, ICANN has a responsibility to develop policies that will foster user trust in the DNS. The ALAC understands that ccTLDs are outside of ICANN scope in regards to this.</p> <p>- believes that fostering trust in the DNS must be incorporated into the ICANN Bylaws. This can be accomplished by adding the phrase “and to foster user trust in the DNS” to Paragraph 56 as well as including it in Commitments. The reference in paragraph 107 is not sufficient since that is in relation solely to competition.</p> <p>Para 65: The ALAC believes that it is appropriate to define the reference to Private Sector leadership as explicitly meaning NOT led by the governments. Furthermore, although it is led by the private sector (as defined here), governments do have a role to play in the ICANN Multistakeholder model.</p> <p>- recommends caution on classing any Bylaws related to reviews as fundamental without a provision for altering the</p>	

		timing, with widespread community agreement, but without requiring a formal Bylaw change.	
1 2 0	LAB	<ul style="list-style-type: none"> - para 56 the syntax is overly complex and ambiguous (does the "which" refer to "policy", "process" or "systems"?). I suggest the syntax be simplified. I suggest too that "open, transparent" be inserted directly before "bottom-up". - para 76, the words "in a way that is substantially related to that interest" seem superfluous and could thus be deleted. - 86, I suggest that the rather lengthy phrase "relevant principles of international law and applicable law and international conventions" be replaced by simply "international and domestic law" (assuming that "applicable law" is intended to encompass national/domestic law). - para 87, I suggest deleting "internet" from the phrase "internet DNS". - para 111, I suggest the following wording: "Striving to ensure that the interests of one or more interest groups are not advanced at the undue expense of others". 	
1 2 1	RSSAC	We note that the proposed bylaws revision (p. 20) includes a placeholder for language relating to the root server system in an updated description of ICANN's mission. We expect to contribute proposed language on this point as the process of revising the bylaws proceeds.	

Fundamental Bylaws

Additional Question: The CCWG-Accountability welcomes feedback on whether there is a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to propose new Fundamental Bylaws or changes to existing ones. In particular, the CCWG-Accountability welcomes feedback on whether the Mission should be subject to even higher thresholds of Board or community assent.

Question 3: Do you agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability?

Question 4: Do you agree with the list of requirements for this recommendation, including the list of which Bylaws should become Fundamental Bylaws? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
1 2 2	RH	Only the membership should have the power to change the Bylaws.	
1 2 3	Jan Scholte (JS) comment 1	<ul style="list-style-type: none"> - Motivate more explicitly the creation of Fundamental Bylaws. Currently para 113 simply asserts that 'CCWG-Accountability believes', without specifying the grounds for this belief. Since the creation of Fundamental Bylaws adds considerable complication to the proposal, perhaps greater justification of the step is wanted? Indeed, why would Fundamental Bylaws inherently enhance accountability, as implied at para 122? Could situations not arise where a particular Fundamental Bylaw worked against accountability and, owing to its 'fundamental' character, would be harder to correct? - The proposal repeatedly refers to ICANN's 'limited technical mission' and the need to avoid 'mission creep'. Where in practice would the line be drawn between 'technical mission' and wider activity? Could one person's legitimate mandate be another's mission creep? What lies behind this concern? Would it be helpful to be more specific in this regard: e.g. that ICANN should not embark on unduly restrictive regulation of the domain name industry; or that ICANN should not interfere in the operations of ccTLDs? 	
1 2 4	auDA	<ul style="list-style-type: none"> - auDA supports the concept of utilising "fundamental bylaws" as another mechanism for facilitating accountability. the concept of fundamental bylaws that restrict the ICANN Board's ability to change these tenets is similar to the "golden bylaws" concept auDA proposed as part of our initial response to the consultations of the CWG on IANA transition.¹⁴ Although the foci of the CWG and CCWG differ, auDA supports the concept of using such mechanisms as the primary tool for delivering accountability. - auDA supports the list of items that the CCWG proposes could be afforded coverage by fundamental bylaws - auDA notes the CCWG's observation that the language for underlying Bylaw provisions has not yet been reviewed by Legal Counsel and ". . . is only conceptual in nature at this stage. . ." and, accordingly, welcomes the opportunity to provide additional / revised commentary once such advice has been provided and analysed. 	
1 2 5	DBA	In particular, we would like to emphasize the following: Creating a set of Fundamental Bylaws.	
1 2 6	CRG	<ul style="list-style-type: none"> - To question 1a) ICANN values and fundamental Bylaw proposals call for more general values than the present narrow technical scope under the USG stewardship. For example: <i>ICANN is accountable to all its members, users and open and free Internet. ICANN is accountable for the IANA, functions as well as a stable, resilient, open and efficient DNS Market....</i> Then ICANN should be measured against those higher/more general standards. But the proposed amendments mix present technical objectives with more general (future) standards. It will be a hard discussion if we start with an amended text, but guess thats the reason we have so many lawyers involved. - Based on my personal experience in ATRT2, I consider the AoC to be the best basis for the actual constitutional 	

		<p>core values, from which the new By Laws have to be drafted. For example, if the community commits to a “market” model in the fundamental ByLaws as per above, the discussion of “private sector led” o not led, becomes less relevant and maybe it can be preempted. The proposal has to respect some strict hierarchy of values first, technical conditions second, etc. so as not to get bogged down in details further down the road in the best UN fashion.</p> <p>- Q3. It should be part of WS to establish at the level of Management, the internal clarity of operative roles and the level of internal separation of powers between them. This cannot be left to the discretion of any new CEO anymore. The question is so important in terms of internal accountability, that it should be embedded in the Fundamental By Laws pre-transition (WS1) so has to have it protected under the highest threshold possible.</p> <p>- Q4. WS1 should develop a minimum requirement of internal checks and balances and transparent arms length relationships should be established at least for the major organisational areas of (a) policy development, (b) compliance and (c) operational functions, including but not limited to IANA.</p>	
1 2 7	DCA-T	<p>- Q3. Indeed the ICANN’s Bylaws should be harder to change than others. These would be deemed Fundamental Bylaws; these identified sections of the bylaws should be well designated and marked.</p> <p>- Q4. The proposed increase of the voting threshold to 3/4 of votes in favour of the change (higher than the usual threshold of 2/3) Is acceptable, however the members of the board in question must also demonstrate their understanding of the proposals through proper study so that it is not just passed by vote without due considerations. The board members should be careful not to be just approvers of proposals; they must do so under justifiable and necessary means.</p>	
1 2 8	NM	<p>We provide for changes in the by-laws, but it may be that we would be better off making clear that core principles are not subject to change. The ultimate goal of the organization is to act in the interest of the public as a whole, without special treatment of any business, private entity, individual, or government. The inherent founding principle that this entity exists for the overall public good and not for the commercial benefits of any individual or group should be a core principle that cannot be changed, no matter how many people go for it.</p>	
1 2 9	AFRALO	<p>Q3. The creation of fundamental bylaws that require the consent of the community to be changed is a good approach and would enhance the accountability of ICANN board to the community.</p> <p>Q4. AFRALO members believe that the fundamental bylaws should include the fundamental standing issues such as the mission and the core values of the organization, excluding any functional or operational issue.</p>	
1 3 0	Afnic	<p>Q3. Afnic supports the idea of fundamental bylaws, in the sense it’s a way to balance the powers of the Board through the empowerment of the Community (see below). This set of fundamental bylaws is interesting only if the empowered community is put in place.</p> <p>Q4. Afnic agrees with the list of fundamental bylaws proposed and, in order to achieve the IANA stewardship transition, insist on the importance of including in the fundamental bylaws the provisions for reviews that are part of CWG-Stewardship work as well as the creation of the CSC.</p>	
1 3 1	Govt-IN	<p>It is appreciated that the current proposal suggests that fundamental bylaws should stay intact unless change is called for by the community. It is important for ICANN to have a well defined mission, commitments and core values that should be reflected in its organisational DNA, objectives and prioritisation approach.</p>	
1 3 2	DP-DK	<p>We strongly endorse the use of Fundamental Bylaws as a means of assuring the broader Internet community that ICANN will continue to live up to the commitments it is making as part of the transition for the foreseeable future, and that these fundamental constraints on the abuse of its power will not themselves be subject to easy manipulation.</p>	
1 3 3	IA	<p>- IA agrees that classifying some Bylaws as “Fundamental Bylaws” will enhance ICANN’s accountability by restricting its ability to change certain Bylaws with only a two-thirds majority.</p> <p>- The CCWG may want to examine whether there is a way to ensure that the need for binding Independent Review panels is enshrined in a Fundamental Bylaw without binding the community to the precise formulation recommended by the CCWG. Although the process set forth by the CCWG seems reasonable, it may be the case that it needs to be modified at the margins once parties have had some experience with it.</p> <p>- IC believes that it is a requirement for the ICANN principal office or headquarters to be located in Los Angeles should be included as a Fundamental Bylaw.</p>	
1 3 4	eco	<p>- Making some bylaws more robust than others, i.e. the idea of creating Fundamental Bylaws, is a good one. The described process seems to strike an appropriate balance between making it harder to change these bylaws and at the same time allowing for changes whenever substantial parts of the community deem this to be required. Some flexibility needs to be retained for an organization working in a rapidly changing environment.</p> <p>- Fundamental Bylaws, changes to which require approval, are an appropriate measure to enhance ICANN’s accountability.</p> <p>- The list of items qualifying for Fundamental Bylaws should be kept as short as possible and only encompass those</p>	

		clauses that are needed to protect the accountability architecture as such. Based on the suggestions made in the draft report, the list of items appears to be appropriate.	
1 3 5	RySG	<ul style="list-style-type: none"> - Executive Summary refers to “reviews required by the CWG-Stewardship.” We support the recommendation that these reviews be incorporated into the Fundamental Bylaws and recommend that the procedures for implementing the outcomes of such reviews that are determined by the CWG-IANA are also included within that fundamental bylaw 10 - Yes. Establishing an approval threshold of 75% would serve to ensure a substantial percentage of the affected community agrees with proposed changes. - RySG agrees with the list of proposed Fundamental Bylaws, with one recommended addition. We believe that ICANN’s current bylaw (Article XVIII, Section 1) establishing ICANN’s principle office location, which is consistent with the Affirmation of Commitments Section 8b establishing ICANN’s headquarters location, should be made a Fundamental Bylaw. Reason: All of the accountability mechanisms and reforms currently proposed by the CCWG assume ICANN’s continued operation under California not-for-profit corporate law. If that assumption were to change, all of the current accountability reform efforts would need to be re-assessed and started anew. - The RySG also strongly supports the recommendation that the CWG-Stewardship’s proposed IANA Function Review, including CWG-identified requirements for implementing the outcomes of the IFR, should be added to the ICANN Bylaws, as a Fundamental Bylaw. 	
1 3 6	JH	According to the current proposal, I agree that the introduction of Fundamental Bylaws would enhance ICANN’s accountability. Because if we say something is wrong, we should have right criteria, which should be the Fundamental Bylaws. Although ICANN has Bylaws now, there are still many problems. This proposal should point out these problems and give specific amendments. For example, many problems have already been raised by the communities: the transparency of Nomcom, the representativeness of the ICANN Board of Directors (It is questionable whether board members selected from each community represent the community or just themselves), the ICANN Board membership and voting rights issues, which law should ICANN follow. It is critical to have Bylaws under the ground of community consensus, because it is the criteria to judge whether ICANN does sth wrong or right decision. If the criteria is problematic, it is impossible to discuss about the latter issues.	
1 3 7	BC	<ul style="list-style-type: none"> - BC supports the concept of designating certain Bylaws as Fundamental Bylaws that would require majority approval by community Members. Also, the BC supports the CCWG’s proposal that 75% of community Members must vote in favor of any proposed change to Fundamental Bylaws. - However, we suggest that the CCWG explore a way to ensure that the need for binding Independent Review is enshrined in a Fundamental Bylaw without fixing every aspect of Independent Review Panel procedure in the Fundamental Bylaw itself. The specific IRP procedures proposed are new, and the community and Board may wish to modify them based on gained experience without having to meet the very high bar established by enshrining these specific details in a Fundamental Bylaw. We need to ensure the process remains sufficiently flexible to address the needs of the community as the Internet continues to evolve. - Additional Fundamental Bylaws: Article XVIII Section 1, the location of ICANN’s principal office - BC believes that Article 18 should be a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed without broad community approval. Moreover, the BC hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law. 	
1 3 8	.co.uk	<p>We support the general concept of fundamental bylaws.</p> <p>3.2.3.3: While we recognise the need to have a high bar to changing a fundamental bylaw, this can also be an impediment to necessary change. We wonder whether some thought should be given to exceptional mechanisms that can define and assess necessary changes (addition of new, abrogation or amendment of existing) in exceptional circumstances, something akin to a constitutional conference.</p>	
1 3 9	USCIB	<p>Q3. Yes. Critical elements that require a high standard to change, are important both from a stability standpoint, and also to address legitimate concerns for the integrity of the transition.</p> <p>Q4. paragraph 337, “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.” Paragraph 337 says this language will be added to the bylaws core values section, which USCIB supports. However, the entirety of this section does not appear in the proposed bylaw core value changes proposed by the CCWG and we request that the entirety of this language be added.</p>	

1 4 0	LINX	<ul style="list-style-type: none"> - LINX support the introduction of Fundamental Bylaws. - LINX agree with the CCWG's selection of bylaws for "Fundamental" status and do not identify any omissions. - LINX caution against excessive use of "Fundamental" status: ascribing bylaws 'Fundamental' status recklessly would force the community to use what is intended to be an exceptional mechanism more routinely. This would weaken the protection for those bylaws that do deserve entrenchment. We therefore advise approaching with caution any recommendations to give additional bylaws fundamental status. - LINX believe the threshold suggested by CCWG for changing Fundamental Bylaws is appropriate. - LINX are willing to be persuaded that a mechanism should be created for the Community to add or amend Fundamental Bylaws, but this should be subject to a very high threshold within each community. Merely requiring the unanimous support of all SOACs should not be sufficient (or perhaps even necessary): if there is only a bare majority within GNSO this should not be sufficient. 	
1 4 1	JPNIC	<p>Yes. By distinguishing Fundamental Bylaws from the other Bylaws, with explicit community approval required for its changes, it ensures changes to key components of the Bylaws will only take place with clear community support, and avoids the Board passing Fundamental Bylaw changes without getting noticed by the community. We also recognize the need for Fundamental Bylaws is identified by CWG-Stewardship.</p> <p>Yes, we agree all of them to be included in the Fundamental Bylaws. Including the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee.</p>	
1 4 2	CWG-St	<ul style="list-style-type: none"> - Work on the CWG Separation Process (previously Separation Review) has been further developed within the CWG and we expect that this will be more fully described in the forthcoming proposal from the CWG-Stewardship. We are not yet in a position to provide full details ahead of the closure of the this public comment period on June 3rd, but do expect to work with you in future to effectively communicate any additional requirement, including the possible use of a fundamental bylaw to deal with this. - The CCWG Accountability initial proposals describe the scope of the "fundamental bylaws" in section 3.2.4. It is proposed that the "Reviews that are part of the CWG-Stewardship's work – the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee" would be considered Fundamental Bylaws. As such, any change of such Bylaws would require prior approval by the community. 	
1 4 3	IPC	<ul style="list-style-type: none"> - The IPC does not believe that there is a need for additional means to propose or amend Fundamental Bylaws, other than those proposed by the CCWG. The IPC is not necessarily opposed to increasing the supermajority thresholds proposed by the CCWG, but any change must be carefully analyzed to avoid a single stakeholder veto situation. Furthermore, there should be a degree of deference to existing supermajority thresholds of general applicability. - "Fundamental Bylaws" should be those bylaws that are <i>fundamental</i> to the mission and core values of ICANN. These bylaws should be harder to change because of their fundamental nature, not merely because they are designated as such. <p>Thus, the introduction of bylaws that are harder to change does not, by itself, enhance ICANN's accountability. Rather, it is the substance of these bylaws that must be reviewed to determine whether they will affect ICANN's accountability. That said, if these bylaws are fundamental in nature, they should be more protected from changes by the Board.</p> <ul style="list-style-type: none"> - The IPC is generally supportive of the bylaws which have been proposed to be "fundamental." However, as noted below, the IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw: <i>ICANN affirms its commitments to: 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.</i> 	
1 4 4	Govt-BR	<p>CCWG should consider reviewing Article XVIII, Section 1, of ICANN's bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a "fundamental bylaw".</p>	
1 4 5	MPAA	<ul style="list-style-type: none"> - MPAA fully supports the concept of making certain bylaws Fundamental Bylaws that enjoy special protection and can only be changed based on prior approval by the Community. The five items proposed to have the status of Fundamental Bylaws (p. 5) will ensure a stable, autonomous and self-governing ICANN that is not easily altered or swayed by the Board or any external forces. - MPAA suggests that the existing ICANN bylaw requiring the principal office of ICANN be in the State of California, USA, also be designated as a Fundamental Bylaw. See additional comment on this topic in the Nexus section below. - Regarding transparency in the proposed IRP process, the MPAA believes it will be important for the community to be aware of the filing of IRPs in an open and timely manner. This will allow parties "materially affected" by the IRP process and eventually decisions to fully participate. - The US Courts provide a de facto check on ICANN's adherence to its bylaws and the rule of law. Litigation 	

		represents a last resort to be used only in the event of a catastrophic failure of the multi-stakeholder process, but the mere existence of that option has a stabilizing effect. As such, and as mentioned above, MPAA suggests that current ICANN bylaw Article 18, Section 1 be made a Fundamental Bylaw. requiring 75% community voting approval for any change, would go a long way to ensure a stable and accountable ICANN post transition.	
1 4 6	CDT	<ul style="list-style-type: none"> - CDT agrees that the addition of fundamental bylaws enhances ICANN accountability and supports a role for the community with regard to approving new bylaws or changes to existing bylaws. The latter is a critical element in ensuring that ICANN does not stray from its mission, commitments and core values. - CDT supports the proposed list of current bylaws that would become fundamental bylaws. We also support the inclusion of the IANA Function Review (the periodicity of the review, as well as the Special Review) and the Customer Standing Committee (CSC) as a minimum set of IANA related mechanisms that should be brought into the fundamental bylaws. 	
1 4 7	CIRA	I believe the introduction of specific 'fundamental bylaws', while limiting the Board of Directors' ability to modify these bylaws may be effective as a check against mandate creep on the part of the organization.	
1 4 8	SR	I believe the thresholds proposed are sufficient at this time.	
1 4 9	USCC	<ul style="list-style-type: none"> - Yes, the threshold ensuring that 75% of the impacted community approves of the proposed changes will enhance accountability. - Yes it is useful to elevate certain bylaws, in particular those preventing mission creep would ensure accountability and allow ICANN to focus on its core duties. - However, given this higher voting threshold, the CCWG should consider how to strike a balance between providing an appropriate level of detail and creating the flexibility to add improvements to new processes created by the plan. - Suggests the inclusion of a new bylaw aimed at the prevention of government capture or undue ICANN influence on public policies unrelated to ICANN's core mission. This would be achieved through additional transparency, requiring that ICANN or any individual acting on ICANN's behalf make periodic public disclosure of their relationship with any government official, as well as activities, receipts and disbursement in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN. 	
1 5 0	INTA	<p>Q3. agrees that there should be certain bylaws considered "fundamental," in that they embody core principles and goals and, hence, are more difficult to amend or abrogate.</p> <p>However, establishing "fundamental" bylaws does not necessarily provide a remedy if the Community perceives that ICANN is not following a fundamental bylaw, or any other bylaw for that matter. We strongly support a mechanism in which an aggrieved party or group can seek redress if it has credible evidence that ICANN is not adhering to a fundamental bylaw.</p> <p>Q4. agrees, in general, with the bylaws which have been proposed to be "fundamental." However, after review, we suggest the addition of AoC ¶ 8b as a mechanism(s) for establishing the IRP (§4.1), and Community powers (§§5.3–5.6) should be included as a "fundamental" bylaw</p>	
1 5 1	.NZ	<ul style="list-style-type: none"> - Yes. In the context of a membership model, making some parts of the bylaws harder to change – and the authorisation of such changes being more broadly done than simply by the Board – would be a meaningful enhancement to ICANN's accountability in the post-contract environment. - Yes – the requirements set out are reasonable, and the proposed list of Fundamental Bylaws is appropriate. The membership model on which this new accountability system rests should also be Fundamental, whether it is set out in the Bylaws or the Articles. 	
1 5 2	HR2251	ICANN has adopted, if necessary through amendment to its bylaws, all additional measures recommended by the multistakeholder community through the IANA Stewardship Transition Coordination Group, the Cross Community Working Group on Enhancing ICANN Accountability, and the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions.	
1 5 3	NCSG	<ul style="list-style-type: none"> - supports the empowerment of the ICANN community through the introduction of fundamental bylaws. - supports the importance of preserving the ICANN's narrow mandate and believes that a higher threshold for initiating a new or changing an existing fundamental bylaw and a role for the community to approve such bylaw changes are essential components in that regard. - support the list of suggested fundamental bylaws as well as the addition of reviews that are a part of the CWG Stewardship's work. 	
1	GG	While we support designating some bylaws as fundamental, fundamental bylaws should not be overly detailed.	

5 4		Fundamental bylaws should be flexible enough to adapt to evolving experience. We agree with the CCWG-Accountability's proposal to designate certain bylaws as fundamental and the requirement to require support from the community, as well as a ¾ vote of the ICANN Board, in order to change any fundamental bylaws. However, given 6 this higher voting threshold, the CCWG-Accountability should consider whether some fundamental bylaws might be unnecessarily detailed. For example, we agree that the fundamental bylaws should include a requirement for a binding, accessible Independent Review Process (IRP) mechanism that reaches both substantive and procedural complaints. 7 However, because the ICANN community to date has no experience with this new IRP process, the procedures will likely evolve in light of experience. At this time, the detailed procedures governing how the IRP operates should not be fixed in the language of the fundamental bylaws.	
1 5 5	CENTR	We believe that the introduction of so-called "Fundamental Bylaws" that should be "harder" to change than other provisions, would moderately improve ICANN's accountability. The entire ICANN "rulebook" should apply to all ICANN Board members and/or staff without distinguishing among core values that would then become "frozen".	
1 5 6	NIRA	- NIRA supports that the proposal be subjected to higher assent by the community. - NIRA agrees with the introduction of Fundamental Bylaws and requirements of the recommendation. It expect that Fundamental Bylaws would be scarcely used, and where they are use, the wishes and powers of the community would be allowed to prevail over that of the Board including recalling the Board.	

Independent Review Panel Enhancement

Question 5: Do you agree that the proposed improvements to the IRP would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
1 5 7	RH	"Third party international arbitral bodies would nominate candidates". That is too vague. The proposal would have to specify some specific bodies. But I propose that this provision be deleted entirely. I doubt that any arbitral body has enough knowledge and experience to be able to propose candidates. I would propose instead that ICANN itself ask for nominations, as it did for the PIC DRP.	
1 5 8	Jan Scholte (JS) comment 1	How can the costs of non-compliance be made sufficiently high that parties will follow the rulings? For example, the Dispute Settlement Mechanism of the World Trade Organization has binding rulings, but sometimes rich and powerful states can pay the (for them relatively modest) fine and continue with the violating behavior.	
1 5 9	auDA	Bolstering the process for Independent Review to hold ICANN to a "substantive standard of behaviour rather than just an evaluation of whether or not its action was taken in good faith". That these review processes are proposed by the CCWG to be binding upon the ICANN Board, is a welcome improvement.	
1 6 0	DBA	New and improved appeal mechanisms: An IRP Panel that is binding, affordable, more accessible, broadened in scope as well as a reformed Reconsideration Process.	
1 6 1	WC comment 1	Reforming the way in which the Independent Appeals mechanisms function enables those affected by the Board's decisions to have the basis for such decisions to be tested in a fair and accessible process.	
1 6 2	WC comment 2	The question of whether the community should resolve disputes over its powers by arbitration or recourse to the courts is a very interesting question in the sense that it may be that the executive of the US government in the form of Department of Commerce is handing over oversight and accountability in a proposal to the community of ICANN, but the courts - the legal or judicial accountability- still remains in terms of the courts in California and legislative accountability remains in terms of what's in the non-profit corporation legislation. So are we left with the argument that the community should not be seen to be going to the courts for enforcement, and therefore arbitration is a better solution, or is it really a way of perhaps avoiding the fact that there still is judicial accountability for ICANN even after the transition? I obviously haven't been party to all of the discussions so I'm really not fully able to assess this.	
1 6 3	DCA-T	- The Independent review process is a very important redress mechanism for the users of ICANN's services; the ICANN's existing Independent Review Process (IRP) could be having some limitations as have been identified by the panels that are currently handling different IRP's of the new gTLD process. - The Independent Review Process (IRP) panels need to be more empowered to be able to do its duties as an independent yet judicial mechanism that can propose or produce declarations without the fear of a veto by a disagreeing ICANN Board. - The IRP Panels ought to feel well empowered to perform it duties transparently and with the confidence that a resulting ruling will carry the day. Therefore it is important that the rulings from the IRP are binding rather than merely advisory. - On accessibility, applicants have shied away from accessing these services due to the expensive nature of the IRP. Thus the IRP should be made more be accessible, both financially and from a standing perspective, transparent,	

		<p>efficient. Therefore the burden of the legal fees would be on ICANN</p> <ul style="list-style-type: none"> - Results from the IRP should not make ICANN to immunize or insulate itself more to 'WIN' in future rather it should take into account the recommendations of the IRP panels and be used to enrich the operation of ICANN in the foreseeable future. - The time limits set for filing IRPs should be extended to at least 9 months from the date of the decision that is being challenged, having taken into account the additional (elapsed) time expended on Reconsideration and Cooperative Engagement Processes (CEP). The point is that delays in preliminary/exploratory processes might affect a final decision to institute an IRP, if the preliminary processes prove unsatisfactory, and time limitation should not stop an aggrieved party from seeking accountability through the IRP procedure. - Since the purpose of an IRP is to contest ICANN board or staff actions against policy, an IRP should focus really on accountability and should not be dismissed on a flimsy technicality. An adjudicating IRP Panel should allow a plaintiff to re-file or amend an IRP filing if it is deemed to have been filed incorrectly. - An IRP Panel should be able to determine financial claims and damages and make such awards accordingly. - A party that institutes an IRP against ICANN should also be allowed to exercise the option of seeking redress and relief in a regular court of Law within the judicial system if the IRP is seen as restricted. The overall aim is to seek justice for any wrongful action. <p>Composition of Panel; Expertise: Most of ICANN's activities are rendered by volunteers, however there is need for significant training for anybody deemed fit to offer a consultancy or legal expertise, particularly international arbitration expertise and expertise, developed over time, about the DNS and ICANN's policies, practices, and procedures.</p> <ul style="list-style-type: none"> - Anyone who renders advisory services to ICANN that shall be admitted as evidence or expert must be able to understand the operations of the DNS to be able to provide relevant and actionable advice. - A Standing IRP Panel should not be normative. Each IRP Panel should be constituted afresh for any IRP to ensure that the neutrals are not influenced to take the details and procedures of a particular IRP proceeding and use that in trying to decide a different IRP Process. 	
<p>1 6 4</p>	<p>AFRALO</p>	<p>AFRALO members appreciate the reinforcement of the Independent review Process.</p>	
<p>1 6 5</p>	<p>Afnic</p>	<ul style="list-style-type: none"> - Afnic is of the opinion that the IRP is an answer long awaited by the community, to have an independent, affordable and binding decision making body that allows affected parties to challenge ICANN's decisions. - Afnic is also convinced that the existence of such an IRP has to be included in the fundamental bylaws, along with the obligation for ICANN to fund adequately this process. - However, in the spirit of enhancing the Community powers, and of recognizing the international nature of this IRP, Afnic suggests the following amendments: 11: The geographical diversity shouldn't be achieved only by "reasonable efforts". Here like in other parts of the proposal (see below) Afnic recommends to strengthen this diversity, by including the following provision: no more than 2 members of the panel from the same region (5 regions); 14. a.: Prior to the submission by "third party international bodies" it should be stated the ICANN has to launch an international public tender; 14. b: Icann Board should send to the "community mechanism" not only the list of candidates it has selected, but the full list of eligible candidates, in which it should isolate the candidates proposed by the board; 19: as for pro bono representation, the complainants should ask for it from the start directly to the panel. The panel (and not ICANN) would allow the complainant to have free access, after examining the non-frivolous nature of its complaint, and the impossibility to afford the expense of the IRP. There's no reason why only community and non for profit complainants should access this pro bono representation, as some SME's (small or medium size enterprise) or individuals can be affected by decisions ICANN makes. In order to avoid the multiplication of complaints by individuals, collective complaints should also be considered as eligible. 	
<p>1 6 6</p>	<p>DP-DK</p>	<ul style="list-style-type: none"> - We enthusiastically support the CCWG Draft Proposal's efforts to overhaul and reform ICANN's existing Independent Review Process (IRP). Independent review is the final piece of the constitutional puzzle – a third "branch," independent of the other two (<i>i.e.</i>, both the Board <i>and</i> the community/members), with neither a policy-making nor a policy-implementation role, which can serve as a neutral arbiter in disputes regarding the exercise of those powers by the other components of the institution. We agree that the IRP should possess the main structural features set forth in the CCWG Draft Proposal. - We have alternative proposals that can strengthen the Independent Review Process by defining its core mission more precisely, consolidating references to the IRP's powers in one place in the Bylaws, giving the Board an "override" or "veto" power, exercisable only upon supermajority or unanimous vote, over IRP decisions, and adding several features that will help the IRP develop the institutional weight and institutional power it will need to perform its critical task adequately. 	

