

SUMMARY

Of the Stress Tests, ST18 received the most comments. Argentina, Brazil, France and Spain were opposed to ST18. To quote France on the issue: “[...] the French Government shall formally object to any approval by GAC of a final proposal that would not leave Bylaws Article XI.2.1.j unchanged.” There were 5 submissions against: COA, IFPI & RIAA, IPC, US Chamber of Commerce, and USCIB. These submissions were concerned about conflation with content regulation. To quote the US Chamber of Commerce on the topic: “We are concerned with the framing of Stress Tests # 29 and 30, which seems to conflate the enforcement of certain mutually-agreed to contractual obligations with that of “content regulation.” ICANN has a duty to enforce and enter into mutually agreeable contractual provisions, that are aimed at preventing malicious, abusive, or illegal conduct and the CCWG should add language clarifying this obligation is not altered by ICANN’s revised Mission statement. We have a concern that the by-laws can be interpreted to limit ICANN’s ability (or willingness) to enforce existing contract terms and Public Interest Commitments with Registrars, agree to new contracts with strong protection provisions or otherwise participate in other programs designed to promote public interest goals.”

Stress Tests	Support areas	Neutral areas	Issue areas
ccTLD New Zealand (Internet NZ)	<p>We consider the accountability measures proposed through Stress Tests 18, 33, and 34 are necessary to ensure that a balance is struck between ensuring each AC/SO can present its perspectives, while avoiding capture or the use of advisory powers to override ICANN’s multistakeholder, bottom-up decisions making process.</p> <p>In particular we acknowledge the balance struck in Stress Test 18, which recognises the role Governments fulfil within ICANN in articulating and protecting public interest, while avoiding a situation where split GAC advice is able to “paralyse” a decision-making process by requiring the ICANN Board to find a mutually acceptable solution between multiple parties.</p> <p>We consider the proposed measures under Stress Test 18 recognises the fundamental role of governments in international internet-related public policy issues, and that from time to time the GAC may wish to give advice that covers more than one point of view. However, it also ensures that where there is clear GAC consensus on a public policy issue, the ICANN Board must give due deference to this advice and try to find “a mutually acceptable solution” between the GAC and other parties.</p>	N/A	N/A
CyberInvasion Ltd	General support for most of the proposal: Stress Tests (#18; #11; #32); We support the conclusion of Stress Test 18 with regards to requiring the GAC to issue consensus advice in order to enter into discussions between the Board and the GAC to find a mutually acceptable solution.	N/A	We express concern over the potential rebalancing of power between the SO/AC community as defined by the method of participation in the community mechanism. We respectfully suggest that Stress Test 35 (NTIA-4) may not have fully examined the potential impact of operationalising the advisory committees into roles that may not have been envisaged for them during their creation.
RySG (Registries Stakeholder Group)	Stress Test 18 seeks to formally adopt present practice while recognizing that GAC remains free to determine how it renders advice on public policy matters. The RySG believes that the amendment prompted by Stress Test 18 is necessary for the transition and will work to reinforce the functioning of the multi-stakeholder ICANN community.	N/A	N/A

COA (Coalition for Online Accountability)	Agrees with stress tests 18 and 21	N/A	Stress Test #21 (p. 94): COA agrees with the conclusion (para. 731) that “proposed measures do not adequately empower the community to address this scenario” (ccTLD redelegation outside scope of established policies), and refers to its comments on the IANA Transition Proposal pointing out this significant gap in oversight/review mechanisms. Stress Tests #29 and 30 (pp. 112-113): As previously noted, these are not legitimate stress tests as presented. “Strong” or at least adequate ICANN enforcement of its contracts should be a goal, not a “stress” that must be countered. The CCWG’s response to these new “stress tests” is also indicative of a serious imbalance, since it contemplates enhanced accountability review(through the IRP) for ICANN actions to enforce the contracts, but could foreclose such review where ICANN fails to enforce the contracts adequately or at all. The latter is a far more realistic scenario than the former. Stress Test #33 (NTIA-2) (p.116): The risk of “internal capture” is real, and in fact may be a reality already within the GNSO, whose structure ensures dominance by contracted parties. The responses propounded by CCWG in paras. 984-86 seem inadequate, especially if the trend continues of excluding “structural” considerations from the periodic reviews undertaken. The chance that the Board would effectively reconsider a decision to follow the recommendation, adopted through facially valid procedures, of a “captured” AC or SO seems slight. Whether the IRP would provide an adequate accountability mechanism could depend on the willingness and capacity of arbitrators to look past procedural compliance to assess whether that captured entity actually exhibits a “bottom-up, consensus-based, multistakeholder process.”
ELIG	N/A	N/A	Deadlocks in changing bylaws or fundamental Bylaws may require stress test
Government of Argentina	N/A	N/A	Stress Test 18 and 12 - In this Second Draft Proposal there is no inclusion or mention about the many concerns expressed by Argentina and other governments about this stress test and the proposed Bylaw changes. Amendments proposed to the bylaws are not necessary. These changes make a specific reference to the way that GAC makes its decisions, and it may result in limiting the abilities of GAC for its internal deliberations. Member states participating in the GAC should be the ones to decide about their own decision-making rules. It should be noted that the same comments apply to Stress test 12.

