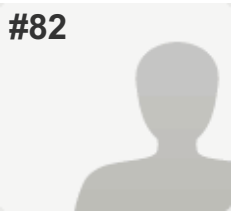

#82

COMPLETE

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PAGE 2: Personal Information

Q1: **Name**	Alan Greenberg
Q2: **Affiliation**	Chair, At-Large Advisory Committee (ALAC)
Q3: **Responding on behalf of**	ALAC

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 The ALAC support of Recommendation 1 is based on two presumptions: 1. Both the ASO and the GAC will not "opt out" of the Empowered Community as the SSAC and RSSAC have done. 2. There is no change in the proposal giving equal weighting to all of the AC/SOs that are participating in the Empowered Community. Although the TLD registries are central components of ICANN, the SOs that represent them must be balanced by the interests represented in the GAC and the ALAC. The ALAC also notes that page 14, item 2 of the proposal says "The members of the unincorporated association would be representatives of ICANN's Supporting Organizations and Advisory Committees that wish to participate." We note that there has not been any discussion of who these representatives are or how they are to be selected.

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)

No, I do not support this recommendation.,

Comment
The ALAC does support Recommendation 2 as outlined in this survey, but rejects the reduction of AC/SO "Supports" from 4 to 3 in all four powers that would otherwise require 4 "Supports". The main rationale provided was the fear that Fundamental Bylaws would potentially become unchangeable. The ALAC supports that rationale, and indeed has previously raised the issue of ICANN not being able to evolve as necessary. As such we would support the change for just that power. The ALAC cannot support the proposal that the entire Board Recall could be triggered by just 3 AC/SOs. Moreover, the ALAC believes that the other two powers requiring 4 supporting AC/SOs should also remain unchanged. The ALAC also considers that describing this exception in Paragraph 61 under Recommendation 1, far from the Recommendation 2 table documenting the count of required AC/SOs, has buried the proposal such that other reviewers may not even be aware that it was there. Lastly, as described, the exception only covers the situation of 4 AC/SOs exercising their power. Thus if 3 AC/SOs opt to recall the Board, 1 AC/SO objects, and 1 AC/SO abstains, the Board would be recalled. But if 3 AC/SOs opt for recall and 2 abstain, then the power would not be exercised. It makes no sense that the same three AC/SO could exercise the power in the light of a formal objection, but could not exercise the power in in the absence of the objection. The ALAC agrees that AC/SOs should establish rules with a target of replacing interim directors within 120 days, but does not believe that the Bylaws should include wording that says such rules will ENSURE a replacement within this period. Such wording, in the absence of remedy or penalty if the target is not met, is pointless and potentially puts ICANN in violation of its Bylaws should the deadline be missed for unavoidable reasons.

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.,

Comment
This acceptance of Recommendation 4 is contingent of the CCWG addressing one outstanding issue in the Final Proposal. The ALAC has previously raised the issue that in the absence of a guarantee that the AC/SO or its leaders will be able to raise "reasons for director removal or Board recall" without threat of being sued for defamation (in any of its forms), such removals may never be possible. Such limitation of liability might come in the form of pre-appointment letters ensuring that no action will be taken by the director if removed, but other guarantees might be possible. The ALAC understands that this might be treated as an implementation issue, but believes that it must be identified as a requirement in the final proposal.

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)

No, I do not support this recommendation.,

Comment
The ALAC has multiple serious concerns with the changes to ICANN's Mission, Commitments and Core Values. Over and above the specific issues raised below, the ALAC has a grave concern that the wording used to restrict ICANN's mission, and the interaction between the multiple changes, may have inadvertent results which severely impact its ability to properly carry out its intended mission. The following sections of this comment identify specific issues that the ALAC believes must be addressed Section on Content Restriction The notes to drafters imply that ICANN's mission may be restricted to the issues identified in registry Agreement Specification 1 and Registrar Agreement Specification 4. This is incorrect. These Specifications identify ONLY what areas of the contracts are subject to immediate and unilateral change based on a GNSO PDP (properly enacted and approved by the Board). There are many areas of contracts that are not subject to these specifications, were established by negotiation or other means outside of a PDP (or prior to the existence of a PDP) and the ALAC has concerns that such areas could be subject to an IRP and nullification. The ALAC agrees with the grandfather clauses protecting existing contracts, but wants a legal opinion that such grandfathering will allow these contracts to be renewed without change to the areas in question. Moreover, the ALAC is concerned that there are still hundreds of New gTLD applications that are not yet contracted, and this is likely to be the case by the time the new Bylaws are put in place. The requirement for a level playing field (for example ensuring that the current PICs are still honoured for these as yet unsigned contracts) implies that these future contracts

