A Formal Update on the CCWG-Accountability's Progress During and After ICANN54 in Dublin

A Preview of the Third Draft Proposal on Work Stream 1 Recommendations

Context

This is a brief and preliminary overview of the proposal for improving ICANN's accountability developed by the Internet community over the past year. It includes a very high-level summary of the main changes being proposed by the community and outlines what will be described in the full proposal.

This 30-page document is designed to update the community on recent progress in and after ICANN54 in Dublin and raise awareness of the proposed enhancements to ICANN's accountability as a more detailed proposal is finalized. While this formal update reflects the current consensus positions of the group, there are outstanding elements that remain to be finalized. These finishing details are highlighted in the document, and will be confirmed and detailed in the Third Draft Proposal.

The full Third Draft Proposal on Work Stream 1 Recommendations will be shared with the public on 30 November 2015, which will include further explanation and detail about the accountability improvements outlined in this document. It will also explain why the changes have been suggested, how the community arrived at these recommendations and the options considered and ultimately rejected in development of the proposal.

We welcome feedback on this document, and encourage all interested stakeholders to view the full proposal for any outstanding questions or concerns.

Summary

Over the last year, a working group of ICANN community members has been developing a set of proposed enhancements to ICANN's accountability to the global Internet community.

This effort is integral to the transition of the United States' stewardship of the IANA functions to the global Internet community, reflecting the ICANN community's conclusion that improvements to ICANN's accountability were necessary in the absence of the accountability safety net that the historical contractual relationship with the United States government provided. The accountability improvements set out in this document are not designed to change ICANN's multistakeholder model, the bottom-up nature of policy development or ICANN's day-to-day operations.

The main elements of the proposal are outlined below. Together with ICANN's existing structures and groups, these accountability enhancements will ensure ICANN remains accountable to the global Internet community.

- **A revised mission statement** for the ICANN Bylaws, which sets out what ICANN does, its Core Values and its Commitments to the Internet community. This Mission statement clarifies but does not change ICANN's historic mission

- An enhanced **Independent Review Process** and redress process with a broader scope and the power to ensure ICANN stays within its revised Mission

- New specific **powers** for the ICANN community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus including the powers to:

    o Reject ICANN Budgets, Operating Plans or Strategic Plans

    o Reject changes to ICANN's Bylaws

    o Approve changes to new Fundamental Bylaws (see below)

    o Remove an individual ICANN Director from the Board

- o Recall the entire ICANN Board
- An additional new power that gives the community a say in decisions about the **IANA Functions Reviews** and any separation of the IANA Names Functions
- All of these community powers can only be exercised after extensive community discussions and debates through processes of **engagement and escalation.** The process of escalation provides many opportunities for the resolution of disagreements between the parties before formal action is required.

The accountability elements outlined above will be supported through:

- Additions to the ICANN Bylaws to create an **Empowered Community** that is based on a simple legal vehicle that will act on the instructions of ICANN stakeholder groups to exercise the Community Powers. The Empowered Community is granted the status of a Designator (a recognized role in law) and has the standing to enforce the Community Powers if needed.
- Core elements of ICANN's rules and regulations (the Articles and Bylaws) being categorized as **Fundamental Bylaws** that can only be changed with agreement between the ICANN community and the ICANN Board

In addition, further proposed changes include:

- A recognition of **ICANN's respect for Human Rights**
- Incorporation of ICANN's commitments under the 2009 **Affirmation of Commitments** with the United States into the Bylaws, where appropriate
- Improved accountability and diversity for ICANN's **Supporting Organizations and Advisory Committees**
- A commitment to discuss additional accountability improvements and broader accountability enhancements in 2016, following implementation of this core set of accountability improvements

To develop these recommendations to improve ICANN's accountability, the Working Group:

- Relied on suggestions and proposals generated inside the Working Group and by the broader Internet multistakeholder community
- Conducted public comment periods to gather feedback on earlier drafts and discussed iterations of its recommendations across the world at ICANN meetings and through online webinars
- Rigorously "stress tested" ICANN's current and proposed accountability mechanisms to test their strength against problematic scenarios the organization could potentially face
- Engaged two independent law firms to ensure the legal reliability of the proposed accountability enhancements
- Made the minimum enhancements to ICANN's accountability necessary to meet the baseline requirements of the community, as required for the IANA Stewardship Transition
- Met the requirements of the group that developed the IANA Stewardship Transition proposal for the Domain Names community

- Met the requirements of the U.S. National Telecommunications and Information Agency for the IANA Stewardship Transition

We look forward to your thoughts and feedback on our Third Draft Proposal on Enhancing ICANN Accountability.

Background

On 14 March 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the [Internet Assigned Numbers Authority (IANA) functions](#) to the global multistakeholder community. NTIA asked ICANN to convene an inclusive, global discussion to determine a process for transitioning the stewardship of these functions to the Internet community.

During initial discussions on how to proceed with the transition process, the ICANN multistakeholder community, recognizing the safety net that the NTIA provides as part of its stewardship role of the IANA functions, raised concerns about the impact of the transition on ICANN's accountability.

To address these concerns, the ICANN community requested that ICANN's existing accountability mechanisms be reviewed and enhanced as a key part of the transition process. As a result, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) convened. The CCWG-Accountability's work consists of two tracks:

- **Work Stream 1**: Focused on mechanisms to enhance ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

- **Work Stream 2**: Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

Any other consensus items that are not required to be in place within the IANA Stewardship transition timeframe can be addressed in Work Stream 2. There are mechanisms in Work Stream 1 to adequately enforce implementation of Work Stream 2 items, even if they were to encounter resistance from ICANN management or if it were against the interest of ICANN as a corporate entity.

The work documented in this high-level summary primarily focuses on Work Stream 1, with some references to related activities that are part of Work Stream 2's remit.

The Cross Community group that developed the IANA Stewardship Transition proposal for the Domain Names community stated that its proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms proposed by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). As such, the CCWG-Accountability committed to address the dependencies identified by the CWG-Stewardship, namely:

- **ICANN Budget:** Community rights regarding the development and consideration of the ICANN Budget

- **ICANN Board:** Community rights regarding the ability to appoint/remove Directors of the ICANN Board, and recall the entire Board

- **ICANN Bylaws:** Incorporation of the following into ICANN's Bylaws: IANA Function Review, Customer Standing Committee and the Separation Process

- **Fundamental Bylaws:** All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws

- **Independent Review Panel:** Should be made applicable to IANA Functions and accessible by managers of top-level domains

The CCWG-Accountability's Findings and Recommendations

This section provides an overview of the CCWG-Accountability's findings and recommendations regarding Work Stream 1 on the following aspects:

Recommendation #1: Establishing an Empowered Community for enforcing Community Powers

Recommendation #2: Empowering the community through consensus: engage, escalate, enforce

Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'

Recommendation #4: Ensuring community engagement in ICANN decision-making: five new Community Powers

Recommendation #5: Changing aspects of ICANN's Mission, Commitments and Core Values

Recommendation #6: Reaffirming ICANN's commitment to respect internationally recognized Human Rights as it carries out its mission

Recommendation #7: Strengthening ICANN's Independent Review Process

Recommendation #8: Fortifying ICANN's Request for Reconsideration Process

Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN's Bylaws

Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees

Recommendation #11: Executing stress tests to identify and diminish risks to the Internet's security, stability, and resiliency

Recommendation #12: Committing to further accountability work in Work Stream 2

It is important to note that while the recommendations below are agreed upon, consensus is yet to be reached on two topics:

- Enforcement and regulations provisions embedded in the Revised Mission, Core Values and Commitments

- Outcome of the stress test (known as Stress Test 18) intended to assess accountability mechanisms associated with how ICANN receives and reacts to advice from the Government Advisory Committee (GAC).

