Annex 15 – Stress Testing

1. Overview

1 An essential part of the CCWG-Accountability Charter calls for stress testing of accountability enhancements.

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.

3 The CCWG-Accountability Charter calls for stress testing of accountability enhancements in Work Streams 1 and 2. Among the deliverables listed in the charter is the following:

4 *Identification of contingencies to be considered in the stress tests: Review of possible solutions for each Work Stream including stress tests against identified contingencies.*

5 The purpose of the stress tests was 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. The CCWG-Accountability ran a total of 37 Stress Test scenarios.

2. Purpose and Methodology

Methodology

6

7 The CCWG-Accountability considered the following methodology for stress tests:

- Analysis of potential weaknesses and risks
- Analysis existing remedies and their robustness
- Definition of additional remedies or modification of existing remedies
- Description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies

8 The CCWG-Accountability Stress Test Work Party documented contingencies identified in prior public comment rounds. The Stress Test Work Party then prepared a draft document showing how these stress tests are useful in evaluating existing and proposed accountability measures.

9 The exercise of applying stress tests identified changes to the current ICANN Bylaws that might be necessary to enable the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

Purpose

10

11 The purpose of the stress tests was 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.

12 The CCWG-Accountability Charter does not ask that probability estimates be assigned for contingencies. Probabilities are not needed to determine whether the community has adequate means to challenge ICANN's reactions to the contingency.

13 In its initial phases of work, the CCWG-Accountability gathered an inventory of contingencies identified in prior public comments. The Work Team responsible for this then consolidated the inventory into five 'stress test categories' as 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.

3. Stress Test Categories

14 ## I. Financial Crisis or Insolvency (Stress Tests #5, 6, 7, 8 and 9)

15 **Scenario:** 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.

16 ## II. Failure To Meet Operational Obligations (#1, 2, 11, 17, and 21)

17 **Scenario:** ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation despite objections of stakeholders, such as those defined as 'Significantly Interested Parties'.

18 ## III. Legal/Legislative Action (#3, 4, 19 and 20)

19 **Scenario:** 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)

Scenario: Actions (or expenditure of resources) by one or more ICANN Board Directors, the President and 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)

Scenario: ICANN modifies its structure to avoid obligations to external stakeholders, such as terminating the Affirmation of Commitments, terminating its presence in a jurisdiction where it faces legal action, or 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.

Stress Tests Suggested by NTIA

The CCWG-Accountability added four stress test items that were suggested by NTIA in Secretary Larry Strickling's statement issued on 16 June 2015:

- **NTIA-1:** Test preservation of the multistakeholder model if individual ICANN Supporting Organizations and/or Advisory Committees 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 a Supporting Organization and/or Advisory Committee.
- **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. Governmental Advisory Committee)

Stress Tests Relating to the Transition of the IANA Naming Functions Contract

Note that several stress tests can specifically apply to work of CWG-Stewardship regarding transition of the IANA naming functions contract (see Stress Tests #1 & 2, 11, 17, 19, 20, 21, 25.

Across all of the Stress Test categories, this exercise demonstrates that CCWG-Accountability's Work Stream 1 recommendations significantly enhance the community's ability to hold the ICANN's Board and management accountable, relative to present accountability measures. For Stress Tests that explore risks of "capture" of an Advisory Committee or Supporting Organization, the proposed Community Powers preserve the ability for aggrieved parties to challenge and block ICANN actions based on inappropriate Advisory Committee or Supporting Organization behavior.

Stress Test #21

30 Stress Test #21, regarding appeals of country code top-level domains revocations and assignments, has not been adequately addressed in either the CWG-Stewardship or CCWG-Accountability proposals. This is due to the Country Code Naming Related Functions undertaking policy development work pursuant to the Framework of Interpretation approved in 2014.

4. Outcomes of Stress Testing

31 The following section gives a short overview of the stress test scenarios and outlines whether existing accountability measures and proposed accountability measures are adequate or not to mitigate the potential risks.

Stress test category I: Financial Crisis or Insolvency

32 **Stress Test #5:** Domain industry financial crisis.

33 **Stress Test #6:** General financial crisis.

34 **Stress Test #7:** Litigation arising from private contract, e.g., breach of contract.

35 **Stress Test #8:** Technology competing with DNS.

36 **Consequence(s):** Significant reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN's ability to operate; loss affecting reserves sufficient to threaten business continuity.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
37 ICANN could propose revenue increases or spending cuts, but these decisions are not subject to challenge by the ICANN community. 38 The community has input in ICANN's budgeting and Strategic Plan. 39 Registrars must approve ICANN's variable registrar fees. If not, registry operators pay the fees. 40 ICANN's reserve fund could support operations in a period of reduced revenue. The reserve fund is independently reviewed periodically.	41 One proposed measure would empower the community to veto ICANN's proposed operating plan and annual budget. This measure enables the community to block a proposal by ICANN to increase its revenues by adding fees on registrars, registries, and/or registrants. 42 Another proposed measure 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, the new IRP could reverse that decision.