must be covered as well. In short, anything which would allow an IRP to invalidate the current contractual terms which are within today's mission is not acceptable. Market Mechanisms A current Core Value reads "Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment." The proposed new text omits the first phrase "Where feasible and appropriate". The ALAC believes that this is not acceptable. During earlier discussions on this point, the example given to justify the removal is that "ICANN does not possess the requisite skill or authority to intervene in the competitive market, and its Registry Service Evaluation Process (RSEP) recognizes that (by flagging potential items for review by sovereign competition authorities)." A brief review of the RSEP (https://www.icann.org/resources/pages/prelim-competition-issues-2012-02-25-en) indicates that ICANN indeed may refer an RSEP issue to outside authorities. However, this happens ONLY after ICANN asks the RSEP applicant about the potential competition issues and performs a preliminary determination of whether they may be issues that require further investigation. It is at that point that external agencies may be consulted. If, as the proposed Bylaw says, ICANN had to solely depend on market mechanisms, it would not even be allowed to ask the question nor do the preliminary determination and an IRP could require ICANN to eliminate this process. And if the question was still asked, it might require ICANN to subject EVERY RSEP to external authorities, a situation that would be untenable. There are no doubt other examples as well. Neutral and Judgment Free The proposed text of a Bylaw commitment is "Preserve and enhance the neutral and judgment free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet". The ALAC has raised concerns over implications that ICANN is responsible for such operation of the entire DNS. The reply received was that this was an NTIA requirement. In fact, the wording used was that the NTIA was committed to a transition ensuring "The neutral and judgment free administration of the technical DNS and IANA functions". The ALAC has no problem with the NTIA requirement, but believes that widening the administration of the technical DNS and IANA functions to the operation of the DNS (a world-wide service) is expanding ICANN's mission beyond what is reasonable or even implementable. Consumer Trust The ALAC believes that the commitment in the AoC to Consumer Trust, in section c) of AoC clause 3 is similar to the wording in section a) which reaffirms the requirement to act in the public interest. It is not related purely to the New gTLD program and it warrants a reference in the Article I of the ICANN Bylaws. The ALAC notes that this reference was in the first CCWG Draft Proposal but was eliminated in the 2nd Draft Proposal.

PAGE 8: Recommendation 6

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)	No, I do not support this recommendation., Comment The ALAC supports the inclusion of Human Rights in the Bylaws as outlined in the Proposal, but the commitment to carrying out the WS2 work "in no event later than one year after Bylaw xx is adopted" is not acceptable. One year is not a long time, and it is possible that ICANN could be found in violation of its Bylaws if the deadline is missed. As a general principal, Bylaws should not include hard deadlines without explicitly describing what the consequences are of not meeting those deadlines. If this deadline language is removed or stated as an intent, the ALAC would support the Recommendation.

PAGE 9: Recommendation 7

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., Comment The current IRP specifications allow the IRP to hear cases related to conflicting panel decisions, but the allowed outcomes only refer to Bylaw violation. Either the IRP ability to resolve conflicting panel decisions should be removed, or there should be an outcome which allows such cases to be decided (as suggested during CCWG meetings, such hearing could only be allowed under future PDP recommendations which would also dictate the possible outcomes).

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)	Yes, I support this recommendation.

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., Comment The ALAC suggests that the practice of reviewing AC/SO accountability be enshrined in Article IV, Section 4.1 of the ICANN Bylaws.

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)	Yes, I support this recommendation.

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)	Yes, I support this recommendation.

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.	*Respondent skipped this question*