It is envisioned that the CCWG-Accountability will communicate its conclusions on these two areas in its detailed 'CCWG Accountability Third Draft Proposal on Work Stream 1 Recommendations.'

The Third Draft Proposal is scheduled to go into the public comment phase on 30 November 2015.

Recommendation #1: Establishing an Empowered Community for enforcing Community Powers

Community Enforcement Mechanism

Since the publication of 'Second Draft Proposal on Work Stream 1 Recommendations', the CCWG-Accountability has changed its proposed mechanism for ensuring the community can effectively enforce its decisions. The CCWG-Accountability shifted from a "Sole Member" model to "Sole Designator" model. The reasoning for this change and description of the new model are outlined below.

Concerns with a "Sole Member" model

In the Public Comment on the 'Second Draft Proposal on Work Stream 1 Recommendations', concerns were raised that the "Sole Member" model granted a significant number of powers under California law called "statutory rights." Commenters expressed concern that these rights, such as the ability to dissolve the corporation, could not be adequately constrained and might have unintended and unanticipated consequences.

The "Sole Designator" model

To address these risks, the CCWG-Accountability now recommends using a "Sole Designator" model. The Sole Designator has only two powers under California law and those are the powers to appoint and remove ICANN Board members, including the entire Board. Legal counsel informed the group that adopting a "Sole Designator" model could effectively be implemented while meeting the community's requirements while and having minimal impact on the corporate structure of ICANN.

THE EMPOWERED ICANN COMMUNITY
AS **SOLE DESIGNATOR**
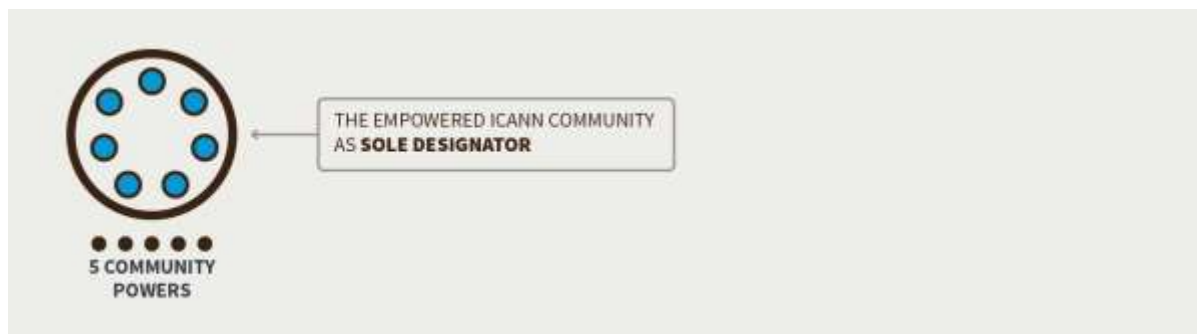
5 COMMUNITY POWERS

To implement the "Sole Designator" model, ICANN's Supporting Organizations and Advisory Committees would create a unified entity to enforce their Community Powers. This unified entity will be referred to as the "Empowered Community.[1]" The rules for how the Empowered Community decides to use its powers will be added into the ICANN Bylaws and are described in detail in the following sections.

The powers required by the CCWG-Accountability, such as the power to reject the annual budget or inspecting documents, would be included in the ICANN Bylaws to ensure their effectiveness. These powers will be subject to the enhanced Independent Review Process for enforcement.

The Empowered Community has recourse to the courts if necessary to enforce community appointments to and removals from the Board, and to enforce its powers regarding changes to ICANN Bylaws. In other words, its decisions can withstand the withering influence of fiduciary decisions by the Board. In addition, the right of inspection of the corporation's records will be included under the Empowered Community model (a member would have this right by law, but it can be granted to the Empowered Community under ICANN's Bylaws).

Implementation of the "Sole Designator" model currently anticipates that all of ICANN's Supporting Organizations, the At-Large Advisory Committee and Governmental Advisory Committee would participate in the Empowered Community.

The thresholds presented in this document were determined based on this assessment. If fewer than 5 of ICANN's Supporting Organizations and Advisory Committees agree to participate, these thresholds for consensus support may be adjusted. Thresholds would also have to be adjusted if ICANN changes to have more Supporting Organizations or Advisory Committees.

Recommendation #2: Empowering the community through consensus: engage, escalate, enforce

The CCWG expects that disagreements between the community and the ICANN Board might arise from time to time. In an effort to prevent such disagreements from happening the CCWG is recommending ICANN be required to engage with the community on any key decisions it is considering such as Budgets or changing Bylaws. Should disagreements arise, the CCWG-Accountability is proposing a series of procedures that ensure all sides have the chance to completely and thoroughly discuss any disagreements and have multiple

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[1] The Empowered Community would act as a Sole Designator, which would have legal standing as a California-based Unincorporated Association

opportunities to resolve any such issues before having to resort to the powers of the Empowered Community.

This process is referred to as Engagement, Escalation and Enforcement.

Engagement

Currently, the ICANN Board engagement processes, such as public consultations, are voluntary. The CCWG-Accountability recommends that the engagement processes be made mandatory, and be reinforced in the ICANN Bylaws.

The CCWG-Accountability proposes to require the ICANN Board to engage with the community before making certain critical decisions, including this engagement process that will allow for most community concerns to be addressed early and avoid the need for using the escalation and enforcement procedures.

Escalation

The CCWG-Accountability proposes a set of escalation steps that allow the ICANN Board and community to completely and thoroughly discuss any disagreements. The general escalation process (which may vary in application depending on the Community Power being used) is outlined below:
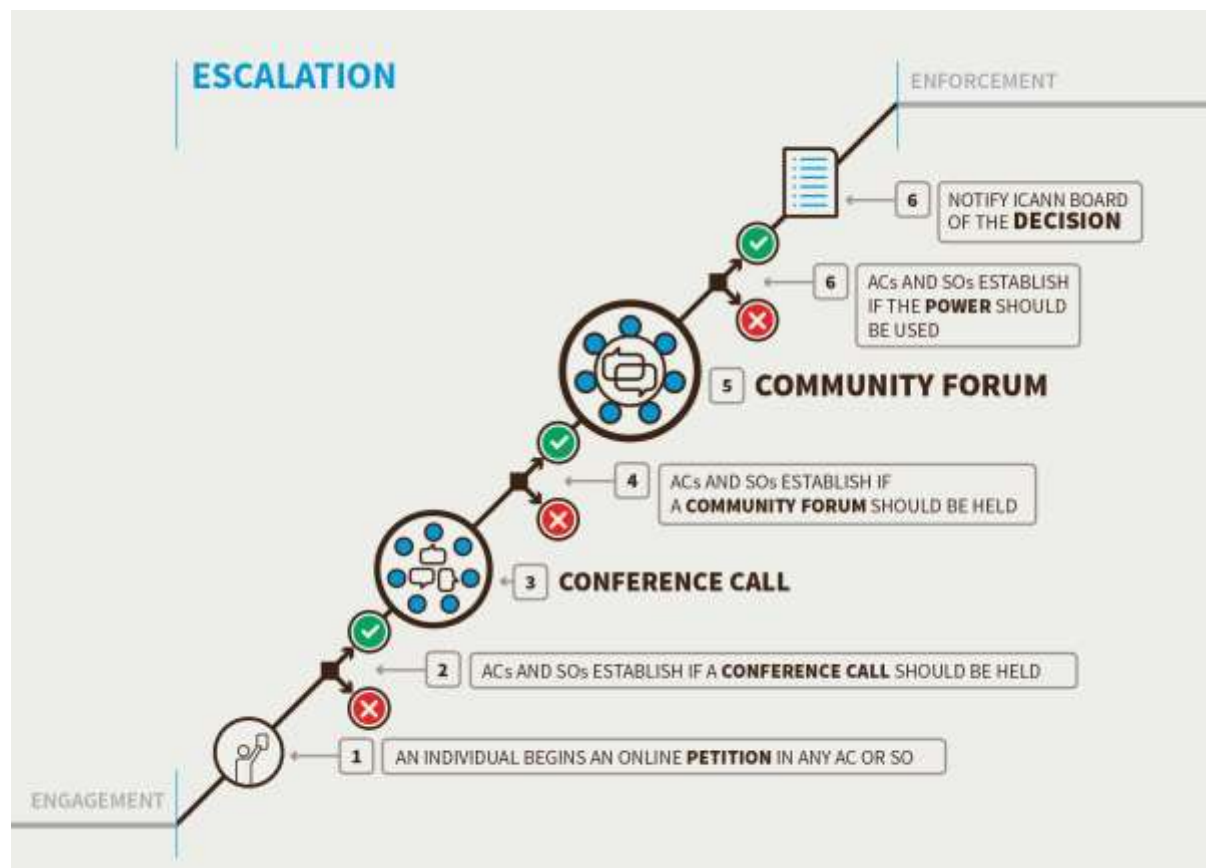
Triggering Review by Community Petition (15 days) or by Board Action

