

8) Stress Tests

8.1 Introduction

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

8.2 Purpose & Methodology

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

AMONG DELIVERABLES LISTED IN THE CCWG-ACCOUNTABILITY CHARTER ARE:

Identification of contingencies to be considered in the stress tests. The CCWG-Accountability should consider the following methodology for stress tests:

1. Analysis of potential weaknesses and risks;
2. Analysis of existing remedies and their robustness;
3. Definition of additional remedies or modification of existing remedies;
4. Description of how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies.

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

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

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

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

We consolidated these into five 'stress test categories' listed below, and prepared draft documents showing how these stress tests are useful to evaluate ICANN's existing and CCWG-Accountability's proposed accountability measures.

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I. FINANCIAL CRISIS OR INSOLVENCY (#5, 6, 7, 8 AND 9)

ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the domain name industry, or the general global economy. It could also result from a legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes domain name registrations obsolete.

II. FAILURE TO MEET OPERATIONAL OBLIGATIONS (#1, 2, 11, 17, AND 21)

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

III. LEGAL/LEGISLATIVE ACTION (#3, 4, 19, AND 20)

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

IV. FAILURE OF ACCOUNTABILITY (#10, 12, 13, 16, 18, 22, 23, 24 AND 26)

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

V. FAILURE OF ACCOUNTABILITY TO EXTERNAL STAKEHOLDERS (#14, 15, 25)

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

Applying Additional Stress Tests

Public comment participants may conceive of other contingencies and risks beyond the 26 stress tests identified in this section. In that case, we encourage commenters to apply their own stress test analysis. To do so, a commenter can examine ICANN's present accountability mechanisms to determine whether they adequately address the contingency. Then, the commenter can examine the proposed accountability enhancements in this document, and assess whether they would give the community adequate means to challenge Board decisions and to hold the Board accountable for its actions.

For example, the stress test team evaluated contingencies that could generally be described as external events (cyber attack, financial crisis, etc.). 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. Instead, it was critical to explore the ability of the

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community to hold ICANN Board and management accountable for their preparation and reaction to the external events. The proposed accountability measures do provide adequate means to do so.

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

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

The stress test exercise demonstrates that Work Stream 1 recommendations do enhance the community's ability to hold ICANN Board and management accountable, relative to present accountability measures. It is also clear that the CWG-Stewardship proposals are complementary to CCWG-Accountability measures. One stress test regarding appeals of ccTLD revocations and assignments (ST 21) has not been adequately addressed in either the CWG-Stewardship or CCWG-Accountability proposals, awaiting policy development from the ccNSO.

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

8.3 Stress test category I: Financial Crisis or Insolvency

STRESS TEST #5, 6, 7, 8	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>5. Domain industry financial crisis. Consequence: significant reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN's ability to operate.</p> <p>6. General financial crisis.</p> <p>7. Litigation arising from private contract, e.g., Breach of Contract.</p> <p>8. Technology competing with DNS.</p> <p>Consequence: loss affecting reserves sufficient to threaten business continuity.</p>	<p>ICANN could propose revenue increases or spending cuts, but these decisions are not subject to challenge by the ICANN community.</p> <p>The Community has input in ICANN budgeting and Strategic Plan.</p> <p>Registrars must approve ICANN's variable registrar fees. If not, registry operators pay the fees.</p> <p>ICANN's reserve fund could support operations in a period of reduced revenue. Reserve fund is independently reviewed periodically.</p>	<p>One proposed measure would empower the community to veto ICANN's proposed annual budget. This measure enables blocking a proposal by ICANN to increase its revenues by adding fees on registrars, registries, and/or registrants.</p> <p>Another proposed mechanism is community challenge to a Board decision using a reconsideration request and/or referral to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a revenue or expenditure decision outside the annual budget process, the Reconsideration or IRP mechanisms may be able to reverse that decision unless it was deemed vital to ICANN.</p>
<p>Conclusions: a) This threat is not directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures would be adequate, unless the revenue loss was extreme and sustained.</p>	<p>e) Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.</p>

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STRESS TEST #9	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>9. Major corruption or fraud.</p> <p>Consequence: major impact on corporate reputation, significant litigation and loss of reserves.</p>	<p>ICANN has annual independent audit that includes testing of internal controls designed to prevent fraud and corruption.</p> <p>ICANN maintains an anonymous hotline for employees to report suspected fraud.</p> <p>ICANN Board can dismiss CEO and/or executives responsible.</p> <p>The community has no ability to force the Board to report or take action against suspected corruption or fraud.</p>	<p>One proposed measure is to empower the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review. An ATRT could make recommendations to avoid conflicts of interest. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>Another proposed measure would empower the community to veto ICANN's proposed annual budget. This measure enables blocking a budget proposal that is tainted by corruption or fraud.</p> <p>If ICANN's Board were involved, or if the Board did not act decisively in preventing corruption or fraud (for instance by enforcing internal controls or policies), a proposed measure empowers the community to remove individual Directors or recall the entire Board.</p>
<p>Conclusions: a) This threat is not directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures would not be adequate if litigation costs or losses were extreme and sustained.</p>	<p>e) Proposed measures are helpful, but might not be adequate if litigation costs and losses were extreme and sustained.</p>

