

#51



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, December 10, 2015 3:57:57 PM  
**Last Modified:** Friday, December 18, 2015 4:00:12 PM  
**Time Spent:** Over a week

PAGE 2: Personal Information

<b>Q1: Name</b>	Barbara Wanner
<b>Q2: Affiliation</b>	U.S. Council for International Business
<b>Q3: Responding on behalf of</b>	U.S. Council for International Business

PAGE 3: Recommendation 1

**Q4: Is establishing an Empowered Community for enforcing Community Powers a solution that is acceptable to you?(Please see Annex 1 - Recommendation #1: Establishing An Empowered Community For Enforcing Community Powers for more information)**

Yes, I support this recommendation.,

Comment

In our comments on the CCWG's 2nd draft, USCIB expressed support for the "Sole Member" model as an approach to enforce enhanced community powers in six areas. We acknowledge that other community members held divergent views concerning possible unintended and unanticipated consequences of exercising the Sole Member statutory rights granted under California law. We respect that ultimately the community could not realize a consensus in support of the Sole Member model. The CCWG subsequently put forward the "Sole Designator" model as an alternative reference model for the accountability proposal. We understand that under California law, the Sole Designator model would enable the ICANN community of stakeholders to vote recall the entire Board of Directors if the Board refused to accept a binding decision by the Independent Review Panel (IRP) in favor of the ICANN community related to a budget, strategic, or policy decision, a change to bylaws, or removal of an individual Board member. During an October 21 CCWG-Accountability working session at ICANN 54, a critical mass of the ICANN constituencies endorsed the Sole Designator model as the foundation upon which the CCWG would develop the 3rd draft proposal. USCIB joins the Business Constituency (BC) and fellow Commercial Stakeholder Group constituencies in supporting the CCWG's recommendation to use the Sole Designator model to enforce the six new community powers. Our support is influenced by the following factors: • This model has legal standing as a California-based unincorporated association; • We agree with the CCWG's contention that this model would meet the community's requirements to hold the Board accountable, yet have

requirements to hold the Board accountable, yet have a minimal impact on the corporate structure of ICANN;

- ICANN’s Supporting Organizations (SOs) and Advisory Committees (ACs) would create a unified entity, “the Empowered Community” to implement the Sole Designator model. This appears to represent an improvement over the Sole Member Model, which, in the view of some stakeholders, might have required the SOs/ACs to take separate legal action to establish themselves as “member groups;”
- The definition of what constitutes the Empowered Community and its right to exercise its powers under the Sole Designator Framework will be enshrined in ICANN’s Fundamental Bylaws. We view this as key since changes to a Fundamental Bylaw would require a higher threshold to change as well as agreement between the ICANN Board and the Empowered Community;
- The Empowered Community would have recourse to courts if the ICANN Board refuses or fails to comply with a decision of the Empower Community. As we discuss below, the results of the highest level of the mediation phase – the Independent Review Process (IRP) – must be binding on the Board and enforceable in court;
- ICANN’s bylaws would be revised to grant the Empowered Community operating under the Sole Designator model the right to inspect ICANN’s accounting records and minutes of both Board meetings and Board committee meetings. This important “patch,” addressing an enforcement gap between the Sole Member and Sole Designator models, is critical to ensuring transparency and community access to ICANN internal documents in the event that a community objection advances through the dispute resolution process we examine below. We note, however, that use of the term “community” is unclear in the text. In some cases, it looks like “community” refers to the “Empowered Community,” while in other cases it looks like it is used in a more general sense. We urge the CCWG-Accountability to clean up the text to make sure it is used consistently and to make clear up front how the term is being used. For example, if “community” is meant to mean “Empowered Community” then there should be text at the beginning of the document clarifying that. We offer this comment not to diminish our support for the Sole Designator Model, but rather to improve the clarity of the text.