- Begin a petition in a Supporting Organization or Advisory Committee

- Any individual can begin a petition as the first step to using a Community Power.

- For the petition to be accepted, the Supporting Organization or Advisory Committee, in accordance with its own mechanisms, must accept the petition

- If the Supporting Organization or Advisory Committee does not approve the petition within the 15 days the escalation process terminates

- If the Supporting Organization or Advisory Committee approves the petition it contacts the other Supporting Organizations or Advisory Committees to ask them to support the petition so a conference call can be organized that will allow the entire community to discuss the issue. At least one additional Supporting Organization and/or Advisory Committee must support the petition (for a minimum of 2) for a conference call to be organized

- If a minimum of two Supporting Organizations or Advisory Committees support the petition within 15-days, a conference call is organized

- If the petition fails to gather the required level of support, the escalation process terminates (except for removal of individual Director)
    - Note 1: To exercise any of the rejection powers, such rejection of a Budget, the 15-day period begins at the time the Board votes on the element to be rejected. If the petition is not successful within 15 days of the Board vote, the rejection process cannot be used.
    - Note 2: For ICANN Board resolutions on changes to Standard Bylaws, Budget, Strategic and Operating Plans, the Board would be required to automatically provide a 15-day period before the resolution takes effect to allow for the escalation to be confirmed. If the petition is supported by a minimum of 2 Supporting Organizations or Advisory Committees within the 15-day period, the Board is required to put implementation of the contested resolution on hold until the escalation process is completed. The purpose of this is to avoid requiring ICANN to undo things (if the rejection is approved), which could be potentially very difficult to undo.

Conference Call (7 days to organize and hold from the date the decision is made to hold the call)

- The petitioning Supporting Organizations and/or Advisory Committees circulate written justification for exercising the community power in preparation for the conference call. Any Supporting Organization or Advisory Committee may contribute preliminary thoughts or questions in writing before the call is held via a specific archived email list set up for this specific issue

- ICANN hosts a conference call open to any interested participants and will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised

- If the community and the Board can resolve the issue on the conference call, the escalation terminates

- If the community and the Board cannot resolve the issue the community must decide if it wishes to hold a Community Forum.

Decision to hold a Community Forum (7days from the end of the conference call)

- If the community and the Board cannot resolve the issue on the conference call, the Supporting Organizations and/or Advisory Committees must decide if they want to hold a Community Forum. This would be a one or two day event, possibly face-to-face, where the ICANN community would explore in detail the issue between the Board and the community and the potential avenues for resolution or action.

- If three or more Supporting Organizations or Advisory Committees support holding a Community Forum within the 7-day period the Community Forum will be organized

- If the proposal to hold a Community Forum does not obtain the required support during the 7 days the escalation process terminates

Holding a Community Forum (15 days to organize and hold the event from the date of the decision to hold it)

- The Community Forum would be planned for 1 to 2 days

- The Community Forum would be open to all interested participants and ICANN will provide support services. Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.

- The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any Supporting Organization or Advisory Committee may circulate in writing their preliminary views on the exercise of this community power

- The Community Forum will not make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage. This decision is up to the Supporting Organizations and/or Advisory Committees to determine after the forum

- The Community Forum should be managed/moderated in a fair and neutral manner

- Should the relevant Supporting Organizations or Advisory Committees determine a need for further deliberation, a second and third session of the Community Forum could be held

- Staff will collect and publish a public record of the Forum(s), including all written submissions

- If the Empowered Community and ICANN Board can resolve the issue in the Community Forum, the escalation process terminates

- If the Empowered Community and ICANN Board cannot resolve the issue, the community must decide if it wishes to take further action.

Decision to use its power as an Empowered Community (15 days from the conclusion of the community forum)

- If four or more (for some powers 3) Supporting Organizations and/or Advisory Committees support and no more than one objects within the 15-day period, the Sole Designator will use its power. The community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons.

- If the proposal to instruct the Sole Designator to use its power does not meet the required thresholds during the 15-day period, the escalation process terminates

Advising the ICANN Board (1 day)

- If the Empowered Community has instructed Sole Designator to use its power, it will advise the ICANN Board of the decision and direct the Board to take any necessary action to comply with the decision

Enforcement

The CCWG-Accountability proposes that, in the unlikely situation where the ICANN Board refuses to comply with a decision by the Empowered Community, the community would proceed according to one of the following two options:

Option 1: Initiate mediation and community Independent Review Process procedures

- Representatives from the community and ICANN Board would undertake a formal mediation phase. If the community accepts the results from the mediation phase, the enforcement phase would be terminated.

- If not, the community will proceed with a community Independent Review Process that could only be initiated using the escalation process described above.

- If the community chooses to begin a community Independent Review Process, representatives from the community and ICANN Board would undertake a formal and binding Independent Review Process.

- If the results of the binding Independent Review Process are in favor of the Board, the enforcement procedure is terminated.

- If the results of the binding Independent Review Process are in favor of the community, the Board must comply.

- If the Board does not comply with the decision of the Independent Review Process, the Sole Designator can ask a court with jurisdiction to enforce the results of the Independent Review Process, or the community can use the escalation process to have the Sole Designator remove the Board.

Option 2: Initiate an escalation process to remove the entire Board.

- If the requisite threshold of community support is achieved, the Sole Designator removes all of the members of the ICANN Board (except the CEO) and replaces them with an Interim Board until a new Board can be seated.

- If ICANN staff, the outgoing Board or removed Directors question the legitimacy of the Sole Designator's decision or block the Interim Board, it may seek enforcement by a court with jurisdiction

Recommendation #3: Redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws'

ICANN Bylaws describe how power is exercised in ICANN, including setting out the organization's Mission, Commitments and Core Values. Together with the Articles of Incorporation, the Bylaws are an essential part of ICANN because they set the scope of the organization's corporate authority, determine its governance framework and define working practices.

