

# **ALAC Briefing on CCWG-Accountability Final Proposal**

24/25 February 2016

# Overview

- Plan for ALAC decision
- Review of the Final CCWG Proposal to enhance ICANN Accountability
- Concerns

# Chartering Organization (CO) Ratification

- ALAC to consider the Final Proposal (12 recommendations).
- If we choose not to ratify any or all of the Proposal Recommendations, we must notify the CCWG and at a minimum provide reasons for the lack of support and a suggested alternative that would be acceptable, if any.
- There is no requirement that all, or all but one CO ratify.
- ALAC decision required no later than Wednesday, 09 March 2016, but preferably earlier.
- If we ratify, we could also include a statement but that would not alter the Proposal, although it could impact how the overall package is viewed by the US Government.

# Documentation

- This presentation
- Full Report (*Supplemental Final Proposal Work Stream 1 Recommendations*)  
<https://community.icann.org/x/8w2AAw>
  - Main Report
  - 15 Annexes (1-12 = Recommendation 1-12)
  - 11 Appendices
  - 345 pages!

# Accountability – The Problem

- Currently ICANN Board is supreme. We select them, but once there, they have complete control.
- IANA Transition required that there must be *some* level of oversight of the Board.
  - Threat: ICANN Board “goes rogue” and does something really ill-advised.
- The only entity that was realistic (to us!) is the ICANN Community itself.
- An that was the start of this 15 month saga.

# Accountability – The Answer

- The Community, as defined by the Supporting Organizations and Advisory Committees, acting in (relative) unison, can have power over the Board
- Various frameworks were investigated and most discarded for one reason or another
  - Complexity
  - Too much power
  - Too much change
  - Fear (a realistic one!) of unexpected outcomes

# Work Streams

- Work Stream 1
  - Powers required to ensure IANA Transition Accountability and to allow additional accountability issues to be resolved later.
- Work Stream 2
  - The rest...

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

- Empowered Community (*EC*)
  - GNSO, ccNSO, ASO, GAC, ALAC
    - GAC has not formally said they would, or would not participate, but the presumption is that they will, although they may not often exercise those powers
  - SSAC, RSSAC have opted to maintain their advisory roles and not participate in the community powers
- The Bylaws will give the EC specific powers and describe how they may be exercised.



# Empowered Community

- Technically an Unincorporated Association (UA) used as a grouping of the five SO/ACs, likely using their respective Chairs to formally exercise their powers (implementation)
- The EC has is a legal person and can thus take court action should it ever be necessary.
- The SOs and At-Large will appoint their Directors via the Empowered Community using a construct called the Designator. This one Designator will take instructions from the SOs, At-Large and the Nominating Committee to appoint Directors.
- Since there is only one Designator for the all such appointments, the term “Sole Designator” is used.
- A Designator also has the power to remove Directors.

# Who looks after the Public Interest?

- Board members are required to set aside their personal interests and consider the corporation's interests and the global public interest (both undefined!)
- AC/SO have no such requirement. Each may strongly fight for what it feels is best for ITS constituency.
- The hope is that the EC requires sufficient collaboration that the AC/SO individual interests are balanced.

# ALAC Concerns: General

- Most or all of the ALAC concerns to be listed have been well discussed and *in general*, earlier discussions have indicated that each recommendation is probably acceptable, if not optimal to all ALAC Members (and other At-Large participants)
- But the final decision will rest upon ALAC discussions.

# ALAC Concerns: Recommendation 1

- It is possible that somehow the interests of parts of the ICANN community can end up exercising control, through the inattention or lack of interest of the other parts; or by somehow co-opting the other communities.

**Warning: Recommendations  
intentionally out of order!**

## Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

- Currently, there are only one type of Bylaw.
- The Articles of Incorporation (*A of I* - the Corporate Charter used to establish a Corporation) and the Bylaws may be changed at will be the Board.
  - We have practices in ICANN that constrain the Board, but they are voluntary practices that could be ignored.

# The Bylaw Conundrum

(def: difficult problem!)

