




Elements to enhance ICANN accountability for a successful IANA Stewardship Transition

For many months I have watched with great admiration the community's hard work on ICANN Accountability. As we come to the final stage in Dublin, I wanted to take stock of where we stand:

Where do we have broad agreement? And where do we still have some questions to answer?

I read most of the CCWG-Accountability documents as well as the 93 comments received during the latest public comment period. If like me you are overwhelmed by the amount of information, I hope this document will serve as a tool to communicate the great work of our community in a clear and accessible summary -- helping us all successfully complete the transition.

To help track where we seem to be meeting requirements and expectations I have added the following color coding:

-  Requirements, expectations, concerns, etc. are met
-  There are concerns or unanswered questions
-  Does not apply

CWG
Dependencies

Refers to the CWG-Stewardship's dependencies as outlined in the ICG final proposal

CCWG
Requirements

Refers to the CCWG-Accountability's requirements as outlined in their 2nd draft proposal

NTIA
Requirements

Refers to the NTIA's Requirements provided in their original announcement of intent to transition stewardship

Public
Comments

Refers to community comments shared on the CCWG-Accountability's 2nd draft proposal

Board
Support

Refers to ICANN's Board and their comments made in response to the CCWG-Accountability's 2nd draft proposal

MSM
Upheld

Refers to the multistakeholder balance to uphold

Elements to enhance ICANN accountability for a successful IANA Stewardship Transition	Broad community agreement on elements replacing USG backstop role in IANA Contract	Broad community agreement on additional elements	Broad community agreement on requirements but not on implementation approach
1. Oversight of IANA operations by operational communities	✓		
2. Assurance of IANA service levels	✓		
3. Guarantee of continued IANA funding	✓		
4. Community right to remove Board Directors	✓		
5. Community power to appeal IANA decisions	✓		
6. Establish higher thresholds to modify Bylaws deemed 'Fundamental'	✓		
7. Reaffirm in Bylaws current requirement of Board/GAC consultation on consensus advice	✓ *		
8. Include AOC reviews into Fundamental Bylaws	✓		
9. Strengthen, make binding, and improve timeliness and effectiveness of IRP		✓	
10. Broaden scope and improve effectiveness of Reconsideration process		✓	
11. Promote diversity within ICANN's community and activities		✓	
12. Adhere to Mission and Core Values and new Commitments (within remit)		✓	
13. Community consent to change all Bylaws		✓	
14. Continue accountability improvements post IANA Stewardship Transition		✓	
15. Empower community role in developing and objecting to Strategic and Operating Plans and Budget			○
16. Empower community with new legal enforcement (statutory rights under California law or binding arbitration)			○

 Elements addressing all CWG-Stewardship dependencies on the CCWG-Accountability

* GAC has not taken a position

1. Oversight of IANA operations by operational communities

Broad community agreement on elements replacing USG backstop role in IANA Contract



IANA customers will have operational oversight of the **Post-Transition IANA** (PTI) through:

- **The Customer Standing Committee** (CSC), which will manage the relationship between the names community customers and PTI
- **The IANA Function Review** (IFR) which will review PTI's performance, both on a regular schedule or by special request
- **The Standing Committee** which will make recommendations to the ICANN Board regarding substantive technical changes to IANA operations

The PTI, CSC, IFR, and Standing Committee will be established as Fundamental Bylaws.

PTI will provide good service to its customers through service level agreements with IANA customers, along with regular reporting for transparency.

IANA names customers will have an escalation path through the CSC, the ccNSO or GNSO, and finally an appeals mechanism through an enhanced Independent Review Process*. IANA numbers and protocol parameters communities have separate appeal processes.

**The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, for which the ccTLD community will develop post-transition. The numbers community and the protocol parameters community have also requested to be excluded from the IRP, as they will define separate escalation processes within their agreements with ICANN.*

CWG
Dependencies

CCWG
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NTIA
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Public
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Board
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2. Assurance of IANA service levels

Broad community agreement on elements replacing USG backstop role in IANA Contract



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The PTI, CSC, IFR, and Standing Committee will be established as Fundamental Bylaws.

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Support

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3. Guarantee of continued IANA funding

Broad community agreement on elements replacing USG backstop role in IANA Contract



The IANA customers will be given powers to approve and reject the IANA budget.

