

Appendix G: Legal Documents

In their role as counsel to the CCWG-Accountability the law firms Sidley Austin and Adler & Colvin have provided a number of memoranda, charts, and legal reviews of report text. In this Appendix, the group presents a selection of key documents that were essential in the process of producing the Second Draft Report. The full list of documents is available on the public Wiki space at: <https://community.icann.org/x/pqw0Aw>.

- ❑ [Chart of Mandatory Statutory Member Rights Relevant to the Community Mechanism as Sole Member](#)
30 July 2015 (also displayed below)
- ❑ [Options for Board Replacement in the Event of Full Board Recall](#)
18 July 2015
- ❑ [Empowered SO/AC Membership & Designator Models with Community Mechanism as Sole Member Model](#)
17 July 2015
- ❑ [Description and Comparison of Empowered SO/AC Membership and Designator Models](#)
07 July 2015
- ❑ [Updated Legal Assessment: Revised Summary Chart and Governance Chart](#)
16 June 2015
- ❑ [Use of Unincorporated Associations in ICANN Governance](#)
03 May 2015
- ❑ [Overview of Community Powers](#)
24 April 2015
- ❑ [Response to Questions Re: Unincorporated Associations](#)
23 April 2015
- ❑ [Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart](#)
23 April 2015

□ [Updated Sidley Austin, Adler & Colvin Joint Preliminary Analysis](#)

10 April 2015

Chart of Mandatory Statutory Member Rights Relevant to the Community Mechanism as Sole Member

This Chart is referred to in Section 5A and copied below for ease of reference.

Mandatory Statutory Member Rightsⁱ Relevant to CMSMⁱⁱ and Methods of Limiting the Exercise of Those Rights

Statutory Member Right		Limit on CMSM's exercise ⁱⁱⁱ	
		Proposed Vote in CMSM ^{iv}	ICANN Board Action Required ^v
1	Elect directors	Per CCWG proposal	
2	Unilaterally set/change board size stated in the bylaws through a CMSM-initiated and approved bylaw amendment	Supermajority/consensus	
3	Remove directors without cause	Per CCWG proposal	
4.a	Fill board vacancies as a result of director removal	Per CCWG proposal	
4.b	Fill board vacancies caused by reasons other than removal	Per CCWG proposal	
5	Approve bylaw amendments which would materially and adversely affect the sole member's voting rights	Per CCWG proposal	

Statutory Member Right		Limit on CMSM's exercise ⁱⁱⁱ	
		Proposed Vote in CMSM ^{iv}	ICANN Board Action Required ^v
6/7	Unilaterally initiate and adopt amendments to bylaws that extend or increase the length of directors' terms; and Unilaterally adopt, amend, or repeal other bylaw provisions	Supermajority/consensus	
8	Approve amendments to articles of incorporation	¾ vote (same as for fundamental bylaws)	✓
9	Amend governing documents to terminate member structure	Supermajority/consensus	
10	Approve indemnification of a corporate agent	majority	
11.a	Bring suit to remove a director for fraud, dishonesty, abuse of authority, or breach of fiduciary duty	Supermajority/consensus	
11.d	Bring suit against a third party in the corporation's name (a "derivative suit"), including an action to remedy a breach of charitable trust or against a director for self-dealing ^{vi}	Supermajority/consensus	
12	Approve sale or disposition of all or substantially all assets	Supermajority/consensus	✓
13	Approve merger	Supermajority/consensus	✓
14	Petition for court-ordered involuntary dissolution of the corporation	Supermajority/consensus	
15	Elect to voluntarily dissolve the corporation	Supermajority/consensus	
17	Inspection rights	majority	
18	Member resignation	Supermajority/consensus	

ⁱ For a full listing of all rights which must be granted to members of a California nonprofit public benefit corporation, see [Responses to Questions from Samantha Eisner from June 8, 2015](#). As the sole statutory member of ICANN, the CMSM will have *all* the rights of a member under California corporate law that were listed in the table from the June 8 memorandum.

ⁱⁱ Certain of the rights listed in the table to the June 8 memorandum, such as meeting or voting rights, are relevant only in multiple-member contexts, and are not applicable where a corporation has a sole member. Accordingly, these rights will not apply to the CMSM for practical purposes. Similarly, in the CMSM model, there will be no classes of members, so rights given to member classes will be inapplicable as well. We have not listed these rights herein, but they include rights relating to (11b/c) suits to resolve director/member deadlock, (19) due process for member expulsion, (21-28, 31) member meetings and voting, and (32) equality of member rights. We have also omitted for simplicity certain other member rights, such as the rights to (16) receive reports and (20,29) be protected from liabilities, and (30) the right to approve certain corporate obligations (which may, but need not, be provided to members in the Bylaws).

ⁱⁱⁱ By limit on CMSM's exercise, we mean what sort of structural restraints exist to make sure that the exercise of powers by the CMSM will reflect the consensus of the community and have received full consideration. For certain actions—such as bylaw amendments or articles of incorporation amendments (including those which would eliminate the member structure), or approval of mergers or sales of substantially all the assets of the corporation--California law allows third persons to be given approval rights, in addition to whatever member or Board approvals are otherwise required. These third persons could be participants in the CMSM or from outside the CMSM entirely.

^{iv} The CMSM governing provisions that will be incorporated into the ICANN Bylaws can be as flexible as desired. These provisions can provide that the CMSM will exercise its statutory rights as the sole member of ICANN in the same manner as the other decisions under consideration. Thus, the decision to exercise any statutory right in the table could be made through the same community voting mechanism that will exist for making decisions to exercise the essential community powers, with the same SOs and ACs having the same number of votes. At the same time, however, if the CCWG-Accountability decides it would be preferable, each such right could have different requirements for its exercise by the CMSM, including the percentage of votes (available or cast) required to approve the CMSM's exercise of the right. We have indicated the rights where a higher threshold has been discussed, or would logically follow from the thresholds for similar rights,

by “supermajority/consensus.” Rights which might reasonably be exercised with a lower threshold, but which we are not aware have been discussed, are noted as “majority.”

^v For certain actions, California corporate law *requires* the approval of *both* the member and the Board of Directors; neither can act without the other. These are marked in the table. This limitation on the power of CMSM as the sole member is not optional.

^{vi} The power to require ICANN to enter into an IRP—as opposed to filing a derivative suit--would be accomplished by a simple majority vote.