The CCWG-Accountability believes that it is essential for the community's decision rights and the set of key Bylaws that are fundamental to ICANN's stability and operational continuity to be given additional protection from changes by requiring community approval of any amendments.

The CCWG-Accountability recommends that ICANN's Bylaws be characterized as:

Fundamental Bylaws: The aspects of the Articles of Incorporation or Bylaws that are deemed fundamental to the organization's stability, operational continuity and community decision rights such as:

- The Mission, Commitments and Core Values

- The framework for the Independent Review Process (IRP)

- The process by which Fundamental Bylaws can be amended

- The five proposed Community Powers

- The Community Mechanism as the Sole Designator, i.e. the "Empowered Community"

- The IANA Function Review[2], Special IANA Function Review and the Separation Process required by the IANA Stewardship Transition proposal

- The Post-Transition IANA Governance and Customer Standing Committee structures that are also required by the IANA Stewardship Transition proposal

Standard Bylaws: all Bylaws that are not deemed to be Fundamental Bylaws

Provisions redefined as Fundamental Bylaws should not be amended unless there is strong consensus to do so within both the ICANN Board and community.

The Power to Approve Changes to Fundamental Bylaws

To safeguard against the possibility that the ICANN Board could unilaterally amend Bylaws *without* consulting the community, the CCWG-Accountability determined that the community consultation process should be reinforced in Fundamental Bylaws. The proposed set of Fundamental Bylaws would be harder to change than the Standard Bylaws for two reasons:

- The authority to change Fundamental Bylaws would be shared between the ICANN Board and the ICANN community

- The required threshold of support to change a Fundamental Bylaw would be significantly higher than the threshold to change a Standard Bylaw

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[2] The IANA Function Review only refers to the naming-related aspects of the IANA Functions

The CCWG-Accountability emphasizes the importance for the ICANN Board and ICANN community to be able to define new Fundamental Bylaws over time, or to change or remove existing ones to ensure that ICANN can adapt to the changing Internet environment.

The escalation and enforcement processes for this power are as presented in "Recommendation #2: Empowering the community through consensus: engage, escalate, enforce" with the following modifications:

- Once the ICANN Board has approved the change to the Fundamental Bylaw a conference call is organized within 15 days without having a petition.

- 3 SOs or ACs have to support holding a Community Forum. If the threshold is not met the process moves to approving using the Power to Approve Changes to the Fundamental Bylaw.

- To use the Power to Approve changes to the Fundamental Bylaws 4 or more SOs or ACs have to support it and no more than one can object.

## The Power to Reject Changes to ICANN's Standard Bylaws

ICANN Bylaws describe ICANN's purpose and the internal rules that govern ICANN's operations, including how decisions are made. The ICANN Board currently has the ability to change any ICANN Bylaw with a two-thirds majority vote. Although current Board practice is to gather the community's feedback on any Bylaws amendments, the consultation process is not required under current ICANN Bylaws. The CCWG-Accountability recommends that ICANN Bylaws be classified as **Fundamental Bylaws** (Bylaws are deemed critical or fundamental to the organization's stability and operational continuity) and **Standard Bylaws** (Bylaws not deemed to be Fundamental Bylaws).

To safeguard against the possibility that the ICANN Board could unilaterally amend Bylaws without consulting the community, the CCWG-Accountability recommends that the community be given the power to reject changes to Standard ICANN Bylaws after the Board approves them, but before the changes come into effect. Any changes approved by the Board would take 15 days to come into effect to enable the community to decide whether a petition to reject the change should be initiated.

This power, with respect to Standard Bylaws, is a rejection process that is used to tell the ICANN Board that the community does not support a Board-approved change. It does not enable the community to re-write a Standard Bylaw change that has been proposed by the Board.

The escalation and enforcement processes for this power are as presented in "Recommendation #2: Empowering the community through consensus: engage, escalate, enforce."

Recommendation #4: Ensuring community engagement in ICANN decision-making: five new Community Powers
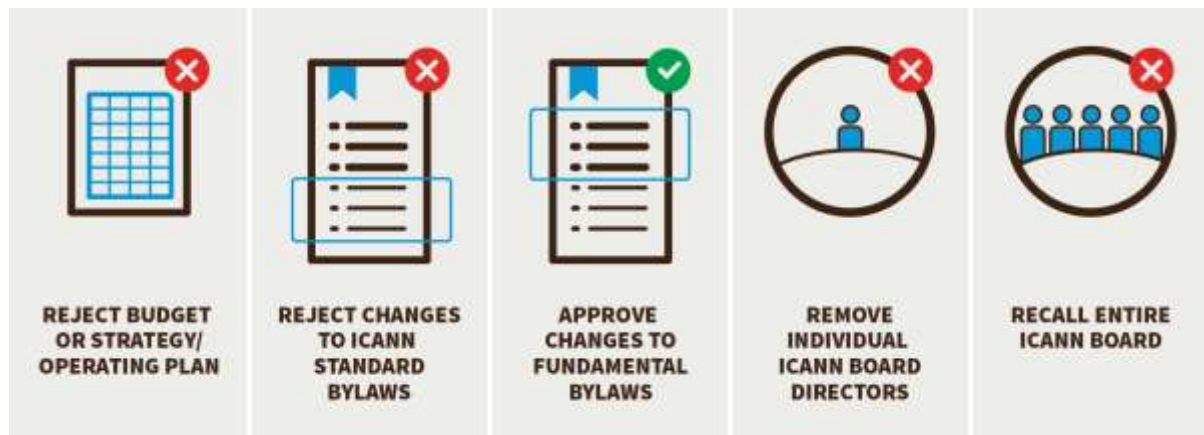
The CCWG-Accountability has proposed a set of five Community Powers designed to empower the community to hold ICANN accountable for the organization's Principles (the Mission, Commitments, and Core Values). The proposed Community Powers are:

- The Power to Reject ICANN's Budget or Strategy/Operating Plans

- The Power to Reject Changes to ICANN Standard Bylaws

- The Power to Remove Individual ICANN Board Directors

- The Power to Recall the Entire ICANN Board

- The Power to Approve Changes to Fundamental Bylaws

It is important to note that the above powers, as well as the launch of a Separation Cross Community Working Group[3], (as required by the CWG-Stewardship dependencies), can be enforced by using the community Independent Review Process or the Power to recall the entire Board.

The Powers to Reject Changes to ICANN Standard Bylaws and Approve Changes to Fundamental Bylaws are outlined in "Recommendation #3: Redefining ICANN's Bylaws as 'Fundamental' and 'Standard Bylaws.'"

The Power to Reject ICANN's Budget or Strategic/Operating Plans

The right to set budgets and strategic direction is a critical governance power for any organization. By allocating resources and defining the goals to which these resources are directed, Strategic

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[3] If the CWG-Stewardship's IANA Function Review determines that a separation process is necessary, it will recommend the creation of a Separation Cross Community Working Group. This recommendation will need to be approved by a supermajority of each of the Generic Names Supporting Organization and the Country-Code Names Supporting Organization Councils, according to their normal procedures for determining supermajority, and will need to be approved by the ICANN Board after a public comment period, as well as a community mechanism derived from the CCWG-Accountability process.

Plans, Operating Plans and Budgets have a significant impact on what ICANN does and how effectively it fulfills its role. The ICANN community already plays an active role in giving input into these key documents through participation in the existing consultation processes ICANN organizes.

