

Stress Tests			
	Contributor	Comment	CCWG Response/Action
8 7	RH	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>"Concerns"</p> <p>RH acknowledges that jurisdiction is distinct from where ICANN is organized and located. " ICANN will be subject to the laws of the countries in which it operates" No disagreement there.</p> <p>RH says, " 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."</p> <p>On this point, ICANN's Articles of Incorporation and Bylaws Article 18 require California incorporation and location. In WS1, the CCWG is not proposing any changes in ICANN's state of incorporation. ICANN relocation could be a subject for later debate, although any change to Articles or Bylaws would be subject to new community veto of the proposed change.</p>
8 8	DBA	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 stakeholder group in any way, including in ICANN's policy development processes and decision making functions.	<p>"Agreement" "Concerns"</p> <p>Several stress tests address capture of AC/SOs and policy/decision-making functions. (see ST 12, 13, 26)</p> <p>First draft of Stress Testing indicated need for transparency and participation processes within AC/SO charters and operating procedures. This is likely to be a WS2 item.</p> <p>Still, the ST team has added new stress tests for capture by members of an AC/SO (see ST 33, suggested by NTIA)</p>
8 9	WCcomment 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.	"Agreement"
9 0	CRG	Are they any stress test yet about conflicts of interest internal to the corporation (Board- Management, Management-Management)?	<p>CRG asks if there any STs for internal conflicts of interest within ICANN board and management. ST 9 comes closest, by examining corruption or fraud.</p> <p>Of the existing accountability measures, there is an anonymous hotline for employees to use. And in 2013 ICANN published a Conflict of Interest review (link) See pages 4 and 5 for implementation of new policies.</p> <p>The CCWG proposes community powers to challenge ICANN decisions or inaction via a binding IRP. And the community could block ICANN's op plan or budget if the proposal were tainted by conflict of interests. Finally, the community could remove one or all ICANN directors.</p>
9 1	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.	<p>"Concerns"</p> <p>In ST 21, the Stress Test team attempted to address this scenario. However, ccNSO has decided to undertake policy development pursuant to the Framework of Interpretation (Oct-2014), and requested that CCWG defer to that process. CCWG agreed.</p>
9 2	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>Stress Test 1:</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>David Post and Danielle Kehl requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.</p> <p>The ST team has added 2 new stress tests for the next draft, ST 29 (similar to ST23), and ST30.</p> <p>In both these new stress tests, the proposed accountability measures would be adequate to challenge ICANN enforcement decisions.</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>	
9 3	IA	<p>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</p>	<p>"Agreement" with comment</p> <p>IA agrees with ST 18, and suggests that it is directly related to the IANA transition.</p> <p>First, the ST team made this designation on the narrow criteria of whether the IANA transition provoked the stress test scenario. In the case of ST18 and GAC voting, this is not related to IANA contract.</p> <p>Moreover, this designation is for informational purposes only, and does not determine whether a change is part of WS1 or WS2.</p>
9 4	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 ICANN's capture by an internal community other than the GAC. - Measures to prevent capture by other groups should be proposed. Otherwise, this stress test overlaps with stress test 18. 	<p>"Concerns"</p> <p>ES opposes ST 21, regarding revocation and re-assignment of ccTLD manager. In ST 21, the Stress Test team attempted to address this scenario. However, ccNSO has decided to undertake policy development pursuant to the Framework of Interpretation (Oct-2014), and requested that CCWG defer to that process. CCWG agreed, and therefore ST 21 is not being cited to suggest any changes as part of CCWG proposal.</p> <p>--</p> <p>ES recommends doing without ST 4 regarding new regulation or legislation. This stress test evaluates how the community could challenge ICANN's decision in reaction to new legislation/regulation. The improved IRP could overturn ICANN's decision, allowing the community to pursue other means of reacting to the regulation/legislation, such as further policy development or litigation.</p> <p>--</p> <p>ES notes that ST 12 focuses on capture by GAC, whereas there are other capture scenarios. Several stress tests address capture of AC/SOs and policy/decision-making</p>