CONCLUSIONS:	
43 Existing measures would be adequate, unless the revenue loss was extreme and sustained.	44 Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.

45 **Stress Test #9**: Major corruption or fraud.	
46 **Consequence(s):** Major impact on corporate reputation, significant litigation and loss of reserves.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
47 ICANN has an annual independent audit that includes testing of internal controls designed to prevent fraud and corruption. 48 ICANN maintains an anonymous hotline for employees to report suspected fraud. 49 ICANN Board can dismiss the CEO and/or executives responsible. 50 The community has no ability to force the Board to report or take action against suspected corruption or fraud.	51 One proposed measure is to empower the community to force ICANN's Board to consider a recommendation from an Accountability and Transparency Review Team (ATRT). 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. 52 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. 53 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.
CONCLUSIONS:	
54 Existing measures would not be adequate if litigation costs or losses were extreme and sustained.	55 Proposed measures are helpful, but might not be adequate if litigation costs and losses were extreme and sustained.

7.6 Stress test category II: Failure to Meet Operational Expectations

56 **Stress Test #1:** Change authority for the root zone ceases to function, in part or in whole.

57 **Stress Test #2:** Delegation authority for the root zone ceases to function, in part or in whole.

58 **Consequence(s):** Interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
59 Under the present IANA functions contract, NTIA can revoke ICANN's authority to perform IANA functions and re-assign this role to different entity/entities. 60 After NTIA relinquishes the IANA functions contract, this measure will no longer be available.	61 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. 62 The CWG-Stewardship proposes that IANA naming functions be legally transferred to a new Post-Transition IANA entity (PTI) that would be an affiliate controlled by ICANN. 63 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 initiate a separation process which could result in termination or non-renewal of the IANA Functions Contract with PTI, among other actions. 64 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. 65 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.

CONCLUSIONS:	
66 Existing measures would be inadequate after NTIA terminates the IANA contract.	67 Proposed measures are, in combination, adequate to mitigate this contingency.

68 **Stress Test #11:** Compromise of credentials.	
69 **Consequence(s):** Major impact on corporate reputation, significant loss of authentication and/or authorization capacities.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
70 Regarding compromise of internal systems: 71 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. 72 It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report. 73 Regarding DNS security: 74 Beyond operating procedures, there are credentials employed in DNSSEC. 75 ICANN annually seeks SysTrust Certification for its role as the Root Zone KSK manager. 76 The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities. 77 Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.	78 Regarding compromise of internal systems: 79 The proposed IRP measure could challenge ICANN's Board or management for any action or inaction that conflicts with Bylaws. An IRP challenge might therefore be able to force ICANN to conduct an after-action report and disclose it to the community. 80 Through the IRP measure, the community might also be able to force ICANN management to execute its stated security procedures for employees and contractors. 81 Regarding DNS security: 82 One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review such as Security Stability and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. 83 A proposed Bylaws change would require ICANN's 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 challenge that Board decision with an IRP. 84 Suggestions for Work Stream 2: 85 · Require annual external security audits and publication of results.

	86 · Require certification per standards (ISO 27001) and publication of results.
CONCLUSIONS: 87 Existing measures would not be adequate.	88 Proposed measures, in combination, would be helpful to mitigate effects of this scenario. Work Stream 2 suggestions could add risk prevention measures.

89 **Stress Test #17:** ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by the technical community or other stakeholder groups.	
90 **Consequence(s):** DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
91 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 and .home (SAC 057) 92 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. It is not clear if that would/could have been a finding if ICANN attempted to delegate a new TLD such as .mail or .home. 93	94 One proposed measure is to empower the community to force ICANN's Board to consider recommendations from an Affirmation of Commitments Review such as a Review of Security, Stability, and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. 95 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 challenge that Board decision with an IRP.
CONCLUSIONS: 96 Existing measures were adequate to mitigate the risks of this scenario.	97 Proposed measures enhance community's power to mitigate the risks of this scenario.

98 **Stress Test #21**: A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager.

99 However, the IANA functions manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a designated manager.

100 But the IANA functions manager does not document that: significantly interested parties agree; that other stakeholders had a voice in selection; the designated manager has demonstrated required capabilities; there are not objections of many significantly interested parties.

101 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.

