# First Public Comment Review Tool - comprehensive version - 18 August 2015

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*This document contains a summary of the public comments [1] received in response to the draft Work Stream 1 recommendations issued by the Cross Community Working on Enhancing ICANN Accountability (CCWG-Accountability). The comments are summarized in order of submission for each category as applicable. Even though this summary was drawn up to reflect as accurately and objectively as possible the views expressed by participants, it does not substitute in any way the original contributions which are publicly available for full reference at: http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/*

**Contributions provided by:**

**Comments on Specific Recommendations**

African Regional At-Large Organization (AFRALO)
Association française pour le nommage Internet en coopération (Afnic)
At-Large Advisory Committee (ALAC)
Australia's Domain Name Administrator (auDA)
Business Constituency (BC)
Canadian Internet Registration Authority (CIRA)
Carlos Raul Gutierrez (CRG)
Center for Democracy & Technology (CDT)
Centre for Communication Governance (CCG)
China Academy of Information and Communication Technology (CAICT)
Council for European National Top Level Domain Registries (CENTR)
CWG to Develop an IANA Stewardship Transition Proposal on Naming Related Functions Stewardship (CWG-St)
Cyber Cafe Association of India (CCAOI)
Danish Business Authority (DBA)
David Post – Danielle Kehl (DP-DK)
DotConnectAfrica Trust (DCA-T)
DotMusic (.MUSIC)
eco (eco)
Federal Ministry for Economic Affairs and Energy (Govt-DE)
Google (GG)
Government of Brazil (Govt-BR)
Government of India (Govt-IN)
Government of Italy (Govt-IT)
Government of Spain (Govt-ES)
gTLD Registries Stakeholder Group (RySG)
ICANN Board of Directors (ICANN)
Information Technology Industry Council (ITI)
Intellectual Property Constituency (IPC)
International Trademark Association (INTA)
Internet Architecture Board (IAB)
Internet Association (IA)
Internet Infrastructure Coalition (I2Coalition)
InternetNZ (.NZ)
Internet Services Provider and Connectivity Provider Constituency (ISPCP)
Jan Scholte (JS) comment 1
Jan Scholte (JS) comment 2
Japan Network Information Center (JPNIC)
Jiah He (JH)
Lee Andrew Bygrave (LAB)
London Internet Exchange (LINX)
Milton Mueller (MM)
Ministère des Affaires étrangères (Govt-FR)
Ministry of Foreign Affairs of Argentina (Govt-AR)
Motion Picture Association of America (MPAA)
Namibian Network Information Centre (.NA)
Nigeria Internet Registration Association (NIRA)
Nell Minow (NM)
Nominet (.UK)
Non Commercial Stakeholder Group (NCSG)
Regional Internet Registries (RIR)
Richard Hill (RH)
Roberto Bissio (RB)
Root Server System Advisory Committee (RSSAC)
Sébastien Bachollet (SB)
Security and Stability Advisory Committee (SSAC)
Sivasubramanian M (Siva)
Sue Randel (SR)
UNINETT Norid AS (NORID)
US Chamber of Commerce (USCC)
US Council for International Business (USCIB)
US Rep. Mike Kelly HR2251 (HR2251)
William Currie (WC) comment 1
William Currie (WC) comment 2
Zhong Rui (ZR)

**General Comments**
**SUMMARY for General Comments:**

Number of comments: 59
Number of agreements: 42
Number of concerns: 22
Number of confusion: 1
Number of divergence: 5
Number of new ideas: 11
NB: some comments are classified in two or more categories

**Abstract:**
The majority of the comments received were supportive of the general approach taken by the CCWG, whereby ICANN's accountability architecture should be based on 4 building blocks, i.e. an empowered community, the Board, the Bylaws and the Independent Review Process. Most comments regarded the suggestions that have been made as improvements of ICANN's accountability.

The commenters have also raised concerns, asked questions or provided additional information not yet discussed by the CCWG. Questions and concerns are primarily related to the CCWG's proposed accountability measures implementation and not that much on the recommended measures, e.g. community powers, and such.

In this report, the CCWG responds to the comments received and explains if and when the suggestions are relating to ideas or arguments that have already been discussed by the group, but which did not get sufficient traction to make it to the set of proposals in the first report. Also, the CCWG highlights concerns and divergence in particular and identifies where new ideas need to be further discussed or where concerns should lead to a reconsideration of the approach taken.

Several commenters recommend that the CCWG should put more emphasis on the accountability of the community itself (the SOs and ACs) and also to ensure that ICANN is accountable to all stakeholders, including those outside ICANN.

Several commenters expressed concerns regarding implementation details and complexity, underlying costs and risks associated. Others highlight the need for enforceability and are supportive of the proposed implementation.

Some commenters regret that the CCWG did not explore setting up a global structure, or incorporating ICANN as an international organization or in a neutral state such as Switzerland.

**Action items for CCWG:**
- Consider the idea of the public accountability forum
- Provide details on the rationale for not exploring the setting up of a global structure

| # | Contributor | Comment | CCWG Response/Action |
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| **1** | RH | - This is a step in the right direction but it suffers from reinventing the wheel.<br>- Consider the proposals of the Internet Ad Hoc Group (IAHC) http://web.archive.org/web/19971211190257/http://www.gtld-mou.org/gTLD-MoU.html .<br>- It would be easier to implement proper accountability if the several functions were separated, each with its own accountability mechanism, as proposed by the Just Net Coalition .<br>- ICANN should not be incorporated in the USA, or in any other powerful state that might be tempted to interfere with ICANN for political or economic reasons. It should be incorporated in a neutral state that is unlikely to interfere, for example Switzerland. If ICANN remains incorporated in the USA it will be subject to US law, which could have undesirable consequences (e.g. force ICANN to comply with sanctions that are unilaterally imposed). | Concerns Divergence<br>**Summary / Impression:**<br>- In the right direction but complex<br>- Incorporate ICANN in neutral state (e.g. Switzerland)<br>- Consider accountability mechanism proposed by IAHC<br><br>**Actions suggested:**<br>Look into proposals by IAHC and Just Net Coalition.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG has extensively discussed the question of where ICANN should be located, but relocation did not get sufficient traction for multiple reasons. However, the question of jurisdiction will further be looked into as a WS2 issue. Also, the proposed accountability architecture got broad support so that the CCWG proceeded on that basis. |

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| **2** | JS comment 1 | - Congratulations for the impressive achievement. That the group could in just six months produce such a comprehensive, creative, reflective, professional proposal is a real tribute to what a well-executed multistakeholder process can accomplish.<br>- One can always find areas for further development, but the glass is already so very much more than half-full. | Agreement<br>**Summary / Impression:**<br>- Tribute to multistakeholder process<br>- Areas for further improvement<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:** Thank you for your comment |
| **3** | auDA | - auDA welcomes the work of the CCWG and, specifically, the significant efforts of the group to deliver an appropriate model for ensuring the ongoing accountability of ICANN's operations beyond the transition.<br>- auDA does not support the CCWG's assertions regarding how these principles and goals should be implemented.<br>- While auDA's supports the general principles for improved accountability, as well as a number of implementation mechanisms mentioned, our position diverges significantly from that of the CCWG in regard to many other implementation details proposed in the Draft Report. Our concerns are very serious and we believe that the flaws in the CCWG's draft proposals are significant and profound. auDA notes that the CCWG has focussed on a structure that can enforce accountability by delivering to the community the ability to sue ICANN / the ICANN Board. While auDA accepts that this is one way to bolster accountability, we question whether the proposed solution: 1) is worth the significant and seismic changes to ICANN's structure and to the nature of ICANN's Supporting Organisations and Advisory Committees; 2) might give rise to a series of new risks and weaknesses that run counter to both the goals of the CCWG and ICANN's own Bylaw commitments; and 3) might, on the whole, be inferior to an accountability solution involving changes to existing mechanisms and the introduction of fundamental bylaws that cannot be altered without the explicit support of SOs and ACs.<br>- The CCWG has developed a solution that gives rise to a number of new complexities and questions, and which may not deliver the most effective and efficient outcome. Associated cost, risk and structural issues all need to be considered and weighed against any proposal and auDA is not satisfied that the need for a 'legal enforceability' solution (which would also serve to further concentrate power in the United States) is greater than the compromises and costs required to implement it. auDA strongly recommends that the CCWG and the ICANN community return to the fundamental principles identified as part of the preliminary stages of the CCWG's work, abandon the need for legal enforceability as a fundamental tenet of the accountability review and attempt to arrive at a solution that delivers acceptable levels of accountability and community empowerment. | Divergence<br>**Summary / Impression:**<br>- Welcomes work but does not support CCWG's assertions regarding implementation details<br>- Structure where community has ability to sue ICANN/ICANN Board might create risks counter to CCWG goals and ICANN's Bylaws commitments<br>- Complexity which may not deliver efficiency<br>- Consider associated cost, risk and structural issues<br>- Enforceability will concentrate power in US<br>- Return to fundamental principles identified at preliminary stages<br>- Abandon enforceability as fundamental tenet empowerment.<br><br>**Actions suggested:**<br>The concerns need to be discussed and more information on the proposed alternative models needs to be provided.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG has considered this feedback. The CCWG trusts that most, if not all concerns are addressed in the 2 nd report. |

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| **4** | DBA | - Denmark welcomes the decision by the NTIA to transition the stewardship of the IANA functions to the global multistakeholder community and to remain fully committed to completing the transition in a timely and responsible manner.<br>- Our initial assessment of the Initial Draft Proposal, which focuses on developing accountability mechanisms necessary for the IANA transition to take place, is that the overall framework looks promising and ICANN's accountability towards the multistakeholder community would be enhanced when implemented.<br>- In our view the combination of accountability mechanisms proposed provides a set of necessary of checks and balances for the global multistakeholder community to hold the ICANN Board and management accountable in the absence of the NTIA in its current role.<br>- In light of the fact that the CWG Stewardship Transition Proposal on Naming Related Functions is dependent on these community powers, these dependencies must not be compromised.<br>- It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safeguards against capture from any specific stakeholder group in any way, including in ICANN's policy development processes and decision making functions.<br>- Finally, Denmark is committed to participating in the CCWG Accountability and in developing an accountable and multistakeholder-based proposal for the IANA transition process together with the global internet community. | Agreement - Concerns<br>**Summary / Impression:**<br>- It looks promising<br>- It provides set of necessary checks and balances<br>- CWG dependencies on community powers must not be compromised<br>- Ensure the new governance model is truly multistakeholder: there must safeguards against capture<br><br>**Actions suggested:**<br>Check with DBA whether more stress tests to test if ICANN is sufficiently safeguarded against capture are needed after the revision following the PC period.<br><br>**CCWG Response:**<br>Thank you for your comment – the CCWG has considered this feedback. The CCWG trusts that most, if not all concerns are addressed in the 2 nd report. In particular, the proposals in the 2 nd report and the updated section on stress tests should show that the risk of capture is well addressed. |

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| **5** | WC comment 1 | - The CCWG-Accountability proposal does an excellent job of creating an empowered community as the accountability forum which can hold the accountable actor, the Board, to account for its decision-making. By tightening up the principles, commitments and core values in ICANN's by-laws, the proposal makes clear what the standards are against which the Board is to be held to account.<br>- The new community powers are finely balanced and limited in a way that will not hamper the Board's fiduciary duties towards ICANN, nor undermine the efficiency or effectiveness of the Board's decision-making processes.<br>- What is missing is a space in which the community - as accountability forum - can hold the Board - as accountable actor - to account on a regular basis. Here the work of public accountability academic, Mark Bovens, may be of use. He sees accountability as a social relation and defines accountability as `a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor can be sanctioned'. At its regular meetings, ICANN holds a Public Forum which already has many of these features. The Board gives an account of some of its activities and members of the community can make comments and pose questions to the Board. It may be of value to transform this Public Forum into a Public Accountability Forum. The way this could work is as follows: 1 The community, that is the supporting organisations and advisory committees, represented by their chairpersons and vice-chairs, meets and constitutes itself as the accountability forum. 2 The accountability forum then chooses a chairperson and vice-chair to convene the Public Accountability Forum at each tri-annual ICANN meeting, for the period of a year; 3 The Board and the CEO would constitute the accountable actor at the Public Accountability Forum; 4 The Chairpersons consult with the community, the Board and the CEO to determine the agenda for the Public Accountability Forum; 5 At the Public Accountability Forum, the Board, as accountable actor, gives an account of the agenda items and the accountability forum, represented by the chairs and vice-chairs of each supporting organisation and advisory committee, pose questions and pass judgment. Passing judgment, in this instance, would be the equivalent of comments on the behaviour or actions of the accountable actor rather than a formal judgment by the accountability forum as a whole; 6 In a second round, members of the community have an opportunity to pose questions and pass judgment. Passing judgment here would be the perception or opinion of the individual community member on the behaviour or actions of the accountable actor; 7 Should any matters arise that touch on the new community powers to sanction the Board, these are noted by the chairs of the Public Accountability Forum for discussion by the accountability forum, which would meet on its own directly after the Public Accountability Forum is over; 8 The Chairs of the Public Accountability Forum briefly sum up the discussion and close the Public Accountability Forum. The idea would be to limit the agenda to a few key issues rather than to address every conceivable question. The emphasis would be on the accountable actor giving an account of its actions and the accountability forum questioning and passing judgment. The question of sanctions would only arise if the issues under discussion touched on one of the new community powers. | Agreement – New Idea<br>**Summary / Impression:**<br>- Excellent job of creating an empowered community which holds Board accountable<br>- Consider transforming public forum into a public accountability forum: SO/ACs Chairs constitute forum, choose a Chair and Vice-Chair, consult with community, Board and CEO to establish agenda, Board gives account. Should any matters touch on new community powers to sanction Board, these will be discussed with the forum. The question of sanctions would only arise if the issues under discussion touched on one of the new community powers.<br><br>**Actions suggested:**<br>Discuss proposed accountability forum<br><br>**CCWG Response** :<br>Thank you for your comment – the CCWG has considered this feedback and your recommendations are reflected in section 6.3 of the 2 nd report. |