	<p>- 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.</p> <p>- 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</p> <p>- 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>	<p>functions. (see ST 12, 13, 26)</p> <p>First draft of Stress Testing indicated need for transparency and participation processes within AC/SO charters and operating procedures. This is likely to be a WS2 item.</p> <p>Still, the ST team has added new stress tests for capture by members of an AC/SO (see ST 33, suggested by NTIA)</p> <p>--</p> <p>ES does not agree with ST 18. The ST team notes that the scenario in ST 18 is entirely conceivable –GAC can change to majority voting instead of the absence-of-objection method it has always used. The bylaws change suggested by ST 18 is designed to preserve the "mutually agreeable solution" obligation as it has always been applied – to GAC advice that is supported by consensus. GAC can still offer advice that is not supported by consensus, and that advice would still be "duly taken into account" by ICANN.</p> <p>--</p> <p>ES does not think that ST 14 is necessary since we are bringing AoC commitments into the Bylaws. However, it was ST 14 that suggested the incorporation of AoC into the bylaws, so we shall retain ST 14 as part of that process. The next draft proposal will include this as part of the AoC incorporation, "After these aspects of the Affirmation of Commitments are adopted in ICANN bylaws, ICANN and the NTIA should mutually agree to terminate the Affirmation of Commitments."</p> <p>--</p> <p>Regarding ST 15, we note that ES does <u>not</u> believe that Article 18 of ICANN bylaws should become a Fundamental Bylaw. That preference is fully noted.</p>
<p>9 5</p> <p>RySG</p>	<p>- 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.</p> <p>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".</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>"Agreement" "Concerns"</p> <p>RySG asks how CCWG will react to STs that are scored as "inadequate" or "partially adequate". First, the CCWG intends to adjust proposed accountability measures to the extent feasible in order to address all stress tests. However, as noted in our first draft, "We discovered that while some risk mitigation was possible, it became clear that no accountability framework could eliminate the risk of such events or entirely alleviate their impact."</p> <p>--</p> <p>RySG asks how community powers (incl IRP decisions) could drive revisions to registry and registrar agreements. The ST team notes that proposed changes to ICANN's Mission and Core Values are partly designed to constrain ICANN's ability to impose obligations outside its limited technical mission. [NOTE: add new language from draft 2 of Mission/Core Values]</p> <p>--</p> <p>RySG notes that ST 16 is not related to the IANA transition. In the second column, the ST team noted "As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to expand scope without community support. But as a result of IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain IANA contract with NTIA." [NOTE: Let's ask RySG if this answer is satisfactory]</p> <p>--</p> <p>RySG notes that ST 20 had temporal mismatch. We corrected it to read, "Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation."</p> <p>--</p> <p>RySG notes that ST 26 should also address actions of ICANN staff in the absence of an actionable board decision. The ST work team agrees that staff actions should be challengeable via reconsideration or IRP, and is</p>

		actions that did not directly follow from a board decision, as overturn of the Board decision would not be the appropriate fix.	working with WP2 and WP3 to address this in the next draft proposal.
9 6	Govt-BR	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.	"Agreement"
9 7	SR	<p>- 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.</p> <p>- 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.</p> <p>- para 581, 657 - and reputation loss that could lead to capture.</p> <p>- para 585 YES!</p> <p>- para 613 From past community discussions, if community driven, an "ICANN foundation" may be a desirable outcome.</p> <p>- 663 YES!</p> <p>- 707,708 YES!</p>	<p>Agreement plus suggestions</p> <p>Sue Randel suggests an additional stress test for capture of IANA root zone by ITU or other body. The ST work team asks whether the approved CWG-Stewardship proposal adequately protects IANA root zone by embedding Post-Transition IANA inside of ICANN?</p> <p>--</p> <p>Regarding ST 1 and 2, Sue Randel suggests that PTI have separate legal advisors and publish its audits. This suggestion is for the ICG to consider, and does not affect ST 1 & 2.</p> <p>--</p> <p>Regarding ST 10 & 24, Sue Randel suggests adding "reputation loss" that could lead to capture. Done.</p> <p>--</p> <p>Regarding ST 16, Su Randel notes that an ICANN Foundation might handle programs outside ICANN's technical mission. Perhaps an item to be considered post-transition.</p>