Stress test category I: Financial Crisis or Insolvency

Stress Test #5: Domain industry financial crisis.

Stress Test #6: General financial crisis.

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

Stress Test #8: Technology competing with DNS.

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
ICANN could propose revenue increases or spending cuts, but these decisions are not subject to challenge by the ICANN community. The community has input in ICANN's budgeting and Strategic Plan. Registrars must approve ICANN's variable registrar fees. If not, registry operators pay the fees. ICANN's reserve fund could support operations in a period of reduced revenue. The reserve fund is independently reviewed periodically.	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. 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: Existing measures would be adequate, unless the revenue loss was extreme and sustained.	Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.

Stress Test #9: Major corruption or fraud.	
Consequence(s): Major impact on corporate reputation, significant litigation and loss of reserves.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
ICANN has an annual independent audit that includes testing of internal controls designed to prevent fraud and corruption. ICANN maintains an anonymous hotline for employees to report suspected fraud. ICANN Board can dismiss the CEO and/or executives responsible. The community has no ability to force the Board to report or take action against suspected corruption or fraud.	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. 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. 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: Existing measures would not be adequate if litigation costs or losses were extreme and sustained.	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

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

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

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
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. After NTIA relinquishes the IANA functions contract, this measure will no longer be available.	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. 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. 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. 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. 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: Existing measures would be inadequate after NTIA terminates	Proposed measures are, in combination, adequate to mitigate this contingency.

the IANA contract.	

Stress Test #11: Compromise of credentials.
Consequence(s): Major impact on corporate reputation, significant loss of authentication and/or authorization capacities.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Regarding compromise of internal systems: 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. It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report. Regarding DNS security: Beyond operating procedures, there are credentials employed in DNSSEC. ICANN annually seeks SysTrust Certification for its role as the Root Zone KSK manager. The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities. Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.	Regarding compromise of internal systems: 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. Through the IRP measure, the community might also be able to force ICANN management to execute its stated security procedures for employees and contractors. Regarding DNS security: 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. 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.

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

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.

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
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) 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.	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. 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:	

Existing measures were adequate to mitigate the risks of this scenario.	Proposed measures enhance community's power to mitigate the risks of this scenario.

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

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.

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.

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

Consequence(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
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. There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN's certification that process was followed properly. See GAC Principles for	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." 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." Regarding CCWG-Accountability proposed measures: 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

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

See Framework of Interpretation, 20-Oct-2014. | Values.

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

Existing measures would not be adequate. | 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

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.

Consequence(s): Significant interference with existing policies and/or policy development relating to relevant activities.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The community could develop new policies that respond to litigation challenges.

An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use the IRP.

Reconsideration looks at process but not the substance of a decision.

ICANN must follow orders from courts of competent jurisdiction. | After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:

The community could develop new policies that respond to litigation challenges.

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.

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.
	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: Existing measures are inadequate.	Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.

Stress Test #4: New regulations or legislation.

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.

In response, ICANN's Board would decide whether to litigate, concede, settle, etc.

Consequence(s): Significant interference with existing policies and/or policy development relating to relevant activities.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
The community could develop new policies that respond to new regulations. 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. Reconsideration looks at the process but not the substance of a decision. ICANN must follow orders from courts of	After ICANN's Board responded to the regulation (litigate or change policy/implementation), the community would have several response options: The community could develop new policies that respond to the regulation. 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.

| | competent jurisdiction. | 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.

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:**

Existing measures are inadequate. | Proposed measures would be an improvement but might still be inadequate. |

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.

In response, the ICANN Board would decide whether to litigate, concede, settle, etc.

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
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.	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.

While it would not protect the root zone |

However, the IANA Stewardship Transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits. A separate consideration: An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP. Reconsideration looks at the process but not the substance of a decision. ICANN must follow orders from courts of competent jurisdiction.	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 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. 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: Existing measures are not adequate.	Proposed measures are adequate to allow the community to challenge and reverse decisions of ICANN Board and management.

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.

For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string.

In response, the ICANN Board would decide whether to litigate, concede, settle, etc.

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
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. An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use an IRP. Reconsideration looks at the process but not the substance of a decision. ICANN must follow orders from courts of competent jurisdiction, and may consider such factors as the as cost of litigation and insurance.	Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation. A future new gTLD Guidebook could give the community standing to file objections. Remedial: After the ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options: 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. 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: Existing measures would be inadequate.	Proposed measures would be an improvement but might still be inadequate.

7.8 Stress test category IV: Failure of Accountability

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

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.

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
As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand its scope too broadly. The Community has some input in ICANN budgeting and Strategic Plan, and could register objections to plans and spending on extending ICANN's Mission. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	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. 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: Existing measures are inadequate after NTIA terminates the IANA contract.	Proposed measures in combination are adequate.

Stress Test #12: Capture of ICANN processes by one or several groups of stakeholders.	
Consequence(s): Major impact on trust in multistakeholder model, prejudice to other stakeholders.	
EXISTING ACCOUNTABILITY MEASURES	**PROPOSED ACCOUNTABILITY MEASURES**
Regarding capture by governments, the 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". 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. Regarding internal capture by stakeholders within an AC or SO, see Stress Test 33.	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 capture by one or a few groups. 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: Existing measures would be inadequate.	Proposed measures would be adequate.