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| **6** | NM | I begin by endorsing the comments of Jan Aart Scholte, which express my concerns with more eloquence and depth. With regard to our frequent mentions of the importance of transparency, we also need to be more specific. We're talking about organization that is core to the most transparency-friendly entity in the history of the world, and yet we don't have any specifics about what the organization needs to do when there are say, for example, proposed bylaw changes, to make sure that they are widely disseminated. We need to have some specifics about making sure that they take specific steps to make sure that everything they do and everything that the advisory groups do is as widely disseminated as possible, even to the extent of outlining the minimums for social media reach and unique visitors to make sure that transparency is not just offered but is actually implemented. | Agreement - Concerns<br>**Summary / Impression:**<br>- Agrees with JS comments<br>- Need to be more specific about transparency, make sure it is implemented<br>- Need specifics steps to ensure wide dissemination.<br><br>**Actions suggested:**<br>No additional actions needed.<br><br>**CCWG Response** :<br>The CCWG is cognizant of the need for outreach and global engagement. It will ensure to treat this area as a priority, but would welcome suggestions on concrete and implementable measures. |
| **7** | CRG | - In my view the CCWG draft document has focused on the Board-Community relation only. So far there is little on the draft proposal related to the internal structure of ICANN, summarised sometimes as "management" & "staff", but limited to the budget veto mechanism (as per paragraph 40). I think a full section (or 5th Building Block) on "internal" checks and balances is quiet necessary, for the wider scope of parties that will be reviewing the CCWG-ACCT proposal.<br>- Para 40, under #2 speaks of mechanisms to restrict actions of he board AND MANAGEMENT of the Corporation, but the present draft develops only Board decisions and no Management ones. | Concerns – New Idea<br>**Summary / Impression** :<br>- There is little on internal structure of ICANN (management/staff). Section on internal checks and balances is necessary.<br>- 5th Building Block on "internal" checks and balances<br><br>**Actions suggested:**<br>Add more detail on checks and balances.<br><br>**CCWG Response** :<br>The CCWG has prepared its proposal based on the idea of establishing improved and robust checks and balances. The CCWG has made this more explicit in its report. A section on Staff Accountability has been added as Section 8.2. Aggrieved parties can invoke IRP and RFR not only against actions of the Board, but also against staff action, see para 268 and 270 of the report. |
| **8** | AFRALO | The AFRALO community members express their support to the CCWG and think that the report needs further work to find the best ways to empower the community using the right means and avoiding ICANN the risk of being weakened or losing its independence, its inclusiveness and its multi-stakeholder nature. | Concerns<br>**Summary / Impression:**<br>Further work needed to find best ways to empower community using right means and avoiding risk of being weakened or losing independent, inclusiveness and multistakeholder nature.<br><br>**Actions suggested:**<br>No particular action, but recognition of the principle in further deliberations.<br><br>**CCWG Response:**<br>The CCWG welcomes the suggestion made by the AFRALO and encourages continued input from the AFRALO when it comes to concrete implementation measures to counter the concerns expressed in their comment. |

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| **9** | Govt-AR | Argentina will continue participating in the IANA transition process, and expects that those principles agreed in the Net Mundial Mulstistakeholder Statement will guide our work and will be respected.<br>- Discussion about mechanisms for guaranteeing the transparency and accountability of those functions after the US Government role ends, has to take place through an open process with the participation of all stakeholders extending beyond the ICANN community.<br>- This transition should be conducted thoughtfully with a focus on maintaining the security and stability of the Internet, empowering the principle of equal participation among all stakeholder groups and striving towards a completed transition by September 2015<br>- It is expected that the process of globalization of ICANN speeds up leading to a truly international and global organization serving the public interest with clearly implementable and verifiable accountability and transparency mechanisms that satisfy requirements from both internal stakeholders and the global community. The active representation from all stakeholders in the ICANN structure from all regions is a key issue in the process of a successful globalization. | Concerns<br>**Summary / Impression:**<br>- NetMundial statement should guide work and be respected<br>- All stakeholders should participate in conversation<br>- Conduct transition with focus on maintaining SSR, empowering equal participation, strive toward completion in September<br>- Speed up process of globalization<br><br>**Actions suggested:**<br>Revisit reference to NetMundial in the report.<br><br>**CCWG Response:**<br>The issues raised by Argentina have been discussed by the CCWG. |
| **10** | Govt-IN | - As ICANN is the current IANA operator, it must demonstrate accountability in its approach<br>- Subsequent to the IANA Transition irrespective of ICANN's role and degree of involvement with operational aspects of the IANA functions, ICANN must have improved robust accountability and transparency mechanisms: stronger accountability mechanisms are of paramount importance, specifically, in terms of operations relating to naming policy development and gTLDs.<br>- In addition to strengthened internal community oversight and accountability, the accountability review must endeavour to incorporate external accountability and checks and balances in respect of the functions exercised by ICANN.<br>- ICANN must be clear and transparent, particularly about its structure, mission, operations, staff, elections, collaborations, decision-making processes, plans, and budget, finances and earnings | Agreement - New Idea<br>**Summary / Impression:**<br>- ICANN must demonstrate accountability in IANA operator role<br>- Consider incorporating external checks and balances<br>- Transparency is required<br>- Accountability review<br><br>**Actions suggested** :<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has considered the suggestion made. However, the CCWG already took and will continue to take to heart the principles mentioned in the comment when drafting the first report. The CCWG trusts that external accountability can be achieved by means of reviews including independent reviewers and independent review process. The CCWG welcomes concrete suggestions to be included in the upcoming report. |
| **11** | DCA-T | - ICANN's past has faced many question relating especially to the accountability of the organization, some users of ICANN's services and especially the new gTLD applicant have faced many issues as regards a fair and just handling of the issues that cover accountability and transparency. As such ICANN's need for accountability and transparency in all its activities cannot be over stated. The need for independence must also be accompanied by proper structures and mechanisms to address accountability of Board and staff in equal measure.<br>- ICANN must therefore allow an independent and separate accountability and transparency body to be created to manage the issues that arise from actions or inactions of the Board and/or staff and any other contractor assigned specific duties in the day to day running. Such accountability mechanisms need to touch on all spheres of ICANN including the ICANN budgets | Agreement - Concerns<br>**Summary / Impression:**<br>- ICANN's need for accountability cannot be overstated<br>- Independent and separate accountability and transparency should manage actions or inactions<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG agrees with the principles stated and would welcome more detail on what can or should be done beyond the proposed improvements. |

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| **12** | Afnic | - CCWG-Accountability has laid the foundation for both a rapid and profound enhancement of ICANN accountability, necessary for the achievement of the IANA stewardship transition (Work stream 1), and the implementation of a sustainable accountability mechanism for the long term (Work stream 2).<br>- Given the sometimes complex and, in any case, technical nature of this exercise, Afnic wants to commend all participants of this group for their implication and their involvement, as well as for the very intensive outreach work done.<br>- Having participated to this outreach by organizing a French event on the ICANN accountability and IANA transition, Afnic can witness that moving from the accountability principle stage to the principles implementation stage, while trying to maintain a global consensus, is indeed very difficult.<br>- [The] community empowerment proposal shows what is currently missing in ICANN, to make this organization a truly multistakeholder one. Without the powers given to the community, ICANN is more in a "representative democracy" model, and not even, because all Board members are not elected. | Agreement -<br>**Summary / Impression:**<br>- Foundation laid for profound enhancement<br>- Moving from principle stage to implementation stage is difficult<br>- Without community powers ICANN is a "representative democracy" model, and not even, because all Board members are not elected.<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **13** | NORID | NORID welcomes the opportunity to praise the significant work the group has done to deliver their view on improved accountability in ICANN within the restricted timeframe given and the openness in which the process has been conducted under. We support most of the principles outlined, but being a small registry we do not have the resources to go into detail. Therefore we instead support the very sensitive of our regional organization CENTR. | Agreement -<br>**Summary / Impression:**<br>- Support most of outlined principles<br>- Endorses CENTR comments<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **14** | Govt-DE | We would like to thank the Danish GAC representatives in particular for their comments which we fully support.<br>- Germany supports the multistakeholder approach inherent in the CCWG's working methods and draft report because the joint governance of internet resources and standards by the internet community has proven to be one of the key factors driving the success of the internet.<br>- In this context we would like to recall the joint German Position Paper on Guidelines and Recommendations for Action for the IANA Stewardship Transition from 26 March which has been drafted in a multistakeholder process itself. Germany notes that many of the issues raised in this position paper have been adressed by the draft report. | Agreement -<br>**Summary / Impression:**<br>- Supports DBA comments<br>- Supports multistakeholder approach inherent in CCWG report and methods<br>- Report addresses many of issues raised in German Position Paper<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |
| | | - We strongly endorse these four critical goals: 1) Restating ICANN's Mission, Commitments, and Core Values, and placing those into the ICANN Bylaws; (2) establishing certain bylaws as "Fundamental Bylaws" that cannot be altered by the ICANN Board acting unilaterally, but over which stakeholders have prior approval rights; (3) creating a formal "membership" structure for ICANN, along with provisions designed to give the stakeholder-members greater influence on Board decisions; and (4) enhancing and strengthening ICANN's Independent Review Process (IRP).<br>- We believe that the CCWG has made significant and substantial progress in designing a durable accountability structure for a post-transition ICANN. We also believe, however, that there are a number of important omissions and/or clarifications that need to be addressed before we can be confident that these mechanisms will, in practice, accomplish their mission. | Agreement - Concerns<br>**Summary / Impression:**<br>- Strongly endorse four critical goals<br>- Endorse restating mission, commitments, and core values; establishing "Fundamental Bylaws; creating membership structure; strengthening IRP<br>- Progress but omissions<br>- Address accountability prior to transition<br>- ICANN has a substantial accountability deficit<br>- ICANN vests unconstrained power in its Board<br>- NTIA isn't transferring anything *to* ICANN as part of the transition, there's nothing for it to "take back" if the accountability mechanisms fail<br>- Capture and mission creep are risks posted by the transition |