To provide additional accountability safeguards, the CCWG-Accountability has proposed that the community be given the power to reject:

- ICANN's Five-Year Strategic Plan
- ICANN's Five-Year Operating Plan
- ICANN's Annual Operating Plan & Budget
- The IANA Functions Budget

The CCWG-Accountability has determined that a separate petition would be required for each Budget or Plan being challenged. A Supporting Organization or Advisory Committee petitioning to reject a budget or strategic/operating plan would be required to circulate a rationale and obtain support for its petition from at least one other Supporting Organization or Advisory Committee according to the Escalation Process.

The escalation and enforcement processes for this power are as presented in the section describing these. Should the power be used to reject the annual budget, a caretaker budget would be enacted (details regarding the caretaker budget are currently under development).

Rejecting the Annual Operating Plan & Budget

The CCWG-Accountability has determined that a separate petition would be required for each Budget or Strategic/Operating plan being required. A Budget or Strategic/Operating plan could only be challenged if there are significant issue(s) brought up in the Engagement Phase that were not properly addressed prior to approval.

A Supporting Organization or Advisory Committee petitioning to reject a Budget or Strategic/Operating Plan will be required to circulate a rationale and obtain support for its petition from at least one other Supporting Organization or Advisory Committee according to the Escalation Process.

The IANA Functions Budget

Under this power the community will be able to consider the IANA Functions Budget as a separate budget. The IANA Functions Budget is currently part of ICANN's Annual Operating Plan & Budget.

The CCWG-Accountability recommends that there should be two distinct processes with respect to the community's power to reject the IANA Budget and its power to reject the ICANN Budget, meeting the requirements set forward by the IANA Stewardship Transition proposal. The use of the Community Power to reject the ICANN Budget would have no impact on the IANA Budget, and a rejection of the IANA Budget would have no impact on the ICANN Budget.

In addition, to reinforce the bottom up, collaborative approach that ICANN currently uses to enable the community to give input into these documents, the CCWG-Accountability recommends adding the existing consultation process into the ICANN Bylaws.

The Power to Remove Individual ICANN Board Directors

The proposed power to Remove Individual ICANN Board Directors would enable the nominating SO/AC after community consultation to remove a Director before the Director's current term comes to an end. The CCWG-Accountability recommends that the community be given this express power. Currently, the power to remove Individual Directors is only available to the Board itself pursuant to existing Bylaws.

Under this Community Power, a Director could be removed by the nominating SO/AC after community consultation. The CCWG-Accountability expects that this power would only be used in cases of serious concerns about a particular Director.[4]

The escalation and enforcement process to Remove Individual ICANN Board Directors requires the following amendments to the standard escalation and enforcement process described earlier:

Directors nominated by the Nominating Committee

- In cases where the community perceives that there is a reason to remove a Director appointed by the Nominating Committee it could use the engagement and escalation process to decide if the Sole Designator should remove the Director. It is important to note that this process can only be used once during a Director's current term if the process reaches the step of holding a Community Forum or above and then fails to remove the Director.
- Only require 2 Supporting Organizations or Advisory Committees to convene a Community Forum
- Only require 3 Supporting Organizations or Advisory Committees, and none objecting, for the empowered community to use the power.
- Naming a replacement
    - The Nominating Committee may instruct the Sole Designator to appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several "reserve" candidates in place.
    - Replacement Directors will fill the same "seat" and their term will come to an end when the term of the original Director was to end. A Director appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

Directors Nominated by a Supporting Organization or Advisory Committee

- In cases where the nominating Supporting Organization or Advisory Committee believes there is a reason to remove with its appointed Director it can use the following escalation process to determine whether the Sole Designator will remove. It is important to note that this process can only be used once during a Director's term if the process reaches the step of holding a Community Forum or above and then fails to remove the Director.
- The petition can only be started in the SO or AC that nominated the Director.
- The petition to hold a conference call is successful if the SO or AC that nominated the Director approves it.
- If a petition is accepted, the Chair of the relevant Supporting Organization or Advisory Committee will meet promptly in private (by phone or in-person) with the concerned Director to discuss the approved petition. If no resolution is found, the Supporting

Organization or Advisory Committee schedule a Conference Call within 7 days of the petition being accepted.

- The process proceeds directly to a Community Forum following the conference call if the parties have not resolved their differences.
- At the end of the Community Forum the Community Forum Chair will issue a formal call for comments and recommendations from the community, and input received will be sent to the relevant Supporting Organization or Advisory Committee and posted publicly within 7 days
- Supporting Organizations and/or Advisory Committees publish their comments and recommendations (7 days)
- Decision to use its power as an Empowered Community (7 days from the conclusion of the Comment period) is the responsibility of the nominating SO or AC only. As such the threshold is 1.
- Naming a replacement
  - The respective Supporting Organization or Advisory Committee is responsible for filling their vacancy on the ICANN Board through its usual process (as set out in Article VI, Section 12.1 of the Bylaws).
  - Replacement Directors will fill the same "seat" and their term will come to an end when the term of the original Director was to end. A Director appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

The Power to Recall the Entire ICANN Board

The CCWG-Accountability believes there may be situations where removing Individual Directors from ICANN's Board may not be a sufficient accountability remedy for the community.

In cases where the community perceives that a set of problems has become impossible to resolve, the community may wish to signal its lack of confidence in the Board by petitioning for a recall (i.e. the removal) of the entire ICANN Board (except the CEO who is appointed by the Board). The power to recall a Board is a critical enforcement mechanism for the community under the Sole Designator model because it can be used to support the other Community Powers and provide a final and binding accountability mechanism.

By exercising this power, the entire ICANN Board (except the CEO) could be removed for by the community. However, it is unlikely that the community would use this power lightly, and the engagement and escalation pathways are designed to encourage agreement between the Board and the community. If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.

The CCWG-Accountability expects that this power would only be exercised as a last resort after all other attempts at resolution have failed. As a recall of the Board would be extremely disruptive for the entire organization, the CCWG-Accountability has included several safeguards in the proposed escalation process to ensure that this decision reaches the maturity and level of support needed before it can be used.

The escalation and enforcement processes for this power are as presented in the section describing these with the following modifications:

- Threshold for calling a Community Forum is 3 SO or ACs supporting.

- Threshold for using the power is 4 SO or ACs supporting and no more than one objecting.

Interim Board

The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations, Advisory Committees and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN.

The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the Supporting Organization and Advisory Committee leadership before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies, or management, including replacement of the serving President and CEO.

Recommendation #5: Changing aspects of ICANN's Mission, Commitments and Core Values
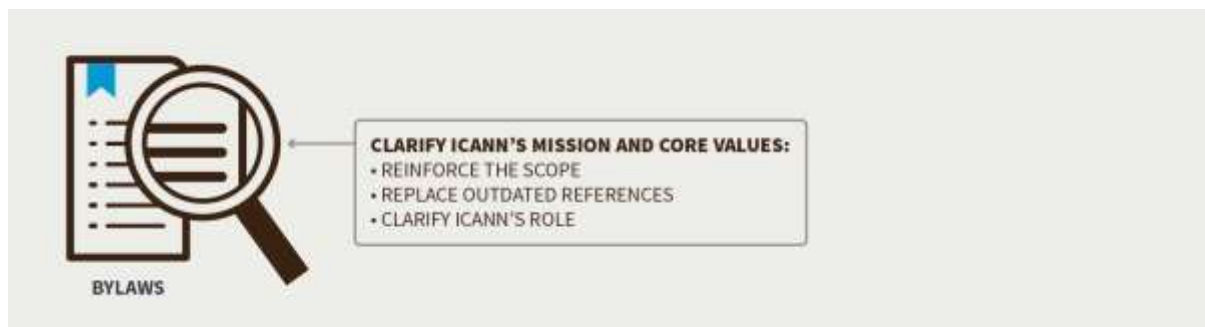
The revised mission statement clearly sets forth ICANN's role with respect to names, numbers, root servers, and protocol port and parameters.