Government of Brazil	N/A	N/A	Stress test 18 - What ST 18 would actually seek would be to impose on GAC a decision-making process that would give a "de facto" veto power for any individual government (or very small group of governments) that may, even in cases where massive majority of governments would favor any given course of action (that might, by the way, involve the interests of a particular national company), be able to block the possibility of triggering the requirement that the Board must enter into negotiations to find a mutually acceptable solution to any conflict between possible Board action and GAC advice. - In the light of the stated above, Brazil firmly rejects ST 18 and fails to see why approval of the IANA stewardship transition proposal should be held hostage of a decision in that regard. It is important, on the hand, to uphold the principle that each SO and AC should retain its autonomy in deciding about its internal operating procedures, without being, in principle, constrained by any external rule that might impose an obligation to frame its decision-making mechanism in any particular way. (see comment for complete text on this subject)
Government of France	N/A	N/A	Stress test 18 - To our surprise, in the case of Stress Test 18, the CCWG 2nd proposal does not put forward the effectiveness of the very mechanisms which the CCWG was commissioned to design in order to enhance ICANN accountability, and which actually apply to most other stress tests. It is incomprehensible to us that the CCWG could maintain an unfortunate amendment to Bylaws Article XI.2.1.j as a solution for Stress Test 18 instead. It even seems irresponsible to us that the CCWG could aggravate the risk of delaying the IANA transition, in spite of all warnings that strict consensus will be needed among governments for GAC to approve the CCWG final proposal as a chartering organization. We therefore thank the CCWG for considering that the French Government shall formally object to any approval by GAC of a final proposal that would not leave Bylaws Article XI.2.1.j unchanged. (see comment for complete text on this subject)
Government of India	Sstress test 34 - The additional stress test relating to 'barriers to entry' (Stress Test #34) is important and required additional focus. In order for ICANN to accurately reflect the views of the multistakeholder community, there must be a sustained focus on barriers to entry which mean that formal inclusion does not always translate to substantive inclusion. Active steps must be taken to ensure substantive inclusion of stakeholders (whether through existing SO/ACs or new ones), while keeping in view diversity of languages and regions.	N/A	N/A

Government of New Zealand	Stress test 18 and 35 - We consider the accountability measures proposed through Stress Tests 18, 33, and 34 are necessary to ensure that a balance is struck between ensuring each AC/SO can present its perspectives, while avoiding capture or the use of advisory powers to override ICANN's multistakeholder, bottom-up decisions making process. In particular we acknowledge the balance struck in Stress Test 18, which recognises the role Governments fulfil within ICANN in articulating and protecting public interest, while avoiding a situation where split GAC advice is able to "paralyse" a decision-making process by requiring the ICANN Board to find a mutually acceptable solution between multiple parties.	Stress test 21 - Stress Test 21 considers a situation where a government demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager. Noting the ccNSO Policy Development Process (PDP) that is planned regarding delegation and redelegation of ccTLDs, one of the proposed accountability measures is to exclude ccTLD delegation/redelegation issues from any appeal mechanism. ccTLD delegation/redelegation has been proposed as an exclusion to the Independent Review Process (IRP) in paragraph 8, page 40 of the proposal. This recommendation is also included in the CWG-Stewardship Proposal that forms part of the proposal to transition the stewardship of the Internet Assigned Numbers Authority. While we acknowledge the commitment of the ccNSO in developing a clearer process for ccTLD delegation/redelegation, we do not consider a potential PDP is sufficient rationale for excluding ccTLD delegation/redelegation from the IRP.	N/A
Government of Spain	N/A	N/A	Disagrees with stress test 18.
Intel	Intel strongly supports the proposed bylaw change as written. The proposed bylaw language will maintain the role of the GAC and its influence, yet satisfy a fundamental requirement from the United States Government that the transition not result in a "government-led" solution. Moreover, advice that did not represent consensus among governments may not be actionable from a practical matter. While we recognize that the proposal does not yet have support of the GAC, Intel believes that the carefully crafted text represents the best chance of adoption by the global community and NTIA, and hence enabling a successful transition.	N/A	N/A
IFPI & RIAA (International Federation of the Phonographic Industry & Recording Industry Association of America)	N/A	N/A	It also means that any ICANN accountability proposal, and any of its stress tests, cannot and should not conflate issues about theoretically questionable content regulation with sound contractual enforcement to prevent illegal conduct and other abuse. Just because some digital transmissions may involve free speech does not mean that all digital transitions are therefore speech, much less protected, free speech, and completely ignores the conduct in question. This flawed logic, taken to extremes, would suggest that ICANN commitments to deter malware and other security threats are inappropriate because the malware is, at some level, digital content. Yet stress tests 29 and 30 precisely suggest such inappropriate conflation of these issues. With this in mind, we believe that the accountability proposal must be amended to require clarifications that contract enforcement is not an act of "regulating services or content", and that stress tests 29 and 30 are improper and should be rejected entirely.