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| **15** | DP-DK | - The IANA transition is premised on the notion – one that we strongly endorse – that the DNS can best be managed going forward by a private, non-governmental, global, consensus-based, "multi-stakeholder" institution. No element of the transition plan is more important than the design of effective accountability mechanisms for that institution. The DNS has become a significant and immensely valuable global resource, and whoever controls DNS policy-making and policy-implementation wields considerable power. How can the US government, and the global Internet community, assure itself that that power will not be abused by a post-transition-ICANN ("PT-ICANN") that is no longer answerable to the US government for its actions? If the USG is not going to be exercising oversight over PT-ICANN's management of the DNS, who is? How is that oversight to be exercised, and how effective is it likely to be? These "accountability" concerns must be addressed before the transition proceeds.<br>- There are many examples of private global governance institutions whose accountability mechanisms are notoriously ill-developed – FIFA and the International Olympic Committee come immediately to mind – and in whose hands we would hardly be expected to place a resource of the magnitude and importance of the Internet's DNS. There is also widespread agreement (and acknowledgement by ICANN itself) that as currently configured, ICANN has a substantial accountability deficit. Professors Weber and Gunnarson's recent summary captures what we believe is a broad consensus among scholars and other observers of the history and practice of DNS policy-making: *ICANN's corporate organization vest[s] virtually unconstrained power in its Board of Directors. The Board may be influenced or even pressured by particular stakeholders on particular issues at particular times. But it remains legally free to remove directors and officers; disregard community consensus; reject recommendations by the Board Governance Committee or the IRP regarding challenges to a Board decision; and reject policy recommendations from any source, including the GAC and its nation-state representatives.*<br>- The IANA transition represents an opportunity to get these accountability mechanisms right. The ICANN Board has indicated that it accepts, as a pre-condition for implementing the transition, the need to implement fundamental changes in the corporation's governance structure; but once the transition takes place, that leverage disappears. And the opportunity, once lost, might well not come again, because the transition will be very difficult to undo. As we explained in a recent paper, the IANA transition involves nothing more, at bottom, than the expiration of a government procurement contract; because NTIA isn't transferring anything *to* ICANN as part of the transition, there's nothing for it to "take back" if the accountability mechanisms fail to effectively control ICANN's misbehavior. In addition, it appears that many other components of the final transition proposal – involving the operational details of the transfer of the IANA functions (names, numbers, protocols) – are themselves expressly conditioned on the development of an adequate accountability structure for ICANN, giving added significance and importance to the Accountability portion of the transition plan.<br>- We are particularly concerned, and focus our comments below upon, the extent to which the proposal protects against two forms of abuse: *Capture* by an entity or an interest (public or private) seeking to use DNS resources for its own self-interested purposes, and *Mission Creep* , leveraging control over the DNS to exercise power over matters outside the confines of the DNS itself. These are not, we acknowledge, the only risks posed by the transition; but they are sufficiently important to warrant special attention, and we believe our comments will be most useful if they are focused on them. | - "Constitution" for a re-formulated ICANN should provide, at a minimum, for: 1. A clear enumeration of the powers, and a clear demarcation of those that it cannot exercise; 2. A division of the institution's powers, to avoid concentrating all powers in one set of hands; 3. Mechanism(s) to enforce the constraints and (2) in the form of meaningful remedies for violations; 4. Transparency and simplicity<br>- The more complex those chartering documents are, the less likely it is that they will be comprehensible to that community<br>- A number of elements that must fall into place to ensure that the global multistakeholder community has the means to correct any abuses or misuses of ICANN's power after U.S. government oversight is removed<br><br>**Actions suggested:**<br>No particular action required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG has considered this feedback and welcomes the continued input from the Danish Government. The CCWG trusts the most, if not all concerns are addressed in the 2 nd report. |

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| | | - The CCWG correctly identifies the task it is undertaking – to ensure that ICANN's power is adequately and appropriately constrained – as a "constitutional" one: that the CCWG Draft Proposal, and ICANN's accountability post-transition, can be understood and analyzed as a constitutional exercise, and that the transition proposal should meet constitutional criteria. Constitutions exist to constrain and to channel and to check otherwise unchecked power – "sovereign" power that is subject to no higher (governmental) power. ICANN is not a true "sovereign," but it can usefully be viewed as one for the purpose of evaluating the sufficiency of checks on *its* power. We believe that there is a broad consensus – reflected in the CCWG Draft – that a "constitution" for a re-formulated ICANN should provide, at a minimum, for: 1. A clear enumeration of the powers that the corporation can exercise, and a clear demarcation of those that it cannot exercise; 2. A division of the institution's powers, to avoid concentrating all powers in one set of hands, and as a means of providing internal checks on its exercise; 3. Mechanism(s) to enforce the constraints of (1) and (2) in the form of meaningful remedies for violations; 4. Transparency and simplicity. No constitutional checks on an institution's power, no matter how clearly they may be articulated in its chartering documents, can be effective to the extent that the institution's actions are shielded from view. And it is particularly important, in the context of a truly *global* multi-stakeholder institution, that its structure, and the chartering documents that implement that structure and that guide its operations, are framed as simply and transparently as possible. ICANN's Charter and Bylaws should speak to the global Internet community whose interests the corporation seeks to advance. The more complex those chartering documents are, the less likely it is that they will be comprehensible to that community (or even to the subset of English speakers within that community).<br>- Designing the mechanisms through which a post-transition ICANN can be held accountable for it actions to the global community is both a critical component of the overall IANA transition process and an extraordinarily difficult task. We applaud the efforts that the CCWG-Accountability group has made thus far, and we support the goals it has identified and the general thrust in which the Draft Proposal is pointing. There are, however, a number of elements that must fall into place to ensure that the global multistakeholder community has the means to correct any abuses or misuses of ICANN's power after U.S. government oversight is removed. We believe that the concerns that we have raised in these comments need to be considered and addressed if ICANN's power is to be adequately constrained. We look forward to continued engagement on these important matters. | |
| **16** | IA | Once the plan is accepted, ICANN must implement the Bylaw changes in full prior to the USG terminating the IANA contract. | Agreement<br>**Summary / Impression:**<br>- ICANN must implement Bylaw changes in full prior to terminating IANA contract<br><br>**Actions suggested:**<br>Ensure bylaw changes are added to the mandatory WS1 requirements.<br><br>**CCWG Response:**<br>There will be more bylaw changes required than those inevitably needed for WS1 requirements. Thus, the mandatory bylaw changes should be limited to those essential to make the WS1 requirements work. |

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| **17** | RB | - On the first conference call of the advisors the issue was raised of the need to define under what jurisdiction ICANN would be incorporated. This is a key starting point, as the jurisdiction will ultimately define the law that applies and incorporation, which implies registering bi-laws (and the definition of a: who is a party, b: who takes decision and c: who the parties relate to the decision-making) but also who the "external authority" that ultimately defines the legitimacy and legality of the whole operation.<br>- First, it must be pointed out that in replacing the role of the US government, the focus here is on external accountability of ICANN and not its internal accountability. External accountability is the larger political accountability, with regard to general public interest, and the internal accountability is vis a vis the groups and constituents - often called stakeholders - that directly deal with ICANN, and are in any case represented in various ways in its internal processes. While internal accountability is important, it must be remembered that this whole debate was triggered by the vacuum that arises in terms ICANN's *external accountability* as a consequence of the US government stepping out (in whatever limited way). The focus should therefore be on the responsibility to the larger public -what the document calls “the community” and which is not defined.<br>Yet, in any analysis of what the Internet currently is and who benefits from ICANN services or could be affected by its malfunction, it is clear that “the community” is composed by the billions of users of Internet and potentially by all of humanity. Such a large public will never be able to exercise direct accountability. Two institutional devices are normally employed in democratic polities. (1) A body that is as representative as possible of the larger public is the one that extracts accountability, and (2) there is separation of powers whereby when one particular body (and groupings around it) is to be held accountable, we seek another body which has the least overlap with the first body in its constitution and interests and make the first one accountable to the second one - making the arrangement in a manner - as is their between the executive and the judiciary for instance - that both bodies have different kinds of power, and therefore neither can independently become tyrannical, at least not easily. At the same time, by the very separation of groups/ processes involved in constitution of the two bodies, the very dangerous possibility of collusion is minimised.<br>- In the current case, neither of these key criteria and method-templates have been satisfied or employed. There has been no effort made to explore some kind of global structure that can be considered to have some kind of representativity vis a vis the global public - however less than perfect. Neither the lesser and easier criterion of seeking separation of power by looking at a body/ system with a very different kind of constitution than what makes the current power configuration in the ICANN being fulfilled. What one sees is that the same groups and systems that put the ICANN decision making structures in place in the first instance are being given some recall and interim powers vis a vis this power structure. Certainly an improvement as far as the ICANN's organisational structure is concerned but it says nothing about ICANN's accountability to the global public what this process was really mandated to seek, and put in place.<br>- It should be reminded that NTIA asked for transfer of oversight to global multistakeholder community. Most of the external advisors to the group share the notion that this requires some form of internationally agreed legal incorporation and accountability to an external group that can somehow represent the whole of humanity. We were told that this would be “unrealistic”. See http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00018.html for full comment. | Divergence - New Idea<br>**Summary / Impression:**<br>- Define under what jurisdiction ICANN would be incorporated is the key starting point<br>- Focus is on external accountability, not internal accountability, i.e. responsibility to the larger public<br>- No effort made to explore global structure<br>- A form of internationally agreed legal incorporation and accountability to an external group that can somehow represent the whole of humanity is required<br><br>**Actions suggested:**<br>Provide a rationale why the suggestions made by RB did not get traction.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has dealt, during its deliberations, with most of the points raised. Nevertheless, its members have found some points as not having sufficient support in order to continue discussing them. However, particularly the question of jurisdiction will be further worked on in WS2.. |

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| **18** | Govt-FR | - The French government comprehend that temporary US jurisdiction over ICANN is necessary for purposes of stress testing the CCWG-accountability final proposal over a limited period of time. Yet the CCWG-accountability final proposal should be transposable on an international legal framework, which we ultimately consider to be the only neutral legal framework suited for ICANN.<br>We finally have concerns with the expectations that the CCWG-accountability placed upon governments.<br>NTIA made it clear that the IANA transition is a resumption of the process of privatisation of the DNS and that they will not accept a transition proposal that replaces the NTIA role with a government-led or intergovernmental organisation solution. We therefore understand that, consistent with the US approach to the IANA transition, the solution designed by the CCWG- accountability cannot be but a private sector-led organisation. We also find it perfectly understandable that the solution designed by the CCWG-accountability would focus on mechanisms to mitigate the risk of capture of the future organisation by governments.<br>- Govt-FR has concerns with the expectations that the CCWG-accountability placed upon governments.<br>- Govt-FR understand that the solution designed by the CCWG-accountability cannot must be a private sector-led organisation<br>- Govt-FR understand that the solution designed by the CCWG-accountability would focus on mechanisms to mitigate the risk of capture of the future organisation by governments. | Concerns<br>**Summary / Impression:**<br>- Final proposal should be transposable on international legal framework i.e. neutral legal framework suited for ICANN<br><br>**Actions suggested:**<br>No additional action required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG has planned to further work on the question of jurisdiction in WS2. |

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| **19** | .NA | - The CCWG Accountability has not only failed its mandate, but in a manner that can hardly be described accountable. In conclusion, as one of the ccNSO appointed member of the Cross Community Working Group on Enhancing ICANN Accountability, I do not support this document nor the recommendations made therein.<br>- In particular does the document not contain discernible content relevant to ccTLD Managers which is hardly surprising considering the dynamics within the CCWG Accountability. As I have written in my comments to the CWG Stewardship's 2nd Draft Proposals, ccTLD Managers only need *Root Zone Change Request Management – not including delegation and redelegation (NTIA IANA Functions Contract: C.2.9.2.a)* and *Root Zone "WHOIS" Change Request and Database Management (NTIA IANA Func- tions Contract: C.2.9.2.b)* whereas ICANN needs the IANA Function. And the root zone. No other service provided by the IANA Function Manager is required, per se, by a ccTLD Manager, including DNSSEC.Delegation service is a one time occurrence, which does not affect the ccTLD Manager once completed and it must also be said that hardly any ccTLD Manager wishes to avail oneself of un-consented revocation services by the IANA Function Manager.<br>- (Individual) ccTLD Managers need accountability by the ICANN Function Manager, for the decisions it (in this context the Board) takes against them and for the way its staff interacts with incumbent and/or prospective ccTLD Managers. The charter clearly states that all accountability issues other than operational and administrative ones of the IANA Function (which are to be addressed by the CWG Stewardship, where, unfortunately, they are not being addressed to any relevant extent) fall under the CCWG Accountability.<br>- Without a shadow of a doubt is the root zone a database and thus clearly an asset, ie some form of property, even though it is very closely linked to the services such as Root Zone Change Request Management and Root Zone "WHOIS Change Request and Database Management. I firmly believe the root zone can exist without the services surrounding it, but absolutely not can the services exist without the root zone.<br>- Now the issue is not what type of property it is, per se, but what will happen to it. In other words, who owns the root zone, will ownership be transferred, at all? And if so how and when? From this the question follows, what will happen if only the functions to manage but not the ownership of the root zone, and/or the root zone itself are transferred.<br>- It also raises the unanswered question under what statutory powers this transfer will occur.<br>And this question must be answered in order for any transfer of the functions and/or the root zone to occur. | Divergence<br>**Summary / Impression:**<br>- No support for proposal<br>- Consider that ccTLD Managers need accountability by ICANN Functions Manager<br>- Who owns the rootzone: will it be transferred and under what statutory powers?<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **20** | Govt-ES | The IANA stewardship transition and the accountability process should strengthen ICANN responsiveness to the demands of the global Internet community, enhance mechanisms to keep it accountable to that community and prepare ICANN for its globalization, which should remain as a priority for the organization. | Concerns<br>**Summary / Impression:**<br>- Process should strengthen ICANN responsiveness to demands of global internet community, enhance mechanisms to keep it accountable and prepare for globalization<br>- Globalization is a priority<br><br>**Actions suggested:**<br>No additional action.<br><br>**CCWG Response:**<br>Thank you for your comment. |