8.4 Stress test category II: Failure to Meet Operational Expectations

STRESS TEST #1, 2	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>1. Change authority for the Root Zone ceases to function, in part or in whole.</p> <p>2. Delegation authority for the Root Zone ceases to function, in part or in whole.</p> <p>Consequence: interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.</p>	<p>Under the present IANA functions contract, NTIA can revoke ICANN's authority to perform IANA functions and re-assign to different entity/entities.</p> <p>NTIA relinquishes the IANA functions contract, this measure will no longer be available.</p>	<p>The CWG-Stewardship proposal includes various escalation procedures to prevent degradation of service, as well as a framework (operational) for the transition of the IANA function.</p> <p>The CWG-Stewardship proposes that IANA naming functions be legally transferred to a new Post-Transition IANA entity (PTI) that would be a subsidiary or affiliate of ICANN.</p> <p>The CWG-Stewardship proposes a multistakeholder IANA Function Review (IFR) to conduct reviews of PTI. Results of IFR are not prescribed or restricted and could include recommendations to the ICANN Board to terminate or not renew the IANA Functions Contract with PTI. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>The CWG-Stewardship proposes the ability for the multistakeholder community to require, if necessary and after other escalation mechanisms and methods have been exhausted, the selection of a new operator for the IANA functions.</p> <p>Suggestions for Work Stream 2: Require annual external security audits and publication of results, and require certification per international standards (ISO 27001) and publication of results.</p>
<p>Conclusions: a) This threat is directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures would be inadequate after NTIA terminates the IANA contract.</p>	<p>e) Proposed measures are, in combination, adequate to mitigate this contingency.</p>

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STRESS TEST #11	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>11. Compromise of credentials.</p> <p>Consequence: major impact on corporate reputation, significant loss of authentication and/or authorization capacities.</p>	<p>Regarding compromise of internal systems:</p> <p>Based upon experience of the recent security breach, it is not apparent how the community holds ICANN management accountable for implementation of adopted security procedures.</p> <p>It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report.</p> <p>Regarding DNS security:</p> <p>Beyond operating procedures, there are credentials employed in DNSSEC.</p> <p>ICANN annually seeks SysTrust Certification for its role as the Root Zone KSK manager. The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities.</p> <p>Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.</p>	<p>Regarding compromise of internal systems:</p> <p>No measures yet suggested would force ICANN management to conduct an after-action report and disclose it to the community.</p> <p>Nor can the community force ICANN management to execute its stated security procedures for employees and contractors.</p> <p>Regarding DNS security:</p> <p>One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, <i>Security Stability and Resiliency</i>. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>A proposed Bylaws change would require ICANN Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could be empowered to challenge that Board decision to an IRP.</p> <p>Suggestions for Work Stream 2:</p> <ul style="list-style-type: none"> - Require annual external security audits and publication of results. - Require certification per international standards (ISO 27001) and publication of results.
<p>Conclusions:</p> <p>a-) This threat is directly related to the transition of IANA stewardship</p>	<p>b-) Existing measures would not be adequate.</p>	<p>c-) Proposed Work Stream 1 measures, in combination, would be helpful to mitigate the scenario, but not to prevent it. Work Stream 2 suggestions might provide risk mitigation measures.</p>

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STRESS TEST #17	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>17. ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by technical community or other stakeholder groups.</p> <p>Consequence: DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.</p>	<p>In 2013-14 the community demonstrated that it could eventually prod ICANN management to attend to risks identified by SSAC. For example: dotless domains (SAC 053); security certificates and name collisions such as .mail, .home (SAC 057)</p> <p>NTIA presently gives clerical approval for each delegation to indicate that ICANN has followed its processes. NTIA could delay a delegation if its finds that ICANN has not followed its processes. Not clear if that would/could have been a finding if ICANN attempted to delegate a new TLD such as .mail or .home.</p>	<p>One proposed measure is to empower the community to force ICANN's Board to respond to recommendations arising from an Affirmation of Commitments Review – namely, 9.2 Review of Security, Stability, and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>A proposed Bylaws change would require ICANN Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could be empowered to challenge that Board decision to an IRP.</p>
<p>Conclusions: a) This threat is partially related to the transition of IANA stewardship.</p>	<p>b) Existing measures were adequate to mitigate the risks of this scenario.</p>	<p>e) Proposed measures enhance community's power to mitigate the risks of this scenario.</p>

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STRESS TEST #21	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>21. A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD Manager.</p> <p>However, the IANA Functions Manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD Manager.</p> <p>Also, the government official demands that ICANN assign management responsibility for a ccTLD to a Designated Manager. But the IANA Functions Manager does not document that: Significantly Interested Parties agree; that</p>	<p>Under the present IANA contract with NTIA, the IANA Department issues a boiler-plate report to the ICANN Board, which approves this on the Consent Agenda and forwards to NTIA, which relies on the Board's certification and approves the revocation, delegation or transfer.</p> <p>There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN's certification that process was followed properly.</p>	<p>From the CWG-Stewardship draft proposal: "CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and redelegations in the IANA Stewardship Transition proposal."</p> <p>From CWG-Stewardship co-chair correspondence on 15-Apr-2015: "As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes."</p> <p>Regarding CCWG-Accountability proposed measures:</p>

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other Stakeholders had a voice in selection; the Designated Manager has demonstrated required capabilities; there are not objections of many Interested Parties and/or Significantly Interested Parties.

This stress test examines the community's ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place.

Consequence: Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.

Conclusions:

a) This threat is directly related to the transition of IANA stewardship.

See GAC Principles for delegation and administration of ccTLDs. GAC Advice published in 2000 and updated in 2005 specifically referenced to Sections 1.2 & 7.1.

See [Framework of Interpretation](#), 20-Oct-2014.

One proposed CCWG-Accountability measure could give the community standing to request Reconsideration of management's decision to certify the ccTLD change. Would require a standard of review that is more specific than amended ICANN Mission, Commitments and Core Values.