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

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
103 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. 104 There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN's certification that process was followed properly. 105 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. 106 See Framework of Interpretation, 20-Oct-2014.	107 From the CWG-Stewardship final proposal: "CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and redelegations in the IANA Stewardship Transition proposal." 108 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." 109 Regarding CCWG-Accountability proposed measures: 110 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. 111 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.
CONCLUSIONS: 112 Existing measures would not be adequate.	113 Proposed measures do not adequately empower the community to address this scenario. CCNSO is developing policy pursuant to the Framework of Interpretation.

7.7 Stress test category III: Legal/Legislative Action

114 **Stress Test #3:** Litigation arising from existing public policy, e.g., antitrust suit. In response, ICANN Board would decide whether to litigate, concede, settle, etc.	
115 **Consequence(s):** Significant interference with existing policies and/or policy development relating to relevant activities.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
116 The community could develop new policies that respond to litigation challenges. 117 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use the IRP. 118 Reconsideration looks at process but not the substance of a decision. 119 ICANN must follow orders from courts of competent jurisdiction.	120 After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options: 121 The community could develop new policies that respond to litigation challenges. 122 Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws (including Mission, Commitments and Core Values) and ICANN's established policies. 123 However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. 124 Note also that generally the community will

	not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. 125 An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
CONCLUSIONS: 126 Existing measures are inadequate.	127 Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.

128 **Stress Test #4:** New regulations or legislation. 129 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. 130 In response, ICANN's Board would decide whether to litigate, concede, settle, etc.	
131 **Consequence(s):** Significant interference with existing policies and/or policy development relating to relevant activities.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
132 The community could develop new policies that respond to new regulations. 133 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 the IRP. 134 Reconsideration looks at the process but not the substance of a decision. 135 ICANN must follow orders from courts of competent jurisdiction.	136 After ICANN's Board responded to the regulation (litigate or change policy/implementation), the community would have several response options: 137 The community could develop new policies that respond to the regulation. 138 Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN's established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to

	cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. 139 An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
CONCLUSIONS: 140 Existing measures are inadequate.	141 Proposed measures would be an improvement but might still be inadequate.

142 **Stress Test #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. 143 In response, the ICANN Board would decide whether to litigate, concede, settle, etc.	
144 **Consequence(s):** The entity charged with root zone maintenance could face the question of whether to follow ICANN's re-delegation request or to follow the court order.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
145 Under the present agreement with NTIA, the entity performing root zone maintenance is protected from lawsuits since it is publishing the root per a contract with the US Government. 146 However, the IANA Stewardship Transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits. 147 A separate consideration: 148 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.	151 ICANN could indemnify the root zone maintainer against liability, so long as the RZM was performing under the scope of contract and not in breach. 152 While it would not protect the root zone maintainer from lawsuits, one proposed mechanism is community challenge of ICANN decision to re-delegate. This challenge would take the form of a Reconsideration or IRP. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the

149 Reconsideration looks at the process but not the substance of a decision. 150 ICANN must follow orders from courts of competent jurisdiction.	decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. 153 After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the decision could be challenged via Reconsideration or IRP, based on the standard of review in the amended Mission, Commitments and Core Values; however, it is highly unlikely that the community could cause ICANN to reopen a settlement reached with a third party, or act contrary to a court decision.
CONCLUSIONS: 154 Existing measures are not adequate.	155 Proposed measures are adequate to allow the community to challenge and reverse decisions of ICANN Board and management.

156 **Stress Test #20:** A court order is issued to block ICANN's delegation of a new TLD, because of a complaint by existing TLD operators or other aggrieved parties. 157 For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string. 158 In response, the ICANN Board would decide whether to litigate, concede, settle, etc.	
159 **Consequence(s):** ICANN's decision about how to respond to court order could bring liability to ICANN and its contract parties.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
160 Before delegation, the community lacked standing to object to string similarity decisions. Reconsideration requests looks at the process but not at substance of the decision. 161 An ICANN Board decision (litigate or settle) could not be challenged by the community	164 Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation. 165 A future new gTLD Guidebook could give the community standing to file objections. 166 Remedial: After the ICANN Board responded

at-large, which lacks standing to use an IRP. 162 Reconsideration looks at the process but not the substance of a decision. 163 ICANN must follow orders from courts of competent jurisdiction, and may consider such factors as the as cost of litigation and insurance.	to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options: 167 One measure would give the community standing to file for Reconsideration or institute an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN's established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. The IRP could assess ICANN's response to the court decision, although it would not alter the court's decision. 168 One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, Consumer Trust, Choice, and Competition. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.
CONCLUSIONS: 169 Existing measures would be inadequate.	170 Proposed measures would be an improvement but might still be inadequate.

7.8 Stress test category IV: Failure of Accountability

171 **Stress Test #10:** Chairman, CEO, or Officer acting in a manner inconsistent with the organization's mission.

172 **Stress Test #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.

