

At-Large Cross Community Working Group on Enhancing ICANN Accountability 2nd Draft Report (Work Stream 1) Workspace

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Comment Close Date	Statement Name	Status	Assignee(s)	Call for Comments Open	Call for Comments Close	Vote Open	Vote Close	Date of Submission
📅 12 Sep 2015	Cross Community Working Group on Enhancing ICANN Accountability 2nd Draft Report (Work Stream 1)	DRAFTING	@Alan Greenberg	TBC	TBC	TBC	TBC	TBC

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FINAL VERSION TO BE SUBMITTED IF RATIFIED

The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.

FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.

FIRST DRAFT SUBMITTED

The first draft submitted will be placed here before the call for comments begins.

7 Comments



Alan Greenberg

Part 1 of my comments.

While I am generally supportive of the draft proposal, I do have a number of concerns.

Paragraph 154, bullet 1:

I support the alternate definition that explicitly includes End-Users as opposed to being lumped together within Civil Society.

Section 5.1 Independent Review Panel (IRP)

I still have concerns related to the binding nature of the IRP and why we should feel more comfortable with a 3-person panel than with a Board selected by the community. I do accept that our board HAS made bad decisions at times, but the feeling of unease is still there. The fact that a decision may act as a precedent only increases that unease.

Paragraph 319 – SO/AC Weighting.

I am prepared to accept the (5 x 5) + (2 x 2) weighting. Should the SSAC at some point in the future no longer be Board appointed, I believe that they should have the full 5-weight commensurate with the importance of security and stability in ICANN's mission.

I would support the 7 x 5 model if there were a general community desire to implement it, and categorically reject the model of 4 votes per SO and 2 per AC.

Paragraph 346 – Voting thresholds

The definition says that if a threshold is 66%, then MORE than 66% must be obtained for the threshold to be met. This might be problematic for thresholds of 75%. More than 75% being required implies that if there are only 4 SO/ACs participating, that gives a single SO/AC a veto. On the other hand, given my reservations about "ganging up" (See part 2 of my comments on budget veto and Bylaw rejection), this might be a feature and not a bug.

More to come...



Sebastien Bachollet

I agree with all the Part 1 Alan Greenberg comments.

Regarding

Paragraph 319 – SO/AC Weighting.

My preference would be 7X5 for the long term.

Until the time of SSAC and RSSAC are populated by other processes than by the Board I would support 5X5 + 2X2.

ASO = gNSO = ccNSO = GAC = ALAC is a must. If it is not achieved, it is one of the reason for ALAC not to endorse the report.

Paragraph 346 – Voting thresholds

Any threshold must be very clearly defined is it 66% (75%) or 66%+1 (75%+1)?



Alan Greenberg

Part 2 of my comments.

Section 7.1. Budget rejection/veto

The terms "rejection" and "veto" seem to be used interchangeably and with the same meaning. This should be clarified and preferably only one term used.

Paragraphs 389 and 390 seem to be at odds with each other. 289 says that if there is a second community veto, the previous year's budget will be used. 390 talks about the community's judgement of the Board's response to a 2nd veto, but under the proposed 389, there is no opportunity for a Board obeying the Bylaws to do anything other than comply. More clarity is needed.

I have a concern about rejection of a budget solely due to budget items related to a single SO/AC. There is the opportunity for ganging up on that SO/AC.

Section 7.2. Bylaw rejection

I fear the "ganging up" phenomena here as well.

7.3 Removal of an Individual Director

There must be an explicit statement (and perhaps waiver from each director) that there is no right to appeal, no right to claim unfairness to the Ombudsman, and no legal right related to libel, slander or defamation.

Sections 407 and 409 need to explicitly allow for parallel removal of multiple directors without having to convene the ICANN Community Forum multiple times.

7.4 Removal of the Entire board

Paragraph 415, bullet 2, sub-bullet 2. This section requires notification of just the participating SO/ACs, but then talks about discussions between all SO/ACs (some of whom have not been notified).

[not for the formal ALAC comment, but there is a run-on sentence fragment: *calling for all SOs and ACs that have the right to appoint Directors to select one (or two, depending on their allocation) directors to notify by the close of the Discussion Period of the person[s] it has selected to serve on an Interim Board (for only so long as necessary until a replacement election could be held) should a vote in favor of recall of the entire Board occur, such notice to include a signed statement from the candidate(s) of their willingness to serve and any other information that the Bylaws require Board candidates to provide prior to election.*]

Paragraphs 429-430, Minority View:

I categorically reject the ability of a single SO to remove the entire Board.