- **The Substantive Standard of IRP Review.** Like the Board of Directors, the IRP will function most effectively if its powers are confined narrowly to its core mission, which in the IRP's case is to *determine whether ICANN is complying with the provisions of the Bylaws* – including, importantly, the provisions regarding ICANN's Mission and powers. The IRP should *not* become a general-purpose catch-all institution to which anyone who might claim that ICANN has acted badly towards them, or has harmed them in some way, has recourse. Defining the IRP's mandate too broadly will embroil the institution in any number of ordinary commercial disputes, distracting and deflecting it from its core mission. ICANN, of course, is and will continue to be enmeshed in a complex web of contracts between and among registries, registrars, and registrants, and the disputes that inevitably arise concerning performance under those contracts are already subject to commercial arbitration (see, e.g., § 5.2 of the Base Registry Agreement); we have no reason to believe that that system has been inadequate for that task, or that the IRP is meant to supplant or augment it. The IRP's powers need to be carefully delineated so that it excludes this class of disputes from the scope of its jurisdiction.

- the power that the IRP *does* require to achieve its narrow but critical mission – the power to overturn and invalidate Board action that is inconsistent with the Bylaws – is itself subject to abuse, and the IRP's exercise of its powers, like the corresponding powers of the Board, needs to be kept within narrow constraints. As is the case with the Board's powers, a careful and precise enumeration of the IRP's power will help to achieve that goal.

- We believe the language in the CCWG Draft Proposal can be tightened up considerably in this regard. At various points in the draft, the IRP's duties are deemed to include resolving the question of "whether ICANN is staying within its limited technical Mission"; whether it is "abiding by policies adopted by the multistakeholder community"; whether "in carrying out its Mission and applying consensus policies it is acting in accordance with ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values, or ICANN policies"; whether "in carrying out that Mission, [it] acts in a manner that respects community-agreed fundamental rights, freedoms, and values"; whether its actions "violate community-approved standards of behavior, including violations of established ICANN policies"; and whether it has complied with "policies established to hold ICANN accountable to legal requirements applicable to non-profit corporate and charitable organizations." We believe these formulations are much broader than necessary for the IRP to serve its "constitutional" function. We would propose consolidating references to the IRP's powers in one place in the Bylaws, and stating them more directly:

The Independent Review Panel shall have the power to determine whether ICANN has acted (or has failed to act) in violation of these Bylaws. Any person materially harmed by action or inaction by ICANN in violation of these Bylaws may file a claim with the IRP to remedy that violation.

- **Binding decision.** The CCWG Draft Proposal states that "the intent is that IRP decisions should be binding on ICANN." The draft is not entirely clear, however, as to how that will be accomplished, and there appears to be some confusion about how that principle will be implemented in the Bylaws and how it will operate in practice. In particular, there appears to be an open question as to whether, or the extent to which, California law permits the Board to agree, in advance and via a specific provision in the Bylaws, to comply with the decisions of an Independent Review Panel. The Proposal notes that that "the IRP could not address matters that are *so material to the Board that it would undermine its statutory obligations and fiduciary roles to allow the IRP to bind the Board,*"² without any indication of the matters that might fall into that category (and therefore outside of IRP review/control). The legal memorandum attached to the CCWG Draft Proposal has a discussion of this question, though it does not provide much clarity on this question.

- Here as well there is no explanation of what powers are part of the Board's "core powers" that would not be subject to independent review. It is, potentially, a very troubling restriction on the IRP's ability to carry out its mission, which is to help ensure that the Board does not exercise *any* of its powers beyond the confines set forth in the Bylaws. An IRP that cannot examine the exercise of the Board's "core powers" might – depending on the definition of "core powers" – be an ineffective and toothless check on improper Board action. It is very difficult, without a better understanding of this constraint, to evaluate the likely effectiveness of the IRP as an accountability mechanism, and we strongly urge the CCWG to obtain additional clarification from counsel on this question.

We also would propose the following, as a possible means of implementing the principle that IRP decisions bind the corporation without running afoul of the requirement that "all corporate powers shall be exercised by or under the direction of the Board": In addition to an explicit requirement that that the Board shall comply with IRP decisions, giving the Board the power to refuse to comply – an "override," or "veto," power – exercisable *only* upon supermajority (or even unanimous) action by the Board. This has a number of features to recommend it. It could serve as a useful check on the IRP's powers and the possibility of "rogue decision-making" by the IRP; the

combination of a high voting threshold (which could be as high as 100%) and the representation of the various ICANN communities on the Board will help ensure that resisting an IRP directive in any particular matter has broad community support; and it would appear to comply with the requirement that the Board retains direction and control over corporate action, insofar as it retains the ability to “decide for itself” whether or not to comply with IRP directives (though the non-compliance option is one that can only be exercised by an extraordinary Board action).

- **Independence, Transparency, and Precedent.** We are concerned that in a number of crucial features, the IRP, as described in the CCWG Draft Proposal, appears to be modeled along the lines of ordinary commercial arbitration. The IRP’s mission is far removed from ordinary commercial arbitration, and will require a different structure, modeled more closely on the constitutional courts common in civil law countries – institutions whose task, like the IRP’s, is to determine whether the terms and limitations set forth in the relevant foundational documents have been complied with – than on commercial arbitration systems. This is a task that ordinary commercial arbitrators are never called upon to undertake.

- There are many reasons why ICANN’s existing IRP process – which has been a feature of ICANN’s structure since its inception – has failed, in the eyes of virtually all observers, to serve as an effective check on ICANN’s powers. The Bylaw modification, adopted in 2012, authorizing the IRP to evaluate only whether a narrow class of Board *procedural* misconduct had occurred – “did the Board act without conflict of interest in taking its decision? did the Board exercise due diligence and care? did the Board members exercise independent judgment in taking the decision?” – rather than applying a *substantive* standard (did the Board act in compliance with all provisions of the Bylaws, including the substantive restrictions on its power?) certainly played a very significant part.

- But we would suggest that an additional cause of the failure of the process is that it, too, has been modeled far too closely on ordinary commercial arbitration. The IRP process is, in its current configuration, outsourced to a third party “international dispute resolution provider” chosen by the ICANN Board – currently, the International Center for the Settlement of Investment Disputes (ICSID)), an institution with long-standing experience in providing arbitration and mediation services for complex international commercial disputes. The outside provider has the responsibility for choosing the members of the IRP “standing panel”, designating a “Chair” of the Standing Panel, determining the size (1-person or 3-person) of the IRP panel that will hear any individual dispute, and assigning individual members of the standing panel serve as panelists.

This is a familiar arbitration mechanism that functions quite effectively for ordinary commercial disputes. But it is ill-designed for the fundamental purpose the IRP is meant to serve. It is not reasonable to give a single arbitrator, chosen by a third-party provider, who may have little or no prior contact with or understanding of the complex world of DNS policy-making, who may never again be called upon to examine any aspect of ICANN’s operations or to consider its role in the management of DNS resources, who has no body of prior precedential decisions to use as a guide to decision-making and little or no incentive to add to the stock of well-reasoned and persuasive decisions, the power to decide (with no appeal of the decision permitted) that Board action contravened fundamental principles embodied in the corporation’s foundational documents and was therefore invalid. The Board’s reluctance, over the years, to allow *this* process to exercise *that* power is, in a sense, entirely understandable.

- Unlike an ordinary “standing panel” of available arbitrators, the IRP “Standing Panel” needs to be an independent *institution*, with institutional weight, institutional memory, and institutional power, if it is to perform its central task with the requisite degree of seriousness and gravity that is required.

While we believe that much of the CCWG’s Draft Proposal is consistent with this notion, we do not believe that the proposal goes far enough in this direction. We would propose, to begin with, that the CCWG reconsider its decision to have members of the IRP “Standing Panel” nominated by “international arbitral bodies.” We do not believe those institutions, as skilled as they may be in handling commercial disputes, are appropriately tasked with finding persons with the combination of “legal expertise and a strong understanding of the DNS” that will make them successful IRP members. Appointment by the Board of Directors subject to supermajority Community confirmation should be sufficient for that task.

- More importantly, we suggest that the IRP should not be structured as a “standing panel” comprising a number of arbitrators who are available for service on individual 1- or 3-person panels for the purpose of resolving individual disputes before being returned to the available “pool.” The IRP should hear and decide cases *as an institution*, with all members participating in all cases. The institution, speaking as an institution with a single institutional voice, needs to develop and stand behind its decisions, which will make them harder to ignore.

It will also make the development of a true precedential system far more likely. By placing the weight of the entire institution, and not merely the views of a small subset of members of a largely anonymous pool of available arbitrators, behind the decisions it makes, it makes it more likely that prior decisions will be respected and that decisions that will serve as prior precedent in the future are explained and justified in a reasonable manner, as required for a precedential system to function effectively.

<p>1 6 7</p>	<p>IA</p>	<ul style="list-style-type: none"> - Improvements to the Independent Review Panel will be among the most important tools to enhance ICANN's accountability - IA generally agrees with the proposed requirements. - IA agrees that the scope of the IRP should include actions or inactions possibly in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values, or ICANN policies. - IA supports the independence of IRP Panelists from the ICANN board, staff, SOs, and ACs. - IA has a concern that the IRP process would allow parties to bring new arguments to the IRP without first vetting them through the community's policy development channels. That the process does not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the IRP after policy development has concluded. - IA suggests that the CCWG carefully consider whether additional safeguards—such as requiring parties or their trade associations to participate in a public comment process for instances in which there is a challenge to an existing community-developed policy or where ICANN has sought public comment on implementation of an existing policy—could prevent these eventualities while still preserving an accessible IRP process. The requirement to comment publicly would not apply to instances where ICANN simply contravenes existing policy or pursues implementation without seeking public comment. - Under a strengthened IRP process, the Internet Association agrees that parties should be able to seek review of both substance and procedure. However, ICANN's decision-making should be accorded deference, and overturned only if a decision is arbitrary or not based on a reasonable interpretation of the relevant documents and factors. Under this standard, ICANN's failure to follow its own processes would be both arbitrary and unreasonable. - IA believes that further consideration and clarification is needed regarding what decisions are binding and whom they are binding upon. We suggest that disputes within ICANN should be made binding and thus enforceable in courts of law. Outside parties that are involved in a dispute with ICANN should be able to seek legal recourse outside of ICANN. - IA supports having IRP panels making precedential decisions with some restrictions. Future panels should be permitted to apply precedent, but only in closely analogous cases. Otherwise, prior decisions should serve only as guideposts. Consider a fallback mechanism in situations where the panel finds that a prior panel decision appears to be clearly incorrect based on new circumstances or evidence or was wrongly decided. 	
<p>1 6 8</p>	<p>eco</p>	<ul style="list-style-type: none"> - The proposed improvements to the IRP and reconsideration process would definitely enhance ICANN's accountability. - However, the CCWG does not seem to have reached out to experts on the subject matter. Suggest reach out to experts in the field and rely on their suggestions when it comes to details of the revised IRP - As long as the basic principles, such as accessibility, independence, binding nature of decisions and decisions on the merits of the case (and not only on process) are preserved, internationally recognized standards or best practice could and should be followed when it comes to fleshing out the details. 	
<p>1 6 9</p>	<p>Govt-FR</p>	<p>Just as many other stakeholders, the French government have been a long-time advocate of more effective and affordable means of appeal and redress at ICANN, with adequate guarantees of independence. We consider that the proposed overhauling of the IRP in part 4 of the CCWG initial draft proposal definitively addresses such concerns. Our responsibility as government is nevertheless to stress that the new IRP has to remain an internal mechanism within ICANN and we would particularly insist on: 1. Avoiding the creation of a legal arbitration court on the basis of the CCWG- accountability initial draft proposals for the new IRP. On that basis, stakeholders would hardly be supplied with: either the guarantees of independence that, on the one hand, international arbitration usually does provide; or the guarantees of affordability that, on the other hand, international arbitration usually does not provide. In addition, stakeholders would also risk being prevented from going to other courts to have their complaints examined once they submitted them to the new IRP; 2. Having the ICANN community itself, through the "SO/AC Membership Model", select the IRP panellists, and not only confirm the selection of the IRP panellists by the Board, for better guarantees of independence; 3. Also giving the ICANN community only, through the "SO/AC Membership Model" (and with a very high degree of support e.g. 3/4), the power of remove an IRP panellist, for even better guarantees of independence.</p> <ul style="list-style-type: none"> - One of the innovations that we deem most important is that the new IRP will no longer be limited in its capacity to judge to judge of the merits of a complaint by an aggrieved party. This will greatly expand the standard of review of the current IRP - Govt-FR support the expansion of the standard of review for the IRP - Govt-FR approve that the new IRP's ability to judge on the merits just came from the expansion of its standard of review to ICANN policies. 	

- However, the issue of enforcement of the new IRP's decisions remains, however, unclear. It seems that the maximum expansion of the standard of review for the new IRP is intended to remain within ICANN's limited competencies. We therefore understand why the power to enforce or bind the Board with the new IRP's decisions would be sought within the ICANN community. We are unclear, however, why it would also be sought outside of ICANN (Draft prop., section 4.1, §133, item 18.c: "in the court of the US and other countries that accept international arbitration results").

- Recognizing the IRP as an international court of arbitration would be a major issue because arbitration is strictly regulated by law. In France as in many other countries, two parties can agree on arbitration only after one party feels that the other party fails to respect the terms of an existing contract. Furthermore, the two parties have to waive their right to go before courts of other jurisdictions. For those stakeholders who do not currently have a contract with ICANN, such as governments, there might be room for an agreement with ICANN on arbitration by the new IRP on the basis of other existing documents (Bylaws etc), so it might be possible for us to consent to arbitration by the new IRP on the decision-making procedures followed by the Board, simply because such procedures already exist and are well-documented. However, as a party that might be aggrieved by future ICANN policies, we would have a legal problem consenting to arbitration by the new IRP on the merits of a complaint. As a matter of fact, law would not allow us to already consent to arbitration with ICANN, and waive our right to go before other courts than the new IRP, on the basis of non-existing, or yet-to-be documented policies. We want the new IRP to judge on the merits of future complaints but we cannot legally have only the new IRP do that in the future. This is the "fork in the road" clause permitted by law on international arbitration, which stipulates that an aggrieved party must have the opportunity to choose to go before other competent courts in order to have their complaints examined, before losing that opportunity by agreeing to go to arbitration. In the case of the new IRP, this clause would give way to the possibility, for those stakeholders who could feel aggrieved by ICANN policies in the future, to go before other competent courts in order to have the merits of their complaints examined. It would also imply that ICANN should be ready to recognize the competency of alternative courts for merits of complaints by stakeholders aggrieved by its future policies.

This legal entanglement makes the solution to stress test #12 (forcing resignation of ICANN Board member(s) if they were to ignore binding IRP decisions) all the more important to us. The "fork in the road" clause has consequences in terms of enforcement of decisions taken on the merits of complaints with respect to future ICANN policies. Its very existence implies that stakeholders cannot be provided with legal certainty of enforcement of such decisions through the new IRP alone. Legal certainty of enforcement would come only with additional guarantees for decisions by other competent courts. In other words, since ICANN is based in the US, the US authorities themselves should give stakeholders guarantees on the exequatur for decisions taken by alternative courts regarding future ICANN policies. Should legal certainty of enforcement not be obtained through the new IRP alone, we would recommend stakeholders to content themselves with practical certainty of enforcement of decisions taken on the merits of future complaints. This seems achievable indeed, if (and almost only if) the Board were automatically spilled after ignoring a binding decision of the new IRP. An interim Board would have to be chosen and charged with enforcing the IRP decision which was ignored by the former Board.

We finally feel compelled to point out gaps between common legal practices with regard to choosing international arbitrators and the new IRP.

- It should be pointed out that it is not common legal practice to decide what party should support the costs of international arbitration, which are usually rather high, before it even takes place. Although we understand that ICANN's financial support would provide stakeholders with more affordable appeal mechanisms, the affordability of the new IRP should certainly not come at the expense of the independence of the panellists.

The idea of a standing panel for the new IRP therefore needs to be clarified (Draft prop., section 4.1, §133, item 17). In the case of a 3-member panel, it is indeed common practice that each party, the defending party and the aggrieved party, freely chooses an arbitrator and that the two selected arbitrators choose the third, which gives both parties adequate guarantees of independence of the arbitrators. Yet in the case of the new IRP, ICANN and the party aggrieved by a decision of its Board would have to draw the panellists from a standing panel of arbitrators, who would not only be financially supported by the defending party (ICANN, Draft prop., section 4.1, §133, item 13), but who would also have been selected by the defending party (the Board, Draft prop., section 4.1, §133, item 14b), which seems to give fewer guarantees of independence of the panel.

- Since ICANN's new Statement of Mission, Commitments, and Core values, are to be incorporated in its Bylaws (Draft prop., section 3.1, §50), are we right in considering that the new IRP's ability to judge on the merits, rather than on procedures, only lies in the expansion of its standard of review to ICANN policies?

- Are we correct in understanding that standard international courts of arbitration, such as the ICC, were not considered as adequate for the new IRP mechanism because of the expansion of its standard of review from

		<p>ICANN's Bylaws and Articles of Incorporation to ICANN policies?</p> <ul style="list-style-type: none"> - Must we then understand that all stakeholders, including governments, are expected to legally recognize the IRP as an international court of arbitration whenever they want to file a complaint against any action or inaction of the ICANN Board? - If so, does ICANN understand that it has to acknowledge the competency of alternative courts for merits of complaints by stakeholders aggrieved by its future policies? And since ICANN is based in the US, would the US authorities themselves give stakeholders guarantees on the exequatur for decisions taken by alternative courts regarding future ICANN policies? - Would it therefore not be sufficient that the power to enforce the new IRP's decisions would lie only within ICANN community's power to recall the entire Board, and not "in the court of the US and other countries that accept international arbitration results"? In other words, that the new IRP remains an internal mechanism within ICANN and does not become a legal arbitration court? - Could the CCWG-accountability therefore elaborate more on the independence of the new IRP standing panel? 	
<p>1 7 0</p>	<p>Govt-ES</p>	<p>We applaud the enhancements put forward for the refurbished IRP (and RR), which will contribute to improve the community's power to appeal ICANN's decisions.</p> <ul style="list-style-type: none"> - Standing: The fact that only already "materially affected" parties have a standing in the IRP could prevent stakeholders from using the IRP (or the RR) in case that damage or harm has not been produced yet (i.e.: approval of new gTLDs in highly regulated sectors without adequate safeguards). This loophole should be filled. Govt-ES suggest to expand the scope of legitimacy to file an IRP to a "prospectively affected" party which demonstrates that severe harm will likely be done to the interests it defends, although this damage is not suffered yet. The government as such is not materially harmed and will never be, but they have a duty to preserve the applicability of their national laws and should have the chance of doing so through ICANN accountability mechanisms. - Panel composition: Although the rule should be to appoint panelists from the standing panel, there may be situations where the complexity, local impact of the decision or specialized nature of the conflict require more than technical advisory and would warrant the appointment of a panelist that does not belong to the standing panel. The procedure should provide for this appointment to be made as an exception to the rule. - Language and diversity: The selection of English as primary working language (page 33) may hamper the implementation of the diversity principle that drives the IRP. More flexibility should be allowed in the selection of the language to be used. Rules of procedure for organizations like WIPO (http://www.wipo.int/amc/en/arbitration/rules/newrules.html) or the International Chamber of Commerce (http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/ICC-Rules-of-Arbitration/), that allow the parties to choose the working language, could be taken into account in this regard. In addition, the selection of panellists coming from the affected area and with a better understanding of the issue should be foreseen. - Selection of panelists: The appointment process outlined in the CCWG proposal, in which the ICANN Board would select panellists for the standing panel, subject to community confirmation, affords little community involvement and control over this process. We suggest the Board open a public consultation before selecting the panellists and take into account views expressed. Alternatively, the community group could make the selection to be confirmed later on by the Board. - Timelime: A deadline for lodging challenges should be set in the rules of procedure. In the current IRP, it is 1 month. We propose that it is fixed at a minimum of 2 months in general, and no deadline in cases of inaction of the Board. The same periods could be set as well for the Reconsideration Request process. 	
<p>1 7 1</p>	<p>RySG</p>	<ul style="list-style-type: none"> - Provide further clarify about how panel determinations would be implemented_The Draft proposal states that "the panel may not direct the Board or ICANN on how to amend specific decisions, it shall only be able to make decisions that confirm a decision by ICANN, or cancel a decision, totally or in parts." We believe that it would be useful to further explain how this would work in practice. - Review and refine standing requirements to address the possibility of frivolous complaints. The requirements for standing establish that the IRP may be used by "any person/group/entity "materially affected" by an ICANN action or inaction in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values or ICANN policies." While we agree that the IRP should be more accessible, we have concerns that these requirements could make the IRP vulnerable to frivolous requests that could be time consuming and costly. As an alternative, we recommend that the IRP could be made available to parties directly affected by a decision. For parties that are not directly affected parties the Supporting Organizations and Advisory Committees could be the parties given standing to file; this would in effect allow these community groups to provide a screening function in determining whether complaints met the materiality threshold. - Provide further detail about the fee structure for using the IRP_Define whether restrictions on post-term 	

		<p>appointments are term-limited_We support the introduction of term limits and limitations on post-term appointments. We ask that the CCWG-Further clarify the restrictions on post-term appointments</p> <ul style="list-style-type: none"> - RySG strongly supports a binding IRP and a membership structure to ensure the enforceability of any decisions. - The community must have standing to ensure the ICANN Board abides by and implements any binding IRP decision. A standing panel of experts will help. - Enabling a supermajority of ICANN members to file an IRP without burdensome fees will add an important and effective mechanism for community empowerment - RySG supports further community work on examining the issue of a super-majority of the membership being able to veto certain key Board decisions, so the community could avoid being forced to engage in a lengthy IRP process. 	
1 7 2	CCG	<ul style="list-style-type: none"> - The proposal suggests IRP panelists will be compensated by ICANN. This could affect the independence of the arbitrator. Even though the proposal maintains the panelist will be independent of ICANN, its SOs and ACs, he/she would draw remuneration from ICANN. To cite a widely followed practice, this could be an instance under the "Non- waivable Red list" in IBA Guidelines on Conflicts of Interests in International Arbitration. - Geographical diversity will purportedly be taken into consideration while forming the panel for IRP. Given that the panel would consist of only 7 members, more details on how such diversity would be accommodated will be welcome. - Initiation of an IRP: Matters specifically reserved to any "Members" of ICANN in the Articles or Bylaws would be excluded from IRP review. Likewise, the IRP could also not address matters that are so material to the Board that it would undermine its statutory obligations and fiduciary roles to allow the IRP to bind the Board." <p>The last two sentences need further clarification. Will Stress Tests be required to understand the consequences of the last two instances in this paragraph?</p> <ul style="list-style-type: none"> - IRP can be initiated also cover actions of ICANN board/staff that are against ICANN policies. ICANN policies have been defined as "legal requirements applicable to non-profit corporate and charitable organizations". Therefore ICANN policies would include only local California laws. Can an IRP be initiated when an action of ICANN does not adhere to any international convention that the complainant is a party to? - the proposal requires that parties amicably try to resolve the dispute before arbitration is commenced. There is no clarity on the role of courts which have jurisdiction with respect to applicable California law. Will these avenues have to be exhausted first? If an IRP is initiated, does that prevent parties from approaching the courts? The only mention of courts in the proposal has been made with respect to enforcement of the IRP awards. 	
1 7 3	JH	<p>According to the existing design, IRP Panel is the judge to determine. The independence of IRP is very important. IRP Panel should not belong to ICANN Board, and should not only report to the ICANN Board (I think there is a translation problem in Chinese version. According to the current Chinese translation, IRP Panel only reports to ICANN Board. I see English is different) and should be binding upon the ICANN Board. To emphasize again, the mechanism should ensure that IRP must make independent and impartial decisions. Moreover, the Panel should make clear decision, including pointing out who is wrong, as well as the reasons. In addition, it is necessary to have re-appeal procedure.</p>	
1 7 4	BC	<ul style="list-style-type: none"> - In general, BC supports the proposed improvements to the IRP. A standing committee of independent compensated experts with ICANN experience will lead to better decisions. - BC agrees that redress should be available when a particular action or inaction "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 Bylaws, Articles of Incorporation, or Statement of Mission, Commitments, and Core Values or ICANN policies." However, we believe that ICANN's decision-making should be reviewed under an abuse-of-discretion, rather than a de novo standard: The panel should ask whether a decision was based on a consideration of the relevant factors and whether ICANN committed a clear error of judgment. Under this standard, ICANN's failure to follow its own processes would constitute an abuse of discretion. - BC is particularly supportive of allowing the community to have standing to file an IRP and relief from having to pay legal fees (p.32). If a supermajority of ICANN Members votes to initiate an IRP, we must ensure they have standing and access to the mechanism. This would have been useful, for example, in example challenging ICANN's decision to allow both singular and plural forms of the same string as new gTLDs. - BC supports having IRP decisions be precedential and enforceable in US courts.(p.34) - BC has some concern that the IRP process proposed by the CCWG would allow parties to introduce new arguments without first vetting them through the community's policy development channels. - BC is concerned that the process does not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the IRP after policy development has concluded. Such an approach could create operational inefficiency and could undermine the bottom-up, consensus-based 	

		<p>process for developing policy within ICANN.</p> <ul style="list-style-type: none"> - BC suggests that the CCWG carefully consider whether additional safeguards, such as requiring parties or their trade associations to participate in a public comment process for instances in which there is a challenge to an existing community-developed policy or where ICANN has sought public comment on implementation of an existing policy -- could prevent these eventualities while still preserving an accessible IRP. The requirement to comment publicly would not apply to instances where ICANN simply contravenes existing policy or pursues implementation without seeking public comment. 	
1 7 5	co.uk	<p>This process, of necessity, is complicated and heavy. Hence we welcome the statement in paragraph 16 (page 34) in favour of informal resolution. This could be usefully given more visibility early in the section.</p> <p>We would also encourage some responsibility within ICANN for identifying who might be affected by the organisation's decisions and increased outreach to those communities which are not involved in ICANN should be part of the public interest commitment. This is particularly important when time-limits for submitting an appeal are short.</p> <p>We welcome more effective appeals procedures. It is obviously important to ensure due process is respected to underpin ICANN decisions. It is also reasonable that decisions can be challenged and to allow such processes to be well informed and effective. ICANN needs to have robust, clear and fair mechanisms to give credibility to its processes. Not least important would be to ensure that disputes do not drag on, undermining the organisation's credibility.</p> <p>However, we do believe that some more thought needs to be given to the interests of parties that are not directly involved in ICANN, particularly those who might be seriously impacted by policy developed without their knowledge. It is fundamental to serving the public interest that mechanisms should include processes for receiving, understanding and responding to wider interests even when they come in late in processes. Appeals and reconsideration processes do not appear to provide affected parties any clear process and this favours decisions focussed on the ICANN community's own interests.</p>	
1 7 6	USCIB	<p>In general, USCIB agrees with the proposed improvements. Specific comments:</p> <ul style="list-style-type: none"> - USCIB supports the creation of a standing pool of arbitrators, although we would urge that the pool of potential candidates be broadened to ensure participants have the requisite international arbitration expertise combined with an understanding of ICANN and the DNS. - A liberal approach to who may petition the panel, coupled with the ability of the Panel to provide for loser pays/fee shifting in the event it identifies a challenge as frivolous, seems a good balance between open access to due process, and mitigating delay tactics. The independent nature of the panel also is a crucial element. - Strongly supports the proposed scope of review. Parties should be able to seek review of both substance and procedure. Redress should be available when a particular action or failure to act "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 Bylaws, Articles of Incorporation, or Statement of Mission, Commitments, and Core Values or ICANN policies." - be mindful that IRP procedures should encourage parties to participate in the bottom-up ICANN policymaking process in an active and timely way so that issues can be addressed and resolved at an earlier stage of the process if at all possible. We would appreciate the CCWG-Accountability's proposals for how to strike this balance in the next version of this proposal, seeking to ensure that the IRP is not abused by those seeking to override community-developed and approved policies. - There appears to be a risk that one party could file an IRP to a 1-person panel and overturn community-led policy if the IRP panel decided in its favor. There is some fear that this could put too much power in the hands of few people and create binding precedent that is impossible to overturn. Thus, a new stress test should be considered for this situation, and if the result is unsatisfactory, consideration of a community-based override with a high voting threshold. - With respect to enhancements for both the <i>Independent Review Panel</i> and the Reconsideration Process, provide definitions of "materially affected" and "materially harmed" to clarify if such terms refer to economic harm or would include broader concepts of harm to an entity. 	
1 7 7	LINX	<ul style="list-style-type: none"> - Broadly, we support the changes proposed by the CCWG to the IRP. - In particular, we emphasise the importance of the following changes, which we consider essential to support NTIA transition: Empowering both the community and individuals to bring an IRP case alleging ultra vires activity by ICANN, 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. We cannot stress the importance of this strongly enough. - We do question the following: a. The reservation of certain issues to "Members of ICANN" alone; b. While we 	