The IANA budget will receive funding guarantees independent of the ICANN budget, through the following IANA-specific budget review process:

1. ICANN will provide an itemization of IANA costs
2. Guarantee IANA customers input into creating the annual IANA Budget
3. Ensure the IANA customers comments on IANA Budget are addressed
4. Guarantee that the IANA Budget will be approved on time to ensure the stability of the IANA services, independent of the rest of ICANN's budget
5. Establish a formal process of consultation between Board and IANA customers to resolve disagreement
6. Ensure ability for IANA customers to consider and reject the Annual IANA Budget after approved by Board (but before it comes into effect)
7. If disagreement continues beyond when a new budget is needed, a "caretaker budget" would go into effect at the previous year's funding level (until the disagreement is resolved)

This can be enforced through binding arbitration or removal of Board.

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

Empowered Community

NEW

Board required to consider community objection

Community IRP launched with binding outcome

ENHANCED

NEW

Board removal by community

ENHANCED

Community files formal reconsideration request

Court enforces binding arbitration

NEW

4. Community right to remove Board Directors

Broad community agreement on elements replacing USG backstop role in IANA Contract



The ICANN community will have the power to remove individual ICANN Board members or the entire Board (using the same process) as follows:

Each Board member would sign their own Board Accountability Contract that includes commitments on how they will serve the community, their fiduciary duty to the whole community, and the conditions for which they may be forced to resign or face removal.

These conditions could include:

- Failure to comply with the new community objection processes and powers
- Violating basic governance standards such as conflict of interest policy
- Acting against a binding arbitration result
- Loss of community confidence by ___ % of community and/or appointing SO or AC

If a Board Director violates the conditions, they will step down (per their contract). If they do not, the Community may remove them as follows:

Thresholds:

___ % of SOs and ACs needed to initiate removal.

___ % of SOs and ACs needed to approve removal.

If thresholds are met, the Board member is removed. If not met, the Board member cannot be removed for a year.

Only if necessary, the community may enforce removal through binding arbitration. Binding arbitration is enforceable on ICANN through court.

CWG
Dependencies

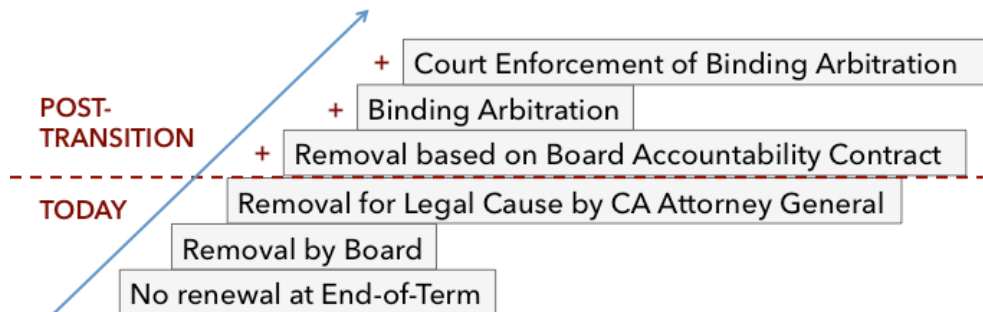
CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld



Empowered Community

NEW

Board required to consider community objection

ENHANCED

Community IRP launched with binding outcome

NEW

Board removal by community

ENHANCED

Community files formal reconsideration request

Court enforces binding arbitration

NEW

5. Community power to appeal IANA decisions

Broad community agreement on elements replacing USG backstop role in IANA Contract



IANA customers will have operational oversight of the **Post-Transition IANA** (PTI) through:

- **The Customer Standing Committee** (CSC), which will manage the relationship between the names community customers and PTI
- **The IANA Function Review** (IFR) which will review PTI's performance, both on a regular schedule or by special request
- **The Standing Committee** which will make recommendations to the ICANN Board regarding substantive technical changes to IANA operations

The PTI, CSC, IFR, and Standing Committee will be established as Fundamental Bylaws.

PTI will provide good service to its customers through service level agreements with IANA customers, along with regular reporting for transparency.

IANA names customers will have an escalation path through the CSC, the ccNSO or GNSO, and finally an appeals mechanism through an enhanced Independent Review Process*. IANA numbers and protocol parameters communities have separate appeal processes.