173 Consequence(s): The 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, the community questions why ICANN's original functions should remain controlled by a body that has acquired a much broader and less widely supported Mission. This creates reputational problems for ICANN that could contribute to capture risks.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
174 As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand its scope too broadly. 175 The Community has some input in ICANN budgeting and Strategic Plan, and could register objections to plans and spending on extending ICANN's Mission. 176 California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	177 One proposed measure empowers the community to veto ICANN's proposed strategic plan or annual budget. This measure could block a proposal by ICANN to increase its expenditure on extending its Mission beyond what the community supported. 178 Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, consistent with the fiduciary duties of the directors. The IRP decision would be based on a standard of review in the amended Mission Statement, including "ICANN shall have no power to act other than in accordance with, and as reasonably appropriate to achieve its Mission.".
CONCLUSIONS: 179 Existing measures are inadequate after NTIA terminates the IANA contract.	180 Proposed measures in combination are adequate.

181 **Stress Test #12:** Capture of ICANN processes by one or several groups of stakeholders.	
182 **Consequence(s):** Major impact on trust in multistakeholder model, prejudice to other stakeholders.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
183 Regarding capture by governments, the	186 CCWG-Accountability proposals for

GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN Bylaws (Article XI, Section 2, item 1j) nonetheless require the board to try "to find a mutually acceptable solution". 184 The community has no standing to challenge a Board decision to accept GAC advice, thereby allowing GAC to capture some aspects of ICANN policy implementation. 185 Regarding internal capture by stakeholders within an AC or SO, see Stress Test 33.	community empowerment rely upon consensus among AC/SOs, requiring a minimum threshold of support and no more than one AC/SO objecting. These consensus requirements are an effective prevention of capture by one or a few groups. 187 Each AC/SO/SG may need improved processes for accountability, transparency, and participation that are helpful to prevent capture from those outside that community. These improvements may be explored in WS2.
CONCLUSIONS: 188 Existing measures would be inadequate.	189 Proposed measures would be adequate.

190 **Stress Test #13:** One or several stakeholders excessively rely on accountability mechanism to "paralyze" ICANN.	
191 **Consequence(s):** Major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
192 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. 193 There are no present mechanisms for a ccTLD operator to challenge a revocation decision.	194 CCWG-Accountability proposals for community empowerment rely upon consensus among AC/SOs, requiring a minimum threshold of support and no more than one AC/SO objecting. These consensus requirements are an effective prevention of paralysis by one AC/SO. 195 Proposed CCWG-Accountability redress mechanisms (Reconsideration and IRP) are more accessible and affordable to individual stakeholders, increasing their ability to block implementation of policies and decisions. However, proposed Reconsideration and IRP enhancements include the ability to dismiss frivolous or abusive claims and to

	limit the duration of proceedings.
CONCLUSIONS: 196 Existing measures seem to be adequate.	197 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.

198 **Stress Test #16:** ICANN engages in programs not necessary to achieve its limited technical Mission. For example, ICANN uses fee revenue or reserve funds to expand its scope beyond its technical Mission, giving grants for external causes.	
199 **Consequence(s):** ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
200 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 the IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain the IANA contract with NTIA. 201 The community was not aware of the ICANN Board's secret resolution to initiate negotiations to create NetMundial. There was no apparent way for the community to challenge/reverse this decision. 202 The community has input in ICANN budgeting and Strategic Plan. 203 Registrars must approve ICANN's variable registrar fees, though Registrars do not view this as an accountability measure. 204 California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	205 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, the entire budget would have to be rejected since there is no proposal for line-item veto. 206 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 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. 207 Another proposal is to amend ICANN Bylaws to prevent the organization from expanding its scope beyond ICANN's amended Mission, Commitments and Core Values. 208 If ICANN's Board proposed to amend/remove these Bylaws provisions,

	another proposed measure would empower the community to veto a proposed Bylaws change. For Fundamental Bylaws, the community must approve changes proposed by the Board.
CONCLUSIONS: 209 Existing measures are inadequate.	210 Proposed measures in combination may be adequate.

211 **Stress Test #18:** Governments in ICANN's Governmental Advisory Committee amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's Board (See 'Annex – 11: Recommendation #11: Board Obligations with Regards to Governmental Advisory Committee Advice')[1]	
212 **Consequence(s):** Under current Bylaws, ICANN must consider and respond to Governmental Advisory Committee advice, even if that advice were not supported by consensus. A majority of governments could thereby approve Governmental Advisory Committee advice.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
213 Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for Governmental Advisory Committee advice. 214 Today, Governmental Advisory Committee 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 formal objection."* 215 The Governmental Advisory Committee may at any time change its procedures instead of its present consensus rule. 216 The requirement to find a mutually acceptable solution in the current Bylaws would then apply, not just for Governmental Advisory Committee consensus advice.	The proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where GAC advice was supported by full GAC consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. The proposed accountability measure recognizes that the decision not to follow consensus advice would require a 2/3 majority of the ICANN Board. GAC can still give ICANN advice at any time, with or without full consensus. 217 Recognizing the general principle that an AC should have the autonomy to refine its Operating Procedures, the GAC could specify how objections are raised and considered

[1] The original posting of Annex 15 on 30 November 2015 did not accurately reflect the current status of stress test #18 discussions. This table has been updated as of 1 December 2015.