---

PAGE 4: Recommendation 2

---

**Q5: Is empowering the community through consensus: engage, escalate, enforce a solution that is acceptable to you?(Please see Annex 02 - Recommendation #2: Empowering The Community Through Consensus: Engage, Escalate, Enforce for more information)**

Comment  
USCIB generally supports this recommendation but did not check either box supporting/not supporting it. We would fully support this recommendation, however, provided the following issues are addressed as the CCWG continues to refine the 3rd draft. In our comments on the CCWG’s 2nd draft, USCIB supported the ability of the community to recall the entire ICANN Board in extenuating circumstances.

However, because we believe that “spilling the board” should be considered a measure of last resort, we urged a much higher threshold (80 percent) for this action. Given the extremely disruptive nature of recalling the entire Board, USCIB supports the proposal’s suggestion that the community be able to remove individual Board members based on particular concerns. This ability enhances ICANN’s accountability, but avoids the disruption and destabilization resulting from removing the entire Board. The CCWG’s development of the “engagement, escalation, and enforcement” dispute resolution process – the so-called “3 E’s” – allays many of our concerns about precipitous use of a drastic accountability measure. This will help to ensure organizational stability. We urge that the proposed “3E’s” recommendation be considered an indispensable complement to the Sole Designator model for enhanced community powers. The following features of this approach influenced our positive view:

- We appreciate how the “three E’s” feature gradually escalating steps and progressively higher thresholds of SO/AC support in order to advance objections up each of the “steps.” We feel this would serve to deter pursuit of spurious, superfluous, insufficiently documented, or otherwise weakly developed complaints. The “stepped” approach also provides key opportunities to resolve the complaint early, minimizing time and resources devoted to its resolution.
- The process is fully open to the community at all levels of “steps;” any individual may begin a petition as the first step to using the Enhance Community powers. This openness respects and reinforces the use of a bottom-up, multistakeholder model for ICANN governance.
- The emphasis throughout the “3 E’s” process is on information gathering, engagement, and transparency. We especially appreciate the stipulation that the Community Forum phase be moderated in a “fair and neutral” manner, and that ICANN staff would publish a record of the Community Forum proceedings; We are concerned, however, that the specific timelines associated with each step are extremely aggressive, but silent on what outcome would follow if they should not be met. We propose that language be inserted to allow for “reasonable delays,” or otherwise enable all of the impacted parties to evaluate the time restraints to ensure that they are realistically achievable considering their multistakeholder processes while still enabling timely conduct of the “3 E’s” process.

Annex 2: Section 3 Escalation -- In the same spirit of proposing refinements, we offer these comments, aimed at fine-tuning the proposal and creating clearer accompanying documents:

- The figure in the Escalation section is not consistent with the text. The figure shows there are 10 steps in the Escalation process while the text show that there are only 7 steps. The steps in the figure should align with the text for ease of understanding.
- Step 5 of the text is not internally consistent. o It says that “The Community Forum will not make decisions nor seek

consensus.” But the Decision Point says “If the Empowered Community and ICANN Board can resolve the issue in the Community Forum, the escalation process terminates.” Either the text that says the Community Forum will not make decisions needs to be modified or the Decision Point needs to move to Step 6.

---

**PAGE 5: Recommendation 3**

---

**Q6: Is redefining ICANN’s Bylaws as ‘Standard Bylaws’ and ‘Fundamental Bylaws’ a solution that is acceptable to you?(Please see Annex 03 - Recommendation #3: Redefining ICANN’s Bylaws As ‘Standard Bylaws’ And ‘Fundamental Bylaws’ for more information)**

---

Yes, I support this recommendation.

**PAGE 6: Recommendation 4**

---

**Q7: Is ensuring community involvement in ICANN decision-making: seven new Community Powers a solution that is acceptable to you? (Please refer to Annex 04: Details on Recommendation 4: Ensuring Community Involvement In ICANN Decision-Making: Seven New Community Powers for more information)**

---

Yes, I support this recommendation.