Stress Test #13: One or several stakeholders excessively rely on accountability mechanism to "paralyze" ICANN.
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
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. There are no present mechanisms for a ccTLD operator to challenge a revocation decision.	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. 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: Existing measures seem to be adequate.	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.

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.

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
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.	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.
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.	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.
The community has input in ICANN budgeting and Strategic Plan.	
Registrars must approve ICANN's variable registrar fees, though Registrars do not view this as an accountability measure.	Another proposal is to amend ICANN Bylaws to prevent the organization from expanding its scope beyond ICANN's amended Mission, Commitments and Core Values.
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.	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: Existing measures are inadequate.	Proposed measures in combination may be adequate.

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

Consequence(s): Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
Current ICANN Bylaws (Section XI) give due deference to GAC advice, including a requirement to try "to find a mutually acceptable solution." This is required for any GAC advice, not just for GAC consensus advice. Today, GAC adopts formal advice according to its Operating Principle 47: "*consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.*"[1] But the GAC may at any time change its procedures to use majority voting instead of consensus.	One 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 GAC consensus. The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN's Bylaws would require trying to find a mutually acceptable solution only on advice that had GAC consensus. GAC can still give ICANN advice at any time, with or without consensus.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures are adequate.

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.

Consequence(s): Community loses confidence in multistakeholder structures to govern ICANN.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
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. Aggrieved parties can ask for Reconsideration of Board decisions, but this is currently limited to questions of whether process was followed. Aggrieved parties can file an IRP, but decisions of the panel are not binding on ICANN. California's Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California's Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.	One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged. Another proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review such as an *Accountability and Transparency Review*. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP. One proposed measure is empowering the community to challenge a Board decision, referring it to an 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. If the ICANN Board were to ignore binding IRP decisions, the Empowered Community could seek enforcement in any court respecting international arbitration results. Another proposed measure empowers the community to recall the entire ICANN Board.
CONCLUSIONS: Existing measures are inadequate.	Proposed measures in combination are adequate because the community has power to recall the Board.

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.)

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

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

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

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

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
During policy development, affected third parties may participate and file comments. Affected third parties may file comments on proposed changes to registry and registrar contracts. Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies. Affected third parties (e.g. registrants and users) have no standing to challenge ICANN's management and Board on how it has *implemented* approved policies. If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.	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. 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. 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: Existing measures are inadequate.	Proposed measures would be adequate.

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.

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
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. An ICANN Board decision could not be challenged by the community at-large, which lacks standing to use the IRP.	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: Existing measures are inadequate.	Proposed measures would be adequate.

Stress test category V: Failure of Accountability to External Stakeholders

Stress Test #14: ICANN or NTIA choose to terminate the Affirmation of Commitments.

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
The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days notice. As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments. 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.	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. 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. 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. If any of the AoC commitments were designated as Fundamental Bylaws, changes would require approval by the Empowered Community. Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.
CONCLUSIONS: Existing measures are inadequate after NTIA terminates the IANA contract.	Proposed measures in combination are adequate.

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.

Consequence(s): Affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
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. 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. As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments. Article XVIII of ICANN Bylaws holds that 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.	Article XVIII of ICANN Bylaws holds that ICANN "shall" maintain a US presence. If ICANN's Board proposed to amend this Bylaws provision, one proposed measure would empower the community to block that proposed Bylaws change. If Article XVIII were designated as a Fundamental Bylaw, changes would require consensus approval by the Empowered Community.
CONCLUSIONS: Existing measures are inadequate once NTIA terminates IANA contract.	Proposed measures improve upon existing measures, and may be adequate.

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.

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
The present IANA contract (link) at C.2.1 does not allow ICANN to sub-contract or outsource its responsibilities to a 3rd party without NTIA's consent. NTIA could exert its control over ICANN's decision as long as it held the IANA contract but would not be able to do so after it relinquishes the IANA contract. Nor would NTIA's required principles for transition be relevant after transition occurred.	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. 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." Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.
CONCLUSIONS: Existing measures would not be adequate after NTIA relinquishes the IANA contract.	Proposed measures are adequate to allow the community to challenge ICANN decisions in this scenario.

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.

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.

Stress Test #27: Board refuses to follow community recommendation, triggering a "Member" to sue ICANN in the California courts. For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation but the ICANN board decides to reject the recommendation.	
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
This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts. Member access to court relief is not available under ICANN's present structure.	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. 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 <u>not</u> 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. If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options: The Empowered Community could vote to recall the

	board.
	The Empowered Community could vote to block the very next budget or operating plan if it did <u>not</u> include the ATRT recommendation.
CONCLUSIONS: Not applicable to ICANN's existing accountability measures.	California courts would not interpret ICANN mission statement, so proposed measures are adequate to mitigate the risk of this scenario.

Stress Test #28: Board follows community recommendation, but is reversed by IRP decision, triggering a "Member" to sue ICANN in California courts.