		<p>recognise that we cannot, in law, allow the IRP to “address matters that are so material to the Board that it would undermine its statutory obligations and fiduciary roles to allow the IRP to bind the Board”, we consider the aim should be to minimise the range of matters to which this can apply, including by taking steps that would place the Board under a legal duty to follow the IRP; c. The IRP, not the Board, should determine what is excluded from its remit on this heading. If the Board disagrees with an IRP decision to rule on these grounds, it will disapply the IRP’s ruling: this will discourage the Board from making excessive and unreasonable (and unreviewable) claims regarding its fiduciary duties.</p> <ul style="list-style-type: none"> - The Bylaws incorporate a duty on ICANN to appoint additional members to the Standing Panel as needed in order to prevent undue delay in IRP cases being heard. - Geographic and cultural diversity of panellists is desirable in order to achieve confidence in the legitimacy of the IRP, but not at the expense of effectiveness. Especially given the very limited number of panellists proposed, we would caution against any hard rules in this regard. However, we do support a provision that geographic diversity should be taken into account when making panel selections. - Prospective panellists should only be eligible for appointment if they are willing to confirm their commitment to the Core Values. This would allay any (no doubt unwarranted, but nonetheless corrosive) suspicions that cultural diversity would lead to a lessened commitment to those Core Values. - To preserve the independence of IRP panellists, we recommend that their term should be quite long (e.g. seven years) –they can of course resign early if they so wish – and that they be barred from reappointment. The bar on future appointments to positions within ICANN should be designed to prevent them taking other remunerated work from ICANN, during or after the conclusion of their term (e.g. consultancy work), with a savings clause permitting them to undertake (after their term concludes) paid review of the effectiveness and sufficiency of the IRP process itself. - Timeliness of IRP complaints: Rules introducing time bars for IRP complaints should not prevent parties from bringing a complaint promptly when they are first affected by an ICANN action merely because that action occurred long ago. 	
<p>1 7 8</p>	<p>JPNIC</p>	<ul style="list-style-type: none"> - Overall, we agree that improvements to the IRP would enhance ICANN’s accountability. However, we recommend to review whether all requirements listed for IRP must be in WS1 or can be considered as further improvements in WS2. For example, we see geographic diversity as an improvement but it may not be critical before the transition and there may be a few other elements which is not a must to agree as WS1. - We further recommend that if this its implementation becomes a delaying factor in the IANA Stewardship Transition, to consider its implementation post transition, given there is assurance from the ICANN Board to implement the proposal on IRP. The CWG-Stewardship has identified that ccTLD delegation and re-delegation as outside the scope of ICANN Accountability CCWG. The budget, which is another core related to the IANA function will be addressed by the community empowerment mechanism. 	
<p>1 7 9</p>	<p>IPC</p>	<ul style="list-style-type: none"> - In our view, the IRP as a whole should continue to take on an ever-greater role in ensuring ICANN’s accountability to the community, and the Proposal represents a significant first step in helping to achieve this. - While we concur with the vast majority of points raised in the Proposal, certain items seemed worthy of additional comment, either because: (1) we consider them to be especially important and potentially deserving of an even greater level of treatment in the Proposal; or (2) we disagree, in whole or in part, with the suggestions of the CCWG with respect to that particular item, and feel that it should be worth a “second look.” <ol style="list-style-type: none"> 1. Impact of IRP declarations: We strongly agree with other commenters (see ¶ 131) as well as the interlocutory “Declaration on the IRP Procedure” issued by the Panel in DCA Trust v. ICANN (see https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf) that the process should be deemed “binding” upon the Board to the fullest extent possible, and should not be merely “advisory” in nature. We also concur with the CCWG’s recommendation (see ¶ 133, sub. 18b) that IRP decisions be “precedential,” with a certain degree of “weight” given to prior decisions. 2. Matters excluded from IRP: Assuming the “membership” organizational model is adopted according to the CCWG’s Proposal (see ¶ 180), it would seem reasonable to the IPC that a great many — if not all — matters “specifically reserved” to the “members” (e.g., recall of the Board or individual directors, budgetary approvals, etc.) should be deemed to be outside the scope of IRP review when exercised by the members. See ¶ 133, sub. - However, the additional exclusion of items “so material to the Board that it would undermine its statutory obligations and fiduciary roles” is vague and demands additional clarification. Ibid. Prior to moving forward, objective standards for determining what matters would undermine the Board’s statutory obligations and fiduciary roles should be developed. A mechanism for making such a determination, including consideration of a procedure for allowing members to have the final say in making such a determination, should be adopted. 3. Panel expertise/training: The IPC considers “training on the workings and management of the domain name 	

		<p>system” (see ¶ 133, sub. 10) to be a very welcome addition.</p> <ul style="list-style-type: none"> - Candidates with both significant legal and technical expertise to be highly attractive, and that each skill be represented by at least one individual panelist may cause considerable delay in panel appointments, as has happened in past IRP. Allowing for panel expertise to be supplemented, on an as needed basis, by qualified experts with specialized knowledge makes a good deal of practical sense. <p>4. Geographic diversity: We generally agree with the CCWG that IRP panels should strive to have “diversity in geographic and cultural representation.” See ¶ 133, sub. 11. However, this desire for diversity must be subsidiary to a meritocratic desire for excellence.</p> <p>5. Standard of Review: The CCWG’s efforts to expand the applicable standard of review to also include “substantive limitations on the permissible scope of ICANN’s actions” (see ¶ 133, sub. 9) are highly commendable and should be fully supported.</p> <p>6. Decision Methodology: According to the CCWG, IRP panels should be permitted to “undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts.” See ¶ 133, sub. 17b. We concur with this approach, and would also direct the CCWG’s attention to the language found in the IRP decision <i>Booking.com v. ICANN</i>:</p> <p>7. Panel Independence: While we agree that the “independence” — both real and perceived — of an IRP panel is highly desirable, we think additional consideration is needed on how best to achieve this in actuality if, as recommended by the CCWG, “panelist salaries” or other forms of compensation are borne completely by ICANN. Admittedly, ensuring broad access to the procedure for as many interests as possible (including non-profits and others with limited financial resources) is itself a laudable goal. CCWG is encouraged to consider that concerns over accessibility should be balanced with the need for truly unbiased and impartial decision-making, which can often only be achieved through various types of cost- sharing and allocation.</p>	
1 8 0	Govt-BR	<ul style="list-style-type: none"> - welcomes the suggestion of establishing an appeal’s mechanism within the ICANN structure that is capable of settling disputes between parties in a truly independent manner. - decisions made by the IRP should be binding to the ICANN organization and should not be overruled by national courts where ICANN is legally established. It is our understanding that the autonomy of the IRP would be seriously undermined if this condition cannot be met. - supports a standing panel of 7 independent members and decisional panels comprised of 3 members. Brazil considers that geographic, cultural and gender diversity is a key element and should be a mandatory criterion in the selection of IRP panelists. - Similarly to the Dispute Settlement mechanism of the World Trade Organization (WTO) – which is regarded as highly efficient and predictable – ICANN’s IRP should be comprised of clearly defined steps with firm deadlines. 	
1 8 1	MPAA	<ul style="list-style-type: none"> - MPAA supports the proposed enhancements to the Independent Review Process including the call for a fully independent judicial/arbitral function and the intent that IRP decisions are not only binding on ICANN but will set precedent for future decisions. However we feel greater clarity is needed on several points: <ul style="list-style-type: none"> - Standard of Review (p. 32) currently places the burden to demonstrate a violation on the party challenging an action or inaction. More clarity around the level of evidence required by the offended party is needed. A set of requirements should exist that ensure the standard of evidence is not unnecessarily high, but high enough to ensure an effective IRP. - MPAA supports the CCWG proposal that any person/group/entity, including 3rd parties, has standing to participate in the IRP process however to ensure an IRP that is truly accessible to the community we suggest that continued discussion is needed to define exactly what constitutes “material harm” (p.31). - MPAA suggests that the CCWG clarify if the notion of a right-of-review is available in the current plan, ensuring an independent and objective review of all parties in the IRP process. 	
1 8 2	CDT	<ul style="list-style-type: none"> - supports the enhancements proposed for the Independent Review Process. The IRP is in need of an overhaul and the proposed enhancements – a binding, accessible and independent process that would hold ICANN to a substantive standard of behavior – will contribute significantly to ICANN’s overall accountability and to ensuring that ICANN does not stray from its mission and its commitment to its multistakeholder community. 	
1 8 3	CIRA	<p>n general, I agree that the powers of the IRP should be enhanced. I would support an IRP that is independent of ICANN, low cost has decisions that are binding, and is streamlined in its processes. I would also like to go on record as stating that any proposed appeal mechanism should not include ccTLD delegation and/or re-delegation issues.</p>	
1 8 4	USCC	<p>-The changes to IRP are a step in the right direction, but many more details regarding due process and standard of review need to be added. Any final accountability plan must feature widely accepted principles on transparency, due process, and fundamental fairness, as well as incorporate well-settled international adjudicatory norms. The</p>	

		<p>decisions of the IRP should be binding and not subject to rejection by the ICANN Board as they currently are.</p> <ul style="list-style-type: none"> - this section is one in need of further development and we plan to engage further as the draft plan continues to develop. - We support that the CCWG seeks to strengthen and expand the use of the IRP – including for review of not only procedural difficulties, but substantive problems as well. - While we agree that review should be available for both substantive and procedural concerns, we believe that actual decisions should be reviewed under an abuse of discretion standard rather than the de novo standard currently contemplated by the Proposal. In this model, failure to follow processes would qualify per se as an abuse of discretion. Pure de novo review would arguably allow individuals to end run around the policy process and undermine decisions made by the community. - The Chamber further supports encouraging active participation during the policy development process as the best means to solve stakeholder concerns. Therefore, we suggest changes to the proposal that ensure parties cannot bring new arguments to the IRP without availing themselves of the community’s well-established policy development processes. - suggests adding these basic transparency and due process improvements to other ICANN review processes, such as the pre-IRP Cooperative Engagement Process, requests for reconsideration of staff action, and petitions to the Ombudsman. 	
1 8 5	INTA	<ul style="list-style-type: none"> - agrees with the proposed IRP improvements, especially those regarding the effect of the decisions as being binding and not merely advisory and precedential. The IRP should have authority to review and prevent “mission creep” or actions in derogation of the Statement of Mission, Commitments & Core Values, the bylaws (both Fundamental and regular), as proposed, as well as grievances concerning appointment and removal of Board members. - INTA recommends a low threshold of the “materially affected” standing requirement. - With respect to the selection and appointment of panelists (subsection 14), we recommend that an aggrieved party shall have the right to move to recuse a panelist if there is a credible basis for bias. - Regarding enforcement of judgments of the IRP, we recommend that the parties agree in advance to be bound by the decision of the Panel, which agreement shall be enforceable in a California court with jurisdiction over ICANN. - We believe that the review of IRP decisions should include a request for reconsideration, as well as an en banc review, at the discretion of the IRP. - The IRP should elect a chief administrator/arbitrator. 	
1 8 6	.NZ	<p>We broadly support the direction set out but have not scrutinised the proposal in depth. We offer the following comments:</p> <ul style="list-style-type: none"> - It is important to ensure that the IRP process cannot be used in a frivolous or vexatious way, and we will review more detailed proposals in the next Public Comment with that concern in mind. - We suggest a “first cab off the rank” approach to the allocation of panellists – both for one-member and three-member panels (in the latter case, the third panellist). A guaranteed rotation of panellists avoids any panellist or subset having undue influence in the development of the precedentiary body of case work the system will create, and avoids complainants choosing a particular panellist for any reason. - We also query the interaction of the Ombudsman with the IRP and suggest the CCWG give further thought to this. There must be clarity for the community as to when each (IRP or Ombudsman) is the right forum to use. 	
1 8 7	HR2251	<ul style="list-style-type: none"> - ICANN has an external, independent process for reviewing and resolving disputes between ICANN and external parties, including members of the multistakeholder community, in all matters related to the operations and policy decisions of ICANN. Such process includes the ability to reverse decisions of the board of directors. 	
1 8 8	NCSG	<ul style="list-style-type: none"> - NCSG believes that a strong independent appeals mechanism is critical to enhancing ICANN’s accountability. We strongly support the binding nature of the proposed process and the accessibility of this mechanism, particularly in relation to the cost burden of the mechanism . - ICANN has a limited Mission, and it must be accountable for actions that exceed the scope of its Mission. This suggest that IRP should provide a means of challenging actions that exceed ICANN’s scope simply because they exceed its scope, not just because they have a negative “material affect” on the challenger. Either that, or ICANN-created restrictions on fundamental rights such as freedom of expression or privacy, must be considered “material affects” and so specified in the proposal. 	
1 8 9	MM	<p>I agree very strongly with the purposes of the IRP as enumerated in 133. I also agree with a standing IR Panel, though I am concerned about the selection of the standing panel by ICANN itself. The mechanisms of community approval need to be better specified, and I would suggest a veto process, similar to <i>voir dire</i> challenges in U.S. jury selection, that allows minority interests to reject judges they view as biased or inimical to their interests. We need to</p>	

		<p>know more about what kind of challenges would be reserved to members and which would be open. My biggest concern here is that the CCWG proposal presents the IRP as something that can prevent mission creep and other violations of ICANN's mission and core values. To make ICANN accountable for actions that exceed the scope of its Mission, the CCWG should consider having the IRP provide a means of challenging actions that expand or deviate from ICANN's mission simply because they exceed its scope, not just because they have a negative "material affect" on the challenger. Either that, or ICANN-created restrictions on fundamental rights such as freedom of expression or privacy, must be considered "material effects" and so specified in the proposal.</p>	
1 9 0	GG	<ul style="list-style-type: none"> - GG supports creating a process for meaningful review of ICANN Board or staff actions through a standing, independent group of expert. - We support the creation of a binding IRP mechanism, but the procedures governing that mechanism should more explicitly encourage clear, informed, and participatory decision-making. - While we agree with the need to create a binding IRP mechanism, we encourage the CCWG-Accountability to modify its proposal in two respects. First, we believe that parties participating in the IRP ought to have previously participated, if applicable, in the public comment process by either submitting their own comments or being members of a trade association, stakeholder/constituency group or some other associated group that submitted a comment on its members' behalf. While some may view this as overly restrictive or burdensome, Google believes that this policy is analogous to the requirements imposed by other rulemaking proceedings and will encourage greater participation by the community – 9 at an earlier stage in ICANN's decision-making process, when many issues can be more proactively identified and resolved. In our view, this requirement would not pose a substantial burden for appellants because participating in ICANN's public comment process does not require specialized expertise or lengthy submissions. The only requirement would be for the appellant to have presented its arguments informally when given an opportunity to do so. Second, we believe that actual decisions should generally be reviewed under an abuse of discretion standard rather than the de novo standard currently contemplated by the Proposal. In this model, failure to follow processes would qualify per se as an abuse of 10 discretion. Pure de novo review would arguably allow individuals to end run around the policy process and undermine the finality of decisions made by the community. It is critical for the stability and efficiency of the Internet ecosystem for ICANN decisions, properly taken and subject to a transparent and accountable review process, to have a degree of finality and predictability. For similar reasons, we appreciate the Proposal's clarification that delegation and re-delegation (with the exception of the ccTLDs) will be handled through a unitary process. 11 However, we recognize that the abuse of discretion standard for review of ICANN staff and board decisions, combined with the limited veto powers we discuss below, may make it unreasonably difficult for ICANN community members to challenge decisions taken by ICANN in the rare instance that they are overwhelmingly opposed by the community. While there might be several ways to address this concern, one approach would be to adopt a different standard of review for IRP challenges brought by the community as a whole, as opposed to an individual entity. In such situations, the CCWG-Accountability could consider mandating that panels to review ICANN's decisions de novo. We look forward to working with the CCWG-Accountability to ensure that a united ICANN community can provide a meaningful check on major ICANN decisions without unduly impeding operational efficiency. 	
1 9 1	Board	<ul style="list-style-type: none"> - We agree that the Independent Review Process needs to be refined; with the standard better defined to meet the needs of the community, and that it is important to have binding decisions arising out of that process, as appropriate. - The proposed enhancements to the Independent Review Process (IRP) still appear to require further detail, including issues such as standing and remedies, as well as definitional work. What steps are in place to avoid overloading the seven-person IRP panel with frivolous or vexatious complaints? We anticipate further questions after more details are provided. 	
1 9 2	CENTR	<ul style="list-style-type: none"> - We agree that the proposed improvements to the Independent Review Process would enhance ICANN's accountability, however having ICANN shouldering all the administrative costs of maintaining the system (including the panelist salaries) might undermine its independence. We invite the CCWG to investigate possible alternatives, including the option of having the IRP managed by an internationally recognized body. That might simplify the appointment procedure which in the draft CCWG paper appears to be extremely complex and, to a certain degree, incomplete. - The panelists must be as independent as possible. Furthermore, we support the notion that panelists must have international arbitration expertise, additionally, but not exclusively, in the DNS environment. We would also like to highlight the importance of having multicultural, multinational and multilingual panelists. - Concerning the recommendation that IRP decisions should be based on precedents, we do not support this principle as any decision must always be duly substantiated and based on policies that might have evolved over the years. 	

		<ul style="list-style-type: none"> - Last but not least we reiterate the requirement that any appeal mechanism must not cover ccTLD delegation and/or re-delegation issues. - CENTR agrees that the proposed improvements to the Independent Review Process would enhance ICANN's accountability, however having ICANN shouldering all the administrative costs of maintaining the system (including the panelist salaries) might undermine its independence; invites the CCWG to investigate possible alternatives, including the option of having the IRP managed by an internationally recognised body; reiterates the requirement that any appeal mechanism must not cover ccTLD delegation and/or re-delegation issues. 	
193	NIRA	<ul style="list-style-type: none"> - NIRA agrees with recommended changes and requirements. 	
194	ALAC	<p>Para 133, Section 13: The ALAC notes that although independence from ICANN is required, there is no such requirement with respect to independence from other parties related to the dispute. Such parties could be contracted parties, or local, national or international entities related to the dispute.</p>	
195	LAB	<ul style="list-style-type: none"> - My principal criticism of the draft proposals relates to the interrelationship of the IRP and RPE. The relationship between the two review processes is not explained; nor is it self-evident. The CCWG-Accountability ought to clarify the extent to which each procedure necessarily deals with different types of complaints. At present, there seems to be a possibility for overlap – i.e., that a matter could be treated under the RPE and then the IRP. Yet, from the draft proposals, there is no firm indication that the CCWG-Accountability intends the RPE to be a preliminary “light-touch” form of review that is ordinarily initiated before embarking on an IRP. If it has not already done so, the Working Group ought to consider the pros and cons of integrating RPEs into the IRP scheme. - Regarding the IRP, it is unclear whether or not this will permit face-to-face meetings or only involve electronic document exchange. The issue ought to be clarified. 	

Reconsideration Process Enhancement

Question 6: Do you agree that the proposed improvements to the reconsideration process would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements. Are the timeframes and deadlines proposed herein sufficient to meet the community's needs? Is the scope of permissible requests broad / narrow enough to meet the community's needs?

#	Contributor	Comment	CCWG Response/Action
196	auDA	<p>Make these areas primary focus as recommendations are finalized: 1) improvement and strengthening of ICANN's Request for Reconsideration process, including a significant expansion in scope; and 2) refinement in the role of the ICANN Ombudsman including direct preliminary involvement in the reconsideration process (replacing the current role of ICANN's legal team).</p>	
197	DBA	<p>New and improved appeal mechanisms: An IRP Panel that is binding, affordable, more accessible, broadened in scope as well as a reformed Reconsideration Process.</p>	
198	CRG	<ul style="list-style-type: none"> - Does the Reconsideration process remain in place and is it required to be tried first before initiating the IRP? - I would suggest the proposal of the Reconsideration process should try to make the difference between Board action/inactions vs. Staff action/inaction easier. 	
199	AFRALO	<p>AFRALO members appreciate the reinforcement of the reconsideration mechanism proposed in the report.</p>	
200	DCA-T	<ul style="list-style-type: none"> - Composition of the Board Governance Committee and the NGPC must be different to provide fairness and rationale in the decision making. - Any outcome for reconsideration request should be reviewed by an independent group to ensure that the same group that made a decision that is being challenged, for which a reconsideration request is sought, are not the same group that will look into the reconsideration and adopt/ratify the earlier decision that they made. A group cannot keep or ratify/approve its own counsel. - Improvement of the transparency mechanisms will play a big role in determining the fairness of decisions made. Thus recordings / transcripts should be posted of the substantive Board discussions on the option of the requester. - It will be acceptable to also provide a rebuttal avenues and opportunity to the BGC's final recommendation (although requesters can't raise new issues in a rebuttal) before the full Board finally decides. 	
201	Afnic	<p>Afnic agrees that there is a strong need to enhance the reconsideration process. Ombudsman implication is a good step. Furthermore, and as long as reconsideration requests are taken in charge by the Board Governance Committee, the implementation of a thorough and independent annual audit on Board members potential conflict of interest seems to be needed.</p>	
202	IA	<ul style="list-style-type: none"> - strongly agrees that reform of the reconsideration process is needed ... and supports the majority of the proposed enhancements and the proposed timelines. - However, does not support allowing reconsideration where the ICANN board has failed to consider “relevant,” 	

		<p>rather than “material” information. In most jurisdictions, the standard for relevancy is extremely low.</p> <ul style="list-style-type: none"> - CCWG [should] clarify, rather than eliminate, the requirement that parties (or coalitions in which parties are a member) must participate in the applicable public comment process before seeking reconsideration. - concerned that eliminating such a safeguard would not create the right incentives, as it would invite parties to use the reconsideration process as an end run around policy development by allowing parties to raise concerns only on reconsideration after policy development has concluded. CCWG should carefully consider whether additional safeguards in the reconsideration process could prevent these eventualities while still preserving an accessible IRP process. - agrees that the Board’s reliance on its internal legal department is cause for concern. We support an initial review by an Ombudsman, but only if the review is conducted free from the involvement or influence or interference by ICANN’s legal department or outside counsel. 	
203	eco	<ul style="list-style-type: none"> - The proposed improvements to the IRP and reconsideration process would definitely enhance ICANN’s accountability. 	
204	RySG	<ul style="list-style-type: none"> - agrees that the proposed improvements to the reconsideration process would help to enhance ICANN’s accountability - agree with the list of requirements and believe that the proposed timeframes and deadlines are reasonable and will likely meet the substantial majority of the community’s needs. - the scope of permissible requests is appropriate 	
205	JH	<p>I agree that the proposed improvements to the reconsideration process would enhance ICANN’s accountability. But the list of requirements for this recommendation is not enough. The proposal only empowered community the power to remove ICANN Board of Directors and recall of the Board. But apparently, not all the wrong decisions need to use the two measures, only for extreme situation. Actually, other punitive measures/solutions mechanism/regulation could be considered.</p>	
206	BC	<p>In general, supports the CCWG proposal to change the standard for Reconsideration Requests to include the amended Mission and Core Values for ICANN. (p.36)</p> <ul style="list-style-type: none"> - also supports the CCWG proposal to increase transparency by requiring full documentation of the ICANN Board Governance Committee’s dismissal of any Reconsideration Request. (p.37) - supports the CCWG proposal to bypass ICANN legal department for the first substantive evaluation of Reconsideration Requests. - believes this review by the Ombudsman is appropriate only if the review is conducted free from the involvement or influence of or interference by ICANN’s Legal Department or outside counsel. Matters of policy should go directly to the Board Governance Committee. (p.37) - supports requiring the full ICANN Board to vote on final determinations of Reconsideration Requests. (p.37) - However, has concerns with the proposal to allow reconsideration for failure to consider any “relevant” material. In most U.S. jurisdictions, the standard for relevancy is extremely low. Under the California Evidence Code, relevant evidence is “evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action” (emphasis added).¹¹ Any decision made by the Board or the staff is likely to overlook <i>some</i> relevant evidence. If failure to consider relevant evidence is grounds for reconsideration, nearly every decision is subject to reconsideration. Therefore, the BC recommends retaining the “material information” standard set forth in the current Bylaws. - also has some concern that the Reconsideration process proposed by the CCWG would allow parties to introduce new arguments without first vetting them through the community’s policy development channels. This could eliminate the requirement to participate in applicable public comment processes. We are concerned that the proposed process might not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the Reconsideration Process after policy development has concluded. These could undermine the bottom-up, consensus-based process for developing policy. 	
207	USCIB	<p>We support the revisions to the Reconsideration Request with the following suggestions:</p> <ul style="list-style-type: none"> - Strongly suggest clarification that the Ombudsman must be fully independent of ICANN Legal staff in order to conduct the initial review as proposed. It should also be ensured that the office of the Ombudsman is properly staff so as to avoid bottlenecks in the review process. - Reiterate concerns expressed regarding the IRP process: be mindful of the fact that procedures should encourage parties to participate in the bottom-up ICANN policymaking process in an active and timely way so that issues can be addressed and resolved at an earlier stage of the process if at all possible. We would appreciate the CCWG-Accountability’s proposals for how to strike this balance in the next version of this proposal, seeking to ensure that 	