<p>IPC (Intellectual Property Constituency)</p>	<p>Stress Test 18 has been the subject of much discussion and a good deal of criticism, much of it misplaced. In the view of some, Stress Test 18 inappropriately interferes with the GAC's ability to set its voting thresholds. However, it does no such thing. It merely states that, if the GAC chooses to lower its voting thresholds from the current "consensus" requirement, its advice will no longer be entitled to the deference that consensus advice receives. The GAC is thus free to change its voting thresholds as it sees fit. It is eminently logical that a lower level of support in the GAC should translate to a lower level of deference for such advice. The IPC supports the approach of the CCWG with regard to the GAC voting thresholds and Stress Test 18. Conversely, the IPC welcomes the addition of the NTIA-inspired stress tests. That said, they need some work. In Stress Test #32, paragraph 976 refers to a situation where "only 2 or 3 SO/ACs vote" but concludes this would be okay if the GNSO, ccNSO, ALAC and ASO were all among the voters. It is hard to see how all four SO/ACs could be among the voters if only 2-3 are voting. This casts doubt on the conclusion of this Stress Test. Stress Test #33 regarding "internal capture" is far from hypothetical, in the view of the IPC. Rather, it reflects ongoing concerns in the ICANN of today. The Accountability Measures proposed by the CCWG are less than satisfactory. The prime difference between the measures available today and those available under the CCWG proposal is that the disenfranchised SO/AC members could institute a reconsideration or IRP after the Board adopts the "captured" policy recommendation. What measures would be available while the capture is afoot? Why do the disenfranchised have to sit powerless until the capture plays out to its conclusion? Furthermore, what if the</p>	<p>N/A</p>	<p>Stress Tests 29 and 30 are new and troubling additions to the Second Draft Report. They are based on the disturbing premise that there are "contract provisions [in the current Registrar Agreement] that exceed the limited mission of ICANN." Although the introduction alludes to multiple provisions, both Stress Tests focus on a single provision, the section that requires registrars to deal with reports of abuse. Stress Test #29 sets out the following hypothetical scenario: "ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations." The Report says that the "Consequence" of this action is that "ICANN effectively becomes a regulator of conduct and content on registrant websites." The IPC vigorously disagrees with this purported "Consequence" and with the idea that this should be considered a "Stress Test." Enforcement of agreed-upon registrar contracts, which were adopted after considerable community discussion and input, is simply not "regulation" under any circumstance. Furthermore, the link between ICANN's enforcement of registrar agreements and termination of name registrations by registrars is tenuous at best. Registrars should be investigating and responding to reports of abuse whether or not ICANN specifically "enforces" that provision. If "some name registrations" are terminated as a result of abuse investigations, that is because registrars have found legitimate instances of abuse, not because ICANN has "enforced" the registrar agreement, much less acted as a "regulator." Stress Test #30 is more of the same. Here the hypothetical scenario is that "ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains," while the Consequence is the same as</p>
<p>ITI (Information Technology Industry Council)</p>	<p>The 2nd Draft Report on Work Stream 1 Recommendations contains significant improvements over the initial draft, and meets relevant benchmarks established by the NTIA. In particular, we strongly support the proposed change to Article XI section 2 clause J of the ICANN Bylaws (paragraph 619) regarding "Stress Test #18." We believe the proposed revision provides essential clarity regarding the appropriate role and weight that should be afforded to GAC advice.</p>	<p>N/A</p>	<p>N/A</p>
<p>Jan Scholte (CCWG Advisor)</p>	<p>General support for most of the proposal</p>	<p>N/A</p>	<p>6. Paras 361-364 prompts a question, at the risk of introducing still another stress test, whether CCWG needs to think through a scenario where special interests (or even mere nuisance actors) clog up ICANN's policy processes with disruptive exploitation of the Community Mechanism. How does one prevent that, for example, a handful of big business players or a limited number of civil society activists 'play politics' by bringing narrowly self-interested challenges to ICANN's strategic plan, the budget or a particular board member? Even if such initiatives had little chance of passing a vote, repelling them could absorb a lot of time and energy.</p>