- Since Bylaws will define the community powers, it would not make sense to allow the Board to unilaterally modify them. The same applies to the A of I since they define the essence of the corporation.
- However, Bylaws change relatively often for many reasons, and we do not want to make it too difficult to change them.

# Standard vs Fundamental Bylaws

- Standard Bylaws are just like the ones we have now.
- Fundamental Bylaws, which will among others things, include the Bylaws which create the EC and provide its powers as well as ICANN's Mission and Core values and Commitments and core IANA functions
- Fundamental Bylaws require a higher Board voting threshold to change (2/3 → 3/4)
- Fundamental Bylaws can only be changed with the agreement of the EC.
- Public consultation prior to all Bylaw changes mandatory.



# ALAC Concerns: Recommendation 3

- Fundamental Bylaw changes which may be “required” to address a changing environment may be difficult to do.
  - Changes “in the global public interest” which are not viewed as being in the interests of parts of the community may allow those parts to block the changes.
    - Note that a single AC/SO cannot block, but combinations of them can.
  - Simple inaction or slow action by sufficient AC/SOs could block change
- No escape clause.

## **Recommendation #4: Ensuring Community Engagement in ICANN Decision-making: Seven New Community Powers**

- Reject ICANN's Budget or Strategy/Operating Plans or IANA Budget
- Reject Changes to ICANN Standard Bylaws
- Remove Individual ICANN Board Directors
- Recall the Entire ICANN Board
- Approve Changes to Fundamental Bylaws and Articles of Incorporation
- Initiate a binding Independent Review Process (IRP) or Request for Reconsideration
- Reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of Post-Transition IANA separation

# Powers

- 6/7 powers can override/question Board action
- One, approval of Fundamental Bylaws, requires positive action of the EC.

# ICANN Budget/Plan Rejection

- ICANN's Five-Year Strategic Plan
- ICANN's Five-Year Operating Plan
- ICANN's Annual Operating Plan & Budget
  - 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.
  - The veto could only concern issues that had been raised in the public consultations conducted before the Board approved the budget or plan.
- Rejected budget → Caretaker budget (basic requirements, no frills or unessential new initiatives)

# IANA Budget Rejection

- Rejection will result in a caretaker budget to protect IANA operations.

# Reject Standard Bylaws

- All Bylaw changes will require mandatory community consultation prior to being enacted.
- Bylaws changes would require a 30 day delay.
- Further delay in community power is initiated.
- Special case if Bylaw is mandated by a SO PDP Recommendation. In that case, rejection of Bylaw required that SO to support rejection.
  - No known case of such a Bylaw change.

# Approve Fundamental Bylaws

- Requires positive action by the EC to change the A of I or Fundamental Bylaws

# Remove Individual AC/SO Director

- Action decided by the AC/SO alone, but following wider community discussion/consultation
- Requires a rationale.
  - Not restricted to particular reasons. Wears purple pants is sufficient, albeit potentially embarrassing to the AC/SO and could make it more difficult to recruit future candidates.
- Director may defend/explain their actions/inactions
- AC/SO representatives indemnified for claims related to statements made about director in good faith.
- Only once per term (if proceeds to actual decision)



# Removal of NomCom Director

- Similar to removal of AC/SO Director, but requires action of the EC.

# Recall of Entire Board

- EC action with high threshold (with one exception)
- Likely highly destabilizing.
- All voting Board members except Ex-Officio CEO.
- At time of power being exercised, each AC/SO would have to name Interim board member(s)
- Interim Board will have same powers of a regular Board, but is required to consult with community if practical (i.e. urgent decision not needed to preserve DNS SSR).

# Recall of Entire Board - 2

- AC/SO/NomCom must put in place rules to allow selection of replacement director within 120 days

# Initiate Independent Review Process or Board Reconsideration

- Power exercised by EC.

# Reject ICANN Board Decisions Relating to Reviews of IANA Functions, Including the Triggering of any Post-Transition IANA Separation Process for the IANA Naming Functions

- Power exercised by EC.