		<p>the Reconsideration Request is not abused by those seeking to override community-developed and approved policies.</p> <p>- With respect to enhancements for both the Independent Review Panel and the <i>Reconsideration Process</i>, provide definitions of “materially affected” and “materially harmed” to clarify if such terms refer to economic harm or would include broader concepts of harm to an entity.</p>	
208	LINX	<p>We support the CCWG’s proposals regarding the reconsideration process.</p>	
209	JPNIC	<p>Overall, we agree that improvements to the reconsideration process would enhance ICANN’s accountability. However, we would like to request for more clarifications on why this must be in WS1, given there are other accountability mechanisms to be in place. We generally support improvements and further consideration on reconsiderations but if there are any contentious issues, which does not get resolved before the IANA Stewardship transition, we recommend that some of the requirements to be added as further improvements of reconsideration as WS2.</p>	
211	IPC	<p>- The IPC also strongly supports many of the CCWG’s recommendations for improving the Request for Reconsideration (“RfR”) process, with particular emphasis on the provisions concerning improvements to transparency mechanisms (e.g., recordings, transcripts, etc. see ¶ 154); document disclosure policies (see ¶ 164); and opportunities for rebuttal after the BGC’s final recommendation but prior to Board decision (see ¶ 155).</p> <p>- The IPC also — in principle — supports the efforts to extend RfR filing deadlines, though considers thirty (30) days to still be a bit on the lean side. See ¶ 161. While the IPC is mindful of the underlying goal of resolving disputes quickly, and does not feel that the timelines need to extend nearly as long as traditional statutes of limitations (or what might otherwise be considered “laches” under common law), further consideration is nonetheless encouraged to try and identify a slightly broader window to allow time for reasonable investigation of the merits of potential claims. See ¶¶ 139, 161; see also Bylaws Art. IV, § 2, Para. 5(a).</p> <p>- Initial review by the Ombudsman (or anyone with mediation training that can serve in a facilitative, rather than adversarial, role) is another potentially useful approach that will likely reduce costs and, at minimum, help reduce the number of issues to be decided in the proceedings. See ¶ 149.</p> <p>- We also support the CCWG’s efforts to broaden the RfR standards and applicability (e.g., changing “material” to “relevant” as listed in ¶ 142; as well as removing highly subjective dismissal criteria such as “vexatious” or “querulous” as listed in ¶ 146). However, while we do consider the RfR process to be a useful accountability tool in certain situations (e.g., involving ICANN staff action/inaction), we feel that an expanded role for the IRP is more likely to ensure a greater degree of consensus and more adequately protect the interests of the community.</p>	
212	GG	<p>- GG supports creating a process to recall, in exceptional circumstances, individual ICANN Board members, though as noted below we are concerned about the proposed power to remove the Board as a whole given the potentially destabilizing effects of such a move.</p> <p>- The reconsideration request process should also encourage more efficient decision-making. As with other aspects of ICANN’s operations, Google believes that any changes to the Request for Reconsideration process should enhance accountability while at the same time promoting efficiency. For this reason, we believe that prior participation in the relevant public comment process should continue to be a requirement for parties to have standing to ask for a reconsideration request, for the reasons outlined in the above IRP discussion. Moreover, we urge the CCWG-Accountability to reconsider changes to the standard used when evaluating the scope of information that the ICANN Board should consider before acting or failing to act in a way that adversely affects a party. The Proposal suggests changing this standard from “material information” to “relevant information,” meaning 12 that in order to avoid challenge, the Board would be forced to consider information beyond that which is material to the decision at issue. This is a significant and novel change to the quantity and breadth of information that the Board would be forced to consider, leading the Board to an impossible decision between being overwhelmed with information – making decisions take longer, without necessarily being better – or not taking into account some information that meets the low threshold of “relevance” and risking a series of requests for 13 reconsideration that degrade the predictability and efficiency of ICANN’s operations. For these reasons, Google urges the drafters of the Proposal to retain the present “material information” standard in these provisions of the bylaws.</p>	
213	i2Coalition	<p>- The i2Coalition strongly agrees that ICANN’s actions should be subject to a binding appeal mechanism. Adoption of a binding appeals process is key to improving ICANN’s overall accountability to the Internet community. We also agree that review should be available for actions or failures to act that violate either (a) substantive limitations on the permissible scope of ICANN’s activity, or (b) decision-making procedures. And we agree that the substantive limitations and decision-making procedures that should form the basis for relief are those set forth in ICANN’s</p>	

		<p>Bylaws; Articles of Incorporation; its Statement of Mission, Commitments, and Core Values; and ICANN policies.</p> <p>- However, we encourage the CWG-Accountability to consider two modifications to its proposal. First, the i2Coalition has some concern the IRP process, as currently proposed by the CCWG, would allow parties to bring new arguments to the IRP without first vetting them through the community’s policy development channels. We are concerned that the process does not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the IRP after policy development has concluded. Such an approach could create operational inefficiency and undermine the bottom-up, consensus-based process for developing policy within ICANN. The i2Coalition suggests that the CCWG carefully consider whether additional safeguards -- such as requiring parties or their trade associations to participate in a public comment process for instances in which there is a challenge to an existing community-developed policy or where ICANN has sought public comment on implementation of an existing policy – could prevent these eventualities while still preserving an accessible IRP. The requirement to comment publicly would not apply to instances where ICANN simply contravenes existing policy or pursues implementation without seeking public comment. Second, we believe that actual decisions should be reviewed under an abuse of discretion standard rather than the de novo standard currently contemplated by the Proposal. Under this model, failure to follow processes would qualify per se as an abuse of discretion. Pure de novo review would arguably allow individuals to circumvent the policy process and undermine the finality of consensus-based decisions made by the community. It is critical for the stability and efficiency of the Internet ecosystem for ICANN decisions, properly taken and subject to a transparent and accountable review process, to have a degree of finality and predictability.</p>	
2 1 4	CDT	<p>- we also support the proposed changes to the Reconsideration Process. Again, these enhancements are central to ICANN’s overall accountability and to empowering the community. CDT supports the increased role of the Ombudsman in lieu of ICANN’s lawyers and encourages greater responsiveness by ICANN’s DIDP.</p>	
2 1 5	USCC	<p>- The proposed improvements would help enhance ICANN’s Accountability</p> <p>- In general, we agree that reform of the reconsideration process is needed. However, we urge the CCWG to reconsider changes to the standard used when evaluating the scope of information that the ICANN Board should consider before acting or failing to act in a way that adversely affects a party. The Proposal suggests changing this standard from “material information” to “relevant information,” meaning that in order to avoid challenge, the Board would be forced to consider all relevant information before making a decision. This is a significant change to the quantity and breadth of information that the Board would be forced to consider because the threshold for relevancy could be considered quite low. For these reasons, the Chamber urges the drafters of the Proposal to retain the present “material information” standard in the reconsideration provisions of the bylaws.</p> <p>- We recommend that the CCWG retain the requirement to participate in a public comment process before seeking reconsideration, but modify it as proposed above in the context of seeking independent panel review.</p> <p>- The Board’s reliance on their internal legal department is cause for concern, particularly because their primary legal obligation is to protect ICANN. We support an initial review by an Ombudsman, but only if the review is conducted free from the involvement or influence of or interference by ICANN’s Legal Department or outside counsel. The Ombudsman must be truly independent, including in both staff and monetary resources.</p>	
2 1 6	INTA	<p>- agrees and we also suggest that ¶ 142(e) should be amended to add, after “relevant information” or “one or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on information, and subsequent to the action or inaction, there is a material change in that information.”</p> <p>- We recommend changing ¶ 149 to state that Ombudsman “should” (not “could”) make initial recommendation to the BGC.</p>	
2 1 7	.NZ	<p>We broadly support the direction set out but have not scrutinised the proposal in depth. It is important to ensure that the reconsideration process cannot be used in a frivolous or vexatious way, and we will review more detailed proposals in the next Public Comment with that concern in mind.</p>	
2 1 8	CENTR	<p>We support both the broadening of the types of decisions which can be re-examined to include ICANN Board/staff action/inaction against ICANN’s Mission or core values as stated in the Bylaws, and the improvement in terms of transparency regarding dismissal cases. At the same time, and considering possible calendar constraints, we recommend the deadline for a reconsideration request be increased to 45 days. On the other hand, final decisions should have a much shorter deadline. The 120 days deadline is too long and might imply negative collaterals on those impacted by ICANN Board/staff action/inaction. Therefore, final decisions should be issued within 90 days as ultimate deadline.</p>	
2 1 9	NIRA	<p>- NIRA agrees with the proposed improvements and requirements. However, NIRA notes that the provision that ICANN Board bears the burden of legal fees specified in 6 (in reference to 5.1) sounds unfair and should be reconsidered though there is a disclaimer in the proposal. NIRA would follow the development of this</p>	

		recommendation. Proposed timeframes and deadlines are sufficient.	
2 2 0	ALAC	<ul style="list-style-type: none"> - Section 4.2: Regarding the enhancements to the Reconsideration Process, many recent reconsideration requests involved decisions of external panels. The ALAC suggests that the proposal be explicit as to whether such decisions are eligible for reconsideration and if so, how they are to be carried out (purely Board reconsideration or re-chartering a new and/or expanded panel). The CCWG should also consider whether discrepancies between multiple panel results could be the subject of reconsideration. - Para 156: The ALAC supports adding specific target deadlines for resolution of reconsideration requests, but suggests that they be worded as to allow for extraordinary situations which might require elongation of the allowed period. Paragraph 159 makes such an allowance for the 60 day period but not for the 120 day period. 	
2 2 1	LAB	<ul style="list-style-type: none"> - My principal criticism of the draft proposals relates to the interrelationship of the IRP and RPE. The relationship between the two review processes is not explained; nor is it self-evident. The CCWG-Accountability ought to clarify the extent to which each procedure necessarily deals with different types of complaints. At present, there seems to be a possibility for overlap – i.e., that a matter could be treated under the RPE and then the IRP. Yet, from the draft proposals, there is no firm indication that the CCWG-Accountability intends the RPE to be a preliminary “light-touch” form of review that is ordinarily initiated before embarking on an IRP. If it has not already done so, the Working Group ought to consider the pros and cons of integrating RPEs into the IRP scheme. 	

Mechanism to empower the Community

Additional questions: Do you agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability?

What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.

Question 7: What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.

#	Contributor	Comment	CCWG Response/Action
2 2 2	RH	<ul style="list-style-type: none"> - I agree that turning ICANN into a membership organization is the way forward: if the membership is sufficiently broad, and ICANN is accountable to its membership, then adequate accountability will be ensured. In some countries (in particular in Switzerland), non-profit associations are, by law, accountable to their membership, in the sense that the membership has full powers to amend the bylaws (called statutes in Switzerland), elect and revoke the Board, approve and review the budget, etc. See articles 60 ff. of the Swiss Civil Code. If we accept the principle that accountability is ensured by the members, then I don't understand why the members of ICANN should not have full powers. The membership should have full powers, not just some powers. - Membership should consist of the members of the SO and AC, not the SO and AC themselves; i.e. direct entities. ICANN will be subject to the laws of the countries in which it operates, unless it is granted immunity of jurisdiction. - But ICANN will primarily be subject to the laws of the country in which it is incorporated. If California law does not allow the membership to exercise full powers, then it might be better to incorporate ICANN elsewhere. Why should the directly concerned entities elect representatives that elect the ICANN Board, when the directly concerned entities can elect the Board themselves? - Question: Agrees. The membership model is better than a “designator” model. 	
2 2 3	Jan Scholte (JS) comment 1	<ul style="list-style-type: none"> - Presumably ‘SO/AC Membership Model’ would not be comprehensible to, or resonate with, wider audiences. Something like ‘Multistakeholder Assembly/Chamber/Council’, which would name the multistakeholder principle that NTIA has required and ICANN embraces? - The proposal could address more directly the issue of maximizing correlation between ‘the ICANN community’ and the (continually evolving) wider world of global Internet stakeholders. Indeed, at para 45 there is a (somewhat complacent?) equation of ‘the community’ with ‘the people’. This correspondence is not automatic and requires proactive cultivation. The proposal is still thin on concrete measures in this regard. How can one ensure that the multistakeholder mechanism will adequately encompass all affected circles? Would any adjustments in the AC and SO constructions be advisable at this juncture to obtain a better congruence? The current draft persuasively argues for ‘participation reflecting the functional, geographic, and cultural diversity of the Internet’ (para 97); and specifies that review groups ‘must be as diverse as possible’ (para 273). However, the proposal suggests few concrete measures for putting these principles into practice. - Could the formula which constitutes ‘the Community’ in the empowerment mechanism (set out at 2.6.1.2) be adjusted in future, as and when the prevailing arrangement is found inadequately to reflect the constellation of ICANN stakeholders at that future time? The world of 2045 is likely to be quite different from that of 2015 – will ICANN's constitution allow it readily to change with the times? - How will participants in the empowerment mechanism be held accountable to wider stakeholder circles, both 	

		<p>within ICANN (i.e. the ACs and SOs) <i>and beyond</i>? Legislators in democratic nation-states are subject to election by the general population, but delegates in the ICANN 'parliament' would only be elected by ACs and SOs, whose connections to wider constituencies – and that so-called 'global public interest' – can be quite thin? How does one ensure that the community empowerment mechanism does not become a vehicle for capture of ICANN by insider activists? Is this a weak point that opponents of the transition could target?</p>	
<p>2 2 4</p>	<p>auDA</p>	<p>- auDA does not agree with the CCWG's assumption about the 'degree of enforceability' expectations of the global multi-stakeholder community. The CCWG appears to have focussed primarily upon the current inability of the community to enforce its rights through a formal legal process, to address circumstances where the ICANN Board ignores the input of the community. auDA observes that the CCWG has seemingly identified this need for legal enforceability as a fundamental tenet of the accountability review, despite the costs, complexities and instabilities associated with delivering this goal. auDA disagrees with the CCWG that the benefits of legal enforceability outweigh these negative side effects.</p> <p>- auDA believes that the multi-stakeholder model (that ICANN is a core part of) should be allowed to perform the functions it was established for and operate with collaboration, negotiation and consensus-building. Mechanisms for escalation and arbitration should underpin the future of this model. auDA believes that, in the extremely unlikely event that the community would to move sue ICANN, the entire system of multi-stakeholderism and the very structure of ICANN would be irreparably and irreversibly broken, rendering the ability to initiate legal action and the prospect of the community "winning" its case a moot point.</p> <p>- In addition to our general cost vs benefit concerns about the value of enforcing accountability upon ICANN through legal means, auDA holds specific concerns about the implications this solution will have on sections of the ICANN community. In order to deliver legal enforceability, ICANN would either need to be radically remodelled into a membership-based organisation or SOs and ACs would need to appoint formal designators as holders of the community's powers over ICANN. In either case, the SOs and ACs would need to become legal entities in their own right.</p> <p>- Some SOs and ACs would, due to their structures, struggle to become an "unincorporated association", as would be required to ensure legal status. As such, "shadow entities" would be required to assume this role and act upon the instructions of their responsible SO or AC. This adds a new, untested level of complexity to ICANN structures. The shadow entities would require mechanisms to ensure their ongoing funding and support and would likely require contracts between them, ICANN and each other, resulting in very significant and complex changes. Further, a great number of accountability and operational mechanisms would need to be built in to ensure these shadow entities always adhered to their "parent" community's instructions. Communities would also need to enshrine systems for voting and selecting people to participate in their shadow entity. It is unclear whether all SOs and ACs could, given their structures, develop such voting mechanisms. In all these ways, an additional operational layer adds the need for a great number of new governance mechanisms. Additionally, bodies such as the ccNSO Council would need to appoint designees to participate in the shadow entity. This may not be appropriate or feasible for a number of ccTLD managers whose domestic arrangements prevent them from assuming a role that involves jurisdiction in the United States.</p> <p>- The CCWG states that: ". . .community participants would have the choice of opting in and participating in this new accountability system or to simply keep on doing what they do today in an ICANN that is more accountable than it is today". auDA disagrees with this statement. The CCWG is proposing a model that is purporting to empower the community, but is actually disempowering some stakeholders and decreasing their ability to effectively and directly affect the operations of ICANN.</p> <p>- A further negative effect of adopting a legal / membership structure is the ability for the unincorporated association or its members to be sued themselves. For example, Vox Populi Registry, which operates ".sucks" has recently threatened legal action²² against ICANN and "its constituent bodies" for defamation and other alleged breaches of US law. While ICANN can currently be held to account in US courts, ICANN's constituent bodies (which are not legal entities) cannot. Should the proposal of the CCWG proceed, it would be possible for aggrieved parties to initiate action directly against SOs and ACs (or their shadow entities). auDA believes this is a significant and unacceptable risk.</p>	
<p>2 2 5</p>	<p>DBA</p>	<p>- DBA emphasizes empowering the community with regard to i.e., spilling the Board, re- viewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.</p> <p>- The new structure (community mechanism) would be composed of ICANN's SO's and AC's as either members or designators with voting power. With regard to the role of governments, we believe that the Governmental Advisory Committee (GAC) should continue to be an advisory body.</p> <p>- Governments have a legitimate responsibility with regard to public policy concerns, which should be duly taken</p>	

	<p>into account. As such it is important that governments are given appropriate weight in the proposed multi-stakeholder reviews, including the ATRT Reviews. Moreover, as the organization will change, new ways for GAC engagement should be explored.</p> <p>- It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safeguards against capture from any specific stakeholder group in any way, including in ICANN's policy development processes and decision making functions.</p>	
<p>2 2 6</p> <p>WC comment 1</p>	<p>- The question of who will guard the guardians has arisen in the CCWG-Accountability's discussion space – put forward most clearly by Jan Aart Scholte (see above comment #).</p> <p>- Michael Goodhart has addressed the issue in this way: <i>In thinking about how to translate models and modalities of democratic accountability to the transnational context, scholars have naturally focused on the question of who is entitled to hold power-wielders to account. That is, they have emphasized the process of democratic accountability. This approach has not been terribly fruitful, because in world politics, the logic of democratic accountability breaks down. The familiar democratic mechanisms don't and can't work because their legitimacy turns out to have less to do with the mechanisms themselves than with certain distinctive features of the Westphalian state: First, the symmetry and congruence between citizens and rulers and between the laws and policies rulers make and their constituents; second, the peculiar status of the people, whose standing as a source of democratic legitimacy is a function of its taken-for-grantedness. Identifying democratic standards of accountability independently from the mechanisms with which they are commonly associated, advances the debate on accountable international relations.</i> In other words, Goodhart argues that in global governance at present the solution to the issue of representation is to identify democratic standards and values and use those as the template against which to measure an international organisation's accountability.</p> <p>- Frank Vibert argues that we need to recognise that we are living in an era which has seen the rise of unelected bodies or 'non-majoritarian institutions' at national and global level. He has identified a number of features of such unelected bodies: 1 Most operate in technically sophisticated areas; 2 Almost all rely on sources outside the government for information and knowledge; 3 With this specialised information and knowledge they form their own communities. As such, non-majoritarian institutions like ICANN are epistemic communities which are bound by a set of values, knowledge and standards rather than elected representatives of the billions of Internet users or netizens. At this stage of human development it is simply not possible for ICANN to hold global elections as it tried to do in 2000. That may be possible as technology changes in the future. Nor is there a fully representative system of world government at this point in history. What ICANN does have in its system of governance is a strong set of stakeholders from governments, business, civil society and the technical community. If the current proposal of the CCWG-Accountability is substantially accepted, this form of multi-stakeholder governance will constitute the ICANN community formally as one that has not simply a supportive or advisory role but one that has powers to hold the Board to account against a set of values and standards. This lays new ground in global governance.</p> <p>- As Richard Mulgan has pointed out, the danger of posing the question of who guards the guardians in a non-majoritarian representative context is that it leads to the problem of infinite regress: <i>If the only way of making one body accountable for how it holds others accountable is to establish a further agent of accountability to watch how this body holds others accountable, then this further agent itself will need to be held accountable by someone else and so on ad infinitum. The problem of how to guard existing guardians thus leads to a search for further guardians to guard existing guardians, a search that must be ultimately fruitless in the absence of a final guardian who does not need guarding.</i> Mulgan's solution to this problem is to propose a form of reciprocated, mutual accountability: <i>In such a structure, two or more parties are accountable to each other, rather than each being accountable to a different party, as in a linear chain of accountability. The legislature and the judiciary as well as holding the executive to account, are also accountable to each other. Courts can hold legislatures accountable for adherence to the law, including the basic rules of the constitution, while legislatures can hold the judiciary accountable for reasonable interpretation of existing law.</i></p> <p>- The question this raises is whether there is a space for mutual accountability within ICANN's systems of accountability and governance that can go some way to addressing the question of who guards the guardians. The question that Jan Aart Scholte raises - 'How does one ensure that the community empowerment mechanism does not become a vehicle for capture of ICANN by insider activists?' needs to be answered. Perhaps in addition to the community powers and the suggestion of a Public Accountability Forum, consideration could be given to establishing a Mutual Accountability Roundtable.</p> <p>- The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new community powers and possibly a Public Accountability Forum construct the community as a principal who calls the Board as agent to account, a line of</p>	

		<p>mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets once a year at the ICANN meeting that constitutes the annual general meeting. The form would be a roundtable of the Board, CEO and all supporting organisations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year at the end of each AGM who would be responsible for the next Mutual Accountability Roundtable. There could be a round of each structure giving an account of what worked and didn't work in the year under review, following by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement. It could be argued that this form of mutual accountability would contradict and undermine the 'linear chain of accountability' established in the new community powers and cause confusion. The answer to this is that ICANN needs a combination of accountabilities to manage its complexity as an organisation. In the IANA transition, it is critically important for ICANN to have a strong principal-agent relationship at the centre of its accountability system to replace that of the NTIA. However, that system is vulnerable to charges that the community assuming the role of accountability holder or forum is itself not representatively accountable to the global public of Internet users. To address this requires a way of introducing a system of mutual accountability as well as a recognition that ICANN is accountable as a whole ecosystem to a set of democratic standards and values captured in its Bylaws.</p>	
2 2 7	WC comment 2	<p>The second point that I don't quite follow in the discussion is where some people are arguing for unincorporated associations as a form of membership which seems to be the overall position of the group. But there's also an argument that individual chairs of SOs and ACs could assume that membership. I was just wondering if there's any clarity on that issue.</p>	
2 2 8	JS comment 2	<p>- One is to maximize the correlation between the ICANN community as represented in the community empowerment mechanism and the evolving wider world of global Internet stakeholders. Already one sees that the functional, regional and social distribution of participation in the IANA transition deliberations does not always correspond to the map of current Internet stakeholders. To be concrete, suppliers are much more present than users, the North Atlantic and Anglophones are much more present than their share of actual and prospective Internet engagement, and there is disproportionately low participation of young persons and women. The CCWG draft proposal acknowledges the issue of 'diversity', but no concrete steps are advanced to address the situation. In particular what, if anything, is going to be done - immediately and/or in the longer term - regarding the composition and workings of the community empowerment mechanism? Otherwise the purported 'empowerment' mechanism might in practice actually marginalize some important stakeholders. For example, would one do nothing if the SOs and ACs delivered a 'community empowerment mechanism' composed entirely of middle-aged white Anglophone businessmen from urban Euro-America-Australia?</p> <p>- A second key point is the accountability of those who hold ICANN to account, particularly through the new community empowerment mechanism. This can be a major challenge for private global governance institutions, as the current scandal around FIFA strikingly illustrates. How does one ensure that appointments to the 'community empowerment mechanism' do not become the object of cosy insider deals, where a small group of well-connected veterans control the show and become divorced from the wider world of constituents to whom they are meant to answer? Where membership of the community empowerment mechanism becomes a stepping-stone to membership of the board? One could imagine steps like a term limit, a prohibition on subsequent board membership, and intensified efforts by ICANN to attract new blood. The CCWG report could at a very minimum explicitly identify the issue of community accountability. Otherwise a skeptic can worry that the activist community has a blind spot and/or complacency on its own accountabilities.</p>	
2 2 9	NM	<p>I share Jan Aart Scholte's concerns about the accountability of the groups and how they're selected. If we are not more specific, we can find ourselves in an infinite regression of groups that oversee the groups that oversee the groups that oversee the groups. It is important that we be more specific that in order to participate, the groups have to be able to demonstrate that their own mechanisms for internal governance and for keeping their membership fresh and independent are sufficient. If we do not set minimum requirements for what qualifies as a "community" with oversight authority, this will not have any meaning.</p>	
2 3 0	CRG	<p>B. YES, but in my view at this stage of the draft that it would also make the internal difference between SO/AC delegates to the Board and NomCom delegates within the BOARD more obvious</p> <p>C. If the voting Members are not going to meet in a separate council, and delegates to the Board will have to follow the instructions of the community mechanism, leaving us factually with a two-tier Board, new operating principles may be necessary at the highest level (By laws).</p> <p>In my view and in the stated interest of minimum changes, WS1 should re-consider an earlier suggestion of the Northern European two tier Board.</p>	

2 3 1	AFRALO	<ul style="list-style-type: none"> - They do not see the unincorporated associations as a good means for SOs and ACs to exercise the powers included in the report because the practical application of the UA setup seem to be problematic and complicated. One of the problems is the fact that some of the community stakeholders may be unable and/or unwilling to become a UA, which means that they will not contribute to the community decision making process while exercising the proposed community powers. Also creating the UA may expose the SO/AC to legal issue as they may be sued within the California jurisdiction, which may harm the community members. - Any other form of legal entity to represent the SOs and ACs wouldn't be acceptable if it leads to suing those entities in courts. - All the accountability mechanisms should avoid leading to courts as much as possible. In fact, the AFRALO members do not accept that ICANN affairs be managed by courts in whatever the jurisdiction is. - The community group that will act on behalf of the respective community stakeholders to exercise the powers mentioned in the report should be as inclusive as possible. AFRALO members prefer equal footing for all SOs and ACs, but can live with the composition proposed in the report. 	
2 3 2	Govt-AR	<p>Governments have a relevant role at the national level; this must be considered in any new structure. Governments must have a role in multistakeholder reviews, with equal participation among other stakeholders.</p>	
2 3 3	Govt-IN	<ul style="list-style-type: none"> - Community empowerment is a quintessential part of ICANN Accountability, and it is appreciated that the CCWG Accountability's current proposal has identified community empowerment as an essential building block. - There must be robust oversight mechanisms, under which ICANN should be accountable to the global multistakeholder community, with adequate representation of geographical and linguistic diversity. - ICANN's accountability to various stakeholders may be calibrated in the context of the different roles played by stakeholders on various issues. In particular, a higher level of accountability towards Governments is required in areas where Governments have primary responsibility, such as security and similar public policy concerns. - In addition, ICANN must make efforts to broaden participation in the Government Advisory Committee (GAC), to take into account the views and concerns of Governments currently not having representatives on the GAC. 	
2 3 4	DCA-T	<ul style="list-style-type: none"> - The recommendation that 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. - It is important to formulate the membership criterions of the SO's and AC's so that there is accountability within them and this can translate into a better ICANN. 	
2 3 5	Afnic	<p>B - Provided that the legal advice states that the establishment of an "empowered community" assembly, being the assembly of members, will not change the liability and risks for all ICANN participants, this proposal only brings added value to the current situation (ref : 180. 5)</p> <ul style="list-style-type: none"> - Afnic welcomes this proposal that applies the accountability principles to the multistakeholder nature of ICANN. As the current organization of SOs and ACs is supposed to represent all the stakeholders, it's essential that these stakeholders should be fully empowered to undertake the checks, balance, review and redress process that come with accountability. - As for the reference model, Afnic is of the opinion that 5 seats per SOs/ACs (except for RSSAC and SSAC) is a good number. Afnic notes the rationale for it, which is to allow geographical diversity, but advise that this geographical diversity should be included in the bylaws, along with the provisions for the empowered community. It should therefore be stated that each SOs/ACs should designate no more than two representatives from the same region. - Finally, Afnic feels that the designation rules for each SOs/ACs, if they should be set by the constituency themselves, should be aligned between constituencies, and fully transparent. Furthermore, the designation mechanism itself should be, either organized by a third party to the constituency (for instance, an ICANN election office) or reviewed by external observers. 	
2 3 6	Govt-DE	<ul style="list-style-type: none"> - The envisaged membership structure (or similar constructs) would enable the SO/ACs to directly influence ICANN's work and exert greater oversight, ensuring adequate regard to all community interests. Germany would like to suggest that any choice of form of organisation for ICANN as a public benefit corporation should not preclude stakeholder groups from deciding if and how they want to partake as members. - ICANN's new organisational structure needs to meet the requirements of governments in a multistakeholder environment. In our view governments have an important role to play, particularly on global public policy issues. To this end, Germany sees no need to change the status of the GAC as an advisory body. It is necessary that governments continue to participate in decision-making processes via the multistakeholder model. To ensure ICANN's strong commitment to the public interest GAC advice will need to be duly taken into account in any future form of organisation. We are of the opinion that matters of public interest can be addressed best in this manner. 	