John Klensin	N/A	N/A	Unless CCWG is able to make a plausible claim of omniscience and perfect foresight, no combination of stress testing mechanisms are going to be an adequate substitute for either "IANA transition first, evaluation and corrections, then major structural and accountability reforms" or "structural and accountability reforms first, evaluation and corrections, then IANA transition" for the same reasons that laboratory tests are never a completely adequate substitute for deployment and evaluation of a system under field conditions and at scale. In that regard, even if we believe the ST-WG mechanisms are completely adequate for the contingencies they have identified, the contingencies they have not been able to identify remain a major concern... and no completeness proof has been offered or is likely to be feasible
SIIA (Software & Information Industry Association)	SIIA strongly supports the proposed accountability measures described in Stress Test 18. Section XI of ICANN's bylaws obliges the ICANN Board to give "due deference" to GAC advice. This includes a requirement to find a "mutually acceptable solution" to the advice proffered by the GAC. In order to ensure that the transition does not, in practice, lead to a "government-led or intergovernmental solution," it is important to ensure that the Section XI ICANN obligation only enter into force when GAC advice is developed through consensus – in other words, when it is truly advice and not a reflection of split voting. The accountability measures proposed in Stress Test 18 would amend Article XI Section 2 and oblige the ICANN Board to give due deference only to GAC consensus advice and indicate the definition of consensus that the GAC uses presently. The GAC would still be free to change how it develops advice, but the Board's obligations would only enter into force upon receipt of consensus advice.	N/A	N/A
US Chamber of Commerce	support stress test 18	N/A	Stress tests 29 and 30 - We are concerned with the framing of Stress Tests # 29 and 30, which seems to conflate the enforcement of certain mutually-agreed to contractual obligations with that of "content regulation." ICANN has a duty to enforce and enter into mutually agreeable contractual provisions, that are aimed at preventing malicious, abusive, or illegal conduct and the CCWG should add language clarifying this obligation is not altered by ICANN's revised Mission statement. We have a concern that the by-laws can be interpreted to limit ICANN's ability (or willingness) to enforce existing contract terms and Public Interest Commitments with Registrars, agree to new contracts with strong protection provisions or otherwise participate in other programs designed to promote public interest goals. At the same time, we also agree that ICANN should not use its contracts to expand its mission and jurisdiction. We call upon the CCWG to clarify this language accordingly.

<p>USCIB (US Council on International Business)</p>	<p>ST 18. - A numerical vote would deprive GAC advice of its current legitimacy. Thus, USCIB supports the proposed accountability measure @615-616, which would amend Article XI of ICANN Bylaws to require ICANN to find a mutually acceptable solution for GAC advice only where such advice is supported by GAC consensus. We believe this is consistent with the first Accountability and Transparency Review Team's (ATRT) Recommendations pertaining to the GAC. The proposed accountability measures to Stress Test #18 also are appropriate and necessary to meet the requirement that the IANA transition not yield a government-led or intergovernmental replacement for NTIA's current stewardship role.</p>	<p>N/A</p>	<p>Stress Tests #29 and #30 were added comparatively later in the CCWG's development of the second draft and have not yet been considered by the broader ICANN community. They consider the ramifications if ICANN were to enforce certain contractual provisions with registrars concerning abusive or illegal conduct of certain domain names. USCIB disagrees with the underlying premise, as presented by commenters during the first round of comments, that such contractual enforcement (and the provisions themselves) will always be outside the bounds of ICANN's Mission now or in the future.</p>
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