Another proposed CCWG-Accountability mechanism is community challenge to a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN took action to revoke or assign management responsibility for a ccTLD, the IRP mechanism might be enabled to review that decision. Would require a standard of review.

b) Existing measures would not be adequate.

e) Proposed measures do not adequately empower the community to address this scenario until the appropriate processes develop appropriate mechanisms.

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8.5 Stress test category III: Legal/Legislative Action

STRESS TEST #3	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>3. Litigation arising from existing public policy, e.g., Antitrust suit.</p> <p>In response, ICANN Board would decide whether to litigate, concede, settle, etc.</p> <p>Consequence: significant interference with existing policies and/or policy development relating to relevant activities.</p>	<p>The community could develop new policies that respond to litigation challenges.</p> <p>An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.</p> <p>Reconsideration looks at process but not substance of a decision.</p> <p>ICANN must follow orders from courts of competent jurisdiction.</p>	<p>After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:</p> <p>The community could develop new policies that respond to litigation challenges.</p> <p>Another measure would give the community standing to file for Reconsideration or IRP, based on amended Mission, Commitments and Core Values.</p> <p>Another measure would allow each Affirmation of Commitments review team to assess implementation of prior recommendations, ad renew the recommendations. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p>
<p>Conclusions:</p> <p>a-) This threat is not directly related to the transition of IANA stewardship.</p>	<p>b-) Existing measures are inadequate.</p>	<p>e-) Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.</p>

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STRESS TEST #4	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>4. New regulations or legislation.</p> <p>For example, a government could cite anti-trust or consumer protection laws and find unlawful some rules that ICANN imposes on TLDs. That government could impose fines on ICANN, withdraw from the GAC, and/or force ISPs to use a different root, thereby fragmenting the Internet.</p> <p>In response, ICANN Board would decide whether to litigate, concede, settle, etc.</p> <p>Consequence: significant interference with existing</p>	<p>The community could develop new policies that respond to new regulations.</p> <p>An ICANN Board decision on how to respond to the regulation (litigate or change policy/implementation) could not be challenged by the community at-large, which lacks standing to use IRP.</p> <p>Reconsideration looks at process but not substance of a decision.</p> <p>ICANN must follow orders from courts of competent jurisdiction.</p>	<p>After ICANN Board responded to the regulation (litigate or change policy/implementation), the community would have several response options:</p> <p>The community could develop new policies that respond to regulation.</p> <p>Another measure would give the community standing to file for Reconsideration or IRP, based on amended Mission, Commitments and Core Values.</p> <p>Another measure would allow each Affirmation of Commitments review team to assess</p>

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policies and/or policy development relating to relevant activities.

implementation of prior recommendations, and renew the recommendations. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.

<p>Conclusions: a) This threat is not directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures are inadequate.</p>	<p>e) Proposed measures would be an improvement but might still be inadequate.</p>
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STRESS TEST #19	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>19. ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.</p> <p>In response, ICANN Board would decide whether to litigate, concede, settle, etc.</p> <p>Consequence: The entity charged with root zone maintenance could face the question of whether to follow ICANN re-delegation request or to follow the court order.</p>	<p>Under the present agreement with NTIA, the entity performing root zone maintenance is protected from lawsuits since it is publishing the root per contract with the US Government.</p> <p>However, the IANA stewardship transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits.</p> <p>A separate consideration:</p> <p>An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.</p> <p>Reconsideration looks at process but not substance of a decision.</p> <p>ICANN must follow orders from courts of competent jurisdiction.</p>	<p>While it would not protect the root zone maintainer from lawsuits, one CCWG-Accountability proposed mechanism is community challenge of ICANN decision to re-delegate or its decision to acquiesce or litigate the court order. This challenge would take the form of a Reconsideration or IRP.</p> <p>After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the decision could be challenged via Reconsideration or IRP, based on standard of review in amended Mission, Commitments and Core Values.</p>
<p>Conclusions: a) This threat is directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures might not be adequate.</p>	<p>e) At this point, CWG-Stewardship's recommendations are still in development.</p>

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STRESS TEST #20	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>20. A court order is issued to block ICANN's delegation of a new TLD, because of complaint by existing TLD operators or other aggrieved parties.</p> <p>For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string.</p> <p>In response, ICANN Board would decide whether to litigate, concede, settle, etc.</p> <p>Consequence: ICANN's decision about how to respond to court order could bring liability to ICANN and its contract parties.</p>	<p>Before delegation, the community lacked standing to object to string similarity decisions. Reconsideration requests looks at process but not at <i>substance</i> of the decision.</p> <p>An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.</p> <p>Reconsideration looks at process but not substance of a decision.</p> <p>ICANN must follow orders from courts of competent jurisdiction, and may consider factors such as cost of litigation and insurance.</p>	<p>Preventive: DuringAt the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy and implementation.</p> <p>A future new gTLD Guidebook could give the community standing to file objections.</p> <p>Remedial: After the ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:</p> <p>One measure would give the community standing to file for Reconsideration or IRP, according to standard of review in amended Mission, Commitments and Core Values.</p> <p>One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, <i>Consumer Trust, Choice, and Competition</i>. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p>
<p>Conclusions: a)This threat is not directly related to the transition of IANA stewardship.</p>	<p>b)Existing measures would be inadequate.</p>	<p>e)Proposed measures would be an improvement but might still be inadequate.</p>

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8.6 Stress test category IV: Failure of Accountability

STRESS TEST #10, 24	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>10. Chairman, CEO or officer acting in a manner inconsistent with the organization's Mission.</p>	<p>As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand scope too</p>	<p>One proposed measure empowers the community to veto ICANN's proposed strategic plan or annual budget. This measure</p>

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24. An incoming Chief Executive institutes a "strategic review" that arrives at a new, extended mission for ICANN. Having just hired the new CEO, the Board approves the new Mission / strategy without community consensus.