		Any legal or political assessment of the specifics of GAC’s future engagement with and within an empowered ICANN community should not be precluded. With regard to the multistakeholder approach in general it should be ensured that no singular interest can outweigh those of the community as a whole or the public in general.	
2 3 7	DP-DK	<ul style="list-style-type: none"> - We have alternative proposals that can distribute the power to enforce the Bylaws more broadly to representatives of the ICANN community. - One of the most serious accountability anomalies in ICANN’s current configuration is that, as a California non-profit corporation without members, any action that it takes in violation of its Bylaws can <i>only</i> be remedied in court by means of a lawsuit initiated by the California Attorney General; no other person has legal standing to bring such an action. This is, in our view, a crucial accountability problem. Enforcement of the ICANN Bylaws – whatever they may ultimately say, with whatever important limitations and representations they may contain as a result of this accountability process – should not be in the hands of a single person, whoever that person may be. To put it plainly, the entire accountability Proposal rests on the notion that the ICANN Bylaws bind the corporation in meaningful ways, and that the Bylaws – including the important new provisions to be added as part of this accountability process itself – will be adhered to. Seeing to it that that occurs is a critical part – perhaps <i>the</i> critical part – of any effective accountability scheme. The Bylaws are not self-executing; distributing the power to legally compel compliance with their terms to a broader category of community representatives, while it will not guarantee that the corporation’s future actions are all within the limits set forth in the Bylaws, is a most important part of the overall enforcement arsenal. Like the US government oversight it is designed, in part, to replace, it is a power that may never need to be overtly exercised, but its existence will help to give weight and substance to the Bylaws and to shore them up as a means of insuring proper and appropriate corporate behavior. We therefore strongly support the creation of a membership structure for ICANN as a means of distributing that enforcement power more broadly to representatives of the ICANN community. - The CCWG Draft Proposal suggests that the membership body would consist of 29 members, chosen in a weighted manner as follows: each of the three Supporting Organizations (the Address Supporting Organization, the Country Code Supporting Organization, and the Generic Names Supporting Organization) would have the right to appoint <i>five</i> members; two of the four Advisory Committees (the At Large Advisory Committee and the Government Advisory Committee) would also have the right to appoint <i>five</i> members; and the remaining two Advisory Committees (the Root Server System AC and the Security and Stability AC) each would appoint two members. We understand the rationale for weighting the various groups in this manner, and for the discrepancy in treatment accorded to the different Advisory Committees. The goal was to give “. . . the bulk of influence on an equal basis between the three SOs with which ICANN deals with policy development and the two ACs that are structurally designed to represent stakeholders (Governments and Internet users, respectively) within ICANN . . . while giving the other ACs a more limited role because they are primarily concerned with specific technical and operational matters and have not been constituted as “representative” of any particular stakeholder community. We prefer alternative A – in which each of the SOs receives four votes and each AC receives 2 votes – because it is both simpler and, as the Draft notes, “more closely aligned with ICANN’s existing structure,” giving “the bulk of influence to the SOs, while guaranteeing a say for the ACs on an equal basis among them.” A final decision on these alternative voting models should, however, await final decision on the powers that are granted to members in the Bylaws, and the manner in which those powers are to be exercised. In particular, given the requirement (see below) that the powers to be exercised by the members will in all cases require supermajorities, the two alternatives will have different consequences for coalition-formation (depending on what those supermajority provisions entail). - The CCWG Draft Proposal sets forth five specific powers to be exercised by the corporation’s members. While we support this general plan, we do not fully understand the rationale for requiring a supermajority of members to veto any changes in the ICANN Bylaws (other than Fundamental Bylaws). It would allow the Board to amend the (ordinary) Bylaws not merely in the absence of any consensus among the members that it do so, but even if a majority of the members disapproved of the amendment, and we fail to see a good reason why that should be permitted. 	
2 3 8	IA	<ul style="list-style-type: none"> - The SO/AC membership model in the Draft Proposal is still in its preliminary stages. - IA anticipates that this topic will remain subject to future rounds of comments and, reserves the right to submit further comments on this proposal when more details are provided. - With that understanding, Internet Association believes that this model is sound. - The membership model, coupled with having the SOs/ACs form unincorporated associations, gives the community the most power and enables SOs/ACs to enforce IRP awards against ICANN. It is, thus, the strongest of the proposed models for ICANN accountability. We also believe that the membership model is valid even if some SOs/ACs fail to form unincorporated associations. The Internet Association believes the Designator Model could be a sufficient alternative if the SO/AC Membership model is not accepted by the community. 	

<p>2 3 9</p> <p>eco</p>	<p>Proposed powers are an essential part of a proposal to replace the historic relationship between ICANN/IANA and the USG.</p> <ul style="list-style-type: none"> - Based on the legal advice received, the membership model appears to be the best proposition to operationalize the requirements established by the CCWG. eco fully supports the working method used by the CCWG based on requirements. - The most appropriate implementation model to translate established requirements into working structures and processes should be used. This includes that the established powers and mechanisms are sufficiently robust and cannot be ignored or easily be overturned. As a matter of last resort, enforcement of community powers must be possible. <p>Question 7. The CCWG has suggested a relative influence of the various groups based on an analysis of their composition and based on assumptions that a certain number of votes could facilitate geographic diversity. These suggestions are supported. However, the relative powers might need to be revisited based on feedback received from the groups in question. As long as the general idea of the suggested model is preserved, there should be flexibility in determining the final relative influence.</p>	
<p>2 4 0</p> <p>Govt-FR</p>	<ul style="list-style-type: none"> - Govt-FR await further details on how the principle of cultural diversity and a strict conflict of interest policy will be implemented in order to mitigate the risk of capture of the new institutional framework of ICANN by individuals or groups of individuals. - The proposed internal checks and balances mechanisms insufficiently address the risk of capture by individuals or groups of individuals of the new empowered entities within ICANN: "SO/AC Membership Model" and IRP, in addition to the Board. In order to mitigate the risk of capture of the new "SO/AC Membership Model", or even that of the Board, by a group of individuals, we would therefore expect all stakeholders within SOs and ACs to respect the principle of cultural diversity as identified in the NETmundial "Roadmap for the future evolution of internet governance" "There should be meaningful participation by all interested parties in Internet governance discussions and decision-making, with attention to geographic, stakeholder and gender balance in order to avoid asymmetries" - The new institutional framework of ICANN also remains exposed to the risk of capture by individuals who could take advantage of a weak conflict of interest policy. - It is necessary to have an ex-ante thorough conflict of interest policy providing some oversight over the selection of individual Board members, and leading to the exclusion of one or several of them. - Govt-FR call for the strictest conflict of interest policy to be implemented at Board, IRP and "SO/AC Membership Model" levels. - We are concerned that governments are expected to willingly consent to subject the GAC to California Law. In light of the above, we expect that the "SO/AC Membership Model" will need a legal vehicle for initial implementation. We understand, that flexible as it may seem, California Law offers only but a few options for implementation of the "SO/AC Membership Model". Moreover, it appears that all of them require stakeholders to give SOs and ACs legal status under California Law (Draft prop., section 5.1.1, §180, item 1). - Legal recognition of the GAC is an issue for France because States are subjects of international law only. This is why France does not recognize the GAC as a legal entity today. Like most States, only on the basis of an international treaty has France legally recognized – under international law – organisations that it has participated in. - <u>Requiring France, or any other State, to legally recognize</u> – under foreign law and in the absence of an international treaty – an intergovernmental body that it participates in like the GAC, is in fact unprecedented. Those are very serious concerns that currently under investigation in by our legal Department. - Has the CCWG-accountability considered that requiring legal recognition of the GAC by individual States could lead to a situation where one single State might, willingly or unwillingly, prevent the GAC to be empowered in the "SO/AC Membership Model"? Or worse: where some States might not even be able to be GAC members (anymore or in the future) if the GAC was empowered in the "SO/AC Membership Model"? Not only might the proposed implementation of the "SO/AC Membership Model" under US Law give lower chances to empowerment of the GAC, it also might leave governments lower chances to respect their international agreements through an empowered GAC. - Are we correct in understanding that the "SO/AC Membership Model" would nonetheless give members of other SOs and ACs the opportunity to vote and defeat an empowered GAC, in spite of governments' "rights and responsibilities for international Internet-related public policy issues" (as stated in Paragraph 35 of the Tunis Agenda and recalled in NETmundial Multi-stakeholder Statement, 2.I.1)? - Only governments, not ICANN stakeholders, can tell what public policy advice is and how to provide such advice. With regard to future Bylaws changes, are we correct in considering that the proposed "SO/AC Membership Model" will always expose the GAC to attempts by members of other SOs and ACs to change Bylaws art. XI.2 in order to not even duly take into account GAC advice in the future? Has the CCWG- accountability also considered 	

		that the new Core Value 11 might in fact create paradoxical situations by recognising that GAC advice is always public policy advice which the Board or the empowered community could nonetheless disregard as non- public policy advice?	
2 4 1	RySG	<ul style="list-style-type: none"> - Clarify how bodies that do not elect directors will participate in the Community Empowerment Mechanisms <p>The proposal however is silent on procedures for the Advisory Committees, namely the GAC, that do not elect directors. We ask that that further details be provided about whether these groups will also be expected to (or allowed to) for an unincorporated association and, if not, how they will participate in the revised community empowerment mechanisms.</p> <ul style="list-style-type: none"> - Review the role and structure of the NomCom under the revised community structure. The proposal seems to imply that the NomCom would be included as a member in the ICANN membership structure. We request that further details be provided about whether the NomCom would participate in the Community Empowerment mechanisms as a standalone body. We generally prefer that these mechanisms be deployed by a balance of the other community “members,” particularly given imbalances in the existing NomCom composition. - Include procedures for handling Supporting Organization Advice that is supported by Consensus <p>We believe that the Bylaw Clarifications regarding Advisory Committee Advice that is supported by consensus should apply equally to that from ICANN Supporting Organizations, which provide advice in addition to developing Consensus Policy. We believe it is important for the community to be able to force the Board’s hand if they are unresponsive to advice from SOs as well as ACs (387).</p> <ul style="list-style-type: none"> - RySG generally supports the proposed membership structure, without which the community powers might be unenforceable - RySG generally supports the proposed allocation of member votes outlined on Page 44 (para 191) of the interim proposal - Reference Mechanism seems to be a reasonable approach to vote distribution, but there may have to be distinctions depending on the category of issue. It should distribute votes across the five organizations that are involved in policy development and it also provides the possibility of providing representation across the five ICANN regions or to balance representation across internal groups, such as the Stakeholder Groups in the case of the GNSO 	
2 4 2	CCG	<ul style="list-style-type: none"> - As for the voting structure for the Empowered Community, the proposal states that the same has not been decided and will up for public comment after the second draft proposal. Does the voting structure have any bearing on the viability of this proposal? We know that 5 of the SOs and ACs in EC (Empowered Community) will have 5 votes each, however we do not know if these 5 votes reflect consensus within the communities. - SOs will have 5 votes to ensure that diversity of views (geographical diversity) can be implemented. How will the same be ensured, what voting procedure will be followed by these SOs, can ICANN Bylaws provide for voting/consensus procedure within the SOs? 	
2 4 3	JH	Even if the IRP determined that ICANN is wrong, how to deal with the wrong decision? The existing proposal did not clarify this part. There are two options to solve this problem: First option is to develop a set of punishment measures and be written into Bylaws by the communities. Second, do not develop a set of punishment measures. ICANN Bylaws only includes the ground of the two extreme cases. For specific cases, communities propose specific solutions and then vote.	
2 4 4	BC	<ul style="list-style-type: none"> - BC supports the proposed allocation of votes among SO/ACs in the ICANN community. - With 5 distinct votes, the GNSO could adequately reflect the diversity of interests between registries, registrars, commercial stakeholders, and non-commercial stakeholders. 	
2 4 5	.co.uk	<p>The discussion on “membership”, “designator” and “unincorporated associations” under Californian law is not something we feel comfortable offering an opinion on. The argument is complex and it is not easy to see the real benefits of the different models through the detail provided.</p> <p>We would, however, question the need to build complex legal structures within an organisation to allow the community to hold the Board it appointed to account. This seems to underline a lack of trust that needs to be addressed urgently: building new structures without developing trust in the organisation is not going to address the underlying issues.</p> <p>There does need to be some thought about how often processes can be triggered. The mechanisms will be seriously disruptive to the organisation if and when they are used and we would be concerned if there were to be a continued process that distracted the organisation – stakeholders and the Board – from oversight of the organisation or from developing a clear vision and strategy for the challenges and opportunities that we will confront. We would like to see there being clear cooling-off periods – in particular aimed at rebuilding trust in the organisation – before allowing another process to be launched.</p>	

		<p>There is a delicate balance between thresholds introduced to prevent frivolous use of serious – and potentially damaging – actions on the one hand and making mechanisms useless because it is nearly impossible to trigger those mechanisms. We recognise that the CCWG has attempted to reconcile this. To some extent, the balance is stark because there is no clear escalation process leading to the “nuclear” options of sacking individual Board members or the entire Board, or to vetoing the budget.</p> <p>We recognise that it should not be possible easily to put aside mechanisms that are in place to assure accountability. There is a downside to this: while the processes might be relevant and appropriate now, this might not be the case in the future. It might be possible for a small minority to prevent necessary institutional change in the future, thresholds locking ICANN into process that are no longer appropriate. This is, of course, a difficult issue and we are aware that the CCWG has given it some thought.</p>	
2 4 6	USCIB	<p>Overall, USCIB supports the proposal that Supporting Organizations (SO) and Advisory Committees (AC) establish themselves as legal entities by forming unincorporated associations. We agree that this approach would provide an effective means for SOs/ACs to exercise the powers and rights of Members of a non-profit organization incorporated in California on a number of critical governance issues.</p> <p>We further agree with the rationale used in assigning voting weights for the SOs and ACs as prescribed by the Reference Mechanism, in which the ASO, ccNSO, GNSO, At Large, and GAC communities each receive 5 votes, with the SSAC and RSSAC each receiving 2 votes.</p> <p>Para186: We note that all the implementation details, (such as how the communities will cast votes) will not be developed until the second draft, and we look forward to reviewing such details.</p>	
2 4 7	LINX	<ul style="list-style-type: none"> - LINX support the creation of new accountability powers for the community, and there needs to be some mechanism to utilise them. - It seems likely that the community powers could be more simply and transparently exercised by the SOACs directly than via the Reference Model, which seems unnecessarily complicated. - However, it appears the creation of “Membership” is necessary and unavoidable in order for the Bylaws to be binding on ICANN and enforceable, which is absolutely essential; concerns about complexity in some areas must not cloud the absolute requirement for ultimate enforceability. - We recommend that the CCWG consider granting the community powers to be exercised by SOACs directly, leaving only the power of enforcement to members (and putting in place whatever is needed to limit the powers of membership to enforcement of the Bylaws / of key bylaws). If this were done, we suggest that membership of ICANN could be offered to any person (natural or legal) who chose to apply for it. We are aware that this idea has had no traction within the CCWG so far, but it would appear to solve a difficult problem, and we are unaware of any convincing (or even reasoned) argument being made that it would cause any harm itself. - Community Powers: The proposed changes to the IRP would achieve the goal of creating a credible and enforceable mechanism to limit ICANN’s activities to its intended scope, provided that the Board abides by IRP decisions. This gives rise to a requirement for two things, both of which are essential: <ul style="list-style-type: none"> - A mechanism by which the Board becomes legally obliged to abide by IRP decisions, as opposed to having a fiduciary duty to prefer its own opinions of what is best for ICANN over IRP rulings; and - A mechanism whereby a Board that failed to abide by IRP rulings (or other specifically enumerated community powers, such as a Board spill), for any reason, could be challenged in court and a decision enforced upon it <p>CCWG proposes four powers for the community: (i) Reconsider/Reject Budget or Strategic/Operating Plans; (ii) Reconsider/Reject Changes to ICANN Bylaws; (iii) Approve Changes to Fundamental Bylaws; (iv) Remove Individual Directors; (v) Recall Entire ICANN Board.</p>	
2 4 8	ISPCP	<ul style="list-style-type: none"> - ISPCP believes a Membership model, allowing ICANN components (SOs/ACs) to enforce accountability through legal means, would carry a level of complexity and side effects. Some SO/ACs or constituencies would be in an extreme difficulty to become legal entities. This would carry jurisdictional and legal issues, funding issues and representativeness issues. It would not allow existing stakeholders to fully participate in the Multistakeholder process as of today. - ISPCP believes that enforcement of accountability mechanisms would be better achieved by much simpler mechanisms. - The weights given to the various parts of the community in the community mechanisms is very important question and is key to the accountability mechanisms proposed by the report. Yet, this issue is very briefly covered in the document without analysis of the rationale behind the approaches presented. The proposals do not take into account the work of the CCWG – “problem definition document”. This document comprises an analysis on which stakeholders can affect ICANN or be affected by ICANN, either directly or indirectly. - The weight proposed for the GNSO do not take into account the specifics of this supporting organization. All policies related to the gTLDs are made within ICANN, whereas policies related to the number part are developed at 	

		<p>regional level and most of it are regional policies. In a similar way policies related to the ccTLDs are only related to delegation/re-delegation at top level.</p> <ul style="list-style-type: none"> - As a consequence of the above, the GNSO is a large and complex organization comprising a large diversity of players (Registrars, Registries, Business, IPC, NPOC, NCUC, ISPCP) each of them needing to be directly represented. - ISPCP suggests that 7 seats being allocated to GNSO (1 Registries, 1 registrars, 1BC, 1 IPC, 1 ISPCP, 1 NCUC, 1 NPOC) in the community mechanisms decision body described in the document. 	
<p>2 4 9</p>	<p>JPNIC</p>	<ul style="list-style-type: none"> - We agree with the proposal to enhance community empowerment based on existing SOs/AC mechanisms, based on long tested experience, rather than basing it on a completely new mechanism. We have no objections to the composition currently suggested by the CCWG on representations from SOs and ACs. - Yes, we agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability. It is a common practice for stakeholders who appoint Board members within an non-profit organization, to have such mechanism. At the same time, we should seek for a balance of such powers, not to destabilize the system with too many challenges to move forward in key decisions needed to keep the organization running. - Regarding the proposed options, for the community empowerment in general, we would like to see its implementation to be simple, while ensuring that it gives the community the powers it needs. Too much overhead should be avoided, and preference should be given to simplicity in its adoption. - We are not sure whether it is essential for the SOs and ACs to have a legal standing while we note it is considered preferable by some members of the community. We would like to understand the reason that the legal standing is considered necessary, in balance with the possible cost implications and instability for ICANN. We would like to confirm whether there is a way to prevent abuse of this standing by the community, for stability of ICANN as an organization. 	
<p>2 5 0</p>	<p>IPC</p>	<ul style="list-style-type: none"> - The proposed "membership model" appears to be the most straightforward means to achieve enforceability of the proposed framework and is therefore supported by the IPC. <p>The IPC is generally supportive of using a community mechanism to give the community certain powers regarding certain Board decisions.</p> <ul style="list-style-type: none"> - The IPC generally supports the use of a "membership model" to ensure accountability to and oversight by the community. The role of members in a non-profit corporation (such as ICANN) is naturally suited for this role. The IPC also notes that the accountability structure proposed by the CCWG was designed with California law in mind, which underlines the need to keep ICANN domiciled and incorporated in California. - The IPC believes that each SO and AC should be given fairly broad leeway to determine if and how it forms or otherwise provides a "legal person" to act as an ICANN member. The IPC does not find the concept of the "unincorporated association" ("UA") complex, and notes with approval that it is lightweight and easy to form and manage (indeed, the IPC notes that many of the SO/ACs strongly resemble UAs already). However, it is possible that some SO/ACs may wish to form non-profit corporations rather than UAs, or may even wish to designate a natural person as the member, serving in an official capacity. - The IPC does not believe that the creation of UAs or other legal persons will diminish ICANN's functioning as a multistakeholder organization focused on building consensus. Similarly, the IPC does not believe that a rash of litigation will ensue merely because the ICANN community now has legal vehicles to use for litigation. - The IPC agrees that the use of "designators," on the other hand, would not be sufficient to support the accountability measures proposed by the CCWG. - There are issues in implementation that must be dealt with before the IPC can fully endorse the membership model. <p>Advice on the influence of the various groups in the community mechanism:</p> <ul style="list-style-type: none"> - The IPC has several concerns with the proposed composition and weighting of the membership as discussed in this section – 5 "votes" for each SO, At Large and GAC, and 2 "votes" for the RSSAC and SSAC. <p>First, this bears little resemblance to the way directors are currently appointed to the board, and we assume that the CCWG is not proposing any change to the composition of the board.</p> <ul style="list-style-type: none"> - This tends to diminish the influence of the GNSO, which represents the most significant portion of ICANN's work and revenues. Consideration should be given to a more flexible weighted voting structure, to avoid the situation in which SO's and AC's with no real involvement in the policy development, implementation or utilization of the matter under decision could effectively wield veto power over it. - this composition is yet another ICANN structure where the IPC is essentially made non- existent. If the 5 GNSO votes are translated into 5 representatives, that leaves one representative per stakeholder group, along with one wild card. Again, the IPC is expected to homogenize its concerns with those of the ISPs and the general business 	

		community, and hope that a member of one of these groups can somehow represent all 3. However, it is far from clear whether the CCWG envisions a 29-member council of some sort, or whether there will just be 7 members, with weighted votes. Our concern regarding the latter is that it truly flattens and wipes out diverse voices, and practically speaking puts the RSSAC and SSAC on an equal footing with the other organizations, except when votes are taken. This must be clarified.	
2 5 1	Govt-BR	<ul style="list-style-type: none"> - Brazil supports accountability mechanisms that provide a clear separation of powers within the ICANN structure. In this regard, the 4 building blocks proposed by the CCWG-Accountability – 'Principles', 'Empowered Community', 'Board' and 'Independent Review Mechanisms' – might address, in principle, this concern. - welcomes the proposal to create a "mechanism to empower the community". The implementation of the "empowered community" concept as one of the building blocks of ICANN's accountability would contribute to increase the perception of legitimacy, on the part of all stakeholders, of the corporation's decisions. - while working out the details of the specific mechanism, it will be important to ensure the participation of all relevant stakeholders independently of their status under the current ICANN structure, as the corporation's oversight should be transitioned to the global multistakeholder community and not to a limited number of stakeholder groups. - while evaluating the proper legal status of the stakeholder representatives in the new empowerment mechanism, the CCWG- Accountability final proposal should ensure that effective decision power be granted to the community. It would defeat the purpose of accountability if decisions made by the community could be overruled by the ICANN Board or by national courts (which, again, refers to the issue regarding the corporation's existing "legal status"). - With respect to the involvement of governments, Brazil considers that the GAC is a legitimate stakeholder group with specific concerns and should, therefore, be part of the proposed community empowerment mechanism. Appropriate arrangements should be adopted in order to ensure that the different groups of stakeholders could participate in such mechanism on an equal footing. However, given the corporation's present "legal status", Brazil considers that unsurmountable difficulties may prevent governments to participate, in a representative manner, in such body. The final decision as to whether government representatives shall have seats in the new mechanism should, in any case, result from the deliberations among governments themselves. - geographic, cultural and gender balance should constitute key principles in the formation of the community empowerment mechanism. Gender balance is another important element that should guide the selection of stakeholder representatives. 	
2 5 2	MPAA	<ul style="list-style-type: none"> - strongly supports the membership model as proposed. The membership model is the most effective way to cement these accountability reforms into the DNA of ICANN and to ensure true accountability of ICANN to the global multi- stakeholder community. 	
2 5 3	CDT	<ul style="list-style-type: none"> - a community empowerment mechanism is essential to realizing the levels of accountability and responsiveness to the community that will be required for ICANN and its multistakeholder community to thrive in the future. - We commend the CCWG and its advisors for identifying models that would allow for the community to exercise the proposed powers. We do not subscribe to the view that expansion of community powers through the bylaws without the enforcement capability of a community mechanism would be adequate. Not only would this lessen and inhibit the community's empowerment, it could imperil the IANA transition model proposed by the CWG Stewardship – the lack of enforcement would remove the checks and balances needed to ensure that ICANN heeds the community when it acts as the IANA steward, contracting party and operator. - we agree that the proposed membership model – including "legal personality" through unincorporated associations (UA) – could offer the greatest opportunity for the new community powers to be fully and most effectively realized. - supports the powers that are outlined in the CCWG proposal, sections 5.2 – 5.6. 	
2 5 4	CIRA	<p>The CCWG has identified four building blocks that would form the accountability mechanisms required to enhance ICANN's accountability. I believe this is the right approach to structure the work of the CCWG, however, I would like to highlight a few specific concerns regarding the draft proposal.</p> <ul style="list-style-type: none"> - Central to the mechanisms identified by the CCWG's proposal is an empowered community. While I agree that the specific community powers identified (the ability to recall individual board members, 'spill' the entire Board of Directors, review and revoke ICANN budgets and strategic/operating plans, and amend the fundamental bylaws) are important, I would like to share a few concerns about the proposed new structure that would see the SO/ACs as ICANN members (referred to as the Reference Mechanism). - As I understand it, the Reference Mechanism involves the SO/ACs forming parallel unincorporated associations (UA), in order to have the power under California law to enforce the accountability mechanisms as identified in the CCWG proposal. Otherwise, the structure and functioning of the SO/AC's could remain unchanged. - A considerable number of ccTLD registries are operated by government bodies, and many of those are members 	

		<p>of the ccNSO. As the ccNSO is a committee organized and recognized by the ICANN bylaws, its members are not required to enter into an agreement outside the parameters of the bylaws, thereby enabling their full participation in the ccNSO's activities. I am concerned that the creation of a formal legal association could result in some governments to pause before joining. I appreciate that it would be possible for such governmental agencies not to join the UA, but could this potentially create an organization which might be seen to be less open than the current ccNSO? I encourage the CCWG to examine the impact of a member-based structure on the global ccTLD community to ensure it is inclusive of all voices in the ccTLD community.</p> <ul style="list-style-type: none"> - The executive summary of the proposal explicitly states, "No third party and no individuals would become members of ICANN." While I agree that neither third parties nor individuals should be granted 'membership' status, I do believe that ICANN has been enriched by the participation of non-SO/AC aligned participants, and I would like assurances that these important voices will not be diminished should a membership-based model be adopted. Simply put, I would not like to see accountability come at the expense of expertise. With regard to the role of governments, I agree that the GAC should continue in an advisory role. I would prefer to see a model that would ensure that GAC advice, when backed by consensus, is given due consideration, and if rejected, is done so in a justifiable, transparent and open manner. - Finally, while I appreciate the assurances that the work of the SO/ACs would continue fundamentally unchanged, I would like to better understand whether the proposed model would result in additional time commitments on behalf of members. 	
2 5 5	SR	para 191 is reasonable as a start. We should have the ability to change later.	
2 5 6	USCC	<ul style="list-style-type: none"> - Strongly supports the membership structure proposal because it gives the community true enforceability. Significant legal work has gone into developing this portion of the proposal and without it, we fear that community powers would be unenforceable and there would be no true accountability. The membership model is the only way to secure these critical accountability reforms and to ensure true accountability of the ICANN Corporation, Board and management to the global multistakeholder community. - Believes the Membership model provides the best opportunity to secure the enforceable community powers required to provide sufficient accountability at ICANN. We further believe that the Designator model could be a sufficient alternative if barriers arise in implementing a Membership model. 	
2 5 7	INTA	<ul style="list-style-type: none"> - generally supports the Membership model, which the report asserts is consistent with California law. - does not support the proposed weighting of "community influence". In the current SO/AC structure business interests, except that of the contracted parties, are marginalized. INTA recommends that given the prevalence of trademark issues in the domain name system, in particular, business interests and advice be provided greater Community weight. - also unclear how each organization will determine how its votes will be exercised and how many representatives, 1 or 5 for example, will participate in full votes of the Community mechanism. INTA is concerned that depending on how voting is structured, the voice of the trademark Community, and specifically the voice of the Intellectual Property Constituency, may be marginalized or not heard at all. 	
2 5 8	.NZ	<ul style="list-style-type: none"> - supports a community mechanism along the lines outlined by the CCWG. We have made broad comments in support of the approach in the first part of this comment. - supports making use of the powers that can be granted to members in a non-profit public benefit corporation under California law. The powers proposed for members in the CCWG's report are powers we support and that can best, most reliably & most simply be delivered by a membership option. - supports the proposed share of influence in the community mechanism, noting that it provides a broad cross-section of the Internet community with the ability to hold ICANN to account. - We ask the CCWG to carefully consider whether it is appropriate to give a fully appointed AC (the SSAC) influence in this system, but await with interest the SSAC's own comments on this matter, and the comments of the GAC as to the workability of the model. - We prefer the Reference Mechanism, not the alternatives presented. 	
2 5 9	NCSG	<ul style="list-style-type: none"> - Within NCSG there is support for both the membership and the empowered designator models. NCSG generally recognizes that the membership model provides a viable way of being able to realize the potential of the 6 enumerated powers. - This said, there remain concerns that the membership model itself, including the unincorporated associations aspect thereof, may require considerable changes in the structures, processes and relative power of the ACs and the SOs and their constituent groups (Constituencies and Stakeholder Groups) that the CCWG may not have spent adequate time assessing. Some are also concerned about the accountability mechanisms available to stakeholders 	