**PAGE 7: Recommendation 5**

---

**Q8: Is changing aspects of ICANN's Mission, Commitments and Core Values a solution that is acceptable to you?(Please refer to Annex 05 - Details on Recommendation #5: Changing Aspects Of ICANN's Mission, Commitments And Core Values for more information)**

Yes, I support this recommendation.,

Comment

USCIB generally supports this recommendation, but urges that an issue related to designation of “Core Values as Commitments” be addressed as we propose below in revised text. Regulations on Services: We appreciate that the CCWG has devoted much time to developing the following consensus text. We support this text: “ICANN shall not impose regulations on services that use the Internet’s unique identifiers or the content that such services carry or provide. ICANN shall have the ability to negotiate, enter into and enforce agreements with contracted parties in furtherance of its Mission.” In addition, we support the consensus text which clarifies that it is within ICANN’s Mission to develop and implement consensus policies in accordance with multistakeholder processes, as well as consensus text that recognizes that the provisions of current registry and registrar agreements are facially within ICANN’s mission. Designating Certain Core Values as Commitments -- USCIB supports the designation of certain Core Values as “Commitments,” given their central importance to ensuring the continued stability, reliability, security, global interoperability, resilience, and openness of the DNS, the healthy functioning of multistakeholder processes, and the overall soundness of ICANN’s activities. However, on page 38 item 4 of 3rd draft, USCIB does not support removal of the reference to the consumer. Promoting consumer trust should be one of ICANN’s fundamental goals. We continue to urge that promoting trust in the DNS user community be a clearly stated Commitment. Thus, we urge the inclusion of the following language (see italicized text): “Depend on market mechanisms to promote and sustain a healthy competitive environment in the DNS market that enhances trust and choice of consumers and DNS users.”

**Q9: Is reaffirming ICANN's commitment to respect internationally recognized human rights as it carries out its Mission a solution that is acceptable to you?(Please refer to Annex 06 - Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out Its Mission for more information)**

Yes, I support this recommendation.,

Comment

Human Rights Commitment – As we stated in our comments on the 2nd draft, USCIB supports the protection of internationally recognized fundamental human rights. We greatly value the primarily technical mission of ICANN in coordinating the global Internet's system of unique identifiers and ensuring openness, interoperability, resilience, and stability of the DNS. We have urged very careful consideration of how to include a human rights-related Commitment in ICANN's Bylaws so it does not have the effect of extending ICANN's core mission. USCIB further has recommended that a human rights commitment be solidly anchored within the context of ICANN's technical mission and operations. We would support the inclusion of a bylaw commitment on human rights along the lines proposed in the CCWG's 3rd draft. We appreciate that this language, indeed, anchors a human rights commitment in ICANN's primarily technical mission and does not open the door to mission creep: "Within its mission and 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 laws. 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." We also support the draft interim Bylaw pertaining to Work Stream 2, which would oblige another cross-community working group chartered by one or more SOs/ACs to undertake a more in-depth exploration of how to appropriately operationalize ICANN's commitment to Human Rights and other issues explored later in these comments. We further urge that any such CCWG that addresses this and other issues in WS2 have a charter along equivalent lines of the CCWG-Accountability that is fully supported by the community. However, we again emphasize that the WS2 examination of a Human Rights framework should be undertaken in a thoughtful and deliberative manner. It should recognize the robustness of existing human rights frameworks and feature close consultation with international human rights experts. Such collaboration and expert consultation will best enable participants in this aspect of Work Stream 2 to determine whether -- or not -- there are specific policies or frameworks that ICANN needs to develop to fulfill its Human Rights commitment and to proceed in their recommendations accordingly.

**Q10: Is strengthening ICANN's Independent Review Process a solution that is acceptable to you?(Please refer to Annex 07: Recommendation 7: Strengthening ICANN's Independent Review Process for more information)**

Yes, I support this recommendation.

---

PAGE 10: Recommendation 8

**Q11: Is fortifying ICANN's request for reconsideration process a solution that is acceptable to you?(Please refer to Annex 08 - Recommendation #8: Improving ICANN's Request For Reconsideration Process for more information)**

Yes, I support this recommendation.