**The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, for which the ccTLD community will develop post-transition. The numbers community and the protocol parameters community have also requested to be excluded from the IRP, as they will define separate escalation processes within their agreements with ICANN.*

CWG
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CCWG
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Board
Support

MSM
Upheld

6. Establish higher thresholds to modify Bylaws deemed 'Fundamental'

Broad community agreement on elements replacing USG backstop role in IANA Contract



Fundamental Bylaws describe aspects of ICANN considered core to the scope of and nature of the organization, such as the Mission and Core Values, the Independent Review Process and the new community powers.

The Board will not be able to change Fundamental Bylaws without community agreement. Fundamental Bylaws require a higher threshold to change:

75% of the Board approving, and % consent of SOs and ACs.

The same process and thresholds would apply to changes made to ICANN's Articles of Incorporation.

CWG
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Empowered Community

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ENHANCED

NEW

Board removal by community

ENHANCED

Community files formal reconsideration request

Court enforces binding arbitration

NEW

7. Reaffirm in Bylaws current requirement of Board/GAC consultation on consensus advice.

Broad community agreement on elements replacing USG backstop role in IANA Contract



When the Government Advisory Committee (GAC) submits consensus advice to the ICANN Board, the Board gives the advice special consideration. ICANN will clarify the current practice in the Bylaws to assure governments of the importance the Board places on the GAC's consensus advice. The GAC will continue to select the manner in which it chooses to provide advice.

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

8. Include AOC reviews into Fundamental Bylaws

Broad community agreement on elements replacing USG backstop role in IANA Contract



The Affirmation of Commitments reviews will be added to ICANN's Bylaws as Fundamental Bylaws, which means they cannot be removed or changed without significant community agreement. The community may choose to have parts of the AoC as standard Bylaws.

The thresholds for the community to change Fundamental Bylaws will be set across all Fundamental Bylaws.

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

9. Strengthen, make binding, and improve timeliness and effectiveness of IRP

Broad community agreement on additional elements



Add a community binding arbitration feature to the IRP (Community IRP).

- For claims that the Board did not follow the community powers or Bylaws
- The Community IRP can be initiated by agreement of █ % of the SOs and ACs, who will decide through their own processes whether they support or reject the action.
- A standing panel will hear Community IRPs
- The community has two alternative paths to have standing in front of the panel:
 - ICANN Bylaws will provide standing if the above threshold is reached
 - The community may also choose to form an unincorporated association and only activate it when needed (on the shelf)
- ICANN would pay for Community IRPs - panel and legal costs
- Even if ICANN chooses not to participate in the Community IRP decisions are still binding on ICANN
- Community IRPs will conclude in 6 months or less
- If ICANN does not follow the binding arbitration decision, it can be enforced in court (see Section 16 – Approach A)

Community efforts will continue to enhance the standard IRP which is available to any party.

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
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Board
Support

MSM
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Empowered Community

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ENHANCED

NEW

Board removal by community

ENHANCED

Community files formal reconsideration request

Court enforces binding arbitration

NEW

10. Broaden scope and improve effectiveness of Reconsideration process

Broad community agreement on additional elements



Reconsideration can be used when a person or organization is unhappy with a decision or action taken by ICANN. The Reconsideration Process will be improved by:

- Giving the community more options to hold the ICANN Board and Staff accountable
- Giving the community more time to file requests - from 15 to 30 days
- Empowering ICANN's Ombudsman to perform initial assessment of requests
- Limiting the ability for Board to dismiss requests without full consideration
- Giving the requester more opportunity to speak in the review process before decisions are reached
- Requiring the full Board to take final decisions on all requests, not just through a Board committee
- Making Board decisions on reconsideration more transparent and accountable to deadlines

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

Empowered Community

NEW

Board required to consider community objection

ENHANCED

Community IRP launched with binding outcome

NEW

Board removal by community

ENHANCED

Community files formal reconsideration request

Court enforces binding arbitration

NEW

11. Promote diversity within ICANN's community and activities

Broad community agreement on additional elements



Diversity will continue to be an important element across all parts of ICANN. ICANN will promote global participation in structures and leadership positions.

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

12. Adhere to Mission and Core Values and new Commitments (within remit)

Broad community agreement on additional elements



ICANN Bylaws and activities must reflect the limited technical coordination mission of ICANN, with Core Values and new Commitments to uphold this limited mission.