Consequence: Community ceases to see ICANN as the community's mechanism for limited technical functions, and views ICANN as an independent, *sui generis* entity with its own agenda, not necessarily supported by the community. Ultimately, community questions why ICANN's original functions should remain controlled by a body that has acquired a much broader and less widely supported Mission.

Creates reputational problems for ICANN that could contribute to capture risks.

Conclusions:

~~a)~~ This threat is directly related to the IANA Stewardship Transition.

broadly.

The Community has some input in ICANN budgeting and Strategic Plan, and could register objections to plans and spending on extending ICANN's Mission.

California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation.

~~b)~~ Existing measures are inadequate after NTIA terminates the IANA contract.

could block a proposal by ICANN to increase its expenditure on extending its Mission beyond what the community supported.

Another proposed measure is empowering the community to challenge a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. The IRP decision would be based on a standard of review in the amended Mission Statement, including "ICANN shall not undertake any other Mission not specifically authorized in these Bylaws".

~~c)~~ Proposed measures in combination are adequate.

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STRESS TEST #12	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>12. Capture by one or several groups of stakeholders.</p> <p>Consequence: major impact on trust in multistakeholder model, prejudice to other stakeholders.</p>	<p>Regarding capture by governments, the GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN Bylaws would require due deference only to advice that had GAC consensus.</p>	<p>CCWG-Accountability proposals for community empowerment rely upon supermajority to veto ICANN budgets and strategic plans, to remove ICANN Board director(s). A supermajority requirement is an effective prevention of capture by one or a few groups, provided that quorum requirements are high enough.</p> <p>Each AC/SO/SG needs <u>processes for accountability and transparency rules, and participation that are sufficient</u> to prevent capture from those outside that community.</p> <p>To prevent capture by governments, another proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to obligate trying to find a mutually agreeable solution only where GAC advice was supported by GAC consensus.</p>
<p>Conclusions: a) This threat is not directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures would be inadequate.</p>	<p>e) Proposed measures would be adequate.</p>

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STRESS TEST #13	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>13. One or several stakeholders excessively rely on accountability mechanism to “paralyze” ICANN.</p> <p>Consequence: major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff.</p>	<p>Current redress mechanisms might enable one stakeholder to block implementation of policies. But these mechanisms (IRP, Reconsideration, Ombudsman) are expensive and limited in scope of what can be reviewed.</p> <p>There are no present mechanisms for a ccTLD operator to challenge a revocation decision.</p>	<p>CCWG-Accountability proposals for community empowerment rely upon supermajority to veto ICANN budgets and strategic plans, to remove ICANN Board director(s). A supermajority requirement is an effective prevention of capture by one or a few groups, provided that quorum requirements are high enough.</p> <p>Each AC/SO/SG needs accountability and transparency rules to prevent capture from those outside that community.</p> <p>However, some CCWG-Accountability proposals may make redress mechanisms more accessible and affordable to individual stakeholders, increasing their ability to block implementation of policies and decisions.</p> <p>It should be noted that proposed measures for Reconsideration and IRP include the ability to dismiss frivolous or abusive claims and to limit the duration of proceedings.</p>
<p>Conclusions: a) This threat is not directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures seem to be adequate.</p>	<p>c) Improved access to Reconsideration and IRP could allow individuals to impede ICANN processes, although this risk is mitigated by dismissal of frivolous or abusive claims.</p>

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STRESS TEST #16	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>16. ICANN engages in programs not necessary to achieve its limited technical Mission. For example, uses fee revenue or reserve funds to expand its scope beyond its technical Mission, giving grants for external causes.</p> <p>Consequence: ICANN has the power to determine fees</p>	<p>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.</p> <p>Community was not aware of</p>	<p>One proposed measure is empowering the community to veto ICANN's proposed strategic plan and budget. This measure could block a proposal by ICANN to increase its expenditure on initiatives the community believed were beyond ICANN's limited Mission. However, this would be an extreme measure since the entire budget would have to be</p>

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charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.

ICANN Board's secret resolution to initiate negotiations to create NetMundial. There was no apparent way for community to challenge/reverse this decision.

vetoed.

Another proposed mechanism is a challenge to a Board decision, made by an aggrieved party or the Community as a whole. This would refer the matter to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a commitment or expenditure outside the annual budget process, the IRP mechanism enables reversal of that decision.

The Community has input in ICANN budgeting and Strategic Plan.

Registrars must approve ICANN's variable registrar fees, though Registrars do not view this as an accountability measure.

California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation.

Another proposal is to amend ICANN Bylaws to prevent the organization from expanding scope beyond ICANN's amended Mission and Core Values.

If ICANN's Board proposed to amend/remove these Bylaws provisions, another proposed measure would empower the community to veto that proposed Bylaws change.

<p>Conclusions: a) Threat is directly related to the transition of IANA stewardship.</p>	<p>b) Existing measures are inadequate.</p>	<p>e) Proposed measures in combination may be adequate.</p>
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STRESS TEST #18

EXISTING ACCOUNTABILITY MEASURES

PROPOSED ACCOUNTABILITY MEASURES

18. Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's Board.

Current ICANN Bylaws (Section XI) give due deference to GAC advice, including a requirement to try and find "a mutually agreeable solution."

One proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually agreeable solution only where GAC advice was supported by GAC consensus.