---

PAGE 11: Recommendation 9

**Q12: Is incorporation of the Affirmation of Commitments a solution that is acceptable to you?(Please refer to Annex 09 - Recommendation #9: Incorporation of the Affirmation of Commitments for more information)**

Comment

USCIB generally supports this recommendation to change the current Bylaws to enshrine the Affirmation of Commitments reviews. These reviews are a central aspect of the accountability and transparency framework, and in some areas address matters that would otherwise not be addressed in the Bylaws. Most notably, we support the inclusion of the proposed Bylaw in paragraph 33 of Appendix 9, which incorporates important elements of the review process to promote competition, consumer trust and consumer choice. However, we did not check either box supporting/not supporting this recommendation. We would fully support this recommendation provided the following issues are considered and addressed as the CCWG continues to refine the 3rd draft. We note that there are important differences in the four requisite reviews that should be recognized in the CCWG's proposal. Specifically, the CCT Review and the WHOIS Review address matters within the sole policy development purview of the GNSO (to which USCIB and many of its members belong). As such, these review teams should comprise a majority of members endorsed and selected by the GNSO—rather than, as proposed by the CCWG, giving all SO and AC chairs equal ability to appoint members. For example, RSSAC has nothing to do with WHOIS yet would be able to appoint the same number of members to this review as the GNSO; similarly, the ccNSO is not responsible for gTLDs, but could appoint the same number of CCT Review members as the GNSO.

---

PAGE 12: Recommendation 10

**Q13: Is enhancing the accountability of Supporting Organizations and Advisory Committees a solution that is acceptable to you?(Please refer to Annex 10 - Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees for more information)**

Yes, I support this recommendation.

---

PAGE 13: Recommendation 11

**Q14: Is Board obligations regarding GAC Advice (Stress Test 18) a solution that is acceptable to you?(Please refer to Annex 11 - Recommendation #11: Board obligations regarding GAC Advice)**

Comment  
USCIB did not check either box supporting/not supporting this Recommendation because we feel there are important issues warranting further attention. We ultimately would support this recommendation, however, provided the following comments are addressed as the CCWG continues to refine the 3rd draft: As USCIB stated in our comments about the CCWG's 2nd draft, we believe the GAC should continue to perform its advisory role on public policy issues to the ICANN Board. However, we are unchanged in our view that it is critical that the GAC provide such advice based on consensus. Providing advice in any standard less than full consensus in the absence of objection would deprive GAC advice of its current legitimacy. If the community does decide to raise the threshold for Board rejection of GAC advice to a two-thirds majority, USCIB urges that certain steps be taken to ensure the quality and clarity of GAC advice. • First, GAC advice must be accompanied by a rationale. Note: USCIB does not believe that the CCWG's suggestion to include language stating that "the Advisory Committee will make every effort to ensure that the advice provided is clear and supported by a rationale" is sufficient. A rationale should be required; • Second, any mutually agreeable solution by the Board and GAC must be consistent with ICANN's bylaws; • Third, as our red-line edits indicate below, USCIB believes that paragraph "j" should unequivocally stipulate that GAC advice must be approved by general agreement in the absence of formal objection; and • USCIB believes the second paragraph in the proposal about the GAC being able to specify how objections are raised is ambiguous, raises confusion, and will call into question the proposed Bylaw change, specifically whether consensus means absence of any objection. USCIB urges its deletion. We appreciate the concerted efforts of the special CCWG subgroup and members of the GAC to develop the following compromise text, for which we have suggested edits in CAPITAL LETTERS: j. The advice of the Governmental Advisory Committee on public policy matters, MEANING ADVICE APPROVED BY A FULL GAC CONSENSUS, WHICH IS UNDERSTOOD TO MEAN THE PRACTICE OF ADOPTING DECISIONS BY GENERAL AGREEMENT IN THE ABSENCE OF ANY FORMAL OBJECTION, shall be duly taken into account both in the formulation and adoption of

account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice AS DEFINED ABOVE, it shall so inform the Committee and state the reasons why it decided not to follow that advice. Any GAC advice, AS DEFINED ABOVE AND ACCOMPANIED BY A RATIONALE, may only be rejected by a vote of two-thirds (2/3) of the Board, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution that IS CONSISTENT WITH ICANN'S BY-LAWS. USCIB URGES STRIKING THIS ENTIRE PARAGRAPH: The Government Advisory Committee has the autonomy to refine its Operating Procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection). When transmitting consensus advice to the Board for which the Government Advisory Committee seeks to receive special consideration, the Governmental Advisory Committee has the obligation to confirm the lack of any formal objection.