218 **Stress Test #22:** ICANN Board fails to comply with Bylaws and/or refuses to accept the decision of a redress mechanism constituted under the Bylaws.	
219 **Consequence(s):** Community loses confidence in multistakeholder structures to govern ICANN.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
220 As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to ignore Bylaws or an IRP decision. But as a result of the IANA stewardship transition, ICANN would no longer need to follow its Bylaws in order to retain the IANA contract with NTIA. 221 Aggrieved parties can ask for Reconsideration of Board decisions, but this is currently limited to questions of whether process was followed. 222 Aggrieved parties can file an IRP, but decisions of the panel are not binding on ICANN. 223 California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	224 One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged. 225 Another proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review such as an Accountability and Transparency Review. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. 226 One proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to comply with its Bylaws or policies, the proposed IRP enables a reversal of that decision. 227 If the ICANN Board were to ignore binding IRP decisions, the Empowered Community could seek enforcement in any court respecting international arbitration results. 228 Another proposed measure empowers the community to recall the entire ICANN Board.
CONCLUSIONS: 229 Existing measures are inadequate.	230 Proposed measures in combination are adequate because the community has power to recall the Board.

231 **Stress Test #23:** ICANN uses RAA or Registry contracts to impose requirements on third

parties, outside the scope of ICANN Mission. (e.g. registrant obligations.)

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

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

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

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

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
236 During policy development, affected third parties may participate and file comments. 237 Affected third parties may file comments on proposed changes to registry and registrar contracts. 238 Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies. 239 Affected third parties (e.g. registrants and users) have no standing to challenge ICANN's management and Board on how it has implemented approved policies. 240 If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.	241 A proposed measure to empower an aggrieved party (e.g. registrants and users) to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, based on standard for review in the amended Mission, Commitments and Core Values, or in established policies. 242 Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. 243 That IRP decision would be based on a standard of review in the amended Mission statement, including "ICANN shall have no power to act other than in accordance with, and as reasonably appropriate to achieve its Mission."
CONCLUSIONS: 244 Existing measures are inadequate.	245 Proposed measures would be adequate.

246 **Stress Test #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.

247 Consequence(s): Staff capture of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY

	MEASURES
248 The reconsideration review mechanism allows for appeal to the Board of staff actions that contradict established ICANN policies. However, reconsideration looks at the process but not the substance of a decision. 249 An ICANN Board decision could not be challenged by the community at-large, which lacks standing to use the IRP.	250 A proposed measure would allow the Empowered Community to challenge a Board decision by reconsideration or referral to an IRP with the power to issue a binding decision. The standard of review would look at the revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process"
CONCLUSIONS: 251 Existing measures are inadequate.	252 Proposed measures would be adequate.

Stress test category V: Failure of Accountability to External Stakeholders

253 **Stress Test #14:** ICANN or NTIA choose to terminate the Affirmation of Commitments.	
254 Consequence(s): ICANN would no longer be held to its Affirmation commitments, including the conduct of community reviews and required implementation of review team recommendations.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
255 The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days notice. 256 As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments. 257 But as a result of the IANA stewardship transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain its Affirmation of Commitments.	258 One proposed mechanism would give the Empowered Community standing to challenge a Board decision by referral to an IRP with the power to issue a binding decision. If ICANN cancelled the Affirmation of Commitments, the IRP could enable reversal of that decision. 259 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. 260 If ICANN's Board proposed to amend the AoC commitments and reviews that were added to the Bylaws, another proposed measure would empower the community to veto that proposed Bylaws change. 261 If any of the AoC commitments were designated as Fundamental Bylaws, changes would require approval by the Empowered Community. 262 Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.
CONCLUSIONS: 263 Existing measures are inadequate after NTIA terminates the IANA contract.	264 Proposed measures in combination are adequate.

265 **Stress Test #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.	
266 **Consequence(s):** Affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
267 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. 268 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. 269 As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments. 270 Article XVIII of ICANN Bylaws holds that	271 Article XVIII of ICANN Bylaws holds that ICANN "shall" maintain a US presence. 272 If ICANN's Board proposed to amend this Bylaws provision, one proposed measure would empower the community to block that proposed Bylaws change. 273 If Article XVIII were designated as a Fundamental Bylaw, changes would require consensus approval by the Empowered Community.