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| **21** | RySG | - The RySG believes the set of Work Stream 1 proposals contained in the interim report, if implemented, would likely provide sufficient enhancements to ICANN's accountability framework to enable a timely and responsible transition of IANA functions stewardship (in conjunction with the ongoing work of the IANA Stewardship Transition CWG).<br>- The RySG believes that ensuring that ICANN adheres to its mission, commitments, and core values are fundamental to ensuring ICANN accountability. As such, we strongly support that the Draft Proposal provides a clear statement of ICANN's Mission, as well as ICANN's commitments to the community and its Core Values that govern the manner in which ICANN carries out its Mission. Equally key is the ability of the global multi-stakeholder community to challenge decisions or actions of the ICANN Board and management, where the Board itself is no longer the ultimate authority in review of its own decisions. Appropriate checks and balances on power are the critical requirement.<br>- The RySG strongly supports the recommended enhanced community powers. However, RySG is concerned that these proposed and necessary community powers would be unenforceable under ICANN's current organizational and corporate structure.<br>- A number of additional concerns and questions raised by the Draft Proposal. These comments should not be taken to undermine our generally strong support for the accountability mechanisms proposed. | Agreement<br>**Summary / Impression:**<br>- Likely to provide sufficient enhancements to enable timely transition<br>- Ensuring ICANN adheres to mission and ability to challenge Board /management are fundamental<br>- Strongly supports enhanced community powers but they would be unenforceable under current structure<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **22** | CCG | - The phrase "public interest" is repeated extensively through the proposal including: 1. The "public interest" goal in the revised Mission Statement; 2. The role of "public interest" when balancing competing cores/commitments; 3. When language of AOC is imported into the proposed ICANN Bylaws, "public interest" finds mention. The proposal acknowledges that public interest has not been defined. Is the additional text – emphasizing the process through which it is identified -- sufficient, must a substantive definition be added? Commitments that ICANN shall work to the benefit of the public cannot get around the problem of defining what public interest is, given the corporation's context-specific functions.<br>- The ICANN Board is not bound by community feedback when it comes to changes in ICANN Bylaws, budget, strategic/operating plans (unlike the proposed Fundamental Bylaws). This is of concern. Community feedback should be binding on the board in instances involving budgetary decisions. Will the proposed voting structure of the EC etc. be included as a Fundamental Bylaw, making it difficult to change?<br>- A formal definition of "private sector-led" is required. | Concerns<br>**Summary / Impression:**<br>- Define public interest and private sector-led<br>- ICANN Board is not bound by community feedback when it comes to changes in ICANN Bylaws, budget, strategic/operating plans)<br>- Community feedback should be binding on Board<br>- Will voting structure be a Fundamental Bylaw<br><br>**Actions suggested:**<br>No additional actions.<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **23** | JH | The existing CCWG proposal is trying to solve two problems: (1) The membership mechanism is to empower the community; (2) The IRP Panel is to establish a mechanism of power separation: Empowered Communities make rule, ICANN board executive and IRP Panel make judgment. Those first two steps are very important and a good start. But the problem of ICANN Accountability and Transparency is still not fully solved yet. ICANN Accountability mechanism should answer: What to do if ICANN makes the wrong decision? This question related to three important parts: (1) What is a wrong decision? (2) Is it really wrong? (3) How to deal with the wrong decision? This proposal did not answer well yet. The reasons and my comments (words in black colors) will be followed with the questions in the Public Comment Input guideline of CCWG report (red color words). | Concerns<br>**Summary / Impression:**<br>- Membership mechanisms and IRP are a good start but will not solve problem<br>- Accountability mechanism should answer what to do if ICANN makes the wrong decision? What is a wrong decision? Is it really wrong? How to deal with wrong decision?<br><br>**Actions suggested:**<br>No additional action.<br><br>**CCWG Response:**<br>Thank you for your comment. Changes have been made in the 2 nd report with respect to IRP and RFR (Section 5.1 and 5.2) and the CCWG trusts that these address the concerns. |

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| **24** | BC | - BC supports the proposed rationale and definition for what must be in Work Stream 1 and believes that the proposed community powers in Work Stream 1 should be adequate to overcome any resistance from the ICANN Board and management to additional measures the community attempts to implement after the IANA transition is complete.<br>- BC believes that the community needs to have enforceable powers: To challenge Board decisions via an enhanced independent Review Process; To reject Board-proposed budgets and strategic plans; To reject (or in some cases, approve) Board-proposed changes to Bylaws; To recall ICANN Board Directors, individually or in total as a last-resort measure and is gratified to see these powers among the Work Stream 1 measures proposed by CCWG. BC is concerned that these powers might not be enforceable if we fail to adopt an Supporting Organization /Advisory Committee (SO/AC) Membership Model that takes advantage of powers available under California law and therefore encourages the CCWG to explain how Membership status can be created and maintained without undue costs, complexity, or liability.<br>- BC supports "mechanisms giving the ICANN community ultimate authority over the ICANN Corporation" and supports that "Mechanisms to restrict actions of the Board and management of the ICANN corporation" provided that Work Stream 1 powers are enforceable against the corporation. From legal advice provided to CCWG that may require us to adopt an SO/AC Membership Model to exercise statutory powers under California law.<br>- Work Stream 1 measures should be implemented before NTIA relinquishes the IANA contract. Implementation should include, at least, changes to ICANN Bylaws that establish community powers. Some implementation details could be accomplished post-transition, provided that the community has powers to force ICANN to take a decision on recommendations arising from a Review Team required by the *Affirmation of Commitments* . If ICANN decides not to implement Review Team recommendations, the enhanced IRP process give the community standing and a low-cost way to challenge and potentially overturn that decision. | Agreement<br>**Summary / Impression:**<br>- Supports Work Stream 1 proposal<br>- Needs to be adequate to overcome resistance from Board/Management<br>- Enforceable powers required<br>- If fail to adopt membership, powers might not be enforceable<br>- Explain how membership can be created<br>- Supports power giving ultimate authority to community and mechanisms that restrict Board /Management<br>- Implementation before NTIA relinquishes IANA contract. It should include Bylaws that establish powers. Details could be accomplished post transition provided Review Team given decision-making<br><br>**Actions suggested:**<br>Discuss "enforceability" as a requirement of enhanced accountability.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG trusts that the 2 nd report addresses most, if not all concerns. In particular, the new Community Mechanism addresses the request for enforceability sufficiently. |
| **25** | .UK | Generally we welcome the approach followed by the CCWG. The practical mechanisms proposed give a good framework on which to build and we support the general approach.<br>The draft has a heavy focus on legal structures and mechanisms for use where trust and confidence have already seriously broken down. While we recognise that it is important to have such clear safeguards, we would like to see a little more focus on building confidence and trust – processes that encourage better understanding between the communities and with the executive and the Board. This could include jointly agreeing remedial action and only if there were a failure to act would it then lead into an escalation process, should that be necessary.<br>This is fundamental – ICANN itself is the community and, as an organisation made of different stakeholder groups, there should always be tensions between different interests. Processes need to be more consensual than adversarial, and more needs to be done between communities at an early stage in policy development to build shared understanding.<br>We are concerned that many of the mechanisms identified in the proposal will be massively disruptive – nuclear options. One result of sanctions of such consequence is that they are considered unusable. | Agreement - Concerns<br>**Summary / Impression:**<br>- Supports general framework<br>- Focus on building trust and confidence. This could include jointly agreeing remedial action<br>- Processes need to be more consensual than adversarial.<br>Many of the mechanisms identified in the proposal will be massively disruptive – nuclear options<br><br>**Actions suggested:**<br>Consider the impact of the proposed measures on ICANN's operations.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG trusts that most, if not all, concerns are addressed in the 2 nd report. |

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| **26** | USCIB | USCIB urges you to consider that the overall transition process would benefit from closer coordination of the development of the CWG-Stewardship and CCWG Enhancing ICAAN Accountability proposals. As the two documents are parts of a complete proposal and must be considered together by the community, their contents and reviews should be coordinated. For example, cross-references can be included in the respective sections of each document and availability of the documents and their respective review cycles can be coordinated to enable a holistic review of the proposals.<br>Q1. Work Stream 1 proposals: We applaud the hard work by CCWG and all participants. Overall, we feel the draft Accountability proposal is high quality and inspires confidence that the final proposal will meet all requirements.<br>Implementation: We feel the estimate for Work Stream 1 implementation (roughly nine months) is reasonable and prudent, and would allow for a safe and smooth transition from NTIA stewardship to the global multi-stakeholder community. | Agreement<br>**Summary / Impression:**<br>- Closer coordination between CWG and CCWG needed<br>- Proposal inspires confidence<br>- Implementation estimate is reasonable<br><br>**Actions suggested:**<br>No additional action required.<br><br>**CCWG Response:**<br>Thank you for your comment. Coordination of CWG and CCWG is a priority for both groups. |
| **27** | LINX | - We have confidence that if implemented fully, incorporating the changes to the CCWG proposals that we suggest below, the total package would provide sufficient enhancement to ICANN's accountability for us to support IANA Stewardship transition. We would like to emphasise that this support relies upon the existence of effective, credible, independent and enforceable mechanisms to adjudicate claims that ICANN has acted contrary to its Bylaws and, in particular, that it has acted outside its Mission, and to ensure corrective action in the event of a finding against ICANN. We note that the mechanism to achieve ultimate enforceability, namely the creation of a membership model, members of which would have standing in court, is neither fully developed nor agreed in principle within the CCWG. Though we have our own doubts about whether the Reference Model is the best that can be achieved, this concern is not fundamental. What is fundamental is that the accountability changes must be legally binding and ultimately enforceable. If ICANN were able to disregard its own Bylaws, or disregard IRP rulings against it (whether arbitrarily, citing a broader public interest, or even in response to the Board's understanding of its own fiduciary duty diverging from the Bylaws), then there would be no accountability worth the name. We would not be able to support IANA Stewardship transition unless credible, independent, binding and enforceable accountability mechanisms are created.<br>- Review and redress: We will only be able to support the end of NTIA's role as redress of last resort if we are satisfied that there is clear statement of the intended scope of ICANN's authority, and an effective, credible and enforceable mechanism to limit ICANN' s activities to its intended scope. | Agreement<br>**Summary / Impression:**<br>- Sufficient enhancements provided enforceable mechanisms<br>- Although doubts about Reference Model, fundamental changes must be legally binding<br>- Will support end of NTIA's role if satisfied effective, credible and enforceable mechanism<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **28** | ISPCP | We welcome the efforts to define ICANN's mission more precisely, and to provide an enforceable, binding IRP so as to provide confidence that ICANN will remain within its properly authorised scope. We consider this element of the CCWG proposal to be an essential precondition for IANA transition. | Agreement<br>**Summary / Impression:**<br>- A precise mission and binding IRP are an essential precondition to transition<br><br>**Actions suggested:**<br>No additional action required<br><br>**CCWG Response:**<br>Thank you for your comment |