		<p>when using a separate UA in the proposed model. We suggest that this deserves further discussion and that an empowered designator model be considered as an alternative.]</p> <ul style="list-style-type: none"> - While an empowered designator model may not provide the tightest control nor the easiest means of achieving community empowerment, the extent to which the desired community powers can be realized should be further explored in a designator model for comparison. There may be some willingness to live with some flexibility in terms of enforcement of some of the desired community powers. Some NCSG members believe that internal mechanisms can be put in place to better align the board and the community on matters relating to the organization’s budget and strategic plan such that tight legal enforcement on those matters is not the highest priority in this work. - Some in NCSG support providing each SO/AC with five votes in the community mechanism and others do not support that relative weighting of votes in the community mechanism and instead believe the relative weights should be more closely modeled on communities appointing to ICANN’s existing board of directors. - Regarding the introduction of a community mechanism to empower the community over certain Board decisions, yes, we find this essential to securing the levels of accountability that are necessary for ICANN to be able to successfully function as a fully accountable, transparent and multistakeholder entity going forward. - does not support the suggestion that the same levels of accountability and community empowerment could be achieved without such a mechanism. However we believe significantly more work needs to be done within CCWG regarding the specific model and the important details of that mechanism. For example, some are concerned that the emphasis on legal methods of enforcement particularly litigation, are inconsistent with, or simply antithetical to, the multi-stakeholder model and have potential to undermine this model in the long term. 	
<p>2 6 0</p>	<p>MM</p>	<p>I believe that this plan does not yet have a coherent and workable concept of membership. The draft has not made clear the full implications of selecting one of the two membership models considered by the CCWG (the designator model and the SOAC Unincorporated Association model). While it expresses a preference for the SOAC model, it is not entirely clear how that model would be implemented nor how it could be implemented without major realignments of power within ICANN that are unpredictable. The other problem with the membership proposal is the radical and rather odd rebalancing of voting power within ICANN that it proposes. Assigning an equal number of votes to GNSO, ccNSO, ASO, ALAC and GAC seems like an unfair allocation of voting power and one that works against aligning accountability with the stakeholders. When it comes to membership, it seems incongruous to this veteran of ICANN’s policy making process to consider Advisory Committees members of the same status as Supporting Organizations. With the separation of IANA and ICANN proposed by the CWG-Stewardship, ICANN is now more focused, as it should be, on policy development for domain names. This means that the two names-oriented Supporting Organizations, the ccNSO and the GNSO, are the key arenas for policy development in the new ICANN environment, and thus they are the stakeholders with the greatest interest in ensuring that the ICANN board is held accountable. ICANN’s role as the ratifier of global policies for numbers also justifies a membership status for the ASO, as the ASO represents an extensive global community for policy development organized around Regional Internet Registries. A membership proposal that assigned 5 votes to ccNSO, GNSO and ASO makes sense. It is the ACs that don’t really make sense in this scheme. Providing two votes to a highly technical committee whose membership is appointed by the ICANN board (SSAC) seems obviously wrong. If members are the key stakeholders for holding the board accountable, why do we have board-appointed committees afforded special membership powers? Both GAC and ALAC are also outliers in this proposal. Although one could make some case for considering ALAC a member, because it does select board members under the current regime, in terms of membership and participation ALAC is about the size of a single Stakeholder Group in the GNSO. Giving it the same weight as either GNSO or ccNSO seems woefully unbalanced. If it is to be considered a member at all it should be only two votes as proposed for the RSSAC. It seems especially incongruous to have the Governmental Advisory Committee become a member entity equivalent to a supporting organization. The GAC does not select board members and is barred from doing so by the current bylaws. The GAC is not supposed to be a policy development entity (although it oftentimes does not seem to understand that itself), but a provider of advice to the board on the policies developed by the bottom up process. The legal status of a collection of national governments and Intergovernmental organizations forming an unincorporated association under the umbrella of ICANN seems extremely odd, and will probably prove to be unacceptable to the GAC itself. In short, the proposed membership allocation does not make sense and needs to be rethought.</p>	
<p>2 6 1</p>	<p>Board</p>	<ul style="list-style-type: none"> - The membership model that is described within the CCWG-Accountability report is one of those main areas for which impact testing seems to be needed. One of the foundations of the CCWG-Accountability report is that a move to a membership model is a means to achieving the enhancements identified. The membership model is noted as providing a “viable” solution, with viable meaning “enforceable through a judicial process.” (Annex A to 23 April 2015 Counsel memo.) Recognizing that there is continued debate surrounding this enforceability issue on the CCWG Accountability mailing list, the concept of membership and enforceability seems to raise some questions 	

	<p>that should be considered prior to accepting a specific model, including analysis of what risks and liabilities are being introduced into the system as a whole. For example, while clearer community paths for impacting Board decisions may result in few situations where the community agrees that it is necessary to go to a California court to enforce a right against ICANN, there seems to be other questions about enforceability and impacts have not yet been considered. Such as:</p> <ul style="list-style-type: none"> • What opportunities and rights of action are we opening up under law for individual members to bring against ICANN that cannot be constrained by the Bylaws? • What rights under law do members have to bring actions against other members, and what impact could that have on the multistakeholder model? <p>Does this create opportunities for capture of ICANN or ICANN processes that are not an issue today?</p> <ul style="list-style-type: none"> • Are all parts of the ICANN community comfortable with the role that California courts will assume in enforceability of accountability reforms through the membership model? • If any SO/AC does not want to be a “member,” how does this affect the proposed SO/AC Membership Model? Would it minimize that SO/AC’s participation in the ICANN process if other SOs/ACs have the proposed powers and rights that the “missing” SO/AC does not? <p>- Under the current governance model, advisory committees are responsible for the provision of advice to the ICANN community and Board on certain areas (GAC for public policy issues; SSAC on security and stability concerns; RSSAC on root server stability; and ALAC on the interests of individual internet users.) For the areas of the proposal that rely upon a community “vote” to determine whether action should be taken, how are those pieces of advice proposed to be taken into account? How does the CCWG intend to deal with a Board action based on advice received from an AC that does not choose to become a member? What are the processes that the community would use to reject a Board action based on advice from the GAC, if it elected to do so? What is the basis for proposing to distribute two votes each to the SSAC and RSSAC (collectively less than any other single group in the voting model) when the Bylaws do not reflect any weighting of import across ACs? How does the CCWG contemplate ensuring that the security, stability and resiliency of the DNS be considered and maintained if the vote of the RSSAC and SSAC play such a limited role?</p> <p>- To the extent that ICANN decisions are subject to review or approval through the ICANN “empowered community” model via members, how is that group of members subject to considerations of conflict of interest identification in its decision making?</p> <ul style="list-style-type: none"> o How will the impact of a community mechanism decision be assessed with regards to the broad global public to which ICANN is responsible? And will stakeholders not directly involved in ICANN have a voice? o With regards to removing an individual board director, what is the threshold that triggers this? How will the process not be capturable? What will be the basis for removing a board member? Is it worth considering a threshold that requires more than one SO or AC to support the removal of a board member – thus ensuring that individual Board members are accountable to the whole community for their performance as a director, not just the SO or AC that originally selected them. o With regards to removal of the entire board, what actions trigger this? What mechanisms will be in place to ensure continued stability and security of ICANN’s mission and responsibilities, while a new Board is appointed? 	
<p>2 6 2</p> <p>CENTR</p>	<p>- We highly recommend the CCWG carefully check the option of creating a formal membership body with the power to hold the ICANN Board accountable. As a matter of fact, we understand that the SO/AC Membership Model has been scrutinised from the ICANN Bylaws perspective, but not from the perspective of those organisations/companies that are expected to become “engaged”. Therefore, considering this is one of the most sensitive elements in the entire proposal, we invite the CCWG to further investigate the model from a legal perspective and present an ad-hoc paper about it to the community to explain – as clearly as possible – who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members, as well as possible financial and administrative provisions of such a body. The current proposal fails to describe these crucial elements in plain and clear words.</p> <p>- Furthermore, we firmly believe that sentences like “community participants would have the choice of option in and participating in this new accountability system, or to simply keep on doing what they do today in an ICANN that is more accountable than it is today” are poorly formulated and: introduce discrimination in processes that should be kept multistakeholder and bottom-up based; fail to acknowledge the existence of participants that may like to join the new model, but cannot do so because of the legal framework from which they operate.</p> <p>- We support the principle that the existing functions and work of the SOs and ACs would continue being done within the framework of the ICANN Bylaws and that only the new accountability powers require use of the “unincorporated associations” mechanisms.</p> <p>- CENTR recommends that the CCWG further investigates the membership model from a legal perspective and present an ad-hoc paper about it to the community to explain who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members as well as possible financial and</p>	

		<p>administrative provisions of such a body; highlights the importance of keeping the multistakeholder model as one of the key principles of ICANN.</p>	
<p>2 6 3</p>	<p>NIRA</p>	<ul style="list-style-type: none"> - NIRA agrees with the introduction of a community mechanism but is unsure what and how the proposal on unincorporated status for SOs and ACs would work since this is the only way that the community can challenge and veto the decisions of the ICANN Board based on the California Law. CCWG should a rethink of the issues as they relate to GAC. NIRA finds it difficult to comprehend how governments can become an unincorporated entity in another jurisdiction. - NIRA would suggest a further exploration of globalization of ICANN that can provide a legal flexibility in the Bylaws that can allow the community exercise an oversight role similar to what NTIA currently does with ICANN. - The fact that there are restrictions within the existing legal status of ICANN that has the Board as the final arbiter in any policy development and processes including budgets and Bylaws changes and the legal status of ICANN based on California Law are the underlying rationale. - NIRA welcomes the proposal, however, it is unclear how the GAC fits in there, bearing in mind its working methods. 	
<p>2 6 4</p>	<p>ALAC</p>	<p>Section 5.1:</p> <ul style="list-style-type: none"> - has significant concerns with the concept of enforceability. With the exception of removal of one or more Board members, most ALAC members do not believe that legal enforceability is either required or desirable. - has significant concerns that a formalising of Legal Accountability that will open the door to litigation between the ICANN Communities and the ICANN Organisation also opens the door to third parties using the system for ICANN to self-destruct. We see it as an aberration that ICANN Community and Organisation would sue each other, resulting in every ruling causing harm to ICANN. This would be a loss-loss scenario. - specific concerns on the possibility of personal liability on volunteers who are not backed by any corporate employers who might have interests similar to theirs. <p>Moreover, if one looks at past cases where parts of the community were displeased with Board actions, it is difficult to find instances were:</p> <ul style="list-style-type: none"> • Sufficient parts of the community were displeased so as to trigger the kinds of powers we are now envisioning; and • The situation was sufficiently severe as to warrant community action. <ul style="list-style-type: none"> - understands that the prime intent of “enforceability” is not to take legal action, but to ensure that the community has the power to convince the ICANN Board that community wishes should take precedence. Nevertheless, the existence of such ultimate power is troublesome to many within the ALAC and At-Large. - believes that even in the unknown future, if ICANN is to be viable, there must be sufficient goodwill to ensure community empowerment, and that the threat of removal will be sufficient to cover any eventuality where this is not the case. • If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants. • ICANN must fully fund any legal or other actions taken by the above entities in enforcing the powers granted herein. • Indemnification funds must be held in escrow to ensure that they will be available without requiring ICANN action to release them. • Legal enforcement of community powers could ONLY be exercised if a critical mass of SO/ACs supported such action. Individuals and/or less than a critical mass of SO/ACs could not take such action and certainly would not be indemnified if such action could not be effectively controlled. • The availability of indemnification and holding the funds in escrow must be enshrined in a Fundamental Bylaw. <p>In summary, enshrining the powers in the Bylaws is critical. Legal enforcement of them, with the exception of Board member removal, is of far less importance.</p> <p>If a choice between Members and Designators must be made, the ALAC believes that Membership is the correct choice. It is a simpler and well understood concept. Even if designators could achieve the same results, it is a construct that is foreign to most of the community and will add another level of complexity to an ICANN which is already nearly impossible to explain to newcomers or outsiders. Since both require legal status, there does not seem to be anything in favor of the adoption of the Designator model.</p> <ul style="list-style-type: none"> - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could 	

		<p>accomplish that (similar to the mechanism described in Paragraph 235).</p> <ul style="list-style-type: none"> - Section 5.1.2 Influence in the Community Mechanism: The ALAC would accept the Reference Mechanism of 5 votes per SO, the ALAC and the GAC, and 2 votes for the SSAC and RSSAC only if the SSAC and RSSAC agree. In all other matters, these ACs are according similar rights and privileges in ICANN and the ALAC sees no reason to alter that at this point. Although the size of the SSAC and RSSAC are "small", so is the ASO, and there seems to be no question about according it full weighting status. We note that it might not be unrelated that the SSAC and RSSAC have been allotted lesser status and neither are represented in the CCWG. The SSAC has explicitly stated that it is not a chartering organization SOLELY due to lack of available resources and not due to lack of interest. - In the absence of support for the Reference Mechanism by the SSAC and RSSAC, the ALAC supports Alternative B giving all ACs and SOs 5 votes. - Five is the correct number to allow regional diversity to be adequately covered by those ACs and SOs that are organized base on ICANN's regions. - Under no circumstances would the ALAC agree to support Alternative A giving 4 votes to SOs and 2 votes to all ACs. 	
2 6 5	RSSAC	<p>We do note that in the past, the purpose of RSSAC was to act in an advisory role to the ICANN board and community. RSSAC is happy to continue in its role as an advisory body. However, the proposal from the CWG also places additional responsibilities and requirements upon RSSAC that need careful consideration. As a specific observation, some RSSAC members are uncomfortable with the membership mechanism proposed as long as RSSAC is structured as a board appointed committee under the current charter. RSSAC currently has no plans or capacity to undertake a re-structuring that would eliminate this concern. In order to create a positive consensus view in RSSAC about the CCWG proposal we need to know a great deal more about the implementation and operation of the structures and procedures it discusses. As a specific point, we surmise that formal action by the members would be rare, not likely in the course of normal operations and decisionmaking in ICANN, but it would help us to have that view confirmed.</p>	

Power: Reconsider/reject budget or strategy/operating plans

Question 8: Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
2 6 6	RH	Question: Yes. Membership should have full powers.	
2 6 7	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.	
2 6 8	CRG	<ul style="list-style-type: none"> - In principle yes, but don't think is efficient with the present structure of the budget presentations. - The Budget Veto mechanism should be developed to make transparent to the community how resources are being assigned not only to programs and priorities, but the the different parts of the ORGANISATIONAL STRUCTURE, like the full budget assignments between the major areas of (a) policy development, (b) compliance and (c) operational functions, separate from the corporate overhead which is not the case today. 	
2 6 9	DCA-T	<p>YES</p> <ul style="list-style-type: none"> - Moreover, the community should also have the power to veto or approve any plans to scrap an on-going strategic planning process. - The community should be allowed to be fully included in any discussions especially regarding the regions they come from, in the past, ICANN leadership has been seen to side with some stakeholders while alienating others yet they come from the same region and share interests. - ICANN must maintain impartiality and promote inclusivity in all budget or strategy/operating plans proposals 	
2 7 0	Afnic	<ul style="list-style-type: none"> - Afnic strongly support this proposal. Not only it is necessary for the empowered community to be able to review the IANA functions budget (as clearly stated by the CWG-Stewardship) but also this will allow better quality interactions between staff, board and community on the budget and strategy BEFORE it's approved by the Board. - The limitation of powers such as not rewriting the budget or the super-majority needed to reject the budget twice seems reasonable. 	
2 7 1	IA	<ul style="list-style-type: none"> - Allowing the community to veto the budget or the strategic plan raises questions of efficiency and effectiveness. These are key operational documents, and holding them up for multiple cycles of back-and-forth between the Board and the community could be highly detrimental to ICANN's operational effectiveness. - IA suggests a workable solution may be to allow the SO/AC Members to place a one-time veto per cycle for these two powers, which the Board could override by providing an explanatory statement explaining why rejection of the 	

		veto was consistent with ICANN's mission and the public interest.	
2 7 2	RySG	- RySG agrees that enabling the community to reject a budget or strategic plan would help to enhance ICANN's accountability. The ability to control the budget is essential as it would have the most direct impact on Board and management actions and activity. - RySG agrees with the list of requirements for this recommendation	
2 7 3	BC	- BC supports the proposed community power to reject ICANN's draft budget and strategic plans. It seems appropriate to require 2/3 majority in the first vote and 3/4 majority in subsequent votes. - BC is concerned that a sustained rejection of ICANN budgets and strategic plans could result in the corporation having to operate under prior approved budgets and strategic plans for multiple years. This is not an efficient or effective way to operate an organization like ICANN, and the BC believes CCWG should consider at what point the budget and strategic plan vetoes would be truncated after multiple votes to block the Board's proposal. - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.	
2 7 4	.co.uk	Again this section shows a significant lack of trust in ICANN and its processes. This needs to be addressed. That the complex processes that ICANN goes through in developing strategy, operating plans and budgets, with open consultation, could lead to proposals being rejected by the community suggests something is seriously wrong. Some form of intermediary process – promoting dialogue between the executive and/or Board and the community – is needed to avoid disruptive processes.	
2 7 5	USCIB	- Para 199: We strongly support the power for the community to reject a budget or strategic plan. In many instances, the power of the purse provides the ultimate check on an institution's. Further clarification also is needed regarding what constitutes when the Board has "failed to properly consider community input." - However, USCIB shares the concerns of the ICANN's Business Constituency (BC) that a sustained rejection of ICANN budgets could result in the corporation having to operate under prior-approved budgets for multiple years, comparable to the U.S. Government's practice of operating under a "continuing resolution" based on the budgets of prior fiscal years. This is not an efficient or effective way to operate an organization like ICANN, and USCIB concurs with BC recommendation that the CCWG consider at what point the budget veto would be truncated after multiple votes to block the Board's proposal.	
2 7 6	LINX	We are doubtful of the value or effectiveness of the power to reconsider/reject the Budget and Strategic/Operating Plans, but we are not strongly opposed to this power as designed. We would be opposed to greatly strengthening it.	
2 7 7	JPNIC	It is a common practice for stakeholders who appoint Board members within a non-profit organization, to have the powers over key decisions made for the organization. We also recognize this as the power identified as required by the CWG-Stewardship.	
2 7 8	CWG-St	Including the ability for the community to have more rights regarding the development and consideration of the ICANN budget.	
2 7 9	IPC	The IPC generally supports some form of community oversight and "veto" over budgets and strategic plans, beyond the current public comment exercise. The IPC agrees that this power should be relatively narrowly focused and rely on inconsistency with ICANN's mission and role. A horse-trading line-item-veto process would be unwieldy and put too much power in the hands of the members. In that vein, there should not be an endless loop of feedback. The IPC is concerned by the reference to "subsequent rejection/s" and does not believe there should be more than two bites at the apple, at most. Rather there should be an appropriate consultation process to work through any issues that caused rejection in the first place.	
2 8 0	USCC	Allowing the community to reject a budget or strategic plan would enhance ICANN's accountability. The list of requirements for this recommendation is satisfactory. However, the CCWG should create a proposal that guards against a situation where the Board and community could go back and forth submitting and rejecting several iterations of a budget, and avoid stalemate.	
2 8 1	INTA	- agree that giving the Community the power to reject a budget or strategic plan would enhance ICANN's accountability. However, as presented, we have concerns with the potential for this new power to lead to an impasse or budget crisis. In that regard, it is recommended that the feedback and amendment process not be unlimited. - rather than the Community having a limited number of opportunities for rejection, the Community and Board could be required to participate in mediation or some other form of consultation to resolve the matter. we believe that this type of dispute resolution should be clearly defined and set forth so that all the Community members understand how dispute resolution related to the budget would be handled.	

2 8 2	.NZ	- supports this power as an enhancement to ICANN’s accountability. We are in support of the requirements set out. We note that the annual budgeting process will need to be adjusted to make provision for this power, and consider that that falls naturally into a broader improvement in the budget process that could be part of Work Stream 2.	
2 8 3	NCSG	Some NCSG members believe the ability of the community to intervene in the budget process is a mechanism which is extremely important. A strong ability to ensure that the security and stability of the DNS is not impacted by unwise budgeting or financial planning is at the core of the community's responsibility to their stakeholders and the internet as a complete whole. Other NCSG members would like to see internal mechanisms put in place at ICANN to more closely align the board and the community at various stages in the process including the extent to which agreements between the two can be required before such decisions can be finalized. While the board may have the final say, processes can be put in place to direct the board to work more closely with the community in reaching the ultimate decision. For some NCSG members, that requirement would be sufficient on this issue.	
2 8 4	GG	The community’s power to recall the ICANN Board and veto ICANN’s strategic plan and budget should be reasonably limited. We applaud the CCWG-Accountability’s efforts to identify potential accountability measures to protect ICANN’s key operations in a crisis. However, we believe that one proposed accountability measure – the ability of the community to veto ICANN’s strategic plan and budget – should be limited. Put simply, we do not believe that the community mechanism 14 should be able to veto the strategic plan and budget over multiple iterations. We have seen this play out in multiple global governing institutions and while it does provide an opportunity for checks and balances it also can render an organization unable to carry out its mission. We need to make sure we are striking the balance between accountability and organization paralysis. The community should be able to submit an initial veto, but if the ICANN Board chooses to override that veto, it should be able to do so provided it submits a detailed report that summarizes its reasons for doing so. If the community remained unsatisfied with the Board’s explanation, it could invoke the Independent Review process or seek to recall individual Board members to change ICANN’s direction. A process in which the community and Board could go back and forth for months at a time would unnecessarily and significantly degrade ICANN’s operational efficiency. For similar reasons, we are concerned that the power to remove the ICANN Board as a whole could have a potentially destabilizing effect on the Internet ecosystem. While we 15 believe that the Proposal’s suggestion that the community have the power, in exceptional circumstances, to remove individual Board members is a prudent way to enhance the organization’s overall accountability, we believe that the decision to remove the entire Board should still happen on the basis of particular, serious concerns with each individual Board member, not a generalized objection to the Board as a whole. For this reason, we would favor the community only having the power to remove individual Board members.	
2 8 5	Board	We recognize the importance of affording the ICANN community a voice in assuring that the Strategic Plans of ICANN are within ICANN’s mission, that budgets support the mission.	
2 8 6	CENTR	We support the ability of the community to reject strategic and operating plans/budgets which have already been approved by the Board if they are believed to be inconsistent with the purpose, mission and ICANN’s role as set out in the Bylaws. To this respect, we strongly reiterate the request that ICANN should be more transparent in terms of IANA’s function costs and their itemisation. We believe that the community power should consist in inviting the Board to review the plans, but not in re-writing them. A better enhancement of ICANN accountability would occur if certain recommendations made unanimously by various stakeholder groups are taken on board at the time of their submission. That would avoid time consuming iterations like the Board approval of a plan and its possible, subsequent rejection by the community membership body.	
2 8 7	NIRA	Yes, however, further safeguard should be provided against abuse, e.g. number of times the budget can be rejected by the community, and what options the Board may have in such situations.	
Power: Reconsider/reject changes to ICANN “standard” Bylaws			
<i>Question 9: Do you agree that the power for the community to reject a proposed Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.</i>			
#	Contributor	Comment	CCWG Response/Action
2 8 8	RH	Question: Yes. Membership should have full powers.	
2 8 9	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	

290	Afnic	Afnic supports this proposal. Nevertheless, if the change proposed by the Board can modify the number of SOs/ACs and subsequently their respective weights within the members' assembly, this change should be approved with a supermajority as described below (ref: 5.4).
291	RySG	<ul style="list-style-type: none"> - RySG agrees that an enforceable community power to reject a proposed Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community. We agree with the list of requirements for this recommendation, including the proposed 2/3 majority for a first member vote and 3/4 majority in any subsequent member votes. - RySG notes the following recommendation: <i>"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)."</i> We understand the desire to put a time limit, but two weeks is a terribly short deadline for a multi-stakeholder process, so we would instead suggest at least 30 days.
292	BC	<ul style="list-style-type: none"> - BC supports the proposal to allow the community to block a Bylaws change sought by ICANN's Board. It seems appropriate to require 2/3 majority in the first vote and 3/4 majority in subsequent votes. - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.
293	.co.uk	We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG's proposals.
294	LINX	We strongly support the existence of this power. A time limit of two weeks to coordinate all the necessary parties to exercise the power to reconsider/reject changes to ICANN Bylaws is much too short. We suggest instead that the deadline should be the end of the next ICANN meeting that begins no sooner than one month after the Board posts notice of adoption. A bylaws provision could allow the Board to treat a Bylaws change as presumptively effective from the moment it posts notice of adoption, even though time window for the community to reject it remains open.
295	JPNIC	Yes. Bylaws include Core Values, Mission and the clearly defines the scope of ICANN's activities. The community should have the ability to request for reconsideration or reject changes to the document which is such core to the organization.
296	CWG-St	We understand that in Section 1.4, on page 12 of the CCWG Accountability interim proposals, you do acknowledge the intention of the CWG Stewardship to create a Customer Standing Committee. Moreover that you have not yet considered specific bylaw changes related to the CSC. However, we are encouraged by your view that such an addition would not, in your view, contradict any of the CCWG Accountability proposals. We will look further into this and may indeed, as suggested by your chairs' submission to the CWG-Stewardship public comment, draft and specify this directly as one of the CWG Stewardship recommendations.
297	IPC	<ul style="list-style-type: none"> - The IPC commends the CCWG for recognizing that SO/ACs (with input from the larger community) should have the right to reject Board approved Bylaw changes prior to such changes becoming effective. Allowing SOs/ACs the right to reject Board approved Bylaws is in keeping with ICANN's multi-stakeholder model. - The IPC disagrees with the short time period to object to a proposed Bylaw change: recommends a 60 day window to decide whether or not to reject a proposed Bylaw changes. - The IPC is unclear why the CCWG recommended a 3/4 threshold for the community to reject a change to a "standard" bylaw or the introduction of a proposed standard bylaw. The IPC notes that the Board is required to approve any such new or changed bylaw by a 2/3 majority. Perhaps it would make sense for the "community veto" to be subject to a 2/3 majority as well
298	USCC	The ability of the community to reject a proposed bylaw change would enhance ICANN's accountability. The list of requirements for this recommendation is satisfactory.
299	INTA	<ul style="list-style-type: none"> - supports empowering the Community, through Member SOs and ACs, to reject amendments to the standard Bylaws proposed by the Board. - recognizes that 3/4 support is required to reject a Bylaw amendment, however, are concerned that the exercise of this power could result in an impasse. It is recommended that mediation, arbitration, or some form of consultation process be imposed at some stage. Further, with respect to any mediation or arbitration, this process should be clearly defined at the present time. - also suggest that the time period (one month for example) for objecting to a Bylaw amendment be extended in order to allow organizations to consult properly with their members. - questions whether 3/4 is the appropriate threshold for a first time rejection of a Bylaw amendment, noting that only 2/3 of the Community mechanism is required for a first rejection of a proposed budget or strategic plan.

300	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out – this will be a straightforward change to the bylaws adoption/amendment process.	
301	HR2251	- The term "supermajority" is defined for purposes of the bylaws of ICANN to mean, with respect to a vote of the board of directors, an affirmative vote by at least four-fifths of all directors. - A change in the bylaws of ICANN requires a vote of a supermajority of the board of directors.	
302	NCSG	Yes, we agree.	
303	CENTR	We support the possibility for a new body to reject proposed Bylaw changes after their approval by the ICANN Board, but only before they come into effect. At the same time, we believe this power may slightly improve ICANN's accountability, but it may also impact the Bylaws amendment process and make the ICANN Board/staff in charge of it more defensive when coping with Bylaw changes. Over the past decade, we have witnessed a slow approach of ICANN staff and Board to certain Bylaws changes. The introduction of a community power even to reject Bylaws changes after their approval might push the ICANN staff (in charge of all the various preparatory, consultative, editorial and administrative steps to introduce the amendments) and the Board to delay possible change processes until there is certainty that they will not be questioned by the community at a later stage.	
304	NIRA	Yes, however, NIRA is of the opinion that a limit should be provided on number of times the community can reject changes.	
305	LAB	- para 212, a two-week window is indicated for exercising the proposed power to reject Board approval of changes to Bylaws. I query whether this is a sufficiently long time frame.	