---

PAGE 14: Recommendation 12

**Q15: Is committing to further accountability work in Work Stream 2 a solution that is acceptable to you? (Please refer to Annex 12 - Recommendation #12: Committing to further accountability work in Work Stream 2)**

Comment  
USCIB generally supports this recommendation but did not check either box supporting/not supporting it. This is because -- as we elaborate below -- USCIB believes that Workstream 2 will be accomplished more effectively if issues are prioritized for near-term and longer term action. Thus, we would fully support this recommendation, provided the following comments are addressed as the CCWG continues to refine the 3rd draft. The "Interim Bylaw" – As noted in the 3rd draft, USCIB was one of the community voices expressing concerns about a lack of incentive and enthusiasm and "accountability fatigue" inhibiting timely and effective implementation of Work Stream 2 issues. We appreciate the CCWG's recommendation that the Board adopt an Interim Bylaw that would commit ICANN to implementing Work Stream 2 recommendations. We also are encouraged by the Board's letter of 13 November 2015, confirming its intent to work with the community to provide adequate support for implementation of Work Stream 2 issues. USCIB cannot agree strongly enough about the need for appropriate accountability mechanisms for any entity exercising significant influence within the Internet governance ecosystem. But as we noted in our 2nd draft comments, we continue to be concerned that – even with the impetus provided by the interim bylaw and Board offer of support – some of the proposed additional ongoing reviews called for as part of Work Stream 2 may prove to be too burdensome for the community in the face of recurring procedural

work. We therefore urge CCWG to carefully consider how to prioritize Work Stream 2 issues for the near-term (year-end 2016) and the longer term (year-end 2017; first-half 2018). Human Rights Commitment – As we discussed above, one issue for near-term prioritization in Work Stream 2 is the development and clarification of a framework to operationalize ICANN’s Human Rights commitment. To reiterate, we urge that this examination recognize existing human rights frameworks and be appropriately informed by recognized international human rights experts to ensure that specific policies or frameworks do not expand ICANN’s commitment beyond the scope of its primarily technical mission. Improving Transparency – USCIB was pleased to see this call for improving ICANN transparency with respect to access to documents, interactions with governments, and whistleblower protections. We regard this as a near-term Work Stream 2 priority. Our comments of May 27, 2014, in fact, noted the solid foundation provided by Article III of the Bylaws, which sets forth a number of requirements aimed at ensuring transparency around ICANN’s policy making and technical processes. However, these requirements need to be expanded and improved, particularly in view of the need to implement the document inspection “patch” proposed by the CCWG to address the enforcement gap between the Sole Member and Sole Designator models for enforcing enhanced community powers.

- Written materials -- In particular, we recommend that the near-term Work Stream 2 effort focus on creating a more robust Freedom-of-Information Act (FOIA)-type process. One way to accomplish this would be to have such requests administered by a third party, independent entity that would be retained by ICANN and operate independently of the Board. It would be modeled on freedom of information best practices, develop criteria concerning what information may be released, and generally enable stakeholders to access documents, email communications, staff memos and other unofficial correspondence pertinent to the policymaking process.
- Interactions with governments -- USCIB urged in our 2nd draft comments that the CCWG adopt an additional Bylaw that would require ICANN or any individual acting on ICANN’s behalf (i.e., ICANN staff or third-party individuals hired by ICANN) to make periodic public disclosure of their relationship with any government official, as well as activities, receipts, and disbursements in support of those activities on behalf of ICANN. We continue to advocate consideration of this Bylaw under the auspices of Work Stream 1, rather than relegating this important matter to Work Stream 2, on grounds that disclosure of such information best enables evaluation by the multistakeholder community of the statements and activities of ICANN officials in light of their function as representatives of ICANN. At a very minimum, mechanisms enabling greater transparency of ICANN interactions with governments should be fast-tracked as a Work Stream 2 near-term priority. Jurisdiction -- The CCWG has proposed that Work Stream 2