The CCWG recommends clarifying and, with respect to port and parameter protocols, updating the ICANN mission statement to clearly set forth ICANN¹s role with respect to names, numbers, root servers, and protocol port and parameters: As proposed:

> *The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems in the ways described below. Specifically, ICANN:*
>
> *1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's Mission is to coordinate the development and implementation of policies:*
> * *For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS;*
> * *That are developed through a bottom-up, consensus-based multistakeholder process*

and designed to ensure the stable and secure operation of the Internet¹s unique names systems.

2. Coordinates the operation and evolution of the DNS root name server system. In this role, ICANN's Mission is to be provided by root server operators.

3. Coordinates the allocation and assignment at the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. ICANN's Mission is described in the ASO MoU between ICANN and RIRs.

4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's Mission is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, such as the Internet Engineering Task Force.

The Mission Statement further clarifies that ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve it's Mission.

The CCWG-Accountability is yet to reach consensus on the proposed language that is intended to address contract enforcement and regulation: *[PLACEHOLDER: Without in any way limiting the foregoing absolute prohibition, ICANN shall not regulate services that use the Internet's unique identifiers, or the content that such services carry or provide. ICANN shall have the ability to enforce agreements with contracted parties, subject to established means of community input on those agreements and reasonable checks and balances on its ability to impose obligations exceeding ICANN's Mission on registries and registrars.]*

Recommendation #6: Reaffirming ICANN's commitment to respect internationally recognized Human Rights as it carries out its mission

The group sought legal advice on whether the IANA Functions Contract imposes specific obligations on ICANN with regard to Human Rights that would cease to exist upon the termination of the IANA Functions Contract.

Legal counsel found that, upon termination of the contract, there would be no significant impact on ICANN's obligations with respect to Human Rights. However, the CCWG-Accountability

acknowledged the community's concerns about this: while there were no statutory obligations on ICANN, the safety net of NTIA was assurance that Human Rights would be respected. Adding a Bylaw would be a way to attempt to replace the NTIA safety net. In the 'CCWG-Accountability Second Draft Proposal on Work Stream 1 Recommendations', it proposed two possible solutions[5] for adding Human Rights into ICANN's Bylaws (see Second Draft Proposal, paragraph 148 for more information).

Draft Bylaw on Human Rights

Responding to public comments received on Second Draft Proposal that expressed concerns about potentially expanding ICANN's Mission and the risk of appearing to prioritize some Human Rights over others, the CCWG-Accountability presents the following proposed draft Bylaw for consideration:

> "*Within its mission and in its operations, ICANN will respect internationally recognized human rights. This commitment does not in any way create an obligation for ICANN, or any entity having a relationship with ICANN, to protect or enforce human rights beyond what may be required by applicable law. In particular, this does not create any additional obligation for ICANN to respond to or consider any complaint, request or demand seeking the enforcement of human rights by ICANN.*"

Operationalizing the Commitment to Human Rights

The CCWG-Accountability has identified several activities that it recommends be undertaken as part of Work Stream 2 that will fully operationalize ICANN's commitment to Human Rights. Work Stream 2 focuses on accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

To ensure that these Work Stream 2 activities are implemented, the CCWG-Accountability requires that a Bylaw be adopted as part of Work Stream 1.

The new Bylaw will state that the proposed draft Human Rights Bylaw is to be implemented in accordance with the Framework of Interpretation, which will be developed as part of Work Stream 2. The Bylaw proposed for adoption as part of Work Stream 1 will be used for a limited period of time only, up until the Framework of Interpretation is published.

The CCWG-Accountability states that the group that will work on developing the Framework of Interpretation must be established as soon as possible so that the Framework can be published no later than one year after the Bylaw is adopted.

The Human Rights-related activities to be addressed in Work Stream 2 are:

• Developing a Framework of Interpretation for the Bylaw

• Considering which specific Human Rights conventions or other instruments should be used by ICANN in interpreting and implementing the Bylaw

• Considering the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to Human Rights

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[5] Within its mission and in its operations, ICANN will be committed to respect the fundamental human rights of the exercise of free expression and the free flow of information. Or Within its mission and in it operations, ICANN will be committed to respect internationally recognized fundamental human rights.

- Considering how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process, consistent with ICANN's existing processes and protocols

- Considering what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee

- Considering how, if at all, this Bylaw will affect how ICANN's operations are carried out

- Considering how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures

Recommendation #7: Strengthening ICANN's Independent Review Process
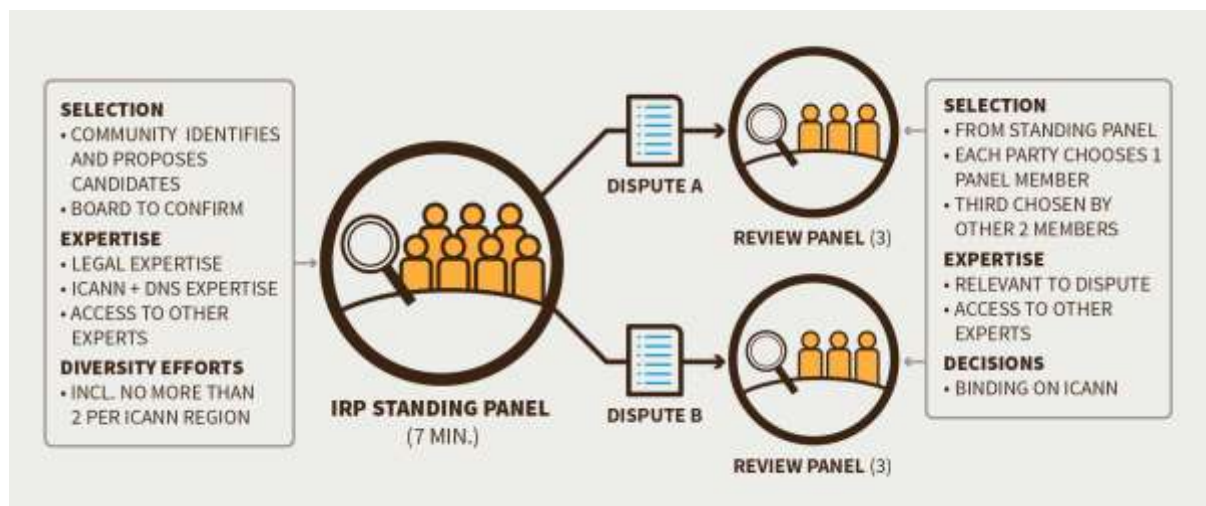
The overall purpose of the Independent Review Process (IRP) is to ensure that ICANN does not exceed the scope of its limited technical mission and complies with both its Articles of Incorporation and Bylaws.

The CCWG-Accountability recommends that the existing Independent Review Process be modified to:

- **Have a standing judicial/arbitral panel:** tasked with reviewing and adjudicating complaints lodged by individuals, entities, and/or the community who have been materially harmed by ICANN's action or inaction in violation of the Articles of Incorporation and/or Bylaws.