Consequence: Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free online

This is required for any GAC advice, not just for GAC consensus advice.

Today, GAC adopts formal advice according to its Operating Principle 47: "*consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any*

The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN Bylaws would require trying to find a mutually agreeable solution only on advice

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expression, for example. *formal objection.*¹ But the GAC that had GAC consensus. may at any time change its procedures to use majority voting instead of consensus. GAC can still give ICANN advice at any time, with or without consensus.

Conclusions: a) This threat is not directly related to the transition of IANA stewardship.	b) Existing measures are inadequate.	c) Proposed measures are adequate.
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STRESS TEST #22

22. ICANN Board fails to comply with Bylaws and/or refuses to accept the decision of a redress mechanism constituted under the Bylaws.

Consequence: Community loses confidence in ultimate stakeholder structures to govern ICANN.

EXISTING ACCOUNTABILITY MEASURES

As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to ignore Bylaws. But as a result of IANA stewardship transition, ICANN would no longer need to follow Bylaws in to retain IANA contract with NTIA.

Aggrieved parties can ask for Reconsideration of Board decisions, but this is currently limited to questions of whether process was followed.

Aggrieved parties can file for IRP, but decisions of the panel are not binding on ICANN.

California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation.

PROPOSED ACCOUNTABILITY MEASURES

⊕ One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged.

Another proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, the *Accountability and Transparency Review Team*. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.

One proposed measure is empowering the community to challenge a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN failed to comply with its Bylaws, the IRP mechanism enables a reversal of that decision.

If the ICANN Board were to ignore binding IRP decisions, another proposed measure would empower the community to force resignation ICANN Board member(s).

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Conclusions:
a) This threat is directly related to the transition of IANA stewardship.

b) Existing measures are inadequate.

c) Proposed measures in combination are adequate because the community has power to spill the Board.

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¹ ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>

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STRESS TEST #23

23. ICANN uses RAA or other agreements to impose requirements on third parties, outside scope of ICANN Mission. (e.g. registrant obligations.)

Affected third parties, not being contracted to ICANN, have no effective recourse.

Contracted parties, not affected by the requirements, may choose not to use their ability to challenge ICANN's decision.

This issue occurs in policy development, implementation, and compliance enforcement.

Consequence: ICANN seen as a monopoly leveraging power in one market (domain names) into adjacent markets.

EXISTING ACCOUNTABILITY MEASURES

During policy development, affected third parties may participate and file comments.

Affected third parties may file comments on proposed changes to registry and registrar contracts.

Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies.

Affected third parties (e.g. registrants and users) have no standing to challenge ICANN management and Board on how it has *implemented* approved policies.

If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.

PROPOSED ACCOUNTABILITY MEASURES

A proposed measure to empower an aggrieved party (e.g. registrants and users) to challenge a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision, based on standard for review in the amended Mission, Commitments and Core Values.

Another proposed measure is empowering the community to challenge a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. That IRP decision would be based on a standard of review in the amended Mission statement, including "ICANN shall not undertake any other Mission not specifically authorized in these Bylaws."

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<p>Conclusions: a) This threat is not directly related to IANA transition.</p>	<p>b) Existing measures are inadequate.</p>	<p>Proposed measures would be adequate.</p>
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STRESS TEST #26	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>26. During implementation of a properly approved policy, ICANN staff substitutes their preferences and creates processes that effectively change or negate the policy developed. Whether staff does so intentionally or unintentionally, the result is the same.</p> <p>Consequence: Staff capture of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.</p>	<p>The reconsideration review mechanism allows for appeal to the Board of staff actions that contradict established ICANN policies. However, reconsideration looks at process but not substance of a decision.</p> <p>An ICANN Board decision could not be challenged by the community at-large, which lacks standing to use IRP.</p>	<p>If the staff action involved a Board decision, there are proposed improvements to challenge a Board decision by reconsideration or referral to an Independent Review Panel (IRP) with the power to issue a binding decision.</p>
<p>Conclusions: a) This threat is not directly related to IANA transition.</p>	<p>b) Existing measures are inadequate.</p>	<p>e) Proposed measures would, in combination, be adequate.</p>

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8.7 Stress test category V: Failure of Accountability to External Stakeholders

STRESS TEST #14	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>14. ICANN or NTIA choose to terminate the Affirmation of Commitments.</p> <p>Consequence: ICANN would no longer be held to its Affirmation commitments, including the conduct of community reviews and required implementation of review team recommendations.</p>	<p>The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days notice.</p> <p>As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>But as a result of IANA stewardship transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain the Affirmation of Commitments.</p>	<p>One proposed mechanism is community standing to challenge a Board decision by referral to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN canceled the Affirmation of Commitments, the IRP mechanism could enable reversal of that decision.</p> <p>Another proposed measure is to import Affirmation of Commitments provisions into the ICANN Bylaws, and dispense with the bilateral Affirmation of Commitments with NTIA. Bylaws would be amended to include Affirmation of Commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in paragraph 9.</p> <p>If ICANN's Board proposed to</p>

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amend the Affirmation of Commitments and reviews that were added to the Bylaws, another proposed measure would empower the community to veto that proposed Bylaws change.

Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.