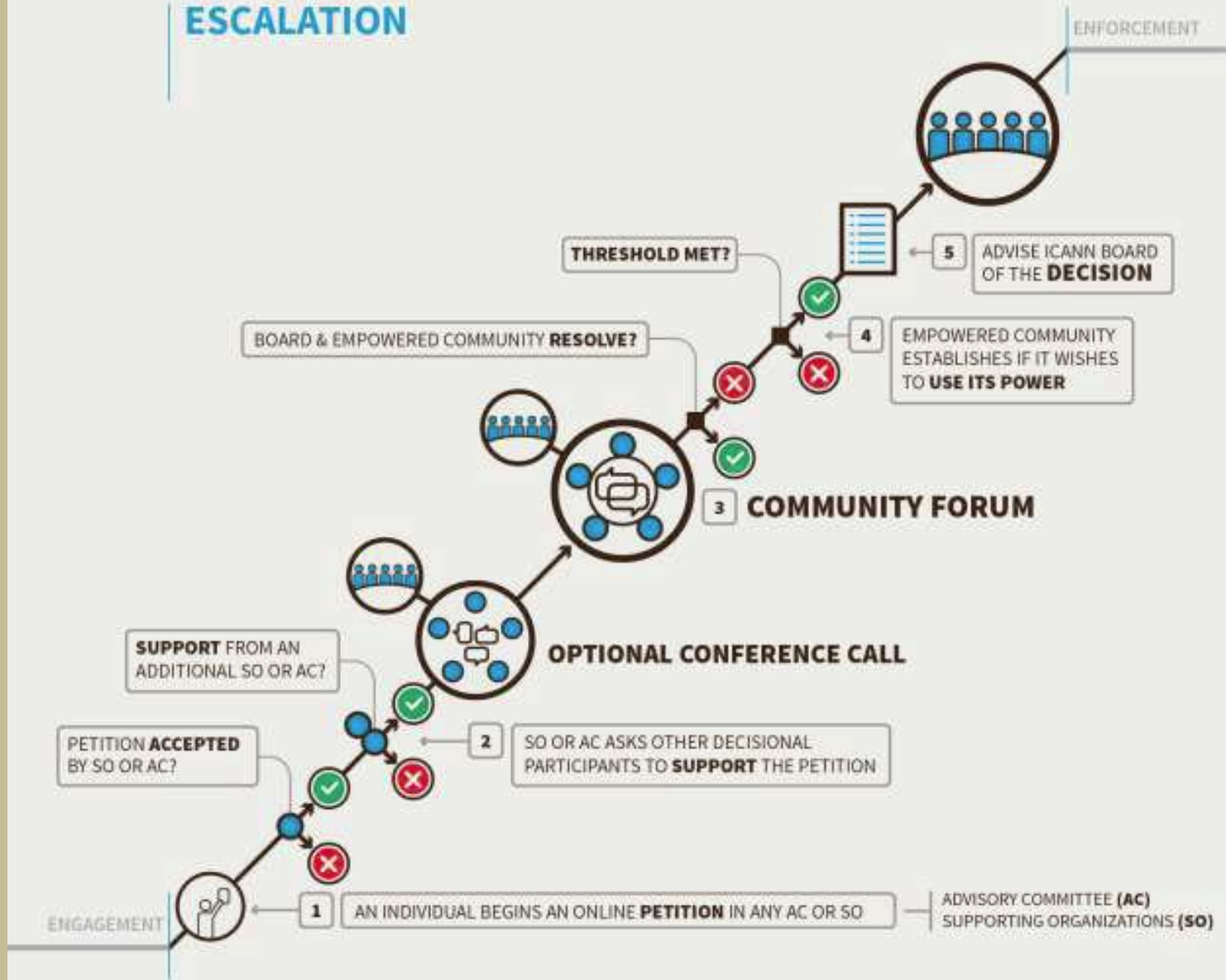
# ALAC Concerns: Recommendation 4

- As discussed: Fundamental Bylaw - Inability to change
- Destabilization if Board recall contemplated or effected.
- Unfairness and potential abuse of AC/SO Removal