- **Composition of Panel and Expertise:** Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration. Panelists should also possess expertise, developed over time, about the DNS and ICANN's policies, practices, and procedures. At a minimum, panelists should receive training on the workings and management of the domain name system. Panelists must have access to skilled technical experts upon request. In addition to legal expertise and a strong understanding of the DNS, panelists may confront issues where highly technical, civil society, business, diplomatic, and regulatory skills are needed. To the extent that individual panelists have one or more of these areas of expertise, the process must ensure that this expertise is available upon request.

- **Standard of Review:** The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on their own independent interpretation of the ICANN Articles and Bylaws in the context of applicable governing law. The standard of review shall be an objective examination as to whether the complained-of action exceeds the scope of ICANN's Mission and/or violates ICANN's Articles and Bylaws. Decisions will be based on each IRP panelist's assessment of the merits of the claimant's case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts.

- **Be more accessible:** Any person/group/entity "materially affected" by an ICANN action or inaction in violation of ICANN's Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. The CCWG-Accountability recommends also giving the Empowered Community the right to have standing with the IRP.

- **Be more affordable:** The CCWG-Accountability recommends that ICANN would bear all the administrative the costs of maintaining the system (including Panelist salaries), while each party should bear the costs of their own legal advice. The Panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access, for example by access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded form utilizing the process. A community IRP approved by the escalation process would be completely subsidized by ICANN. Details of IRP procedure rules will be identified by a subgroup of the Cross-Community Working Group.

- **Result in a binding decision that an action/failure to act complied or did not comply with ICANN's Articles of Incorporation and/or Bylaws:** To the extent permitted by law, the Independent Review Process decisions would be binding on ICANN. The powers of the Independent Review Process are strictly limited to confirming or rejecting ICANN's decisions; it has no mandate to enforce specific outcomes of these decisions.

  - It is important to note that the ccTLD Delegations and Redelegations as well as Numbering resources are excluded from the IRP at their respective SO's request. The ccNSO will be undertaking work to consider how an appeal mechanism could apply to the Delegation and Revocation of ccTLDs.

  - As requested by the CWG-Stewardship, the Community can use the Independent Review Process to challenge a decision by the Board not to implement a recommendation of the IANA Function Review team.

The CCWG-Accountability's enhancements to the Independent Review Process ensure that the Independent Review Process will not be empowered to circumvent the bottom-up, multistakeholder-driven nature of ICANN's processes. The powers of the Independent Review Process are strictly limited to confirming or rejecting ICANN's decisions; it has no mandate to enforce specific outcomes on these decisions.

# Recommendation #8: Fortifying ICANN's Request for Reconsideration Process
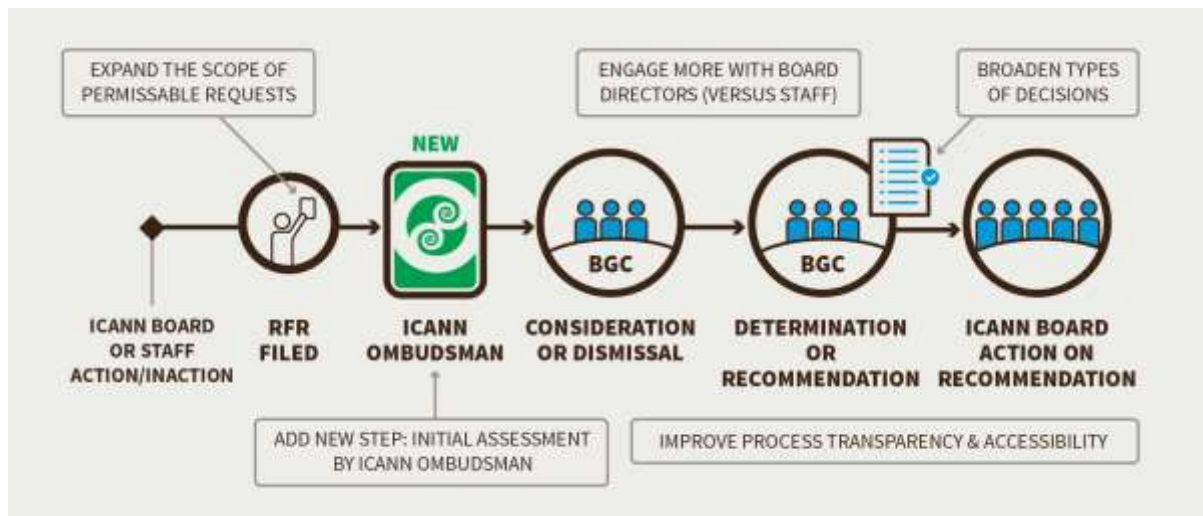
ICANN's current [Request for Reconsideration](#) process is a prominent feature of its appeals mechanisms. The RFR is an internal process to ICANN overseen by the Board Governance Committee where decisions by the Board that affect a party can be appealed. If the request is found to have merit, the Board Governance Committee could recommend that the Board review its decision.

The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process to increase its effectiveness, whereby the ICANN Board of Directors is obliged to reconsider a recent decision, action or inaction by ICANN's Board or staff.

The CCWG-Accountability recommends the following enhancements to the current Request for Reconsideration Process:

- Expanding the scope of permissible requests to include actions or inactions by Board or ICANN staff that contradict established policy, ICANN's Mission, Commitments, or Core Values

- Extending the timeframe for filing a Request for Reconsideration from 15 days to 30 days

- Focusing on having the ICANN Ombudsman perform the initial assessments of Reconsideration Requests instead of ICANN's Legal Department

- Broadening the types of decisions, and providing more transparency in the dismissal process while also providing the Board with reasonable right to dismiss frivolous requests

- Engaging more with the Board Directors instead of with ICANN staff

- Providing general transparency enhancements to the Request for Reconsideration request evaluations, Board discussions and rationales for dismissal

Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN's Bylaws
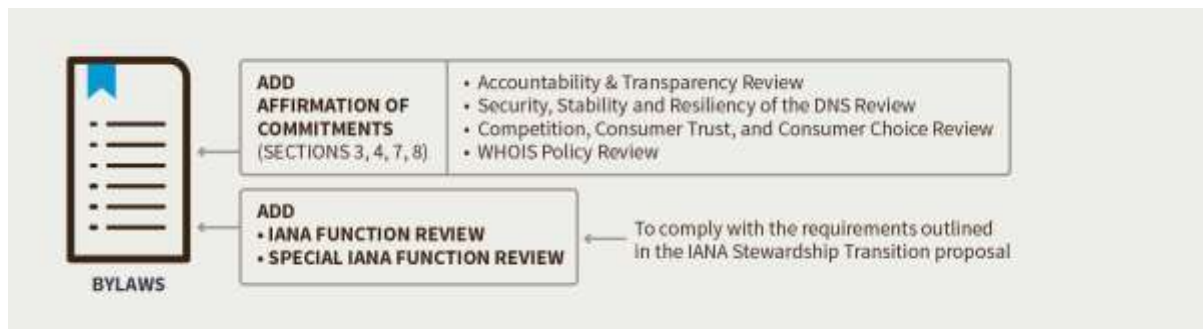
The CCWG-Accountability recommends incorporating the reviews specified in the Affirmation of Commitments, a 2009 bilateral agreement between ICANN and the NTIA, in ICANN Bylaws. This will ensure that Community Reviews remain a central aspect of ICANN's accountability and transparency framework.