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| **29** | JPNIC | It is important to maintain the stability of ICANN, as an organization operating the management of the critical internet resources, as well as a forum of policy development for the names related policies.<br>JPNIC would like to recommend the following general principles in considering ICANN Accountabilities.<br>* Accountability proposal should ensures open, bottom-up and community based decision making process in policy development;<br>* Proposed accountability mechanism should be simple to be comprehensible and pragmatically adoptable in reasonable timeframe; * Accountability proposal and its implementation should not be a delaying factor in the IANA Stewardship Transition.<br>We would like to raise caution of over considering accountability measures which could lead to destabilizing the organization by putting excessive challenges to ICANN Board and/or secretariat decision, which are needed to carry out the activities under its mission. Further, overly complex system often leads to instability, with unintended affect which makes it harder to be identified when making changes, and it makes it harder for the parties to use such mechanisms when in needs. | Concerns<br>**Summary / Impression:**<br>- Maintain stability of ICANN<br>- Ensure bottom-up process<br>- Mechanism should be comprehensible and pragmatically adoptable and not delay transition<br>- Overly complex system will lead to instability<br><br>**Actions suggested:**<br>No additional action required.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has strived for making its recommendations easy to understand and keeping implementations of the recommendations as lean as possible while meeting all requirements that are deemed important. |
| **30** | Govt-IT | There is a need to improve ICANN transparency, accountability and redress mechanisms.Furthermore, there is necessity for strengthening ICANN accountability and providing for effective and affordable means of redress, with adequate guarantees of independence.<br>The role of the GAC is to provide ICANN with “advice on public policy aspects of specific issues for which ICANN has responsibility. This is an important dimension of ICANN’s work”. Nevertheless, in the current framework, the GAC held only a non-voting position in the Board of Directors of ICANN. In the new model, it might be considered that GAC could appoint at least a Voting Director in the Board. | Agreement – New idea<br>**Summary / Impression:**<br>- Need to improve accountability<br>- GAC has non-voting position in Board of Directors. In new model, could appoint a voting Director<br><br>**Actions suggested:**<br>No additional action requirement.<br><br>**CCWG Response:**<br>Thank you for your comment. The role of the GAC has been the subject of extensive discussions in the CCWG. |
| **31** | CWG-St | The CWG-Stewardship's proposal has dependencies on and is expressly conditioned upon, the work of the CCWG-Accountability and the outcomes we anticipate. We are encouraged by your understanding that the CCWG Accountability initial proposals meet the CWG Stewardship expectations and moreover, that within your group's deliberations, the ability to meet these requirements has been rather uncontroversial. Including the ability for the community to have more rights regarding the development and consideration of the ICANN budget. | Agreement<br>**Summary / Impression** :<br>- Dependencies on CCWG work<br>- Proposal meets expectations<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment |

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| **32** | IPC | - IPC remains concerned that sufficient impetus will remain post-transition to implement the WS2 recommendations, the powers proposed in WS1 appear sufficient to ensure the community can expand ICANN reform efforts if they so choose. In all likelihood, the proposed changes in WS2 will be subject to experimentation, review and update and will result in evolutionary change within ICANN.<br>- However, the IPC notes that the power to enforce decisions by the community to review board decisions, reject budgets, scrutinize bylaw changes and recall the board (or individual members) is critical for these accountability mechanisms to be effective. Absent the membership structure or some equivalent, the ICANN community would find itself back where it began at the start of this exercise.<br>- The IPC supports the notion that ICANN should ultimately be accountable to its community and believes the proposed measures in WS1, if enforceable, provide that ultimate accountability. That said, the IPC is anxious to see the process of reform continue after the IANA contract expiration to enable a more finely tuned framework of accountability that will serve the interests of all parts of the community. Operational accountability will be in the details, not the broad strokes outlined in WS1.<br>- However, the IPC also believes that the focus on Board accountability is too narrow. Many of the issues that arise in ICANN's activities and cause concerns in the community stem from actions by senior management rather than the Board. We recognize that the Board is ultimately responsible for the actions of management, but this is indirect oversight and accountability at best, since many management actions occur without express Board approval. We urge the CCWG to consider mechanisms whereby the actions and inactions of management are also held accountable to the community. | Agreement - Concerns<br>**Summary / Impression:**<br>- Sufficient impetus will remain post transition<br>- Power to enforce decisions by community and membership structure are critical<br>- WS1 measures if enforceable provide accountability<br>- Consider mechanisms whereby action and inactions of Board management are held accountable<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment |

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| **33** | Govt-BR | - Brazil believes it is crucial to make sure the this process is structured in a way that all stakeholders feel fully involved – including governments - in order to ensure that the final outcome of the exercise is also considered legitimate by all participants.<br>- The U.S. government has provided the global community with an unparalleled opportunity to reflect on which steps should be taken to ensure that the post-2015 ICANN would be an organization with unchallenged legitimacy. That goal could only be achieved, in our view, if the "legal status" of the corporation would also be included in the "package" of items to be addressed in the transition proposal.<br>- Brazil considers that enhancing the legitimacy of ICANN before all its stakeholders, including governments, requires the adoption of a "founding charter" agreed upon by all stakeholders in replacement of the present pre-determined status of ICANN as a private company incorporated under the law of the state of California.<br>- The government of Brazil, in line with the model for Internet governance adopted domestically, is not advocating that ICANN should be governed by an intergovernmental agreement, this "founding charter" should be negotiated and agreed upon by the global multistakeholder community, including, but not limited to, governments.<br>- Brazil s main concern is not correctly captured, on the other hand, by the notion that ICANN should move out of the U.S.<br>- What we have defended throughout the process is that, unless the issue regarding the "legal status" of the corporation is adequately addressed, any attempt to reform its practices and to establish new governance or accountability mechanisms will be limited, at the end of the day, by the fact that any proposed changes will have to adapt to an existing legal status. From the Brazilian perspective the existing structure clearly imposes limits to the participation of governmental representatives, as it is unlikely that a representative of a foreign government will be authorized (by its own government) to formally accept a position in a body pertaining to a U.S. corporation.<br>- In the spirit of the Tunis Agenda and the NETmundial s related provisions, Brazil certainly believes governments have a role and responsibility in regard to issues addressed by ICANN, in particular regarding their perspective on how public interest should be considered in the corporate s initiatives and decisions – an obligation which, by the way, ICANN is committed to uphold.<br>- Brazil perceives the current IANA stewardship transition and the accountability review processes as important steps towards the internationalization of ICANN.<br>- In the post-transition period, the corporation should become a truly international entity which is accountable not only to a limited group of stakeholders in specific regions, but rather to the worldwide multistakeholder community.<br>- The Brazilian government understands the sense of urgency that is guiding the work of the CCWG-Accountability, the quality of the recommendations should have a higher priority than the accomplishment of deadlines. | Concerns – New Idea<br>**Summary / Impression:**<br>- Make sure process structured in way that all stakeholders are involved<br>- Adopt founding charters agreed upon all stakeholders in replacement of current status to reach unchallenged legitimacy<br>- Existing structure imposes limits to governments' participations. Governments have a role<br>- Transition and accountability are important towards internationalization<br>- Accountable to worldwide multistakeholder community<br>- Quality over deadlines<br><br>**Actions suggested** :<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment. The role of Governments has been thoroughly discussed including the points raised by Brazil. |

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| **34** | MPAA | - MPAA stresses the importance of transparency and believe the ICANN community must receive fair, complete and timely access to all materials relevant to the ICANN decision-making process.<br>- Specifically we believe that additional transparency of ICANN's dealing with governments is required to prevent government capture or undue ICANN influence on public policies unrelated to ICANN's core mission. Governments could seek to control ICANN decision making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use it tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.<br>- Therefore, we suggest that an additional bylaw be added that requires ICANN or any individual acting on ICANN's behalf 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. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN.<br>- MPAA fully supports the views of the CCWG-Accountability team requiring Work Stream 1 accountability changes must be committed to and implemented before any transition of IANA stewardship from NTIA can occur. | Agreement - New Idea<br>**Summary / Impression:**<br>- Transparency: complete and timely access to all materials relevant to decision-making, dealing with governments<br>- Add a Bylaw that require ICANN to make public disclosure of relationship with government official, activities, receipts and disbursements<br>- Supports view that committed to or implemented before transition<br><br>**Actions suggested:**<br>Discuss the bylaw change suggested.<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **35** | CDT | CDT has long called for ICANN to have greater accountability to its community and for it mission to be appropriately circumscribed. The measures proposed by the CCWG go a long way to satisfying both of CDT's priorities. As the work on the CWG has focused increasingly on an ICANN affiliate structure for the post transition IANA (PTI) – a model that effectively makes ICANN the IANA steward, contracting party and operator (at least initially) - the dependencies on the work of the CCWG Accountability, and particularly Work Stream 1, have grown. A mechanism that empowers the ICANN community – as is outlined in the proposal – has therefore become central, indeed essential, to the neutrality, transparency and effectiveness of the IANA functions – and therefore the stability, security and resilience of the DNS. | Agreement<br>**Summary / Impression:**<br>- Mechanism that empowers community has become central to neutrality, transparency, effectiveness of IANA functions and therefore SSR<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment |
| **36** | CIRA | - I commend the CCWG for addressing the dependencies between the IANA stewardship transition and enhancing ICANN accountability processes identified by the CWG in its April 15, 2015 letter. As these two processes are inextricably linked, it is critical that the mechanisms and processes identified by the two working groups integrate seamlessly.<br>- Overall, this document provides a comprehensive approach to enhance ICANN's accountability. The CCWG has done a good job of identifying the standards by which, and to whom, ICANN should be held accountable. However, while I believe enhancing the structures and mechanisms to ensure accountability and transparency are important, trust in an organization is only truly possible when accountability is 'baked in' to its very culture. I urge the CCWG to explore tools that would enable an ICANN culture that takes accountability and transparency as the starting point for its activities, and not added as a mandatory component to meet obligations set out by the community.<br>- CIRA will submit a more detailed commentary on the revised draft during the second public comment period. | Agreement - New Idea<br>**Summary / Impression:**<br>- Applaud CCWG for addressing CWG dependencies<br>- Good job but accountability needs to be baked into culture.<br>- Consider a structure where accountability and transparency as starting point, not added as mandatory component<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG trusts that the concerns are addressed in the 2 nd report. |

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| **37** | SR | - I applaud the work of the ccwg-accountability team and appreciate the opportunity to comment.<br>Your proposal to replace the current US government backstop on IANA function oversight by empowering ICANN's current membership structure is both simple and efficient.<br>- The past few years of mismanagement inside ICANN have demonstrated a necessity to place such overriding powers outside of the management and board.<br>- Your framework offers a mechanism to not only fix the problems of inexperienced or mismatched (with mission/core values) management but to also shine a brighter light on internal operations to improve much needed transparency.<br>- With the ability to recall the board or dismiss individual board members as well as directly effect board/management/staff decisions on strategic plans and budget, the community will finally have an effective recourse to such self-serving behavior.<br>- Furthermore, enshrining a mechanism for the community to veto or approve ICANN's bylaws, mission, commitments and core values is an excellent way to ensure ICANN only attracts the right talent in the board and executive levels.<br>- Your detailed work on the bylaws is most welcome as they have long needed updating to align with what ICANN actually does and be strengthened to limit mission creep...and to ensure ICANN's decisions are for public benefit - not just a particular set of stakeholders or ICANN itself.<br>- I believe your proposals made in the Report will solve the numerous problems extending up and down the current and future management chains, ensuring accountability, and going a long way to making the multstakeholder experiment succeed and become a model for others. | Agreement<br>**Summary / Impression:**<br>Applaud CCWG for simple and efficient approach<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment |
| **38** | USCC | In particular we are pleased that a plan for accountability has procedures in place to ensure real accountability through legal enforceability. The Chamber recognizes that there has been discussion in the CCWG around the use of the term “private sector” (see e.g. paragraph 66). For simplicity, we recommend affirming that private sector refers to any non-governmental entity (see paragraph 841), which includes business, academia, civil society, and any other groups that are neither government nor fully government controlled. This affirmation will prevent unnecessary confusion and uphold long standing usage and global interpretation of the phrase “private sector.” | Agreement<br>**Summary / Impression:**<br>- Plans to ensure real accountability<br>- Suggests private sector definition<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment |
| **39** | INTA | - INTA strongly believes that ICANN must be accountable to the Internet community as a whole (“Community”) and that the proposals set forth in Work Stream 1 provide an excellent starting point. However there is much work to be done.<br>- INTA supports keeping ICANN as a public benefit (non-profit) corporation domiciled in California. ICANN’s status as a public benefit corporation in California allows the members to have greater input within ICANN and improve ICANN’s overall accountability.<br>- The Community as a whole has worked with ICANN in its present form for many years now and is familiar with ICANN’s abilities (and inabilities) as governed by California law. Any change to that status at the present time would bring more uncertainty to a system and process that needs stability. | Agreement<br>**Summary / Impression:**<br>- Excellent starting point but much work to be done<br>- Supports ICANN in California; it allows members to have greater input<br>- Any change to jurisdiction would bring uncertainty<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |

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| **40** | .NZ | - .NZ Supports the SO/AC Membership model as the best way to empower the whole community, and broadly supports the specific initiatives proposed by the CCWG. To make this accountability a reality, the CCWG must develop a proposal that delivers meaningful accountability to that community. Such accountability must be, as the current mechanism is, legally watertight and, should matters require it, enforceable in a court of competent jurisdiction.<br>- Its nature as an unbroken chain of accountability is one underlying reason why InternetNZ supports the membership model proposed by the CCWG. Another reason is that InternetNZ is a membership organisation, and as such is well familiar with the governance framework that the membership model would allow We note that there has been considerable discussion on the CCWG email list regarding the importance of enforceability.<br>- InternetNZ regards enforceability as an essential ingredient in accountability: accountability does not exist if the tools that purport to allow it can be ignored by the party being held accountable.<br>- [the WS1] proposals are sufficient to allow the IANA Stewardship transition to occur, as long as they are in essence implemented, and as long as the framework within which the proposals are implemented is one that is enforceable. | Agreement<br>**Summary / Impression:**<br>- Supports CCWG proposals and membership model as best way to empower community<br>- Enforceability is essential<br>- Sufficient to allow transition as long as implemented and enforceable<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment |
| **41** | ITI | While there are still important areas yet to be addressed, we support the direction reflected in the draft proposal. If adopted, as we believe it should be, we are confident that the proposed accountability enhancements will help engender and strengthen trust and confidence in ICANN.<br>We applaud the CCWG-Accountability for its work on this important initiative, and look forward to the opportunity to evaluate a more complete proposal during the next round of review and comments. | Agreement<br>**Summary / Impression:**<br>While areas yet to be addressed, support proposals – it will create trust in ICANN<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment |
| **42** | HR2251 | - I have been observing with interest the multi-stakeholder community process to develop a proposal for a transition in Internet governance, particularly the work of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), and I support your efforts to enhance accountability within ICANN in the absence of U.S. oversight.<br>- ICANN shall remain subject to United States law (including State law) and to the jurisdiction of United States courts (including State courts).<br>- The United States Government has been granted ownership of the .gov and .mil top-level domains. | Agreement<br>**Summary / Impression:**<br>- Supports CCWG proposals<br>- ICANN shall remain subject to US law. US Govt has ownership of .gov and .mil TLDs.<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment |
| **43** | NCSG | NCSG supports the empowerment of the ICANN community through the 6 powers identified in the proposal. These powers are central to enhancing ICANN's accountability and appropriate tools for community empowerment. | Agreement<br>**Summary / Impression:**<br>6 powers are central<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment |
| **44** | MM | The CCWG has strived to confront many of ICANN's key accountability problems and on the whole it is making tremendous progress toward that goal. In these comments, I address the proposal's treatment of ICANN's mission and scope, its amendments to the independent review process, and its membership proposal. On the first two points, I largely agree with what the CCWG proposes; on the third (membership) I think you need to make some major revisions. | Agreement<br>**Summary / Impression:**<br>- Largely supports CCWG proposals but major revisions needed<br>- ICANN is making tremendous progress towards accountability<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment |

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| **45** | GG | - For the IANA transition to be successful, it is essential that the organization carrying out those functions be accountable to its customers and the multistakeholder community. Among other things, the community must have confidence that the organization makes decisions in a fair, impartial, and transparent fashion; that the organization has a mechanism in place for relevant stakeholders to appeal decisions if necessary; and that the organization remains focused on its core mission and executes that mission efficiently. With these goals in mind, Google appreciates the work of the Cross Community Working Group on Accountability (CCWG-Accountability) to develop an Accountability Initial Draft Proposal (Proposal) to enhance the accountability of ICANN, the organization currently carrying out the IANA functions pursuant to a contract with NTIA. We agree with much of the Proposal; the suggested reforms, if enacted, will be important enablers of a successful and durable IANA transition. Moreover, the Proposal and the reforms contained therein are evidence of the multistakeholder community's ability to reform itself from within, based on a clear-eyed understanding of areas that need improvement.<br>- With these goals in mind, Google appreciates the work of the Cross Community Working Group on Accountability (CCWG-Accountability) to develop an Accountability Initial Draft Proposal (Proposal) to enhance the accountability of ICANN, the organization currently carrying out the IANA functions pursuant to a contract with NTIA. We agree with much of the Proposal; the suggested reforms, if enacted, will be important enablers of a successful and durable IANA transition. Moreover, the Proposal and the reforms contained therein are evidence of the multistakeholder community's ability to reform itself from within, based on a clear-eyed understanding of areas that need improvement.<br>- We believe that the majority of the changes described in the Proposal strike the right balance: they provide a meaningful check on ICANN without compromising administrative efficiency.<br>- We believe that the Proposal could be improved in a few key respects. We detail each of these areas below, but in general, Google believes that some of the proposed measures may unnecessarily create operational inefficiencies and undermine confidence in the finality and predictability of ICANN's decision-making process -- without necessarily improving accountability along the way.<br>- Google recognizes the importance of enhancing ICANN's accountability to its customers and the broader multistakeholder community. In our view the suggestions outlined in the Proposal represent an important first step in achieving this goal. We look forward to working with the CCWG-Accountability in refining these proposals and ensuring that ICANN conducts its important work in an accountable, competent, and efficient way. | Agreement - Concerns<br>**Summary / Impression:**<br>- Supports CCWG proposals<br>- Majority of changes strike the right balance<br>- Some of proposals measures may create operational inefficiencies and undermine confidence in finality and predictability of ICANN's decision-making without necessarily improving accountability<br>- Proposals should be refined to ensure ICANN conducts its important work in an accountable, competent, and efficient way.<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |

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| **46** | Board | - The ICANN Board thanks the CCWG-Accountability for all of its work leading to the first draft proposal of mechanisms to enhance ICANN accountability in light of the changing historical relationship with the US Government. As the CCWG Accountability prepares its proposal, the Board has some comments, observations and questions for the CCWG to consider. We provide these below, and look forward to continued discussions, including at the upcoming ICANN 53 meeting.<br>- As discussed at ICANN52 in Singapore, the Board reiterates that the main areas of proposed enhancements are items that the Board supports. We understand and appreciate how important these changes are to the CCWG-Accountability, and agree that there is a path forward to achieve the community powers and enhancements identified in the CCWG-Accountability's first report. We recognize the importance of affording the ICANN community a voice in assuring that the Strategic Plans of ICANN are within ICANN's mission, that budgets support the mission, and that the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community. We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior. We agree that the Independent Review Process needs to be refined; with the standard better defined to meet the needs of the community, and that it is important to have binding decisions arising out of that process, as appropriate. As we noted in Singapore, we are far more closely aligned with the CCWG-Accountability than many in the community might realize. | Agreement<br>**Summary / Impression:**<br>- Supports the main areas of proposed enhancements<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **47** | CENTR | - CENTR welcomes the opportunity to comment on the first public draft of the CCWG-Accountability paper relating to Work Stream 1 that aims to improve and refine ICANN accountability mechanisms prior to the IANA Stewardship transition. We would like to acknowledge the complexity of the work and compliment the working group for having managed to produce a list of recommendations that represents a good first step even though they are not supported by the consensus of the working group.<br>- The CENTR Board would like to acknowledge the valuable work done by the CCWG.<br>Recommends that the CCWG further investigates the membership model from a legal perspective and present an ad-hoc paper about it to the community to explain who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members as well as possible financial and administrative provisions of such a body;<br>- CENTR reiterates the request that ICANN be more transparent in terms of IANA's function costs and their itemization.<br>- CENTR is supportive of the IANA Function review to take place no more than two years after the transition is completed, but believes that subsequent reviews should occur more regularly and not every five years. | Agreement<br>**Summary / Impression:**<br>- Valuable work<br>- Further investigate membership model from legal perspective and present ad-hoc paper to community to explain<br>- IANA to be more transparent in IANA functions costs<br>- Supports IANA Function review to take place no more than two years after transition is completed but believes subsequent review should occur more regularly (not every five years)<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment. The CWG has requested certain transparency for the ICANN budget and we trust that this is sufficient to address your concern regarding the cost. The CCWG will make this CWG requirement part of its recommendations. |

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| **48** | I2Coalition | The i2Coalition appreciates the work of the CCWG, and we broadly support the proposal's direction. In particular, we appreciate that the CCWG shares two of our key goals: (1) ensuring that ICANN remains focused on its core mission of coordinating the global Internet's systems of unique identifiers and ensuring the stable and secure operation of the Internet's unique identifier systems, and (2) creating a binding mechanism and enforceable community empowerment by which actions outside of or in contravention of ICANN's bylaws can be challenged. I2Coalition believes it represents a strong starting point for continued discussions on improving ICANN's accountability. We look forward to continuing the work with the group as it moves toward finalizing the proposals. | Agreement<br>**Summary / Impression:**<br>- Broadly supports proposal's direction<br>- Share goals of mission and IRP<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **49** | CCAOI | CCAOI wishes to thank the CCWG for providing the opportunity to comment on the Initial draft on Proposed Accountability Enhancements (Work Stream 1). Accountability and Transparency of ICANN to the global community, we believe is critical for the smooth running of the IANA Functions. | Agreement<br>**Summary / Impression:**<br>- Critical for smooth running of Functions<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **50** | NIRA | - NIRA welcomes the work done by CCWG-Accountability since its creation. In addition to supporting the announcement by NTIA to transition its stewardship role in the IANA Functions to the global multi-stakeholder internet community, NIRA supports the proposal of strengthening ICANN Accountability by empowering the ICANN community to have an oversight role in processes and activities of the ICANN Corporate. However, given that ICANN is still under the Californian law, there may be need to explore other jurisdictional legal requirements that can provide flexibilities being sought for/recommended by the CCWG.The globalization of ICANN should be pursued further.<br>- If implemented or committed to, would provide sufficient enhancements to ICANN's accountability to proceed with the IANA Stewardship transition.<br>- In general, NIRA supports the work done so far. However, NIRA thinks the implementation should be clearly stated for the community to be well informed and aware of the legal implications of the proposal. The review mechanisms being proposed should be harmonized with any such reviews being proposed by the three operation communities who are direct customers of IANA. | Agreement - New Idea<br>**Summary / Impression:**<br>- Supports proposal by empowering community<br>- There may be need to explore other jurisdictional requirements that can provide flexibility<br>- Globalization should be pursued further<br>- Implementation should be clearly stated<br>- Harmonize review mechansims with reviews proposed by three operational communities<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **51** | ALAC | In general the ALAC is supportive of the direction being taken by the CCWG and will provide guidance on a number of issues, some of which the CCWG is explicitly seeking, and others where the ALAC believes that reconsideration may be required. | Agreement - Concerns<br>**Summary / Impression:**<br>- Supportive in general<br>- Will provide guidance on where reconsideration may be required<br>- Believes that reconsideration may be required<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment |

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| **52** | LAB | - I commend the CCWG-Accountability for producing a set of draft proposals that, if adopted, will substantially strengthen accountability mechanisms within ICANN. Concomitantly, I support the thrust and mechanics of the reforms being proposed.<br>- I concur, for the most part, with the views of my fellow Advisors, Jan Aart Scholte and Willie Currie, as set out in their respective comments on the draft proposal. In particular, I find the suggestions by Currie of establishing a "Public Accountability Forum" and a "Mutual Accountability Roundtable" well worth considering. Although I am not convinced that the latter will fully resolve the issue of who will "guard the guardians", it seems a step in the right direction. | Agreement - Concerns<br><br>**Summary / Impression:**<br>- Supports thrust and mechanisms<br>- Concurs with WC and JS, especially Public Accountability forum and Mutual Accountability Roundtable.<br>- who will "guard the guardians"<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **53** | RSSAC | RSSAC has reviewed the CCWG-Accountability Work Stream 1 Draft Report. We have no consensus comments on the substance of the CCWG proposal at this point, as we understand the purpose of the CCWG-Accountability group's efforts but find the impacts of the current proposal difficult to evaluate. | Concerns<br>**Summary / Impression:**<br>Difficult to evaluate<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment the CCWG is looking forward to further exchanges. |
| **54** | SSAC | The Security and Stability Advisory Committee (SSAC) welcomes the opportunity to comment on the Cross Community Working Group (CCWG) Proposal on ICANN Accountability Enhancements (Work Stream 1). | **CCWG Response:**<br>Thank you for your comment the CCWG is looking forward to further exchanges. |
| **55** | CAICT | This Draft is a significant step forward in enhancing the process of developing ICANN accountability program, and is the basis of further discussions among the communities.<br>Since CCWG's draft proposal has critical impact on the transfer process and ICANN's future institutional design, CAICT provides the following suggestions: first, CWG and CCWG's plans should be taken into consideration as a whole, with both accountability and transparency mechanism design issues resolved prior to transfer, and the transfer can happen only when both of the plans are confirmed by the communities; second, CCWG's draft proposal should first reach consensus within each community and then get consensus of all communities; third, CAICT hopes the US government show its opinion on CCWG draft proposal in GAC as early as possible, and comply with GAC's consensus; fourth, enhance power of the communities, as changing the existing operating mechanism of ICANN is a major change that demands comprehensive assessment and careful decision making, not only considering the impact of US laws, but also asking for comments from governments and communities of other countries, showing respect to different requirements for accountability in different countries, and considering the possibility and feasibility of ICANN signing AOC with governments of different countries or their representative organizations; fifth, enhancing accountability requires changing council election mechanism, reforming NomCom and enhancing its accountability and transparency to the communities, and strengthening the review and supervision rights of governments of various countries and GAC over decisions related to public policy. | Confusion - Divergence<br>**Summary / Impression:**<br>- CWG and CCWG work needs to be coordinated<br>- CCWG proposal needs buy-in from each community before broader support<br>- Seeking USG feedback on proposal sooner rather than later<br>- Community empowerment by changing ICANN operations, signing AoCs with other countries<br>- Reforming NomCom and increasing government authority of public policy related decisions<br><br>**CCWG Response** :<br>The CCWG agrees with you that its work needs to be coordinated both within the group, and more broadly through the SO/ACs and the CWG.<br><br>Certain issues, such as signing the AoC with other countries and reforming NomCom, are longer term and are not appropriate for WS1. These are issues that can be considered for the broader work of WS2. |