Power: Approve changes to "Fundamental Bylaws"

Question 10: Do you agree that the power for the community to approve any fundamental Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
306	RH	Question: Yes. Membership should have full powers.	
307	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	
308	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and <u>amending the Fundamental Bylaws</u> .	
309	Afnic	Afnic supports this proposal.	
310	RySG	- RySG agrees that an enforceable community power to approve any Fundamental Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community. - RySG agrees with the list of requirements for this recommendation, with the addition of ICANN's existing Bylaw XVIII Section 1 current bylaw establishing ICANN's principle office location .	
311	BC	- BC supports the approval mechanism for Fundamental Bylaws. - BC notes the recommendation to include ICANN primary office location as a fundamental bylaw - BC notes that Article 18 should be a Fundamental Bylaw - BC hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law. - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.	
312	.co.uk	(part b) We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG's proposals.	
313	USCIB	Para 199: We strongly support the requirement that the community ratify new "Fundamental" by-laws by giving	

1 3		positive assent.	
3 1 4	LINX	We strongly support the existence of this power.	
3 1 5	ISPCP	- agrees that the introduction of Fundamental Bylaws in principle would enhance ICANN's accountability. However by introducing specific Fundamental Bylaws a trade-off between the potential accountability enhancement and ICANN (board) limitation to accomplish the mission seems to be needed. This should be discussed in particular under Work Stream 2. - As part of Work Stream 1 we do not see the necessity to add further Fundamental Bylaws.	
3 1 6	JPNIC	- This is a common mechanism for non-profit organization. It is good to have checks and balances on the Board decisions. We recognize this is again listed as a requirement by the CWG-Stewardship. - We do not see a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to proposal new Fundamental Bylaws or changes to existing ones. It is not clear how this enhances accountability and implications of adopting such system. This may be something for consideration in the long term, as a part of Work Steam 2, if such needs are identified.	
3 1 7	IPC	The IPC agrees that empowering the community to approve any change to a Fundamental Bylaw will enhance ICANN's accountability to the community. However, at this time, there does not appear to be a well-defined list of requirements for this recommendation, either in Section 5.4 or in Section 3.2.3. It is critical that these requirements be expressed with clarity, and the IPC urges the CCWG to revisit these sections for purposes of clarification.	
3 1 8	Board	We recognize that the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community.	
3 1 9	USCC	Yes, the community approval of any fundamental bylaws would enhance ICANN's accountability and we believe is the list of requirements for this recommendation is sufficient.	
3 2 0	INTA	- generally supports the idea of requiring some form of assent or involvement of SO/ACs as outlined in §5.4. However, INTA may later object to this requirement depending upon the details of the assent process and we respectfully note that there are flaws in the current proposal since the SO/AC structure is not truly representative of the entire Community and its various constituencies. - supports mechanisms to make it more difficult to change ICANN's purpose and core values and processes and powers critical to its accountability. However, the process for distinguishing between standard and fundamental Bylaws and for objecting to each, will have to be very clear and this standard is not clear enough in its proposed form. For example, at the present time, there is not a list of requirements for this recommendation either in Section 5.4 or Section 3.2.3. We recommend that ICANN develop a list of recommendations and submit them to the Community for public comment. - supports the concept that changes to such Bylaws should require Community consent before changes are implemented, rather than the rejection mechanism available for standard bylaws.	
3 2 1	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out: we support the "co- decision" model that this represents, with the Board and the community mechanism together having to approve changes to Fundamental Bylaws.	
3 2 2	NCSG	Yes, we agree.	
3 2 3	CENTR	We believe that the power of the membership body to reject proposed Bylaw changes after their approval by the ICANN Board before they come into effect and to give positive assent to any change to the Fundamental Bylaws before completion might seriously hamper the process flow and therefore, introduce unnecessary approval layers. Accountability mechanism refinements might be better introduced at the Board representativeness level rather than via new approval layers. The fact the Board does not represent the community that elects it indicates one of the intrinsic accountability issues discernible in the current ICANN structure.	
3 2 4	NIRA	NIRA agrees.	

Power: Recalling individual ICANN Directors

Question 11: Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
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3 2 5	RH	Question: Yes. Membership should have full powers.	
3 2 6	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	
3 2 7	CRG	Removing an individual Director: again this makes the difference between NomCom and SO/ AC directors so obvious, that I'm afraid it will necessarily put the present operating procedures of the Board under review.	
3 2 8	DCA-T	<ul style="list-style-type: none"> - Recommendation: Add a clause to allow individuals to be able to lodge valid complaints about a particular board member (s), then this can be viewed by the petition of at least two of the SOs or ACs (or an SG from the GNSO). - The creation of a separate special committee of the NomCom to deal with removal petitions when they arise will be a viable proposition since it allows each special committee to be appointed on case by case then disbanded when a closure of a removal petition is finalized - There should also be a provision that enables a Standing Community Group to investigate any Conflict of Interest allegations against Board members, and the Standing Community Group to determine whether or not such alleged Conflicted Board members should be made to recuse themselves on a pertinent (or particular) Board issue. Conflicted Board members who fail to recuse themselves should be voted out from the ICANN Board. 	
3 2 9	AFRALO	Recalling one or more board members without reason is an aberration in itself; Its impact would be that the Board directors will act in the interest of the SOs or ACs that appointed them rather than acting in the interest of the entire community (ICANN as an organization). The AFRALO members believe that such a power shouldn't exist in the CCWG recommendations. It shouldn't exist also because the Board directors appointed by the NomCom would have a different recalling procedure that makes the whole members of ICANN board not having an equal treatment.	
3 3 0	Afnic	<p>Afnic supports this proposal. Furthermore, Afnic wants to recall that mechanisms set by ACs and SOs for the removal of the board member they appointed should be transparent and aligned between constituencies.</p> <ul style="list-style-type: none"> - As for the nominating committee, the rationale behind point 234 seems contradictory. - "The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters [removing a NomCom appointed board member]. The disadvantage is that it would require a new set of volunteers to populate it, as it would be preferable for the personnel of the two groups to be separate." - Afnic is of the opinion that it's not a burden but a duty of the NomCom to nominate and, therefore, to remove. 	
3 3 1	RySG	RySG Agrees that an enforceable power to remove individual Board Directors, under special circumstances, would help to enhance ICANN's accountability to the community. The RySG supports the CCWG proposal to enable the respective appointing organization (SO, AC, SG, NomCom or community members) to recall and replace their associated Board member. We also support allowing each appointing group to determine its own voting threshold for recall and replacement of the associated individual Board member.	
3 3 2	BC	<ul style="list-style-type: none"> - BC supports the CCWG proposal to allow the appointing organization to vote to recall individual directors. This is far more effective accountability mechanism than simply waiting for the next election cycle. - BC supports the proposal to allow each SO/AC to determine its own voting threshold for removing its designated director(s) and appointing replacement(s). 	
3 3 3	USCIB	99: We support the ability of the community to recall board members. However, because "spilling the board" should be considered a measure of last resort, we support an 80 percent threshold for this action.	
3 3 4	LINX	We strongly support the existence of this power.	
3 3 5	ISPCP	Removal of Directors by the Nominating Committee. ISPCP do not see any justification to use a different NomCom or a different balance within the NomCom, than the NomCom seated at the time of a petition is made to remove Directors selected through this mean. ISPCP believes that using the NomCom is a more consistent and simple way to proceed. The potential "burden" over the NomCom is not seen as a valid argument as such petitions would only happen in exceptional occasions and the level of work required would not destabilize the functioning of the NomCom.	
3 3 6	JPNIC	Yes. While it should not be abused, and discourage a Board member to act according to its fiduciary duties to please a particular stakeholder, it would be reasonable for the community to have this ability.	
3 3 7	Govt-IT	Considering Paragraph 5.5 "Power: Removing individual ICANN Directors" It's our opinion that, taking into account the horizontal role of the GAC, it might be important that the GAC can	

		propose the removal of a member of the Board. In that case, all the SO/ACs and the NomCom could participate in the voting process.	
3 3 8	CWG-St	We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove <u>individual Directors</u> (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed.	
4 3 4	IPC	Agree: yes. When considering the removal of a director appointed by the NomCom, the IPC believes a special committee of the NomCom should be established to deal with removal petitions when they arise.	
3 3 9	USCC	The Chamber supports the proposal to enable the appointing organization to recall and replace their Board member as a means to improve accountability. Each respective organization should be given the power to set their own voting threshold.	
3 4 0	INTA	strongly supports the ability for the removal of individual Board of Directors and believes that such a measure would certainly increase ICANN’s overall accountability. The current threshold proposed by the CCWG appears to be sufficient as well.	
3 4 1	.NZ	- supports this power as an enhancement to ICANN’s accountability. We are in support of the requirements set out. - We suggest that there be common requirements on all appointing bodies as to the thresholds that must be met (75% in the proposal) to remove a director. - We do not take a stance in this comment regarding the best method of allowing the Nominating Committee to remove directors it has appointed, but we do support such directors being able to be removed when the community petitions for this to occur.	
3 4 2	NCSG	Yes, we agree.	
3 4 3	Board	We understand the community’s need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN’s mission, and how a powerful tool may allow for appropriate action to deter such behavior.	
3 4 4	CENTR	We support the introduction of mechanisms that would allow the community – not necessarily the “membership body” – to eventually remove individual directors. We would recommend a cautious approach when expanding the role of the NomCom be followed (which should undergo a major review process to refine certain procedures, like the Board members selection and interview phases). We are against asking each Director to sign a resignation letter when accepting their appointment as it could trigger any Board member’s accountability profile. A Board member cannot be held legally/administratively accountable with a dated and signed resignation letter because they can always say that the letter was signed and filed before the wrong action they might be held liable.	
3 4 5	NIRA	Yes. NIRA seeks clarification as to the standing of direction. Would they all become voting members of the Board?	
3 4 6	ALAC	- If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235). - Some members of At-Large believe that AC/SO-appointed Directors should not be removable: by the community in general; or solely by the AC/SO that appointed them; or under any circumstances. However, many believe that if a group has the ability to appoint a Director, they should also be able to withdraw that appointment. Specifically, a Director is appointed not to “represent” the appointing group, but because the members of the group believe that the person shares common values with the group. If that belief ceases to be correct, then it is reasonable to no longer support that person as a Director. - The ability to remove individual Board members, either by the appointing AC/SO or by a supermajority of the community, is viewed as crucial by most ALAC Members. Without it, the only alternative is to remove the entire Board and this is a cataclysmic alternative as described under the comment to section 5.6. - Regarding removal by the AC/SO that made the appointment, it has been argued that being able to withdraw such an appointment will “politicize” the appointment, that the Director will alter their behaviour because of it, or	

that the group might withdraw the appointment as punishment for not voting the way they would have wished on a specific issue. The ALAC believes that all of these reasons have little merit.

- **Politicizing:** This is a curious comment given the fact that the selection of Board Members by some AC/SOs is already an extremely political process.
- **Altered behavior:** Although the Director does not “represent” the group, surely the Director should remain in regular contact with the group and understand where the group stands on specific issues. When a vote is approaching that may go against the group, it is reasonable for the Director to approach the group and explain why there are other considerations. Such a dialogue should allow the occasional divergence of opinion. If this becomes a regular occurrence, perhaps the person DOES need to be replaced. Moreover, it has been said that some Directors already vote differently near the end of their term, hoping to encourage renewal – a characteristic which one would hopefully encourage non- renewal.
- **Punishment:** This rationale is interesting. We endow a group with the very serious responsibility of appointing Directors to ICANN’s Board, and we trust them to do it with care and consideration of the needs of the organization. But we then presume that they may act capriciously if they don’t get their way in a particular vote. If we really believe that an AC or SO would act in that way, then ICANN needs to rethink whether constituent bodies should be allowed to appoint Directors at all. Either we have some level of trust that the groups will behave in a serious and thoughtful way on behalf of the organization as a whole, or we don’t. We cannot have it both ways.
- The process used by an AC/SO to approve removals of one or more Board members must be formally documented in that entity’s operating procedures and approved by that AC/SO.

On the issue of removing NomCom appointees to the Board, the ALAC believes that this should be a community decision, just as it is to remove the entire Board. The ALAC does not support having the regular NomCom remove Directors (and specifically those appointed by previous NomComs). The work of the NomCom is sufficiently difficult that this additional task would either come at a time when they are already overwhelmed with the task of identifying and narrowing down new potential appointees, or could come at a time when the NomCom is not even fully organized. Moreover this responsibility would taint what should be a group that is focussing purely on finding the best candidates for the Board as well as other ICANN bodies. Lastly, since the NomCom must operate in complete secrecy (regarding candidates), it would be a bad plan to alter that rule for this particular task allowing full consultation with the community. It would be equally bad to shroud the removal process in secrecy and NOT allow consultation.

- The original intent of the CCWG was that the community (ie the Members or Designators) would remove NomCom appointees. Legal advice indicated that since these people were appointed by the NomCom, they must be removed by the NomCom. There is a simple way to effect this. There should be a sub-committee of the NomCom appointed to carry out NomCom-appointed Director removals. This committee should be composed of the representatives of the SO/AC (or their Unincorporated Associations) empowered to act on behalf of the SO/ACs for all of the other empowerment mechanisms (ie the Members or Designators). We therefore have the removal of NomCom appointees carried out by the very community that desires these removals, without having to create an artificial and perhaps distorting intermediary mechanism. The Bylaws restricting who can sit on a NomCom or what NomCom members can do after their term may need to be reviewed for the members of this sub-committee, particularly in the expected typical case where the sub-committee may technically exist in a given year, but may never actually be convened to take any action.

Power: Recalling the entire ICANN Board

Question 12: Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
3 4 7	RH	Question: Yes. Membership should have full powers.	
3 4 8	auDA	auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals.	
3 4 9	DBA	In particular, we would like to emphasize the following: Empowering the community with regard to i.e., <u>spilling the Board</u> , reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws.	
3 5 0	CRG	I agree that removing the Board as a whole would increase Accountability.	

3 5 1	AFRALO	While giving the community the power of recalling the whole board is an appropriate accountability mechanism, it should be the very extreme step to be taken. AFRALO members wish this would never happen. The majority of 75% proposed in the report for such decision looks acceptable.
3 5 2	Afnic	Afnic supports this proposal and the limitation of powers it includes.
3 5 3	IA	Recalling the entire Board should be considered a measure of last resort, we propose an 80% threshold for this action.
3 5 4	eco	Recalling the entire board is the most important power to ensure that the community can step in in cases where the board is not willing to act in accordance with ICANN's bylaws. Hence, this very community power should be made the most robust one, even in case the CCWG or the community wishes to compromise on other community powers and the associated escalation paths described in the report.
3 5 5	RySG	RySG agrees that an enforceable power to recall the entire ICANN Board would help to enhance ICANN's accountability to the global multi-stakeholder community. We support the 75% member voting threshold for recalling the entire Board.
3 5 6	BC	<ul style="list-style-type: none"> - BC supports the CCWG proposal to allow community Members to vote for removing the entire ICANN Board. Some in the BC support a 75% Member voting threshold to recall the entire Board. Some in the BC support an 80% threshold. (p.50) - BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability. - BC appreciates that CCWG anticipates the need for operational continuity measures in the event the entire ICANN Board is recalled (p.50), and will comment on the details when they are developed.
3 5 7	.co.uk	<i>We are concerned that many of the mechanisms identified in the proposal will be massively disruptive – nuclear options. One result of sanctions of such consequence is that they are considered unusable. Sacking the Board – a Board that has been selected by the community and where many of the members can be held directly to account by their own community – seems to be a case in point. This is particularly so in that there is a small pool of community candidates willing to take on the role. (One could question whether there should be more rotation of community-appointed members on the Board to develop a wider pool of experienced and knowledgeable candidates.)</i> However, at a time of crisis in the organisation, it is hard to see who could step forward to populate a new Board at short notice and who will be able to command the trust needed to rebuild the organisation's confidence. The steps following sacking the Board or individual Board members need to be considered carefully, as do scenarios for rebuilding the organisation once the ultimate mechanisms have been triggered.
3 5 8	LINX	We strongly support the existence of this power. The threshold to spill the entire ICANN Board is too high: <ul style="list-style-type: none"> a. ICANN interacts with the different communities (Numbers, Country-Code Domains, Generic Domains, IETF) in different ways; b. Some of those communities (Numbers, IETF) have additional accountability mechanisms already to preserve their independence from ICANN. The ccTLD community is likely to acquire new such mechanisms as a result of Transition; c. We do not question, and indeed support, these distinctions. Nonetheless, it does mean that the gTLD community is the one that is most likely to ever need to exercise the extraordinary power to spill the ICANN Board; d. We do not think the power to spill the Board should be exercised lightly, and support the requirement for a high threshold within a given community; e. However, in the event that the unanimous decision of the gTLD community were to ask for a Board spill, we think it untenable and highly destabilising to ICANN that the Board remain in place merely because the ccTLD community and the numbers community were not affected by the cause of the gTLD community's complaint; f. To be clear, a choice must be made: either it must be possible for one or more of the SOs to be forced to accept the continuation in office of a Board in which it has utterly lost confidence, or it must be possible for one or more SOs to be forced to accept that a new Board will be required, even though it was content with the existing one. Neither situation is desirable, the only question is which would be worse; g. In our judgement, it is far worse to impose on an entire community a Board that is unacceptable to it, than to require a community to select alternative nominees from the huge range available to it. The continuation in office of a Board that was unacceptable to gNSO would pose grave existential risk to the future of ICANN; h. Accordingly, we recommend that any single SO should be able to dismiss the entire ICANN Board if it passes a vote of 'No Confidence' by a high threshold within itself (e.g. 75% or 80%).
3 5 9	JPNIC	- We would like to understand, what the specific circumstances are, to require the recall of the entire Board, and why this is needed in addition to have the ability to recall individual Board members. Until they are clear, we are not sure at this stage whether this further enhances ICANN's accountability, in balance with the risk of destabilizing the

		organization and the overhead of preparation needed to prepare for such situation. - In case there are specific circumstances for this need, out of the options provided in paragraph 246, we do not think option 1) makes sense, if we are overthrowing the entire Board due to its lack of accountability, to ask this board to act as "caretaker", as there must be very serious reasons to overthrow the entire existing Board.	
3 6 0	CWG-St	We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the <u>entire Board</u> (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed.	
3 6 1	IPC	Agree: yes, and Yes, the requirement threshold is sufficient.	
3 6 2	USCC	Yes, but believe there should be a high threshold as this should be an option of last resort. We strongly support the CCWG goal of binding accountability, which may only be achieved through legal mechanisms is necessary as merely providing power to spill the board is in itself not enough.	
3 6 3	INTA	supports granting the Community the power to recall the entire Board of Directors. The proposed processes and threshold appear appropriate.	
3 6 4	.NZ	- supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. The CCWG must carefully consider the threshold – 75% is the highest that is viable otherwise the power will become only theoretical.	
3 6 5	NCSG	Yes, we agree.	
3 6 6	Board	We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.	
3 6 7	CENTR	We support the introduction of mechanisms that would allow the ICANN community to eventually recall the entire ICANN Board. We believe that both this community power, the steps to implement it and the causes to enforce this ultimate power must be extremely well designed and transparently described.	
3 6 8	NIRA	NIRA agrees.	
3 6 9	ALAC	- If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants. - if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235). - The ALAC has reservations about this mechanism. Exercising it could potentially be catastrophic for ICANN, all the more so given that to date there has not been a viable proposal on how to govern ICANN in the interim until a new Board is selected. The potential for any interim Board being subject to capture or being unresponsive to community input is high, as is the danger of not having an effective Board in place to address any unforeseen circumstances that might arise. It is because of these difficulties that the ALAC would far prefer the "surgical" approach of carefully removing the Directors that the community believes are the source of ICANN's problems while leaving a core Board in which it has confidence.	

Incorporating the Affirmation of Commitments into the ICANN Bylaws

Question 13: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments principles would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

Question 14: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments reviews would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
3 7 0	RH	Question 13: Disagrees. ICANN should not be incorporated in the USA	
3 7	DBA	Question 14: important that governments are given appropriate weight in the proposed multi-stakeholder reviews,	

1		including the ATRT Reviews.	
3 7 2	WC comment 1	The inclusion of the Affirmation of Commitments into the ICANN Bylaws strengthens community review of ICANN's activities.	
3 7 3	CRG	Not if transferred as they are today. Based on my limited experience in ATRT2 I think the structure of the 4 reviews is outdated, cumbersome, and too slow for an ICANN directly accountable to the community. In itself there is a potential conflict of interest there in the community reviewing and organisation led by the community. This is a very serious task for WS2 to define how reviews have to be changed so they enhance accountability under the new stewardship!	
3 7 4	Afnic	Incorporating the AoC into the ICANN Bylaws is a coherent step toward the termination of the unique US oversight role for ICANN. Therefore, Afnic supports this proposal, along with the revised version of the Bylaws proposed at 3.1 and including the IANA function review.	
3 7 5	IA	<ul style="list-style-type: none"> - IA agrees this is a necessary step in the transition, and must be completed prior to the transition. - The various review mechanisms provided by the AOC have historically been helpful tools for addressing concerns with ICANN's accountability. - IA strongly supports the proposed Bylaw changes regarding the new gTLD program, particularly the requirement that recommendations from the previous review be implemented before rounds of new gTLDs can be opened. 	
3 7 6	Govt-ES	<ul style="list-style-type: none"> - Key elements of the AoC addressing ICANN's commitments to the Community are proposed to be reflected in ICANN's Bylaws and Articles of Incorporation (page 20). <u>[Note: request paragraph number]</u> We ask for a detailed timescale, requirements and processes that would lead to the termination of the AoC, including steps to be taken by the USG and ICANN. Full privatization of ICANN requires all contractual links with the USG to be finished. - While the AoC actually states that ICANN should be headquartered in the USA, and the Articles of Incorporation set forth that ICANN is a non-profit public benefit corporation under the California law, we do not believe this should be incorporated into a core or fundamental value of ICANN (page 21), for the reason that the remaining of ICANN subject to Californian Law is not fundamental to the global Internet community. - Regarding periodic reviews, provisions are insufficient to ensure that the community input is duly and fairly taken into account. Some language regarding the decision making procedures that the review team should follow and how their deliberations are reflected in their final recommendation report. - Recommendations issued by the review team should explicitly indicate whether they were reached at by consensus, qualified majority or simple majority in the team. For the sake of transparency, the review teams should describe how they have considered community inputs explaining why they embraced the ones that made their way to the final report and why they rejected the other ones. In addition, a table displaying the suggestions received and their authors ranked by their level of support among community members contributing to the comment periods should be publicly available, as a reflection of the community's preferences. 	
3 7 7	RySG	<ul style="list-style-type: none"> - Q13 - agrees to incorporating key principles and elements of the Affirmation of Commitments (AoC) into the ICANN Bylaws - It further enshrines key accountability and transparency review commitments and helps to eliminate a remaining vestige of the United States government's unique role with regard to ensuring ICANN's accountability. Transitioning key components of the AoC would, in effect, transition that oversight from the USG to the global multi-stakeholder community. - RySG supports the list of requirements for this recommendation - RySG note that there are some conflicting revisions proposed in Sections 3 and Section 6. Generally, we support the more active language used Section 3. We trust that the CCWG-Accountability will reconcile these discrepancies in its final proposal. In the final proposal, we recommend that a single and complete redline of the ICANN Bylaws be included reflecting both the proposed changes to the Mission and Core Values as well as the incorporation of the Affirmation of Commitments into the Bylaws. - RySG has one point of concern with respect to the following text: <i>ICANN will ensure that as it expands the top-level domain space, will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.</i> We agree that the above issues are important topics, but wish to underscore that these topics must be addressed through the multi-stakeholder model and not unilaterally by ICANN as an organization. We urge that this be clarified in the final proposal. Q14. agrees to incorporating the Affirmation of Commitments (AoC) reviews into the ICANN Bylaws - RySG believes the Accountability and Transparency Reviews must be incorporated. - RySG other reviews, such as the Whois review, could be sunset. The RySG believes that the community should 	

		have the power to designate participants on future reviews (unlike today, where the Chairs of the ICANN Board and GAC have that unique power.)	
3 7 8	JH	<p>- It 's not reasonable to fully incorporation all the principles of AOC into Bylaws. It's a possible option to abolish AOC and put some appropriate principles of AOC into ICANN Bylaws. Because on the one hand, some principle in AOC could regulate ICANN, such as "Require the ICANN Board to <u>consider</u> approval and begin implementation of review tam recommendations, including from previous reviews." But the word "Consider" is too weak. Language should be changed in this principle and ICANN Board "must" implement in time. On the other hand, AOC also some terms are questionable by communities, such as ICANN commit to always headquartered in LA, California, USA. Those questionable terms should not be incorporated into Bylaws before communities consensus.</p> <p>- Put some appropriate principles of AOC into ICANN Bylaws would enhance ICANN's accountability. Actually, this is to solve the problem of effectively implementation of ICANN Board. Without strict regulations in Bylaws, even if the IRP determined that ICANN is wrong and there are specific penalties or solutions, It is still possible for ICANN board to delay the process of implementation or do nothing. So the "appropriate" principles should be the principles that could regulate ICANN board to some extent. Additionally, ICANN should be accountable for all the stakeholders, not only for US government. According to the AOC contract relation between US government and ICANN, ICANN is only accountable for US government. Well, after abolishing AOC and partly incorporation some appropriate principles into Bylaws, ICANN will be more accountable for multi-stakeholders. Moreover, some principles from AOC are not enough to make ICANN accountable for community. There should be more regulations in Bylaws. Currently, regulation to be binding upon ICANN Board is too vague, should be more clear and powerful. For example, if removal of a director is determined, then ICANN does not implementation, automatic removal after 10 days; if a policy made by ICANN Board is determined to be rejected by ICANN communities, the policy will be automatically stopped to implementation.</p>	
3 7 9	BC	<p>- BC supports having key commitments from the Affirmation incorporated in ICANN Bylaws according to CCWG proposal (p.55).</p> <p>- BC believes that <i>Affirmation of Commitments</i> paragraph 8b should also become a Fundamental Bylaw" "ICANN affirms its commitments to: 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"</p> <p>- BC believes that Article XVIII should be designated a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed without broad community approval.</p> <p>- Moreover, hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law.</p>	
3 8 0	.co.uk	<p>We welcome the approach of embodying the Affirmation of Commitments into ICANN's DNA and of building on the AoC reviews. This process has been criticised in the past as another layer of review ("ICANN reviewing itself to death") and has also excited little interest in the community. Yet as part of enabling the community, the mechanism provides a way of ensuring concerns are being heard and addressed. We believe that this process is fundamental as a way of building trust in ICANN and it could usefully be included earlier in the report: it is based on improving the organisation, rather than sanctioning it.</p> <p>However, the processes are slow, greedy on volunteers' time and cumbersome (a year to review and even longer to implement: given the frequency of the reviews, one can be started before all the recommendations from the previous review have been fully considered).</p> <p>Hence we welcome the proposals to increase the time cycle of the review process and of focussing reviews on areas of greatest concern. The requirement for an annual report on the state of improvements to accountability and transparency is a good idea: we think it should be a clear part of the CEO's report.</p>	
3 8 1	USCIB	<p>The AoC currently calls for several reviews that have served as effective tools for reviewing and strengthening ICANN's accountability. USCIB therefore strongly supports the inclusion of the Accountability and Transparency Review (ATRT), the Security, Stability, & Resiliency of the DNS Review, the Competition, Consumer Trust, & Consumer Choice Review, and the WHOIS Policy Review into Article IV of the ICANN Bylaws so that ICANN will be legally bound to continue them on a regular and permanent basis. In sum, we regard incorporation of the AoC into the ICANN Bylaws as a fundament requirement of the transition. This will provide the Internet user community with greater confidence that the safety, security, and resiliency of the DNS will continue uninterrupted as NTIA's stewardship of the IANA functions is transitioned.</p> <p>- para 269: The proposed text for insertion in the bylaws is "where feasible, and appropriate, depending on market mechanisms..... " We feel that there is a large range of opinions on the role of the market. The AoC, however, is</p>	