ICANN "shall" maintain a US presence. But the ICANN Board alone can change the Bylaws, and the community has no binding power to block the changes.	
CONCLUSIONS: 274 Existing measures are inadequate once NTIA terminates IANA contract.	275 Proposed measures improve upon existing measures, and may be adequate.

276 **Stress Test #25:** ICANN delegates or subcontracts its obligations under a future IANA functions operator agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.	
277 **Consequence(s):** 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	**PROPOSED ACCOUNTABILITY MEASURES**
278 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. 279 NTIA could exert its control over ICANN's decision as long as it held the IANA contract but would not be able to do so after it relinquishes the IANA contract. 280 Nor would NTIA's required principles for transition be relevant after transition occurred.	281 The CWG-Stewardship "recommends that an ICANN fundamental bylaw be created to define a separation process that can be triggered by a Special IFR if needed." There is no allowance in the CWG-Stewardship proposal to allow ICANN to sub-contract or outsource its IANA responsibilities to a 3rd party other than to PTI. If a separation process were initiated a new IANA functions operator could be selected only with involvement of the empowered community. 282 The CCWG-Accountability is proposing to empower the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to follow Bylaws requirements to have the community define public interest, the IRP enables a reversal of that decision. The standard of review would look at the revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process."

	283 Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.
CONCLUSIONS: 284 Existing measures would not be adequate after NTIA relinquishes the IANA contract.	285 Proposed measures are adequate to allow the community to challenge ICANN decisions in this scenario.

286 After publication of the CCWG-Accountability first draft proposal, new stress tests were suggested in the CCWG-Accountability discussion list and in the public comments received. Below are new stress tests added for publication in the CCWG-Accountability's second draft proposal.

287 Stress Tests were suggested by a scenario that might give ultimate authority to a state-based American court and allow it to make binding and precedent setting decisions about the interpretation of ICANN's mission. Two stress tests (27 and 28) were designed for this scenario.

288 **Stress Test #27:** Board refuses to follow community recommendation, triggering a "Member" to sue ICANN in the California courts. 289 For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation but the ICANN board decides to reject the recommendation.	
290 **Consequence(s):** 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.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
291 This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts. 292 Member access to court relief is not available under ICANN's present structure.	293 The CCWG-Accountability proposal does not give any of the ACs or SOs the power to force ICANN's Board to accept and implement the ATRT recommendation. This is intentional, since the ICANN Board could cite cost or feasibility in deciding not to implement part of a Review Team recommendation. 294 If the ICANN Board refused to implement the ATRT recommendation, the Empowered Community 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. 295 If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options: 296 The Empowered Community could vote to recall the board. 297 The Empowered Community could vote to block the very next budget or operating plan if it did not include the ATRT recommendation.
CONCLUSIONS: 298 Not applicable to ICANN's existing accountability measures.	299 California courts would not interpret ICANN mission statement, so proposed measures are adequate to mitigate the risk of this scenario.

300 **Stress Test #28:** Board follows community recommendation, but is reversed by IRP decision, triggering a "Member" to sue ICANN in California courts. 301 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	
302 **Consequence(s):** 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.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
303 This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts. 304 Member access to court relief is not available under ICANN's present structure.	305 An aggrieved party or the Empowered Community could challenge board's decision with an IRP. An IRP panel (not a Court) could determine that the ATRT recommendation does conflict with "substantive limitations on the permissible scope of ICANN's actions". The IRP panel could thereby cancel the board decision to

	accept and implement the ATRT recommendation. 306 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. 307 If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options: 308 The Empowered Community could vote to recall the board. 309 The Empowered Community could vote to block the very next budget or operating plan if it did not include the ATRT recommendation.
CONCLUSIONS: 310 Not applicable to ICANN's existing accountability measures.	311 California courts would not interpret ICANN's mission statement because a Empowered Community claim would be subject to a binding decision by the IRP, so proposed measures are adequate.

312 Public commenters requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.

313 **Stress Test #29:** (Similar to #23) ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations. 314 ICANN also insists that legacy gTLD operators adopt the new gTLD contract on renewal.	
315 **Consequence(s):** ICANN's enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing Mission and Core Values.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
316 The GNSO could initiate a policy	319 The GNSO could initiate a policy

development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 317 Affected registrants may file comments on the proposed gTLD contract renewals. 318 Affected registrants could challenge ICANN's termination decisions with Reconsideration or IRP, but could not cite Mission and Core Values, because the current IRP only considers whether ICANN followed process.	development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 320 The proposed IRP allows any aggrieved party to challenge ICANN's enforcement actions, resulting in a binding decision. An IRP challenge could assert that an RAA provision was not the result of consensus policy and/or violates Mission Statement, Commitments and Core Values in amended bylaws. 321 The new IRP standard of review would look at revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process".
CONCLUSIONS: 322 Existing measures would not be adequate to challenge ICANN enforcement decision.	323 Proposed measures would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of contract terms and consensus policies