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

13. Community consent to change all Bylaws

Broad community agreement on additional elements



The community has the power to consent to changes to Fundamental Bylaws.

The Board can only modify all other Bylaws after the community has an opportunity for public comment.

After public comment, if _____% of the SOs and ACs object to the Bylaws change, the Board will not go forward with the change.

- CWG**
Dependencies
- CCWG**
Requirements
- NTIA**
Requirements
- Public**
Comments
- Board**
Support
- MSM**
Upheld

Empowered Community

NEW Board required to consider community objection	NEW Board removal by community	ENHANCED Community files formal reconsideration request
ENHANCED Community IRP launched with binding outcome		NEW Court enforces binding arbitration

14. Continue accountability improvements post IANA Stewardship Transition

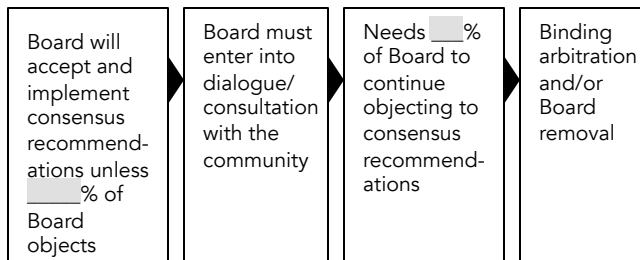
Broad community agreement on additional elements



ICANN must assure the community of its commitment to continuously improve our accountability and, if necessary, evolve its governance structure. Such commitments may be embedded into ICANN's Fundamental Bylaws.

On Improving Accountability:

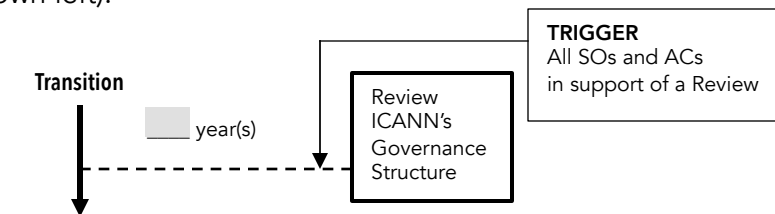
Board will accept and implement consensus recommendations unless █% of Board objects -- and the basis for objection is that the 5 NTIA criteria are not upheld, or if the recommendations are deemed not in the public interest. When the Board objects, it must enter into a dialogue/consultation with the community. After the dialogue, it will take █% of the Board to continue objecting to consensus recommendations.



On Evolving Governance Structure:

█ year(s) after the transition, the community has the sole discretion (without Board consent) to review whether ICANN's governance structure must be changed. This review may only be started by all of the SOs and ACs. In addition to the SOs and ACs, such a governance review must also include ICANN (Board/Staff) as well as the IANA customers (since this will affect them).

The outcome of this review must uphold the multistakeholder model and avoid capture by any special interest(s) or group(s). The recommendations resulting from this review are subject to the same acceptance process for Improving Accountability (shown left).



CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

15. Empower community role in developing and objecting to Strategic and Operating Plans and Budget

Broad community agreement on requirements but not on implementation approach



APPROACH A

APPROACH B

The IANA customers will be given powers to approve and reject the IANA budget. For the rest of the ICANN budget, the ICANN community will be more empowered with regard to the development and approval of ICANN's Strategic and Operating Plans, and Annual Budget.

ICANN will add a Fundamental Bylaw requiring community input during the development phase.

There will be two processes, one for strategic plans and long-term operating plans, and one for the Annual Operating Plan and Budget.

Five Year Strategic and Operating Plan

- If the community disagrees with the Board's plan, they can require the Board to consult with the community to discuss differences
- The community will be empowered to consider and reject long-term plans if they are inconsistent with ICANN's Bylaws:
 - ███% of SOs and ACs required to initially reject
 - ███% of SOs and ACs is required to reject the plan again, after consultation with the Board
- The Board may proceed over the community objection, but only after ███% of the Board agrees to do so
- If the community continues to disagree with the Board's action, the community has the remedy of Board removal