		<p>stronger in its support of the marketplace, so we would suggest deleting the words “and appropriate”.</p> <p>- para 345: We support the bylaw changes on the new gTLD program generally and specifically: “Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section have been implemented.”</p>	
3 8 2	LINX	We support the CCWG’s proposed changes to the Core Values. We have no other comments regarding the incorporation of items from the Affirmation of Commitments.	
3 8 3	JPNIC	Binding the AoC related to Accountability into the Bylaws would ensure that ICANN will be committed to them. However, instead of writing what is in the AoC in the Bylaws and producing duplicate description in two different documents, we suggest to reference relevant sections of the AoC in the Bylaws and bind referred sections by the Bylaws. This would avoid a situation in the future where the Bylaws or AoC was changed but the other document remains unchanged.	
3 8 4	CWG-St	We understand that the CCWG Accountability proposes to incorporate the review system defined in the Affirmation of Commitments into ICANN’s Bylaws, including the ability to start new reviews (section 6.2, page 60). Moreover, that based on the CWG-Stewardship proposal, the CCWG introduced a recommendation to create a new review, based on the requirements we had provided to you.	
3 8 5	IPC	<ul style="list-style-type: none"> - The IPC supports having key commitments from the Affirmation incorporated in ICANN bylaws according to CCWG proposal (p.55). IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw. - The IPC supports the notion of enshrining the key reviews in the ICANN bylaws to enhance ICANN accountability. The IPC also supports the CCWG proposal to empower the Accountability and Transparency Review Team (ATRT) to create new reviews and reschedule reviews as community priorities demand. However, empowering the ATRT to completely eliminate any of the reviews now provided for in the AoC raises concerns. Rather than the expedited six-month review Board review process applicable to ATRT recommendations generally, the elimination of any current AOC-mandated review should be undertaken only through amendment of the relevant new Bylaws through the amendment process ordinarily provided. - Paragraph 305 should be modified to provide that Review Teams include representatives of all “constituencies” as well as the other entities listed. - The reference in paragraph 338 to a Board-initiated review of “any batched round of new gTLDs” is somewhat confusing as to whether it refers to the review required by the AoC (as proposed to be incorporated in the bylaws) or something else. Furthermore, experience with the current new gTLD round (and the pending reviews) suggests that one year after the first new gTLD in the round becomes operational may not be long enough if other new gTLDs are still being rolled out at that time. It’s also possible that there will not be further “batched rounds” of new gTLDs. We support having bylaws requirements for periodic community-wide reviews of whether ICANN’s new gTLD activities are promoting competition, consumer trust and consumer choice, and the proposal in paragraph 347 that such reviews occur at least once every five years. - Paragraph 351 is a sentence fragment referencing the OECD Guidelines as playing some role in future Whois Policy reviews. It is not clear what role is contemplated. The reference to “legal constraints” is also ambiguous since the OECD Guidelines do not have the force of law. 	
3 8 6	Govt-BR	<ul style="list-style-type: none"> - The AoC was created in the context of the US Government’s oversight of ICANN. Once that relation is ended, due consideration should be given as to whether commitments established in the past should remain valid within the new oversight structure. In other words, the incorporation of the provisions contained in the AoC should reflect the agreement of the global multistakeholder community, including governments, and not be automatically transcribed from the AoC. - In this regard, Brazil considers inappropriate that Section 8(b) of the AoC be incorporated to the bylaws without further reflection, as ICANN should not be constrained to be legally established in a specific country if, in the future, its stakeholders decide that it would be more convenient for the corporation to change its main office to another location. - CCWG should consider reviewing Article XVIII, Section 1, of ICANN’s bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a “fundamental bylaw”. - References to the leadership of the private sector (“private sector led”, “rooted in the private sector”) are inadequate and contradict the spirit of multistakeholderism that should govern the corporation. The fact that ICANN is currently incorporated as a “non-profit organization” reinforces this understanding. 	
3 8	CDT	- Supports the inclusion of key Affirmation of Commitments (AoC) principles and reviews. The AoC is an important document that has significantly improved ICANN’s accountability and transparency. Importantly, the AoC also	

7		<p>outlines criteria and characteristics of the organization’s relationship with its community including, among others, the importance of the multistakeholder, bottom-up policy development model. The proposal does a thorough job of bringing these key elements into the bylaws.</p>	
3 8 8	USCC	<ul style="list-style-type: none"> - Incorporating keys aspects of the AoC into the bylaws is critical to enhancing ICANN’s accountability. Even though ICANN has said is has no plans to terminate the AoC, incorporating key provision into the bylaws makes this and the unique bilateral relationship with the USG a non-issue going forward. - Making the reviews permanent would enhance ICANN’s accountability. 	
3 8 9	INTA	<ul style="list-style-type: none"> - it is important to preserve the critical role of the AoC in reviewing and enforcing accountability principles by incorporating its principles within ICANN’s Bylaws. - generally agrees with the list of requirements for this recommendation as they appear to incorporate and enhance all of the commitments made by ICANN when it signed the AoC. - With regard to the proposed incorporation of AoC paragraph 7, we note that the introductory provision of a new Section 8 in Article II of the Bylaws presently reads, “ICANN shall adhere to transparent and accountable budgeting processes, providing [reasonable] [adequate] advance notice to facilitate stakeholder engagement in policy decision- making...” We believe that the use of the term “advance” is insufficient, as ICANN often provides inadequate time for comment periods, and the resulting limitation on adequate review is especially difficult for large membership organizations such as INTA, which represents trademark professionals from around the world. Therefore, we recommend that this phrase read, “providing reasonable and adequate advance notice.” - agrees that it is very important to give force to the incorporation of the AoC within the Bylaws by amending them as proposed. This will ensure periodic reviews relevant to assuring accountability and transparency; preserving security, stability, and resiliency; promoting competition, consumer trust, and consumer choice; and reviewing effectiveness of the WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust. - further agrees that all reviews should be conducted by volunteer community review teams comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board; and that the review group should be as diverse as possible. - concurs that review teams should be empowered to solicit and select independent experts to render advice, and should have access to ICANN internal documents. - have some significant concerns regarding the recommendation that the separate periodic reviews should be carried out at least every five years, whereas the current AoC requires them to be performed every three years (or two years after the receipt of the initial one-year review required for new gTLD rounds). Given the uncertainty of the post-transition situation, we believe that the requirements for reviews to be held every three years should be maintained for at least two full cycles after the transition takes place, with a review mandated after the first six years to decide if less frequent reviews (but no less frequent than every five years) would be adequate to ensure continued adherence to AoC principles. - in regard to any possible future rounds of the new gTLD program, we believe that reviews of its promotion of competition and consumer trust and choice should take place at least every three years -- even if the Board should adopt an open-ended version of the program that does not have discrete rounds with set application deadlines. 	
3 9 0	.NZ	<ul style="list-style-type: none"> - supports the incorporation of the AOC principles and reviews in the bylaws as an enhancement to ICANN’s accountability. We are in support of the requirements set out. 	
3 9 1	NCSG	<p>Yes, we agree and find this an essential component of the proposal.</p>	
3 9 2	GG	<p>GG supports incorporating the Affirmation of Commitments into ICANN’s bylaws.</p>	
3 9 3	Board	<ul style="list-style-type: none"> - With regards to the inclusion of the Affirmation of Commitments reviews into the bylaws: Are there sufficient mechanisms in place to assure diversity of the review teams (geographic, gender, etc.)? What are the mechanisms to adjust the review processes as needed by the community? What are the mechanisms for ensuring costing and subsequent prioritization of recommendations, and determination if recommendations are feasible? What limitations on review team access to documents will be identified to address issues such as restricting access to employee records, trade secrets provided to ICANN by others, and assuring that competitors do not gain access to others’ sensitive documentation that ICANN has within its files? - We recommend that language that is incorporated into the Bylaws on WHOIS be updated to reflect the potential for future modification and overhaul of the registration directory system, and not hardcode the legacy “WHOIS” 	

		requirements into the Bylaws.	
3 9 4	CENTR	- We agree that the incorporation of the Affirmation of Commitment principles into the ICANN Bylaws might enhance certain accountability aspects. At the same time, we believe that adding a new Bylaws section for Periodic Review of ICANN Execution of Key Commitments will certainly serve to better assess ICANN's high-level performances. - Concerning the proposed IANA Function Review – IFR – we are supportive of a review to take place no more than two years after the transition is completed, but we believe that subsequent reviews should occur more regularly and not every five years.	
3 9 5	NIRA	NIRA agrees.	
3 9 6	ALAC	Accountability and Transparency (A&T) Review - Paragraphs 310-317: The wording of this section should be altered to indicate that the a-e list is not prescriptive. Each review team should be given the authority to decide exactly what A&T issues it will address. Based on the experiences of the ATRT1 and ATRT2, the current formulation implies: <ul style="list-style-type: none"> • A narrow focus of A&T as understood by particular individuals in 2009. The very existence of this CCWG illustrates the "straitjacket" that the A&T review teams were controlled by forcing concentration on issues that may have been of lesser importance and restricting what they could look at in addition to or instead of the prescribed list. • The requirement to review in depth the previous work and to explore new areas creates an ever increasing workload that will make it very difficult for an ATRT to effectively tackle real issues that are relevant at the time of its formation. 	
3 9 7	LAB	Regarding the various periodic reviews, these are stipulated to occur "no less frequently than every five years" (see, e.g., paragraph 322 regarding accountability and transparency reviews), yet no explanation is given as to why a five-year cycle is chosen as opposed to, say, a three-year cycle as per the AOC. Perhaps an explanation is in order.	

Bylaws changes suggested by Stress Tests

Question 15: Do you agree that the incorporation into ICANN's Bylaws of the above changes, as suggested by stress tests, would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.

#	Contributor	Comment	CCWG Response/Action
3 9 8	CRG	YES!	
3 9 9	Afnic	- Afnic strongly supports the implementation of ATRT2 recommendation 9, which modifies the Bylaws in order to mandate Board response to AC formal advice. - As far as stress test 18 is concerned (GAC advice by majority within the GAC and not by consensus), Afnic is of the opinion that every constituency has the right to set its own decision making process, as long as this is done in a transparent manner.	
4 0 0	IA	IA supports the proposed Bylaw change recommendations arising from stress tests.	
4 0 1	Govt-FR	Are we correct in understanding that the "SO/AC Membership Model" would nonetheless give members of other SOs and ACs the opportunity to vote and defeat an empowered GAC, in spite of governments' "rights and responsibilities for international Internet-related public policy issues" (etc.) If so, additional mechanisms specifically designed to mitigate the risk of capture of ICANN by governments, such as the proposed changes to Bylaws art. 1.2 (Core value 11) and XI.2.1.j deriving from stress test #18, are redundant and just cause confusion. Stress test#18 suggests that majority voting in the GAC could lead to a threatening situation where ICANN would have to consider and respond to GAC advice restricting free online expression (Draft prop., section 8.6, §629). This is why it is suggested that Bylaws art. XI.2.j be modified in order to "duly take into account" only GAC advice that is supported by strict consensus (Draft prop., section 8.6, §633). In our opinion, such propositions reflect a tendency among ICANN stakeholders to question the responsibility of governments and public authorities with regard to public policy. What it says: "only when governments reach consensus can we duly take into account GAC advice as public policy advice", actually translates: "governments are not responsible for public policy for so long as they cannot reach strict consensus on GAC advice", which is obviously a false statement. Governments are always responsible for public policy (hence paragraph 35 of the Tunis Agenda, section 2.1.1 of the NETmundial Multi-Stakeholder Statement, or the current Core Value 11 of ICANN). Remote as this possibility may seem, we agree that majority voting in the GAC could lead to a situation where ICANN would have to consider and respond to GAC advice restricting free online expression. With strict consensus within the GAC, however, much less remote seems the possibility that one single government deprives ICANN from GAC advice on privacy protection, for example. We do believe that ICANN would be placed in a far more threatening situation if it could not consider the second type of GAC (would-be) advice, than if it just had to respond to the first type of GAC advice.	
4 0	CCG	Stress Test 18 proposes that the ICANN Board reply in a timely manner and find "mutually agreeable solutions" to only that GAC advice where there is consensus involved. How is this different from the existing scenario, and how	

2		does this measure enhance the Board’s accountability to GAC?	
4 0 3	BC	<p>- BC is pleased that these improvements to the Reviews were embraced by the CCWG and supports the proposal as a way to enhance ICANN accountability. (p.55)</p> <p>- BC supports the proposed Bylaw changes regarding the new gTLD program, specifically that recommendations from the previous review to be implemented before rounds of new gTLDs can be opened.</p> <p>- In prior comments, the BC has supported recommendations from the Affirmation review teams, including ATRT2 recommendation 9.1</p> <p>- 9.1. ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice: <i>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.</i></p> <p>And continues to believe this change should be made to ICANN Bylaws in order to enhance ICANN accountability. Moreover, several stress tests indicate this change would be needed to give the community adequate measures to hold ICANN accountable for its decision not to implement formal advice from an Advisory Committee.</p> <p>- BC supports the proposal for a small change to ICANN’s Bylaws, so that ICANN’s obligation to “try and find a mutually acceptable solution” only applies where the GAC advice was supported by consensus. (p.64)</p> <p>- On this particular Bylaws provision, the BC suggests that ICANN’s obligation to “try and find a mutually acceptable solution” on GAC advice should not result in a decision that conflicts with ICANN Bylaws.</p> <p>- BC notes that important questions with respect to the Root Zone Maintainer still need to be resolved (p.77). Insight into the process of transitioning the Root Zone Maintainer would help ensure there is a well-established structure and process for approval of major architectural and operational changes to the Root Zone environment. The BC calls on the CCWG to clarify which entity will have this role and to establish the process that would be used for consultation with the global multi-stakeholder community.</p>	
4 0 4	USCIB	<p>Overall, we agree with the changes suggested by Stress Tests. Specific comments:</p> <p>- para 377: The consultation notes that where the Board has not taken a formal decision (such as not following AC advice), the community might not have a mechanism to challenge the Boards action (or inaction) to act. USCIB would support a mechanism that allows for a “response” to trigger the review mechanisms.</p> <p>- We note that Stress Test #18 considers a potentially concerning scenario in which Governments in ICANN’s Government Advisory Committee amend their operating procedures to change from consensus decisions to majority voting for advice to the Board. para 387: Thus, we strongly support the proposed language in paragraph 387 that limits imposing the obligation on the Board to find a mutually acceptable solution between the GAC and Board to only GAC advice that was developed by consensus.</p> <p>- Moreover, we have seen little discussion about how the proposed accountability measures would address instances where the Board accepts GAC advice without consideration by or in contradiction to the wishes of the community. We thus recommend creating a separate stress test for the situation where the Board and GAC find a mutually acceptable solution that the community believes is outside the scope of GAC Advice or Board mandate, or otherwise disagreeable to the community and considering a community review mechanism over such Board actions if the stress test indicates that the community cannot sufficiently hold the Board accountable for such action.</p> <p>- para 550: We note that important questions with respect to the Root Zone Maintainer still need to be resolved. Direct insight into the process of transitioning the Root Zone Maintainer would help to ensure that there is a well-established structure and process for approval of major architectural and operational changes to the Root Zone environment. USCIB commends that any future proposal to clarify which entity will have this role, and further, to explicitly establish the process that would be utilized for consultation be a topic of public consultation with the multistakeholder community.</p> <p>- para 636: As mentioned above concerning the proposed response presented in paragraph 387 for Stress Test #18, USCIB supports amending the Bylaws such that only GAC consensus advice would trigger the obligation for the Board to find a mutual acceptable solution. However, we disagree with the paragraph 636, which states that the threat posed by Stress Test #18 “is not directly related to the transition of IANA stewardship. To the contrary, USCIB regards this issue, as captured in Stress Test #18, as directly related to the transition.</p>	
4 0 5	LINX	We support the proposal that special Board procedures for GAC advice should only apply in respect of advice support by a consensus in GAC. We understand this to be the intent of the current provisions and current practice, and so we regard this as simply a useful clarification.	
4 0 6	JPNIC	We would like to defer the comments to those who will be directly affected. i.e., SSAC, ALAC, GAC, RSSAC for “Forcing the Board to respond to Advisory Committee formal advice” and GAC for “Require consultation and mutually acceptable solution for GAC advice that is backed by consensus”.	
4 0 7	IPC	<p>-The IPC strongly recommends the inclusion of the ATRT2 recommendation 9.1</p> <p><i>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.</i></p> <p>The IPC believes that the bylaws should be amended to include this language to empower the community to spur the board to action on advice given by ACs.</p> <p>- The phrasing of Stress Test #23 (page 85) seems one-sided. While there may be a danger that “ICANN uses RAA or other measures to impose requirements on third parties outside scope of ICANN Mission,” the more plausible danger is that ICANN will fail to enforce contractual obligations and consequently will harm third parties. The stress test exercise is described in paragraph 18 as applying “a set of plausible, but not necessarily probable, hypothetical scenarios” in order to “gauge how certain events will affect a system, product, company or industry.” The</p>	

		contractual enforcement failure just described would certainly affect the companies and industries that depend on trademark and copyright protection. The stress test should be adjusted to reflect this, and overall the risk of ICANN's failure to consistently and transparently enforce contracts must be effectively addressed in any accountability framework.	
408	Govt-BR	Stress Test 18 – "Require consultation and mutually acceptable solution for GAC advice that is backed by consensus" (Chapter 7.2, p.63) – describes a situation which represents a very improbable risk of capture. That being said, Brazil considers that any decisions that should result from the assessment of ST18 be considered as a Work Stream 2 item.	
409	USCC	- Support the results of Stress Test 18 and agree with the proposed bylaw amendment. ICANN bylaws should stipulate that GAC advices must be issued by consensus in order to compel the ICANN Board to find a mutually acceptable solution when it does not follow GAC advice.	
410	INTA	- agrees that the incorporation of changes as suggested by stress tests should help to enhance ICANN's accountability. The twenty-six separate stress tests outlined in the Proposal appear broad enough to cover all major contingencies. - agrees that a mechanism should be established by which the Community can compel the Board to make a decision in response to advisory committee ("AC") advice, but it must be carefully crafted to facilitate the focused goal of triggering the ability for the Community to challenge the decision via Reconsideration or IRP processes. Advisory committees give advice, not direction, and this mechanism must recognize that the Board should respond to but is not obligated to accept AC advice. - In regard to the Governmental Advisory Committee ("GAC") advice, we generally support amendment of the Bylaws to require the Board to try to find a mutually agreeable solution only where GAC advice was supported by GAC consensus.	
411	.NZ	- supports these changes – in particular the one relating to ICANN's response to GAC advice. It is important that unilateral action by an SO or AC not lead to a change in the balance of influence in the ICANN system. The proposed change as set out in para 387 achieves this in a way that does not constrain GAC's ability to organise itself.	
412	HR2251	- The board of directors of ICANN is prohibited from voting on advice or a policy proposal offered by the Governmental Advisory Committee unless such Committee reaches consensus regarding such advice or proposal. For purposes of the preceding sentence, the term "consensus" means general agreement in the absence of any formal objection.	
413	CENTR	We recommend that the proposed change to ICANN Bylaws regarding the Board response to Governmental Advisory Committee Formal Advice be made more stringent as "will respond in a timely manner" is too vague and does not commit the Board to respond within any specific timeframe.	
414	I2Coalition	We support the proposed Bylaw change recommendations arising from stress tests. In particular, we strongly support the results of stress test 18 regarding the Board's response to GAC advice. ICANN Bylaws should stipulate that GAC advice must be issued by consensus in order to compel the ICANN Board to find a mutually acceptable solution when it does not follow GAC advice	
415	NIRA	NIRA agrees.	

Items for consideration in Work Stream 2

#	Contributor	Comment	CCWG Response/Action
416	JS	Excellent that the document puts a spotlight on Work Stream 2 issues. Moreover, it is implied on page 87 that the CCWG will continue to exist after the IANA transition in order to work on these issues. The intention to sustain the CCWG over a longer term could be affirmed more strongly and unambiguously. Some indication could be given of an initial timeline for progress on WS2 issues? Progress on WS2 could be one of the topics for the first IANA Functions Review two years after the transition and then also a core evaluation concern for the next Accountability and Transparency Review?	
417	DBA	We also note that the CCWG Accountability have decided to fully address the issue of jurisdiction in Work Stream 2, which according to the timeline is to begin this fall. This is a very important outstanding issue, which has to be dealt with adequately. It must also be assured that the global public interest is taken into account with an appropriate role for all relevant stakeholders, including governments.	
418	JS comment 2	A third headline point - which follows from the first two - is that CCWG's work is clearly not finished when the IANA transition is completed. A continuation of the CCWG or some successor body is needed to address Work Stream 2 matters post-transition. The CCWG report could commit more strongly than it currently does on page 87 to continued existence and work beyond the transition.	
419	CRG	Leaving it to Work Stream 2 to focus on internal organisational and structural accountability issues like Board-Staff, and Staff-Staff is risky. The announced change of the CEO makes this point only more relevant, as ICANN has been under a tremendous internal growth of staff and functions over the last few years under the present management.	

		The stability of the present internal organisation may be as well come under close scrutiny to a wider set of stakeholders to the transition, and the CCWG should take the present structure into account.	
4 2 0	Afnic	The work plan established by the CCWG-accountability is coherent with the necessity to propose accountability improvements together with the IANA stewardship transition proposal. This may not divert the ICANN community from the necessary work of enhancing further the ICANN accountability. Therefore, each accountability mechanism proposed in the current draft (including the list of the items to be considered as part of work stream 2) should be included in the Bylaws prior to the transition. It doesn't prevent of course CCWG-Accountability to come back to the community with a final proposal that includes improvements related to the current work stream 2 list, if feasible.	
4 2 1	Govt-IN	- ICANN must have fair, strong and easily accessible freedom of information standards and mechanisms, to enable stakeholders to request and avail adequate and timely information without incurring undue expense. - ICANN should have simplified and user friendly information platforms. - There is currently a lack of clarity on the effect of ICANN's jurisdiction of incorporation on ICANN Accountability, and this is an issue that requires further discussion.	
4 2 2	Govt-DE	Germany would like to recall the importance of examining ICANN's jurisdiction as part of Work Stream 2.	
4 2 3	IA	IA believes that a requirement for the ICANN principal office or headquarters to be located in Los Angeles should be included as a Fundamental Bylaw.	
4 2 4	RB	The current accountability of a global governance body to the law and institutions of just one country is the major issue to correct. This can be corrected only by incorporating ICANN under international law - arrived at by an international treaty - and giving ICANN jurisdictional immunity in the country of its physical location.	
4 2 5	Govt-FR	- Govt-FR has concerns with the expectations that the CCWG-accountability placed upon governments. - Govt-FR understand that the solution designed by the CCWG- accountability cannot must be a private sector-led organisation - Govt-FR understand that the solution designed by the CCWG-accountability would focus on mechanisms to mitigate the risk of capture of the future organisation by governments. - Govt-FR consider that jurisdiction of ICANN was rightly identified as an issue for Work Stream 2.	
4 2 6	Govt-ES	The organization needs a stable and predictable legal and jurisdictional environment and these requirements could certainly be included in the Bylaws as a way to ensure compliance with the accountability measures designed. But prescribing a particular jurisdiction now would preclude other jurisdictions that could perfectly fit and comply with these requirements (in and out the USA) from hosting the organization in the long run. On the other hand, jurisdiction is already a task of Work Stream 2 (page 90) of the CCWG, and enshrining ICANN's current jurisdiction as a fundamental bylaw would pre-empt the future work of WS2 in this regard. It is essential that when that process begins, the global public interest is taken into account and all relevant stakeholders have their say, including governments.	
4 2 7	RySG	- supports the proposed work plan for Work Stream 2. - the key requirement of Work Stream 1 has been to secure key community powers so we can trust the subsequent development, approval and implementation of other less critical or urgent reforms.	
4 2 8	CCG	The Documentary Information Disclosure Policy will be enhanced only after Work Stream 2 proposals come into place. Perhaps it would be worth including this aspect within work stream 1, since it bears on the IANA transition or PTI.	
4 2 9	BC	As a general concern about Work Stream 2 improvements, the BC notes that the community must first show consensus support for these changes to Bylaws. This is true whether the recommendations arise from a PDP or from an <i>Affirmation</i> Review Team. For recommendations that have community support, the community needs the power to force ICANN to take a decision on the recommendations. Then, if ICANN decides not to implement community recommendations, the enhanced IRP process give the community standing and a low-cost way to challenge and potentially overturn that decision. An additional Work Stream 2 improvement would help to prevent government capture of ICANN and reveal ICANN attempts to influence public policies unrelated to ICANN's core mission. Governments could seek to control ICANN decision-making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use it tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.	

		Therefore, the BC suggests that an additional Bylaw be added to require ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their contacts with any government official, as well as activities, receipts, and disbursements in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN.	
4 3 0	USCIB	<p>I. Prevention of government capture or undue ICANN influence on public policies unrelated to ICANN's core mission.</p> <p>Governments could seek to control ICANN decision making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use its tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.</p> <p>Therefore, USCIB suggests that an additional bylaw be added that requires ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their relationship with any government official, as well as activities, receipts and disbursements in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN.</p>	
4 3 1	IPC	<p>The IPC supports the candidate measures outline as part of Work Stream 2.</p> <p>As stated above, the IPC remains concerned about the ICANN community maintaining sufficient impetus to address WS2 reforms but is anxious that we all do so.</p> <p>the IPC is concerned that the proposed accountability reforms focus too much on the ICANN Board and not enough on actions taken by ICANN senior management. The CCWG, in Work Stream 2, should consider how the community can have oversight of senior management decisions without resorting to using the Board as a tool.</p>	
4 3 2	Govt-BR	<ul style="list-style-type: none"> - The assessment of ST18 be considered as a Work Stream 2 item. - The issue regarding legal status/jurisdiction should be part of the initial transition proposal, we would strongly support that the evaluation of alternative jurisdictions for ICANN should, at least, be clearly set as "unfinished business" to be necessarily addressed in the context of Work Stream 2, with a clear and predetermined timeline. - We are concerned about the influence that ICANN's existing jurisdiction may have on the actual operation of policies and accountability mechanisms being proposed and therefore consider it is extremely important that the CCWG- Accountability evaluates other places of legal establishment which could potentially offer effective conditions to deploy the accountability requirements defined by the community. Brazil is willing to collaborate with other members and participants of the CCWG-Accountability in order to perform a comprehensive and impartial assessment of different jurisdictional options for ICANN. - Brazil's concern does not reside in considerations on the physical location of ICANN's headquarters. Brazil's preoccupation lies rather in the fact that corporation's existing "legal status" reflects a unilateral, pre-determined solution, and not a comprehensive agreement addressing all stakeholders's interest and concerns, independently of where it is physically situated. 	
4 3 3	CDT	<ul style="list-style-type: none"> - supports the proposed Work Stream 2 items. - it is important that the CCWG ensure that Work Stream 2 items will be addressed as this process moves forward. - believes that the CCWG also needs to discuss and develop an appropriate mechanism, possibly as a part of the Work Stream 2, which assesses, evaluates and if necessary proposes changes to the Work Stream 1 accountability enhancements if those enhancements are not meeting the expectations of the community and/or are not fulfilling their intended purpose. Implementation of the proposed accountability enhancements should be monitored – the continued assessment of those measures will be an important part of ensuring that the work of this CCWG comes to fruition and that the ICANN community truly benefits from it. 	
4 3 4	USCC	We would like to see greater development of these points with a clear timeline in place prior to the finalization of any plan as these issues should be prepped for rapid completion at the time of the transition. Finally, we want to emphasize that the CCWG's final proposal be implemented before the transition is completed.	
4 3 5	INTA	<ul style="list-style-type: none"> - in general agreement with deferring the items listed for consideration within the post- transition Work Stream 2, so long as there is adequate assurance that ICANN will, indeed, address these items through the adoption of a transitional article in its Bylaws committing ICANN to implement the CCWG-Accountability recommendations, and task the group with creating further enhancements to ICANN's accountability including, but not limited to, the listed items. - agree this transitional article must be incorporated in the Bylaws as part of Work Stream 1 prior to the IANA stewardship transition taking place. 	

		- question the fact that one of the items listed for Work Stream 2 is “Enhancements to the Ombudsman's role and function.” There is general dissatisfaction within the Community regarding the effectiveness of the Ombudsman in its current iteration, even though it is one of the few accountability measures currently available to ICANN stakeholders. Therefore, we believe that review and enhancement of the Ombudsman function should be addressed to at least some extent in Work Stream 1.	
4 3 6	HR2251	ICANN has adopted policies and procedures for disclosing to the public records and other information that are at least as protective of public access as the policies and procedures required by section 552 of title 5, United States Code (commonly known as the Freedom of Information Act). The policies and procedures adopted include a means by which the denial of a request for access to records or other information may be appealed through the independent dispute resolution process described in paragraph (2)(F).	
4 3 7	NCSG	There is a key element missing from Work Stream 2 and that is the monitoring and evaluation (and possible changes) to Work Stream 1 accountability enhancements as they are being implemented and as they are used/exercised. If the community finds that certain Work Stream 1 (and 2) measures outlined in this proposal do not meet expectations and/or do not meet their intended purpose then there should be a mechanism for those measures to be reviewed and possibly amended.	
4 3 8	CENTR	The transitional article in ICANN Bylaws to be adopted by the Board to commit ICANN to implement the CCWG-Accountability recommendations must include a timeframe for it to happen. We urge the CCWG to reconsider the allocation of certain items to Work Stream 2 (addressing accountability topics for which a timeline for developing solutions and full implementation might extend beyond the IANA Stewardship Transition) to Work Stream 1 as refinements to certain procedures might be able to enhance ICANN accountability in the short term, including enhancements to the Ombudsman’s role and function, the introduction of limits to ICANN’s ability to deny transparency/disclosure requests, the definition of security audits and certification requirements for ICANN’s IT system.	