## Recommendation #2: Empowering the Community Through Consensus: Engagement, Escalation, Enforcement

- Individual (anyone) begins a petition
- Supported by AC/SO (21 days from trigger event)
- Conference Call (optional)
- Support (2 or 3) to convene Community Forum (7 days)
- Community Forum (21 days)
- Decision to go to Empowered Community (21 days)
- Community Decision (3 or 4 *For*, <2 *Against*)

# ESCALATION





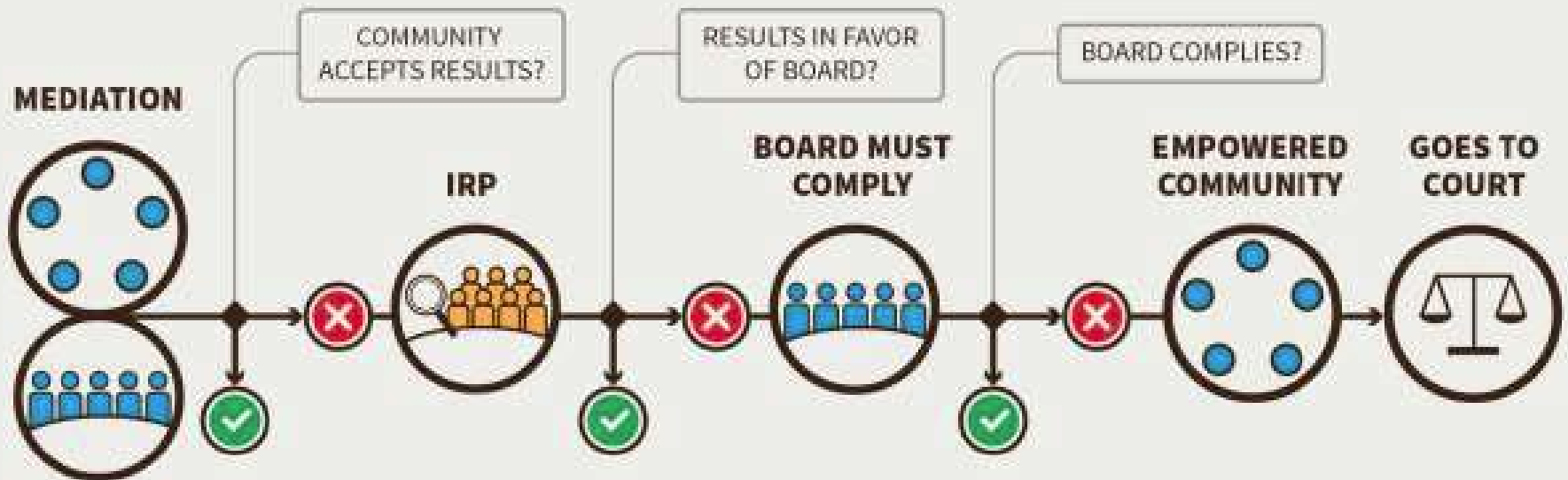
# Processes vary

- The exact process is tailored to power
- Thresholds vary based on power (to be discussed)
- No support from other AC/SO required for AC/SO Board member removal
- No petition required for Fundamental Bylaw approval (triggered by Board action to change Bylaw)

# Enforcement

- Enforcement for Non-compliance
  - Mediation, IRP, Court or Recall if Board does not comply
  - Board Recall

# Enforcement - 2



# Thresholds

Power	SO/AC -> Comm Forum	Support	Object
Reject a proposed Operating Plan/Strategic Plan/Budget	2	4	<2
Approve changes to Fundamental Bylaws and Articles of Incorporation	N/A	4	<2
Reject changes to regular bylaws	2	3	<2
Remove an individual Board Director appointed by a Supporting Organization or Advisory Committee	1	1	
Remove an individual Board Director appointed by the Nominating Committee	2	3	<2
Recall the entire board of directors	3	4 (or 3)*	<2
Initiate a binding Independent Review Process	2	3	<2
Reject ICANN Board decisions relating IANA	2	4	<2

\* Only if an IRP triggered by EC action over GAC advice and IRP rules Board violated Bylaws

# ALAC Concerns: Recommendation 2

- Reduction from 4 to 3 for Board recall in exceptional case.

# Questions

(Font gives insight into frazzled mental state of CCWG Members)