Annual Operating Plan and Budget

- Annual Operating Plan and Budget must be consistent with ICANN's Mission and ICANN's Five Year Strategic and Operating Plan
- The Board must:
 - Balance community interests to avoid unfairness and discrimination
 - Align costs with revenues, for financial stability
 - After consultation phase, retain the ability to approve the plan and budget before the fiscal year end for operational continuity
- If the community disagrees with any deviation from the approved annual plan/budget because it is inconsistent with our Mission or 5-year plans, they can follow the same community objection process for the Five Year Strategic and Operating Plan (outlined on left)

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

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Support

MSM
Upheld

15. Empower community role in developing and objecting to Strategic and Operating Plans and Budget

Broad community agreement on requirements but not on implementation approach



APPROACH A

APPROACH B

The ICANN community will have the power to reject Five Year Strategic and Operating Plans as well as ICANN and IANA Annual Plans/Budgets after approval by the Board (but before they come into effect).

This power will be in the Fundamental Bylaws as follows:

- The community will be formally consulted in the development of Strategic and Operating Plans and Budgets
- The community may veto approved budgets/plans based on perceived inconsistency with the purpose, Mission and role set out in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community
- After issues have been raised in prior consultation, community may veto as follows:
 - % of SOs and ACs is required to exercise a first veto
 - The Board will make adjustments and propose an amended Budget or Plan
 - % of SOs and ACs is required to exercise a second veto
- After two rejections of Annual Budget, ICANN will operate on the previous year's Budget, plus an additional 10%, until another Budget is proposed and agreed
- The Board will continue to have the ability to make out-of-budget funding decisions on the same basis as it does today
- Use of the community power to veto the ICANN Budget would have no impact on the IANA Budget, and vice versa
- No limit to the number of times the community can veto a Five Year Strategic Plan

CWG
Dependencies

CCWG
Requirements

NTIA
Requirements

Public
Comments

Board
Support

MSM
Upheld

16. Empower community with new legal enforcement (statutory rights under California law or binding arbitration)

Broad community agreement on requirements but not on implementation approach



APPROACH A

APPROACH B

If ICANN refuses to implement a binding arbitration award secured through the Community IRP (described in Section 9) -- even if ICANN did not participate in the arbitration, the community may legally enforce the arbitration judgment.

The community may go to court and enforce. The community has 3 alternate paths to have standing in court:

- ICANN Bylaws will provide standing to the party in the binding arbitration to go directly to a California court
- ICANN Bylaws will provide standing to a representative selected by the party in the binding arbitration (ICANN will indemnify this representative)
- any Board Director

CWG
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Empowered Community

NEW

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ENHANCED

NEW

Board removal by community

ENHANCED

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Broad community agreement on requirements but not on implementation approach



APPROACH A

APPROACH B

SINGLE MEMBER / DESIGNATOR

This approach changes ICANN's governance structure from a board/policy board model to a single member model (Single Member) or board/designator model (Designator) — with a different balance and new powers for the Single Member or Designator. The new Single Member or Designator would have statutory rights and/or powers enshrined in California corporate law.

These new powers may be vested in all or part of ICANN's multistakeholder community. The community will need to design and agree on a new decision-making mechanism for those opting to join the Single Member or Designator. Decision-making may be based on votes or consensus, in a way that ensures the continued balance of influence between the stakeholders of ICANN's global and diverse community.

The Single Member or Designator will have legal rights to make decisions that bind ICANN, such as: designation/removal of Board members (Single Member and Designator); Budget approval (Single Member); Bylaws approvals/changes (Single Member and potentially Designator).

The Single Member will have special powers provided by California corporate law (such as dissolving ICANN), powers that cannot be limited. It is possible to make it harder to use these special powers, but it is impossible to remove them. Unlike the Single Member model, which is largely defined by California corporate law, the Designator model is yet to be designed by the community.

Once the Single Member or Designator is established, it may take issues directly to California courts to enforce its powers.

To establish this new structure the community still needs to address a range of open topics to ensure ICANN's stability and freedom from capture:

- SO and AC participation in the decision-making mechanism (which SOs and ACs will opt-in)
- Decision basis among participating SOs and ACs by % of all SOs and ACs
- Consideration of advice from those SOs and ACs opting-out of the decision-making mechanism (similar to GAC/Board advice?)
- Factoring in conflicts of interest and fiduciary or other responsibilities (such as public interest) into overall decision-making

CWG
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CCWG
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Requirements

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Upheld