examine the extent to which ICANN's accountability would be enhanced depending on the laws applicable to its actions. We do not dispute that this would be an important area for further work. However, we feel that this particular "jurisdictional" focus side-steps an issue that continued to divide the community at ICANN 54, i.e., strengthening Article XVIII of the current ICANN Bylaws requiring that ICANN be headquartered in California. We still maintain that Article XVIII should be strengthened with the status of a Fundamental Bylaw to ensure the continued legal certainty and stability of ICANN's operations. The CCWG's extensive work in developing enhanced accountability mechanisms has been based on California laws governing not-for-profit public benefit entities. Thus, any initiative to incorporate ICANN in a different jurisdiction would be a fundamental change that would impact legal certainty, including the legal foundation upon which the new accountability framework is being established. We realize this topic has been discussed at length in the CCWG, and there still may not be a consensus in the community. Nevertheless, because of the benefit that Article XVIII presents for legal certainty and operational stability, USCIB encourages the CCWG to make more explicit the need to further evaluate strengthening ICANN's current California jurisdiction Bylaw as a near-term priority for Work-Stream 2.

#### Operational Details of Work Stream 1

Recommendations – The strengthened Independent Review Panel (IRP) and the ICANN Community Forum are key innovations to enable enforcement of the six new community powers. USCIB therefore regards establishing IRP rules of procedure and defining the practical modalities for the Community Forum as near-term priorities under Work Stream 2 to enable their expeditious implementation. Furthermore, if the ICANN Ombudsman's authority is to be significantly expanded to include making the initial substantive evaluation of IRP requests, then important changes need to be made with respect to this position. These include creating a more independent Ombudsman position, who would be selected by a panel of Board and community representatives, defining the new role and responsibilities and, in general, ensuring that the Ombudsman has the necessary independence from the Board and from ICANN's Legal Team and is accountable to the ICANN community.

Longer-term Work-Stream 2 Issues – All of the issues that will be addressed in Work Stream 2 are important, integral elements to the accountability framework conceived by the CCWG and every effort should be made to fully implement them in a timely fashion. But we note the very real limitations on the time, resources, and energy of community members who will assume Work Stream 2 commitments -- in their capacity as volunteers. We therefore advocate a longer time frame for implementation of certain Work Stream 2 issues. In particular, we urge an additional one year to 18 months (1) to implement improvements to ICANN's standards for diversity and (2) to enhance the accountability of Supporting Organizations (SOs) and Advisory Committees (ACs) by including this as

and Advisory Committees (ACs) by including this as part of the ATRT review process. This longer time frame will better enable the community to balance its need to thoughtfully undertake important accountability enhancements with recurring procedural work.

---

**PAGE 15: Additional Information**

---

**Q16: Please submit comments you have in addition to the information provided above, including on NTIA criteria, CWG-Stewardship requirements and Stress Tests.**

The U.S. Council for International Business (USCIB) again expresses our appreciation for the concerted and indefatigable efforts by members of the CCWG-Accountability in further refining the proposed Enhanced Accountability Mechanisms. USCIB is a trade association composed of more than 300 multinational companies, law firms, and business associations, which includes a broad cross-section of the leading global companies in the information and communications technology (ICT) sector. USCIB members, which include parties to the non-contracted and contracted houses of ICANN, have welcomed this opportunity to offer a cross-community, cross-sectoral perspective on this critically important development in the Internet ecosystem.

Overall, we concur with the CCWG that this ambitious, year-plus effort has produced a set of mechanisms that – when further refined – will empower the community through use of a bottom-up, multistakeholder model. We are confident that with additional work the Work Stream 1 proposal that emerges will enable a seamless IANA transition that meets the four NTIA requirements, thereby safeguarding the continued the security, stability, and resiliency of the DNS and openness of the Internet.

Because there are details that still need refinement, including Bylaws, we look forward to an open and consultative implementation process, should the board accept the CCWG's proposal. We note with favor that ICANN's time-frame for the development and consideration of amendments to Bylaws, indeed, calls for a public comment period from approximately mid-February to mid-March. We look forward to contributing to that process.

---