Conclusions: a) This threat is directly related to IANA transition.	b) Existing measures are inadequate after NTIA terminates the IANA contract.	e) Proposed measures in combination are adequate.
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STRESS TEST #15	EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>15. ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN's failure to enforce contracts, or other actions.</p> <p>Consequence: affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.</p>	<p>As long as NTIA controls the IANA contract, ICANN could risk losing IANA functions if it were to move in order to avoid legal jurisdiction.</p> <p>Paragraph 8 of the Affirmation of Commitments requires ICANN to remain headquartered in the US, but the Affirmation of Commitments can be terminated by ICANN at any time.</p> <p>As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments.</p>	<p>ICANN's present Bylaws include a commitment to maintain headquarters in California with offices around the world.</p> <p>If ICANN's Board proposed to amend this Bylaws provision, one proposed measure would empower the community to veto that proposed Bylaws change.</p>
Conclusions: a) This threat is directly related to the transition of IANA stewardship.	b) Existing measures are inadequate once NTIA terminates IANA contract.	e) Proposed measures improve upon existing measures, and may be adequate.

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STRESS TEST #25

25. ICANN delegates or subcontracts its obligations under a future IANA agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.

Consequence: Responsibility for fulfilling the IANA functions could go to a third party that was subject to national laws that interfered with its ability to execute IANA functions.

EXISTING ACCOUNTABILITY MEASURES

The present IANA contract ([link](#)) at C.2.1 does not allow ICANN to sub-contract or outsource its responsibilities to a 3rd party without NTIA's consent.

NTIA could exert its control over ICANN's decision as long as it held the IANA contract. But not after NTIA relinquishes the IANA contract.

Nor would NTIA's required principles for transition be relevant after transition occurred.

PROPOSED ACCOUNTABILITY MEASURES

The CWG-Stewardship planning the IANA stewardship transition could require community consent before ICANN could sub-contract or outsource its IANA responsibilities to a 3rd party.

The CCWG-Accountability is proposing to empower the community to challenge a Board decision, referring it to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN failed to comply with its Bylaws, the IRP mechanism enables a reversal of that decision.

Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.

Conclusions:

~~a)~~ This threat is directly related to the transition of IANA stewardship.

~~b)~~ Existing measures would not be adequate after NTIA relinquishes the IANA contract.

~~c)~~ Proposed measure are adequate to allow community to challenge ICANN decisions in this scenario.

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After publication of the CCWG first draft proposal, new stress tests were suggested in CCWG email list and in the public comments received. Below are new stress tests proposed for publication in the CCWG's next published draft.

Stress Tests were suggested on 21-May by Chris Disspain's scenario resulting in "handing ultimate authority to a state-based American court and allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission." The ST team had difficulty identifying a scenario under which a California court would make binding decisions about interpretation of ICANN's mission. This was due in part to a misunderstanding embedded in Chris' scenario. We amended Chris' scenario into two scenarios (27 and 28) that could occur under the Member powers described in the CCWG first draft proposal. Neither scenario would result in the outcome Chris worried about.

<u>STRESS TEST #27</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p><u>27. Board refuses to follow community recommendation, triggering a "Member" to sue ICANN in California courts.</u></p> <p><u>For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation. But ICANN board decides to reject the recommendation.</u></p> <p><u>Consequence: Gives ultimate authority to a state-based American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission</u></p>	<p><u>This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts.</u></p> <p><u>Member access to court relief is not available under ICANN's present structure.</u></p>	<p><u>CCWG proposal does not give AC/SOs the power to force ICANN board to accept and implement the ATRT recommendation. This is intentional, since ICANN Board could cite cost or implementability in deciding not to implement part of a Review Team recommendation.</u></p> <p><u>If ICANN board refused to implement the ATRT recommendation, AC/SOs could challenge the board's decision with an IRP. An IRP panel of 3 international arbitrators (not a Court) could hold that the ATRT recommendation does not conflict with "substantive limitations on the permissible scope of ICANN's actions". The IRP decision cancels the board decision to reject the ATRT recommendation. Any court recognizing arbitration results could enforce the IRP decision.</u></p> <p><u>If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, AC/SOs have 2 more options:</u></p> <p><u>AC/SOs could vote to recall the board.</u></p> <p><u>AC/SOs could vote to block the very next budget or Op plan if it did not include the ATRT recommendation.</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Not applicable to ICANN's existing accountability measures</u></p>	<p><u>California courts would not interpret ICANN mission statement, so proposed measures are adequate.</u></p>

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<u>STRESS TEST #28</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p><u>28. Board follows community recommendation, but is reversed by IRP decision, triggering a "Member" to sue ICANN in California courts.</u></p> <p><u>For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation. ICANN board decides to accept the recommendation, believing that it does not conflict with ICANN's limited Mission Statement in the amended bylaws</u></p> <p><u>Consequence: Gives ultimate authority to a state-based American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN's mission</u></p>	<p><u>This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts.</u></p> <p><u>Member access to court relief is not available under ICANN's present structure.</u></p>	<p><u>Aggrieved party or AC/SOs could challenge board's decision with an IRP. An IRP panel of international arbitrators (not a Court) finds that the ATRT recommendation does conflict with "substantive limitations on the permissible scope of ICANN's actions". The IRP panel therefore cancels the board decision to accept and implement the ATRT recommendation.</u></p> <p><u>If the board ignored the IRP ruling and continued to implement its earlier decision, parties to the IRP could ask courts to enforce the IRP decision. Judgments of the IRP Panel would be enforceable in any court that accepts international arbitration results"</u></p> <p><u>If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, AC/SOs have 2 more options:</u></p> <p><u>AC/SOs could vote to recall the board.</u></p> <p><u>AC/SOs could vote to block the very next budget or Op plan if it included the ATRT recommendation.</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Not applicable to ICANN's existing accountability measures</u></p>	<p><u>California courts would not interpret ICANN mission statement, so proposed measures are adequate.</u></p>

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In their public comment (link), David Post and Danielle Kehl requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.