324 **Stress Test #30:** (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.	
325 **Consequence(s):** ICANN's enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing Mission and Core Values.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
326 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 327 Affected registrars could challenge ICANN's termination decisions with Reconsideration or IRP, but could not cite Mission and Core Values, because the current IRP only	329 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 330 The proposed IRP allows any aggrieved party to challenge ICANN's enforcement actions, resulting in a binding decision. An IRP challenge could assert that RAA provision was not the result of consensus

considers whether ICANN followed process. 328 Affected registrants and users have no standing to use IRP to challenge ICANN decision.	policy and/or violates Mission, Commitments and Core Values in amended bylaws. 331 The IRP standard of review would look at revised ICANN bylaws, including a Core Value requiring policies "that are developed through a bottom-up, consensus-based multistakeholder process".
CONCLUSIONS: 332 Existing measures might be adequate for a registrar, but would not be adequate for a registrant to challenge ICANN enforcement decision.	333 Proposed measures would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of contract terms and consensus policies

334 Several individuals requested evaluation of a stress test scenario where the individual designated by an AC/SO failed to follow their AC/SO instructions when communicating AC/SO decisons for any of the community powers proposed by CCWG-Accountability.

335 **Stress Test #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.	
336 **Consequence(s):** Decisions on exercising a community power would be challenged as invalid, and the integrity of decisons could be questioned more broadly.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
337 AC/SO community powers are not available under ICANN's Bylaws.	338 An AC/SO could develop internal processes to ensure that any vote communicated would match the AC/SO decision instructions. 339 If an AC/SO vote communicator voted against the instructions of their AC/SO, the decision rules for Empowered Community could specify procedures to invalidate a vote: 340 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. 341 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 the vote communicator, or replacing the person in that role. 342 After the problem has been remedied, another round of decision would occur.
CONCLUSIONS: 343 Not applicable to ICANN's existing accountability measures.	344 Proposed measures would be adequate to avoid "rogue voting" problems.

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

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

347 **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.

348 **NTIA-3:** Barriers to entry for new participants.

349 **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.

350 **Stress Test #32:** (NTIA-1) 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)	
351 **Consequence(s):** ICANN's multistakeholder model would be in question if multiple stakeholders did not participate in community powers.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
352 AC/SO community powers are not available under ICANN's Bylaws.	353 In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to exercise community powers. 354 The SSAC and RSSAC said they don't intend to participate in decisions on

	community powers. 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. 355 The SSAC and RSSAC could later decide to exercise the Empowered Community decision-making role provided in the bylaws, or request Bylaws amendments to enable this. 356 If fewer than 3 AC/SOs participate in an Empowered Community decision process, the minimum thresholds for consensus would not be reached. 357
CONCLUSIONS: 358 Not applicable to ICANN's existing accountability measures.	359 ICANN's multistakeholder model would be preserved, even if multiple AC/SOs decided not to exercise the new community powers.

360 **Stress Test #33:** (NTIA-2) Participants in an AC/SO could attempt to capture an AC/SO, by arranging over-representation in a working group, in electing officers, or making a decision.	
361 **Consequence(s):** Internal capture, whether actual or perceived, would call into question ICANN's credibility in applying the multistakeholder model.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
362 ICANN's Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption. 363 AC/SOs can revise their charters and operating procedures if they see the need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments. 364 If a 'captured' AC/SO sent advice /policy to	365 ICANN's Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption. 366 AC/SOs can revise their charters and operating procedures if they see a need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments. 367 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.	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"
CONCLUSIONS: 368 Existing accountability measures are not likely to be adequate.	369 Proposed accountability measures would be adequate, provided that the bylaws requirement for a "bottom-up, consensus-based, multistakeholder process" is interpreted by the board and IRP panelists to include assessment of how decisions were reached in an AC or SO

370 **Stress Test #34:** (NTIA-3) Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.	
371 **Consequence(s):** Barriers to entry, whether actual or perceived, would call into question ICANN's credibility in applying the multistakeholder model.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
372 ICANN's Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes. 373 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;" 374 ICANN's Ombudsman might help new entrants to join AC/SOs.	375 ICANN's Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes. 376 Affirmation of Commitments requires periodic 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;" 377 ICANN's Ombudsman might help new entrants to join AC/SOs. 378 CCWG proposes a new Core Value in ICANN's 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.
CONCLUSIONS: 379 Existing accountability reviews can help erode barriers to entry, though not in real-time.	380 Proposed changes to Core Values and IRP could provide faster solutions to barriers encountered by new entrants.