Proposed sections of the Affirmation of Commitments to be added to the Bylaws

Section 3: Affirmation of Commitments Excerpt: This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

Section 4: Affirmation of Commitments Excerpt: DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

Section 7: Affirmation of Commitments Excerpt: ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

> **Section 8:** Affirmation of Commitments Excerpt: ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

Adding these sections into the Bylaws will ensure that key Commitments and Reviews remain intact. The reviews that are included are:

- The Accountability & Transparency Review

- The Security, Stability and Resiliency of the DNS Review

- The Competition, Consumer Trust, and Consumer Choice Review

- The WHOIS Policy Review

In addition to these Reviews, which are specified in the Affirmation of Commitments, the CCWG-Accountability also recommends adding an IANA Functions Review[6] and Special IANA Functions Review[7] to the Bylaws. This is to comply with the requirements set forward in the IANA Stewardship Transition proposal.

The CCWG-Accountability recommends that after the proposed changes to ICANN's Bylaws have been made:

- The Affirmation of Commitments is terminated by ICANN and the NTIA. Care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments Reviews that may currently be in process at that time.

In addition, to support the common goal of improving the efficiency and effectiveness of Reviews, ICANN will publish operational standards to be used as guidance by community, staff and Board in conducting future Reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet community's needs.

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[6] The CWG-Stewardship recommends that Post Transition IANA's performance against the ICANN – PTI contract and the Statement of Work are reviewed as part of the IANA Function Review
[7] While the IFR will normally be scheduled based on a regular cycle of no more than five years in line with other ICANN Reviews, a Special IANA Function Review may also be initiated when Remedial Action Procedures are followed and fail to correct the identified deficiency and the IANA Problem Resolution Process (as described in the CWG-Stewardship Proposal) is followed and fails to correct the identified deficiency.

Recommendation #10: Enhancing the accountability of Supporting Organizations and Advisory Committees

ICANN Supporting Organizations and Advisory Committees constitute a key component of the ICANN ecosystem. The CCWG-Accountability recommends that a review of Supporting Organizations' and Advisory Committees' accountability mechanisms be included as part of these entities' existing periodic Structural Reviews of (see article IV, section IV of ICANN's Bylaws). Structural Reviews are intended to review the performance and operation of ICANN Supporting Organizations and Advisory Committees. The CCWG-Accountability expects Structural Reviews to be added as part of Work Stream 1.

Concerns

During the Public Comment Period on the 'CCWG-Accountability Second Draft Proposal regarding Work Stream 1 Recommendations', the community presented several concerns and suggestions on how the accountability of the Supporting Organizations and Advisory Committees could be enhanced. As the focus of Work Stream 1 recommendations is to ensure that the accountability enhancements necessary for the IANA Stewardship Transition to occur are in place, the CCWG-Accountability will discuss other aspects of this topic as part of Work Stream 2.

Recommendation #11: Executing stress tests to identify and diminish risks to the Internet's security, stability, and resiliency

The CCWG-Accountability Charter calls for stress testing to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community, in the face of plausible and problematic scenarios that could confront the organization. A total of 37 stress tests are developed in this proposal, addressing financial crises, legal challenges, failure to meet operational expectations, and failure of ICANN to follow its commitments and Bylaws.

FINANCIAL CRISIS OR INSOLVENCY   FAILURE TO MEET OPERATIONAL EXPECTATIONS   LEGAL/LEGISLATIVE ACTION   FAILURE OF ICANN TO FOLLOW ITS COMMITMENTS AND/OR ADHERE TO THE BYLAWS

The stress tests addressed the following areas:

- Financial crisis or insolvency

- Failure to meet operational expectations

- Legal/legislative action

- Failure of ICANN to follow its commitments and/or adhere to the Bylaws

Some of the stress tests called for Bylaw changes to enhance the accountability of ICANN to the community it serves. One change suggested by the stress tests is to make parts of the Affirmation of Commitments part of the ICANN's Bylaws, since ICANN could decide to terminate the Affirmation of Commitments upon the termination of the IANA Functions Contract between ICANN and the NTIA.

Another stress test identified the need to qualify ICANN's obligation to seek a mutually acceptable solution when rejecting advice from an Advisory Committee. This resulted in a proposed Bylaws change that would ensure that the obligation to seek a mutually acceptable solution only applied for advice that was supported by consensus of the Advisory Committee. This would avoid requiring ICANN to arbitrate between Advisory Committee members with differing views.

[The stress test to assess accountability mechanisms (Stress Test 18) looks at how ICANN receives and reacts to advice from the Government Advisory Committee (GAC). ICANN receives advice from its Advisory Committees. With regards to advice from the Governmental Advisory Committee, the ICANN Board is required by current ICANN Bylaws to seek "a mutually acceptable solution" if it chooses not to follow that advice, even if that advice does not have consensus and is opposed by a significant minority of the membership of the Government Advisory Committee. In the case of non-consensus advice, the community would find it difficult to hold the ICANN Board accountable for its actions if it was obliged to seek a negotiated solution with the Governmental Advisory Committee. As a result, the CCWG-Accountability sought a way to provide the ICANN Board with guidance on how it should handle such non-consensus advice. At time of publication of this document, discussion of these details is still underway.]

Recommendation #12: Committing to further accountability work in Work Stream 2

The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.

The community raised concerns that, post-Transition, there may be a lack of incentive for ICANN to implement the proposals arising out of Work Stream 2. To bridge this gap, the CCWG-Accountability recommends that the ICANN Board adopt a transitional Bylaw that would commit ICANN to implementing the CCWG-Accountability Work Stream 2 recommendations.

Further, the CCWG-Accountability proposes that Work Stream 2 is tasked with creating further enhancements to ICANN's accountability mechanisms and processes, including:

- Improving ICANN's transparency (Including enhancements to ICANN's Documentary Information Disclosure policies, ICANN's interactions with Governments and Whistleblower policy)

- Enhancing the accountability of ICANN's Supporting Organizations and Advisory Committees
- Considering improvements to ICANN's standards for diversity
- Jurisdiction: Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" This topic is anticipated to address the question of applicable law for contracts and dispute settlements
- Clarifying framework of interpretation for ICANN's Human Rights commitment

The CCWG-Accountability expects to begin refining the scope of Work Stream 2 during the upcoming ICANN 55 Meeting taking place in March 2016. It is intended for Work Stream 2 to be completed by end of 2016.

Conclusion

The CCWG-Accountability believes that the set of accountability mechanisms it has proposed, outlined above, empowers the community through the use of the bottom-up, multistakeholder model by relying on each of the stakeholders within ICANN's existing and tested community structures. Furthermore, the CCWG-Accountability believes that this community-driven model is appropriate for replacing the accountability inherent in ICANN's historical relationship with the U.S. Government.

Community Powers are an effective replacement of the safety net provided by the U.S Government's current IANA stewardship role

The CCWG-Accountability believes that the five Community Powers, as a package, can effectively replace the safety net that the U.S. Government has provided to date as part of its oversight role. It is recommended that these powers need to be enforced by a court of law **only** as a last resort. The CCWG-Accountability has based its recommendations on existing structures and recommends:

- Considering the entire community as ICANN's Empowered Community

- Ensuring no part of the community has more rights than another part, either by having the ability to push through its individual interests or by blocking community consensus. The CCWG-Accountability has ensured that no Community Powers or statutory rights can be exercised singlehandedly

- Ensuring the community can only jointly exercise its powers using a consensus-based model

The recommend accountability frameworks provided in this proposal meet the requirements of the Domain Names Community and the IANA Stewardship Transition proposal

The CCWG-Accountability has received confirmation from the Cross Community group that developed the IANA Stewardship Transition that this proposal meets its requirements.

The CCWG-Accountability believes that its proposal also meets the requirements the NTIA published for the transition and will present its analysis of this in the full proposal.