<u>STRESS TEST #29</u> <u>(similar to #23)</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p><u>29. ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations.</u></p> <p><u>ICANN also insists that legacy gTLD operators adopt the new gTLD contract upon renewal.</u></p> <p><u>Consequence: ICANN effectively becomes a regulator of conduct and content on registrant websites.</u></p>	<p><u>The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</u></p> <p><u>Affected registrants may file comments on the proposed gTLD contract renewals.</u></p> <p><u>Affected registrants and users have no standing to use IRP to challenge ICANN decision.</u></p>	<p><u>The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</u></p> <p><u>The proposed IRP allows any aggrieved party to challenge ICANN's enforcement actions, resulting in a binding decision. IRP challenge could assert that RAA provision was not the result of consensus policy and violates mission statement and core values in amended bylaws.</u></p> <p><u>Moreover, the new IRP standard of review includes "public interest as identified through the bottom-up, multistakeholder policy development process."</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Existing measures would not be adequate to challenge ICANN enforcement decision.</u></p>	<p><u>Proposed measures would be adequate to challenge ICANN enforcement decision.</u></p>

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<u>STRESS TEST #30</u> <u>(similar to #23, 29)</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p><u>30. ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.</u></p> <p><u>Consequence: ICANN effectively becomes a regulator of conduct and content on registrant websites.</u></p>	<p><u>The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</u></p> <p><u>Affected registrars could challenge ICANN's termination decisions with Reconsideration or IRP, although the standard of review is only on whether ICANN followed process.</u></p> <p><u>Affected registrants and users have no standing to use IRP to challenge ICANN decision.</u></p>	<p><u>The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</u></p> <p><u>The proposed IRP allows any aggrieved party to challenge ICANN's enforcement actions, resulting in a binding decision. IRP challenge could assert that RAA provision was not the result of consensus policy and violates mission statement and core values in amended bylaws.</u></p> <p><u>Moreover, the new IRP standard of review includes "public interest as identified through the bottom-up, multistakeholder policy development process."</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Existing measures would not be adequate to challenge ICANN enforcement decision.</u></p>	<p><u>Proposed measures would be adequate to challenge ICANN enforcement decision.</u></p>

Should we add a scenario where RAA enforcement is *too relaxed*, resulting in challenges?

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Several individuals asked us to evaluate a stress test scenario where the individual designated by an AC/SO failed to follow their AC/SO voting instructions when communicating AC/SO vote for any of the community powers proposed by CCWG.

<u>STRESS TEST #31</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p>31. "Rogue" voting, where an AC/SO vote on a community power is not exercised in accord with the express position of the AC/SO.</p> <p>Consequence: Voting on a community power would be challenged as invalid, and the integrity of voting could be questioned more broadly.</p>	<p>AC/SO community powers are not available under ICANN's present bylaws.</p>	<p>An AC/SO could develop internal processes to ensure that any vote communicated would match the AC/SO voting instructions.</p> <p>If an AC/SO vote communicator voted against the instructions of their AC/SO, the voting rules for community empowerment mechanisms could specify procedures to invalidate a vote.</p> <p>If any elected AC/SO officer is aware that the person designated to communicate the AC/SO vote did not follow AC/SO instructions, an AC/SO officer could publicize this issue to ICANN staff and to all other AC/SO communities.</p> <p>After notice, the results of community vote would be set aside, pending correction of the problem by the AC/SO. Correction might involve giving more explicit instructions to vote communicator, or replacing the person in that role.</p> <p>After the problem has been remedied, another round of voting would occur.</p>
<p>Conclusions: This threat is not directly related to the transition of IANA stewardship.</p>	<p>Not applicable to ICANN's existing accountability measures</p>	<p>Proposed measures would be adequate to avoid "rogue voting" problems</p>

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There are four stress test items suggested in NTIA Secretary Larry Strickling's statement of 16-Jun-2015 (link):

NTIA-1: Test preservation of the multistakeholder model if individual ICANN AC/SOs opt out of having votes in community empowerment mechanisms.

NTIA-2: Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an AC/SO.

NTIA-3: Barriers to entry for new participants.

NTIA-4: Unintended consequences of "operationalizing" groups that to date have been advisory in nature (e.g. GAC)

Each of these NTIA stress tests is shown below.

<u>STRESS TEST #32</u> <u>(NTIA-1)</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p><u>32. Several AC/SOs opt-out of exercising community powers (blocking budget, blocking op plan, blocking changes to bylaws, approving changes to fundamental bylaws, recalling board members)</u></p> <p><u>Consequence: ICANN's multistakeholder model would be in question if multiple stakeholders did not participate in community powers.</u></p>	<p><u>AC/SO community powers are not available under ICANN's present bylaws.</u></p>	<p><u>In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to exercise community powers. Their community powers and voting rights would be preserved in the bylaws, even if they declined to participate.</u></p> <p><u>The SSAC and RSSAC said they don't intend to exercise voting in community powers, but that does not remove these ACs from ICANN's multistakeholder process. The SSAC and RSSAC would continue advising the board and community on matters relevant to them. Other AC/SOs can ask for SSAC/RSSAC advice before they exercise community powers. The SSAC and RSSAC could opt at any time to exercise voting rights provided in the bylaws.</u></p> <p><u>There may be instances where only 2 or 3 AC/SOs exercise their community powers, but their participation would still represent global stakeholders as long as gNSO, ccNSO, or ALAC were among the voters.</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Not applicable to ICANN's existing accountability measures</u></p>	<p><u>ICANN's multistakeholder model would be preserved, even if 2 or 3 AC/SOs decided not to exercise the new community powers.</u></p>