381 **Stress Test #35:** (NTIA-4) Unintended consequences of "operationalizing" groups that formerly only gave advice to the ICANN board. (for example, the GAC)	
382 **Consequence(s):** An AC that previously gave only advice on a narrow scope of issues could affect decisions on community powers that extend beyond that narrow scope.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
383 Advisory Committees (ACs) have no community powers or decisional rights under ICANN's Bylaws. 384 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.	385 In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to participate in decisions about exercising community powers. 386 All ACs can thereby expand beyond their present advisory roles. To address concerns that the GAC could gain undue influence over ICANN, CCWG notes proposed changes that reduce GAC's ability to affect ICANN operations: 387 Per Stress Test 18 and the proposed Bylaws change, GAC advice would obligate ICANN to try to "find a mutually acceptable solution" only when the GAC provides consensus advice. 388 In the proposed Mission statement, ICANN is committed to policies "That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems." This would allow the community to challenge an

	ICANN decision to implement any GAC advice that was not supported by the bottom-up consensus process. 389 In Core Value #5, CCWG proposes adding that policy development must be ”led by the private sector”. 390 In Core Values, CCWG restricts ICANN’s scope of activities. 391 The new IRP gives community ability to overturn a Board decision to accept GAC advice that goes against the Mission and Core Values in the amended bylaws. 392 For the Affirmation of Commitments reviews, the GAC Chair would no longer approve/appoint review team members.
CONCLUSIONS: 393 Existing accountability measures have already given advisory committees significant influence over ICANN operations.	394 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.

395 The ICANN board sent a letter on 20-Jun-2015 with 156 questions regarding impact and implementation testing of CCWG proposals. (link) Two questions included requests for stress testing the CCWG proposal for a membership-based model:

396 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?

397 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?

398 Both scenarios are addressed in Stress Test 36:

399 **Stress Test #36**: Unintended consequences arising from empowering 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.
400 **Consequence(s):** An entity could exercise statutory powers accorded to members under California law, and pursue legal actions that would harm interests of the ICANN community.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
401 ACs and SOs have no joint community powers or decisional rights under ICANN's Bylaws. 402 ICANN's Bylaws do not recognize any members as defined under California Nonprofit Public Benefit Corporation law.	403 CCWG proposes that each AC and SO may participate in the decision process on whether to exercise an enumerated community power. No other individuals or entities could exercise these powers. Exercise of these powers requires consensus, which prevents any one AC/SO from advancing its interests against the interests of the broader community. 404 CCWG proposes to have the Empowered Community as the Sole Designator of ICANN. A Designator does not acquire the statutory powers of a Member under California law. 405 Only the Empowered Community could acquire legal status and rights of a Designator, and so legal action would only be brought if supported by the ACs and SOs participating in the Empowered Community, and a high threshold of consensus is required. 406 Individuals and entities – including ACs and SOs – could not become Designators. They could not acquire statutory rights given to Members or Designators under California law.
CONCLUSIONS: 407 Not applicable to ICANN's existing accountability measures.	408 Proposed Empowered Community measures are adequate to avoid this scenario.

409 After publication of the CCWG-Accountability second draft proposal, one new stress test was suggested in public comments received. ELIG (a law firm) suggested stress testing on a "deadlock" over approving changes to Fundamental bylaws, and blocking changes to regular bylaws: "We believe that it would be helpful to also explain the details of the legislation procedures in case of a deadlock during the amendment/enactment of a bylaw."

410 **Stress Test #37:** The Empowered Community blocks a board-proposed change to a regular bylaw, or withholds its approval of a board-proposed change to a fundamental bylaw.

411 **Consequence(s):** A "deadlock" between the ICANN board and the Empowered Community, where the board-proposed bylaws change is not enacted.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
412 ICANN's present bylaws allow the Board alone to amend bylaws: "the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board." 413 There is no requirement for community consultation or public comment for bylaws changes. 414 There is no present power for the community to block or approve bylaws changes.	415 The Empowered Community is intentionally given the power to block a board-proposed change to a regular bylaw. 416 In addition, the Empowered Community is intentionally given the power to withhold its approval of a board-proposed change to a fundamental bylaw. 417 Such outcomes might be characterized as "deadlock" by advocates of the bylaws change. But this would reflect the consensus decision of AC/SOs representing the community that ICANN is designed to serve. 418 This outcome would motivate the board to understand the concerns of the community over proposed bylaws changes. The board could then persuade the community that its concerns were unfounded, or modify its proposed bylaws change to accommodate concerns expressed.
CONCLUSIONS: 419 Existing accountability mechanisms prevent "deadlock" because the community has no power to affect board-proposed bylaws changes.	420 Proposed community powers enable "deadlock" over board-proposed bylaws changes, but only if that is the consensus decision of the community.