Note to AG: Need to review voting thresholds to ensure that they are being used consistently, ie EQUAL or EQUAL TO OR GREATER THAN.

Still more to come...



Sebastien Bachollet

Section 7.1. Budget rejection/veto

I am concern by #380 and #381

#380 it is stated that WS2 develop improvements...

#381 it must be after Board approval and before coming to effect

I don't know and see how it will be feasible if we need also to include more time for consultation. The curent calendar is already very tight.

7.3 Removal of an Individual Director and

7.4 Recalling of the Entire board

I confirm my disagreement for both proposal as it will put the organization at high risk.

I have in the comment of the 1st draft and in a minority report provided an alternative (AFRALO also provided another alternative).

In any case I am concern in the current proposal with:

#409 2.a) The Chair of the Forum must not be associated with the petitioning SO or AC or with the Director involved;

Must add "and with the NomCom".

#411 several "reserve" candidates in place...

Will be very difficult to handle.

#415 second bullet point: "responsible person"???

And if we have to choose between "unlimited period" and a clear calendar,

I vote for the second.

#422 not clear

#423 A minimum diversity requirement must apply.

Like if selecting 2 persons and SO need to have them coming from 2 different regions...

#425 **"The Directors selected for the Interim Board**, and later those selected for the Replacement Board, **will step into the terms** that were vacated by the recalled directors. Each SO and AC and the NomCom shall determine which of the terms the interim and replacement Directors shall fill. In this way there will be no disruption to the staggered terms of the ICANN Board."

I don't see why (and how).

Paragraphs 429-430, Minority View

Agree with Alan



Sebastien Bachollet

As I have published a minority statement, please find the link to all the minority statements (I am the second over 3) and you will have the doc download.

https://community.icann.org/download/attachments/53783460/Appendix%20H%20Minority%20Statements_FINAL.docx?version=1&modificationDate=1438541874000&api=v2

It is also the last document on this page

Second Draft Report (published on 3 August)



Alan Greenberg

Part 3 of my comments.

Paragraph 438, Diversity: I strongly support the position that hat diversity requirements should not prevail over skills or experience requirements.

Paragraph 441, Diversity: The sample list of diversities to be considered includes Skill set, Region, Origin, Culture, Language, Gender, Age, Disability, Stakeholder group. Rules that one must address "diversity" in a given group (whether it is in an IRP Panel, and AoC RT, an AC or SO) must be more specific. It is clear that any relatively finite group (and in one of the examples, the size is only 3) cannot address all forms of diversity.

Paragraph 442: The suggestion to expand the ATRT to include "The review team would be tasked to assess and make recommendations regarding diversity across all ICANN bodies." Is ill-conceived. The task may well be required, but the ATRT is not the place for it, given the other expectations of ATRT outcomes and skill-set required.

"Establish threshold regarding composition of each body (will depend of the body and of the overall composition) to avoid possible blocking on certain votes." I have no idea what this means.

Paragraphs 580-587, WHOIS Review: I believe that this section must be adjusted to allow the "WHOIS" RT to address the appropriate issues for the then current Directory Services and should not be limited to the wording written into the 2009 AoC. Moreover, if the terms of reference of this review need to be further adjusted in the future, it makes no sense to assign this task to the AoC RT, which will have little expertise in this areas. It should be assigned to the Whois RT.

Minority Statement from Eberhard Lisse: I do not support this statement.

Minority Statement by Sebastien Bachellet: I support some of the comments, specifically those related to budget veto and the extraction of non-mission-critical AC/SO Bylaws into what is referred to as an "Operational Document".

Minority Statement by Edward Morris: I reject most of what is being proposed. The only part that may have merit is ensuring that individuals or organizations do not exercise voting rights in multiple AC/SOs or subdivisions thereof. However, this would need to be carefully examined to ensure that such restriction foxes an accountability problem and does not merely restrict individual rights.



Sebastien Bachellet

Regarding Diversity

As I wrote in my comments of the first draft

<http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00069.html>

Diversity is an absolute need.

It was supported by the Francophone community

[Organisation Internationale de la Francophonie input on Diversity \(14 July 2015\)](#)

And I support the recommendations #466 and #467 regarding diversity.