Reflecting updates to account for public comments on 3-May-2015 draft proposal, ~~as published for public comment~~

<u>STRESS TEST #33</u> <u>(NTIA-2)</u>	<u>EXISTING</u> <u>ACCOUNTABILITY</u> <u>MEASURES</u>	<u>PROPOSED ACCOUNTABILITY</u> <u>MEASURES</u>
<p><u>33. Participants in an AC/SO could attempt to capture an AC/SO, by arranging over-representation in a working group, in electing officers, or voting on a decision.</u></p> <p><u>Consequence: Internal capture, whether actual or perceived, would call into question ICANN's credibility in applying the multistakeholder model.</u></p>	<p><u>ICANN bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption.</u></p> <p><u>AC/SOs can revise their charters if they see need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments.</u></p> <p><u>If a 'captured' AC/SO sent advice /policy to the board, it is not clear how disenfranchised AC/SO members could challenge the board decision to follow that advice/policy.</u></p>	<p><u>ICANN bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption.</u></p> <p><u>AC/SOs can revise their charters if they see need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments.</u></p> <p><u>If a 'captured' AC/SO sent advice /policy to the board, a disenfranchised AC/SO could challenge the board decision to follow that advice/policy, using reconsideration or IRP. The standard of review would be ICANN's amended bylaws, including a requirement that policies "are developed through a bottom-up, consensus-based multistakeholder process"</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Existing accountability measures are not likely to be adequate.</u></p>	<p><u>Existing accountability measures are more likely to be adequate.</u></p>

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<u>STRESS TEST #34 (NTIA-3)</u>	<u>EXISTING ACCOUNTABILITY MEASURES</u>	<u>PROPOSED ACCOUNTABILITY MEASURES</u>
<p><u>34. Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.</u></p> <p><u>Consequence: Barriers to entry, whether actual or perceived, would call into question ICANN's credibility in applying the multistakeholder model.</u></p>	<p><u>ICANN bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.</u></p> <p><u>Affirmation of Commitments requires period reviews of Accountability and Transparency, including "(d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community;"</u></p> <p><u>ICANN's Ombudsman might help new entrants to join AC/SOs.</u></p>	<p><u>ICANN bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.</u></p> <p><u>Affirmation of Commitments requires period reviews of Accountability and Transparency, including "(d) assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community;"</u></p> <p><u>ICANN's Ombudsman might help new entrants to join AC/SOs.</u></p> <p><u>CCWG proposes a new Core Value in ICANN bylaws, requiring ICANN to employ "open, transparent and bottom-up, private sector led, multistakeholder policy development processes that seek input from the public, for whose benefit ICANN shall in all events act". This would be the standard of review for IRPs that could be brought by anyone encountering barriers to entry to an AC/SO.</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Existing accountability reviews can help erode barriers to entry, though not in real-time.</u></p>	<p><u>Proposed changes to Core Values and IRP could also provide faster solutions to barriers encountered by new entrants.</u></p>

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<u>STRESS TEST #35</u> <u>(NTIA-4)</u>	<u>EXISTING</u> <u>ACCOUNTABILITY</u> <u>MEASURES</u>	<u>PROPOSED ACCOUNTABILITY</u> <u>MEASURES</u>
<p><u>35. Unintended consequences of "operationalizing" groups that formerly only gave advice to the ICANN board. (for example, the GAC)</u></p> <p><u>Consequence: An AC that previously gave only advice on narrow scope of issues could affect voting on community powers that extend beyond that narrow scope.</u></p>	<p><u>Advisory Committees (ACs) have no community powers or voting rights under ICANN's present bylaws.</u></p> <p><u>That said, ICANN has given significant deference to GAC advice in the new gTLD program, resulting in significant effects on operations for new gTLD registries and registrars.</u></p>	<p><u>In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to exercise community powers.</u></p> <p><u>While an AC such as the GAC could expand its scope of influence by voting on community powers, there are several ways that CCWG proposed to reduce GAC's ability to affect ICANN operations:</u></p> <p><u>Per Stress Test 18, GAC advice gets no special deference unless it is "consensus" advice.</u></p> <p><u>In Core Values, we say the Private Sector leads the multistakeholder process.</u></p> <p><u>In Core Values, we restrict ICANN's scope of activities.</u></p> <p><u>For the Affirmation of Commitments reviews, the GAC Chair would no longer approve/appoint review team members.</u></p> <p><u>The new IRP gives community ability to overturn a board decision to accept GAC advice that goes against Mission and Core Values in amended bylaws.</u></p>
<p><u>Conclusions:</u> <u>This threat is not directly related to the transition of IANA stewardship.</u></p>	<p><u>Existing accountability measures have already given advisory committees significant influence over ICANN operations.</u></p>	<p><u>Proposed accountability measures would treat ACs as multi-equal stakeholders in exercising community powers, while also reducing the GAC's ability to affect ICANN operations.</u></p>

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The ICANN board sent a letter on 20-Jun with 156 questions regarding impact and implementation testing of CCWG proposals. (link) Two questions included requests for stress testing the CCWG Proposal for SO/AC Membership Model:

What unintended consequences may arise from empowering (e.g., approval rights, etc.) entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members or the community as a whole and have stress tests been conducted for each of these consequences?

What are the risks associated with empowering members to bring lawsuits against ICANN, each other and other parties and have stress tests been conducted for reach of these situations?

The ST work team will address these two requests after the CCWG has adopted its preferred enforcement mechanism, which may or may not involve a Membership model.