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

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**
This scenario assumes that ICANN converts to a model where Members acquire statutory rights to pursue relief in California courts. Member access to court relief is not available under ICANN's present structure.	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 <u>does</u> 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. 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.*

	If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options:
	The Empowered Community could vote to recall the board.
	The Empowered Community could vote to block the very next budget or operating plan if it did <u>not</u> include the ATRT recommendation.
CONCLUSIONS: Not applicable to ICANN's existing accountability measures.	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.

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

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.

ICANN also insists that legacy gTLD operators adopt the new gTLD contract on renewal.

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
The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. Affected registrants may file comments on the proposed gTLD contract renewals. Affected registrants could challenge	The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 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

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.	Mission Statement, Commitments and Core Values in amended bylaws. 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: Existing measures would not be adequate to challenge ICANN enforcement decision.	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

Stress Test #30: (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.	
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**
The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 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 considers whether ICANN followed process. Affected registrants and users have no standing to use IRP to challenge ICANN decision.	The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA. 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 policy and/or violates Mission, Commitments and Core Values in amended bylaws.

	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: Existing measures might be adequate for a registrar, but would not be adequate for a registrant to challenge ICANN enforcement decision.	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

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.

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.	
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**
AC/SO community powers are not available under ICANN's Bylaws.	An AC/SO could develop internal processes to ensure that any vote communicated would match the AC/SO decision instructions. 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: 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.

	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. After the problem has been remedied, another round of decision would occur.
CONCLUSIONS: Not applicable to ICANN's existing accountability measures.	Proposed measures would be adequate to avoid "rogue voting" problems.

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

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

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

NTIA-3: Barriers to entry for new participants.

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

Each of these NTIA stress tests is shown below.

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)
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**
AC/SO community powers are not available under ICANN's Bylaws.	In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to exercise community powers.

	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.
	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.
	If fewer than 3 AC/SOs participate in an Empowered Community decision process, the minimum thresholds for consensus would not be reached.
CONCLUSIONS: Not applicable to ICANN's existing accountability measures.	ICANN's multistakeholder model would be preserved, even if multiple AC/SOs decided not to exercise the new community powers.

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.

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
ICANN's Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption. 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	ICANN's Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption. 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

charter amendments.	AC/SO charter amendments.
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.	If a 'captured' AC/SO sent advice /policy to the board, a disenfranchised AC/SO could challenge the board decision to follow that advice/policy, using reconsideration or IRP. The standard of review would be ICANN's amended bylaws, including a requirement that policies "are developed through a bottom-up, consensus-based multistakeholder process"
CONCLUSIONS:	
Existing accountability measures are not likely to be adequate.	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

Stress Test #34: (NTIA-3) Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.	
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**
ICANN's Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.	ICANN's Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.
Affirmation of Commitments requires period reviews of Accountability and Transparency, including "(d) assessing the extent to which	Affirmation of Commitments requires periodic reviews of Accountability and Transparency, including "(d) assessing the

ICANN's decisions are embraced, supported and accepted by the public and the Internet community;"	extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community;"
ICANN's Ombudsman might help new entrants to join AC/SOs.	ICANN's Ombudsman might help new entrants to join AC/SOs.
	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: Existing accountability reviews can help erode barriers to entry, though not in real-time.	Proposed changes to Core Values and IRP could provide faster solutions to barriers encountered by new entrants.

Stress Test #35: (NTIA-4) Unintended consequences of "operationalizing" groups that formerly only gave advice to the ICANN board. (for example, the GAC)
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
Advisory Committees (ACs) have no community powers or decisional rights under ICANN's	In the true spirit of ICANN's multistakeholder model, CCWG proposes inviting all AC/SOs to participate in decisions about exercising community powers.

Bylaws.	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:
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.	
	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.
	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.
	In Core Value #5, CCWG proposes adding that policy development must be "led by the private sector".
	In Core Values, CCWG restricts ICANN's scope of activities.
	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.
	For the Affirmation of Commitments reviews, the GAC Chair would no longer approve/appoint review team members.
CONCLUSIONS:	
Existing accountability measures have already given advisory committees significant influence over ICANN operations.	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.

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:

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

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

Both scenarios are addressed in Stress Test 36:

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.	
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**
ACs and SOs have no joint community powers or decisional rights under ICANN's Bylaws. ICANN's Bylaws do not recognize any members as defined under California Nonprofit Public Benefit Corporation law.	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. 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. 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. 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: Not applicable to ICANN's existing accountability measures.	Proposed Empowered Community measures are adequate to avoid this scenario.

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."

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.

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
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." There is no requirement for community consultation or public comment for bylaws changes. There is no present power for the community to block or approve bylaws changes.	The Empowered Community is intentionally given the power to block a board-proposed change to a regular bylaw. In addition, the Empowered Community is intentionally given the power to withhold its approval of a board-proposed change to a fundamental bylaw. 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. 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: Existing accountability mechanisms prevent "deadlock" because the community has no	Proposed community powers enable "deadlock" over board-proposed bylaws

power to affect board-proposed bylaws changes.	changes, but only if that is the consensus decision of the community.

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