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| **56** | SB | I wish to contribute with my **own** views to the discussion, adding my user perspective, coming from an end user of the Internet.<br>The original version of this text is in French.<br>To make it clear (and transparent), I wish to inform the readers of my involvement (past and current) in and around ICANN.<br>• I first started following ICANN activities in 2001 as a voice for corporate users (France).<br>• Elected chair of the French chapter of the Internet Society in 2004 and participated in the creation of EURALO in 2007. ALAC member (2007 2010).<br>• Member of the ICANN Board of Directors, appointed by At Large: 2010 2014.<br>• Member of the Board of IFFOR: 2011 2014.<br>• Member of the Board of Directors of AFNIC, appointed by the users committee (2013 2016).<br>• Member of the CCWG Accountability appointed by Euralo/At Large<br>• **Complexity**<br>The proposals of the CWG IANA Stewardship Transition added to those of the CCWG Accountability are too complex.<br>*Not to mention the proposals which will come from the IANA Stewardship Transition Coordination Group (ICG.)*<br>o Especially if one takes into account the new structures that are proposed, the members of which will be chosen among those involved with the work of ICANN.<br>o How many structures and how many members?<br>PTI – Post Transition IANA (3 to 5 members)<br>CSC – Consumer Standing Committee (4 memb + x + 1 liaison)<br>IFRT – IANA Function Review Team (11 members + 1 liaison)<br>SCWG – Separation CCWG (12 members + 2/4 liais)<br>The "community" (29 members)<br>o A clear objective must be the **prohibition to hold multiple offices** .<br>o For all these structures, we must therefore find more than 60 people with the necessary skills and diversity.<br>• **Elections**<br>o Regardless of whether it is for existing or for new structures, an elections office must be created to ensure the due consideration of<br>an open and transparent process;<br>the bylaws;<br>diversity;<br>the prohibition to hold multiple offices (at any given point in time or / throughout time);<br>…<br>• **Systematic view**<br>o In order to ensure an acceptable end result which is understandable and implementable, it is absolutely necessary to have a systematic consideration:<br>Of ICANN as an organization;<br>Of its reviews by<br>• Structure;<br>• Topic.<br>Of the proposals<br>• Of the CWG IANA Stewardship Transition;<br>• Of the CCWG Accountability;<br>• Of the IANA Stewardship Coordination Group (ICG). | Concerns - New Idea<br>**Summary / Impression:**<br>- The process is complex (including CWG and ICG)<br>- Suggestion to prohibit community members from holding multiple offices on future structures (PTI, CSC, etc.)<br>- Suggestion for an elections office to monitor elections<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **57** | ZR | It is suggested that a special session for topic of Accountability could be added in future each ICANN meeting, in which ICANN could introduce its implementation efforts regarding how accountable to the global public interests and what kind of improvement achieved to meet the requirements raised by the communities. | Agreement - New Idea<br>**Summary / Impression:**<br>Special session for accountability which introduces improvements achieved.<br><br>**Actions suggested:**<br>Discuss proposed accountability forum.<br><br>**CCWG Response** :<br>The CCWG will consider the suggestion made. |

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| **58** | RIR | - The RIR community appreciates the CCWG efforts to take into account the timelines of the IANA stewardship transition project.<br>- At the same time the ASO representatives would like to echo concerns expressed by members of the numbers community with regards to the implementation of the proposed amendments. Specifically, that the implementation of all accountability mechanisms identified in Work Stream 1 could be a delaying factor to the - IANA stewardship transition.<br>- The RIR community understands that the intention of Work Stream 1 is to identify measures that should be taken before the IANA transition can occur, and urges a review of all measures against the proposed transition timeline such that the transition is not unreasonably delayed. | Concerns<br>**Summary / Impression:**<br>- Concerned with regards to implementation of proposed amendments. They could be a delaying factor<br>- Urges a review of measures against proposed transition timeline<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **59** | DotMusic | - DotMusic supports the creation of a meaningful framework that would hold both the ICANN Board and ICANN Staff accountable to serve the global public interest and to enhance trust. DotMusic commends the CCWG for its efforts in submitting the initial draft proposal to the community for review. Overall, DotMusic is supportive of the accountability framework proposed by the CCWG. It is essential that an appropriate and meaningful accountability framework be in place before the IANA Functions contract expires.<br>- The current ICANN accountability framework is inadequate. Furthermore, any ICANN accountability framework that will be implemented requires mechanisms for enforcement to be effective.<br>- DotMusic concludes that the Initial Draft Proposal by the CCWG constitutes a significant first step towards increasing ICANN's accountability and commends the CCWG for their work. | Agreement<br>**Summary / Impression:**<br>- Supports creation of meaningful framework that would hold Board and staff accountable<br>- Supports proposed framework<br>- Mechanisms required to be effective<br>- Draft proposal is significant step towards accountability<br><br>**Actions suggested:**<br>No action required<br><br>**CCWG Response:**<br>Thank you for your comment. |

**Methodology**
**SUMMARY for Methodology:**

Number of comments: 26
Number of agreements: 6
Number of concerns: 16
Number of confusion: 4
Number of divergence: 3
Number of new ideas: 3
NB: some comments are classified in two or more categories

**Abstract**
While a number of comments are globally positive on the methodology, concerns are raised regarding the complexity of the proposal, and several commenters regret the short duration of the public comment (30 days). At the same time, more details were requested (impact analysis, clearer and more detailed timelines…). Several commenters also called for intensification of outreach efforts. The ICANN Board suggested working with staff on a draft project plan for implementation.

**Action items for CCWG:**
- Ensure 2 nd public comment period is 40 days
- Consider ways to make report easier to read
- Develop and refine timelines

| # | Contributor | Comment | CCWG Response/Action |
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| **60** | JS comment 1 | - The proposal relies quite heavily on 'the (global) public interest' as an ultimate criterion of policy evaluation. Yet, the concept 'public interest' can be quite problematic in practice. 'The public interest' can very much lie in the eye of the beholder. Moreover, the concept can be abused by the powerful to claim that their advantages are for the collective good. The (global) public interest could be 'identified through the bottom-up multistakeholder policy development process'; however, this would make it all the more imperative to ensure that the multistakeholder mechanisms are not dominated by powerful special interests and equitably involve all affected circles.<br>- Motivate why 'the community' should have more influence on certain Board decisions. Currently para 12 simply affirms this point, without giving any rationale.<br>- The jurisdiction issue – which for many observers lies at the heart of ICANN accountability challenges – is mentioned only once (para 688/2) and then in order to defer the issue. Will critics pick up on this point? | Concerns – Confusion<br>**Summary / Impression:**<br>- Public interest can be problematic. It can be abused by the powerful. It could be defined by bottom-up but it would it imperative to ensure mechanisms are not dominated by special interest<br>- Concept of independence is given no specification<br>- Motivate why community should have more influence on certain Board decisions<br>- Jurisdiction mentioned once<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **61** | auDA | - auDA welcomes the CCWG's methodical efforts in attempting to meet its goals. auDA agrees that it was appropriate for the CCWG to: 1) identify an inventory of existing accountability mechanisms; 2) list contingencies ICANN must be safeguarded against; and 3) develop a set of stress tests to assess whether the CCWG's proposed architecture protects against these contingencies.<br>- auDA agrees with the CCWG's assertion that "accountability" is comprised of a series of dimensions: transparency, consultation, review and redress.<br>- auDA agrees with the key "building blocks" that the CCWG has identified as the basis for ICANN's future accountability.<br>- auDA believes that the most efficient and effective method of implementing the principles and goals identified by the CCWG would be the refinement and strengthening of mechanisms that already exist. Many have been developed by the community (or received input from the community) and have been used by ICANN for a number of years as part of existing commitments to accountability and transparency. They are well established and well developed and therefore form a logical basis for future work. auDA notes that the CCWG proposes a number of improvements to these mechanisms and functions and encourages the group to make these areas its primary focus as it finalises its recommendations. | Agreement<br>**Summary / Impression:**<br>- Agrees with listing of inventory, contingencies and stress test<br>- Agrees accountability is comprised of dimensions<br>- Agrees with building blocks<br>- Refine, focus on and strengthen well-establishing and existing mechanisms<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |

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| **62** | DBA | - It is positive that GAC's input (principles) to the CCWG Accountability appears to have been taken into consideration. However, there are still substantial issues (political and juridical) to be addressed before the transition of the IANA Functions to ICANN and the global multistakeholder community could take place. This includes how to organize the Community and ensure an appropriate role for governments in its advisory role.<br>- We are, however, concerned about the complexity of the document as this will make it more difficult to ensure effective participation in the process. This makes the communication and outreach strategy even more important and efforts should be made to engage the broader global community and reach out to stakeholders outside of ICANN. | Agreement - Concerns<br>**Summary / Impression:**<br>- Agrees with listing of inventory, contingencies and stress test<br>- Agrees accountability is comprised of dimensions<br>- Agrees with building blocks<br>- Refine, focus on and strengthen well-establishing and existing mechanisms<br>- There are still substantial issues (political and juridical) to be addressed<br>- Need to ensure an appropriate role for governments in its advisory role<br>- concerned about the complexity of the document as this will make it more difficult to ensure effective participation in the process<br><br>**Actions suggested:**<br>No additional action required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **63** | Govt-AR | Argentina has already expressed concern in relation with the outreach strategy and involvement of countries and communities that are not present in the ICANN process. Efforts must be made to ensure the involvement of the whole Internet community, with special focus on developing economies. | Concerns<br>**Summary / Impression:**<br>- Ensure involvement of whole community with special focus on developing economies<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **64** | Govt-IN | Currently there is a lack of clarity as to the interpretation of crucial terms such as 'community', 'public' and 'public interest'. Further clarity on these terms would assist in determining who ICANN is accountable to. | Confusion<br>**Summary / Impression:**<br>Lack of clarity of interpretation of crucial terms<br><br>**Actions suggested:**<br>Check language of next report for clarity.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |

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| **65** | DCA-T | -There I a need y the CCWG-Accountability to define the number of change proposals that can occur at a time in order to avoid the participant and the volunteer exhaustion and apathy that may have been witnessed in the current state.<br>- The proposal should be set to reduce the number of PDP's and proposals to a certain minimum, this will enable the community to properly comment or respond diligently to the proposals.<br>- The number of days allocated for comments must also be increased to ensure thorough input research. | Concerns<br>**Summary / Impression:**<br>- Define the number of change proposals that can occur at a time to avoid volunteer exhaustion<br>- Set proposal to reduce number of PDPs and proposals to minimum<br>- Increase days allocated for comments<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>The CCWG will consider the suggestion made, but notes that not all suggestions are within the charter of the CCWG. |
| **66** | Govt-DE | - The complexity of the CCWG's work and the large number of stakeholders make it seem necessary to raise awareness of this drafting process beyond the ICANN community to ensure a well-balanced approach for ICANN's future. | Concerns<br>**Summary / Impression:**<br>Raise awareness beyond ICANN community to ensure well-balanced approach<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **67** | IA | - IA suggests that CCWG-Accountability provide in its next draft a document that contains all proposed changes to the Bylaws with changes to the existing Bylaws marked in redline. The Internet Association further encourages CCWG-Accountability to develop a timeline for ICANN to implement the final plan. | New Idea<br>**Summary / Impression:**<br>- Provide a document containing all proposed changes to Bylaws<br>- Develop implementation timeline<br><br>**Actions suggested:**<br>Work on a more detailed time plan and discuss having draft bylaws wording as an Appendix for next proposal.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version. While it would be desirable to have concrete language of bylaw changes in the report, this might not be feasible. |
| **68** | eco | - eco recognizes the outreach efforts by the CCWG, including webinars and the translation of the report into multiple languages as well as ICANN's outreach efforts on the IANA Stewardship Transition at the global level. As the draft report does not represent consensus positions, these outreach efforts need to be continued and intensified to ensure the process is as inclusive as possible.<br>- Regarding the membership model, eco fully supports the working method used by the CCWG based on requirements. | Agreement - Concerns<br>**Summary / Impression:**<br>- Since draft report does not represent consensus position, outreach efforts need to be intensified<br>- Supports requirements working method<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>The CCWG will consider the suggestion made |

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| **69** | RB | As a member of the honorary advisory group I regret that key recommendations and observations made during the conference calls of the group were not taken into account or properly responded to in the Draft Recommendations. | Concerns<br>**Summary / Impression:**<br>Key recommendations made during calls not properly responded to<br><br>**Actions suggested:**<br>Provide rationale in updated report.<br><br>**CCWG Response:**<br>The CCWG will respond in the next versions of the report. |
| **70** | .NA | - A convoluted report at 143 pages, making a graphical supplement necessary for ease of understanding, which was expensive to produce. Clearly the result of a rushed process, where content was subordinated to an arbitrary deadline<br>- Numerous concerns were raised in different levels of vehemence by appointed members of every chartering organizations against this, mine being most vocal and numerous, but were ignored<br>- Poor quality of the process made evident when 3 additional questions were posted to the comments web site. A clear violation of the charter, as the comment period for these questions just 2 days.<br>- The report also violates the rules of engagement in the charter as a mandatory Consensus Call not held, and in fact refused, including the submission of minority viewpoint(s) to be included in the report.<br>- It was not helpful that a SubTeam created purely for funneling legal questions to what is termed Independent Counsel, or rather a single participant (not even a member) of this SubTeam, decides which questions are relevant and it was particularly unhelpful that requests to look at this accountability (i.e. from a "higher level") were rejected or ignored by the Co-Chairs. | Divergence<br>**Summary / Impression:**<br>- Rushed process<br>- Arbitrary deadline<br>- Vehemence ignored<br>- Violation of charter: 2-day comment period for 3 additional questions<br>- Violates rules of engagement – no consensus call<br>- Legal questions funneled by a single participant<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG notes that these concerns are unfounded, and were discussed several times. |
| **71** | RySG | Several RySG members have noted concern with the relatively short time available for consideration of the draft CCWG proposal and development of feedback. As such, RySG support is conditional on further development of the details. Accordingly, we reserve the right to amend our position. | Concerns<br>**Summary / Impression:**<br>Short timeframe to comment<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG 2 nd public comment period will last 40 days. |
| **72** | JH | Given that CCWG report has a significant reformation of ICANN system, it is necessary to have a deep thinking and a broad discussion. While, the Chinese translated draft report has not been provided yet, which brings some difficulties for some Chinese experts to have a deep understand and think about the report. This comment is from my individual point of views. So is it possible to prolong 7 days? | Concerns<br>**Summary / Impression:**<br>Deep thinking needed; request to extend for 7 days<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>The CCWG notes that the submission deadline has been extended for that purpose. |

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| **73** | CWG-St | - We would like to confirm the quality of the ongoing coordination between co-chairs of our respective groups that has been taking place since the launch of your group. Each of our groups has been updated regularly on progress made as well as issues faced, including the interdependency and interrelation between our works and this has led to key correspondence being exchanged on a regular basis to develop and formalize the linkage. As CWG-Stewardship co-chairs, we have been provided with the opportunity to speak directly with the CCWG-Accountability group in addition to the regular discussion of key aspects of the work of both groups amongst the co-chairs.<br>- Looking forward, we remain committed to retaining both the focus of the CWG Stewardship and the link between the works of the two groups. To this end, the assistance and professional advice from the independent legal advisors has been critical and will remain so as we seek to comprehensively formalise the links and dependence. | Agreement<br>**Summary / Impression:**<br>Close CWG-CCWG coordination<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG and the CWG hold regular coordination calls and look forward to continued efforts through the completion of their work. |
| **74** | IPC | - There is no justification for a truncated public comment period, even though this truncation was approved by two "ICANN Global Leaders," and even though a somewhat longer public comment period is contemplated for later in the process.<br>- The statement in paragraph 7 of the Draft Proposal that it is based in part on "requests and suggestions that have been provided by the community during a public comment period conducted last year following the NTIA announcement" is somewhat misleading, since the most recent such public comment period was explicitly limited to "addressing questions about the design of the Enhancing ICANN Accountability Process – not about the potential solutions or outcomes of the review." See https://www.icann.org/public-comments/enhancing-accountability-2014-09-05-en. This is actually the first opportunity the ICANN community has had to comment on specific proposals to enhance ICANN's accountability in the context of the IANA transition. Accordingly, the IPC reserves the right to supplement these comments at a later time. | Divergence<br>**Summary / Impression:**<br>- No justification for truncated public comment period<br>- Statement that Draft Proposal is based on suggestions provided by community is misleading<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG 2 nd public comment period will last 40 days. |
| **75** | CIRA | In terms of process, I expect that the second draft proposal that will be posted for public comment will include timelines, and that those timelines will align with the work of the CWG. I look forward to reviewing the second draft CCWG proposal. | Agreement<br>**Summary / Impression:**<br>Expectation that timelines (in alignment with CWG work) will be provided<br><br>**Actions suggested:**<br>No particular action required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **76** | USCC | As a threshold issue we believe that the 30 day comment period is much too limited time to review and provide substantive feedback on such a substantial plan, in particular for our members who may not be seeped in the day-to-day CCWG or ICANN conversations. While we recognize the desire to have a discussion around community comments at the upcoming Buenos Aires ICANN meeting, we think it is imperative that any future major inflection points provide a longer comment period and that no issues (except for those with broad community consensus) be settled following such a short turnaround time. | Divergence<br>**Summary / Impression:**<br>- 30 days too limited<br>- Imperative to have longer periods for future major inflection points<br><br>**Actions suggested:**<br>No particular action required<br><br>**CCWG Response:**<br>The CCWG 2 nd public comment period will last 40 days. |

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| **77** | INTA | - Requests that ICANN provide additional time to allow for meaningful Community input on complex issues such as the IANA transition and ICANN accountability. Between the CCWG and the CWG reports, the Community had just over one month to review and analyze 233 pages of extremely dense material. This is not sufficient time to critically analyze how the 2 documents work together and whether the pressing concerns of accountability have been fully addressed. The work is too important to rush.<br>- Moreover, as with the CWG report, many of the concepts and questions discussed in the CCWG report are dependent upon other policies or require much more specification before any Community member could rationally indicate their support.<br>- Concerned by the leading nature of the questions set forth herein and the fact that the answering party is forced by the form of the question to indicate agreement or opposition. Any such statements should only be taken as representing a position that INTA may currently possess in light of limited time it has had to analyze this report.<br>- Object to the posting of 3 additional questions after the commencement of the comment period. We have opted not to respond to the additional questions at this time. | Divergence<br>**Summary / Impression:**<br>- Insufficient time to review report<br>- Many concepts are dependent upon other policies or require much more specification<br>- Concerned about leading nature of questions<br>- Objection to posting of 3 additional questions<br><br>**Actions suggested:**<br>No particular action required<br><br>**CCWG Response:**<br>The CCWG 2 nd public comment period will last 40 days and apologizes for the missing questions. |
| **78** | .NZ | We note that the details of implementation, including the role of unincorporated associations as legal 'packages' through which the SOs or ACs act, are still being developed and we look forward to the conversation on that, as well as the overall settlement, in Buenos Aires later this month. | Confusion<br>**Summary / Impression:**<br>Legal packages and details of implementation are still being discussed<br><br>**Actions suggested:**<br>Provide more details on implementation<br><br>**CCWG Response:**<br>The CCWG will consider this feedback while preparing the next version of the proposal. |
| **79** | NCSG | The proposal needs more work on transparency - both in the working of the CCWG (for example chairs mtgs should be transcribed) and also in the substance of the CCWG work. | Confusion<br>**Summary / Impression:**<br>More work needed on transparency of CCWG work<br><br>**Actions suggested:**<br>Transcribe co-chair meetings.<br><br>**CCWG Response:**<br>The CCWG notes that this suggestion was discussed within the group and not adopted. |

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| **80** | Board | - Starting from the baseline that we are supportive of the CCWG-Accountability's main goals, we then have to turn to considerations of implementation – how do we make sure that the goals are implemented in ways that do not pose undue risks to how the ICANN community interacts within the ICANN multistakeholder model? One of the analyses that we do not see within the report is a something akin to a regulatory impact analysis, where the costs, benefits and alternatives to proposals are weighed to assure that the design of the solution for each issue is the most efficient, least burdensome on the community, and most cost-effective solution. This seems a separate exercise from the stress test work that is reflected in the report. That stress test, or contingency planning, work builds from the identification of stressors or situations that ICANN may face, and then considers how the proposed solutions assist ICANN in being more accountable when those situations arise, however unlikely. This is valuable work in considering that the CCWGAccountability is working towards the crucial issues. What seems to be the necessary next step, however, is considering whether the mechanisms that are proposed as solutions are themselves capable of withstanding contingencies and stressors. In this regard, the Board presumes there will be an impact analysis. It is currently working on a series of questions to assist in performing that impact analysis. The membership model that is described within the CCWG-Accountability report is one of those main areas for which impact testing seems to be needed. We do have a concern that the extent of the governance changes that could be required through the CCWG-Accountability creates the possibility for too much change to be introduced into the ICANN system at once. As one of the participants in the recent Board workshop panel on the IANA Stewardship Transition cautioned, sound engineering practices are based in incremental change and following with additional reforms as needed, as opposed to changing everything at once. When you change too much at once, and there is later an issue, it's very hard to figure out what part of the change caused the issue. A shift to a membership model, which may introduce a large number of changes into the whole governance model, is indeed an area where there is potential for unintended consequences. We believe that it's important to keep this principle in mind as impact analysis is performed.<br>- We also support one of the advisors to the CCWG-Accountability, Jan Aart Scholte, in his continued reminder to make sure that the solutions and governance changes that are being introduced today include considerations of how the different parts of the ICANN community remain accountable to each other, and allow for those who are not affiliated with any of the current structures to have meaningful participation options in the future. We recommend that this be part of any impact analysis as well.<br>- As we strive to look at the timeframes, clearly some of the proposals can be achieved more rapidly than others, building on existing mechanisms. New proposals, in particular those changing the governance structure of the organization, require additional time for implementation and testing. Once the proposals become more concrete it would be useful for the CCWG to work with staff on a draft project plan for implementation. | Concerns<br>**Summary / Impression:**<br>- Regulatory impact analysis where costs, benefits and alternatives are weighted to assure the design of the solution is the most efficient and less burdensome is missing.<br>- Working on a series of questions to assist in performing impact analysis.<br>- Governance changes that could be required creates possibility for too much change<br>- Supports JS comments that solutions being introduced include considerations of how different parts of ICANN remain accountable to each other and allow for meaningful participation in the future<br>- CCWG to work with staff on a draft project plan for implementation as new proposals require additional time for implementation and testing<br><br>**Actions suggested:**<br>- Add impact analysis<br>- Work with staff on implementation ASAP<br><br>**CCWG Response:**<br>The CCWG welcomes the suggestion to engage with staff to speed up implementation.<br>The CCWG will consider how to detail impact analysis in the next version of its proposal. |

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| **81** | CENTR | - The draft paper presents various recommendations for whose implementation ICANN bylaws need to be amended. We fail to see a clear timeframe for these amendments to enter into force prior to the IANA Stewardship transition. We suggest to the CCWG that any part of the proposal is assessed from a detailed time perspective (best case and worse case time scenarios) to make sure its implementation is feasible considering the time constraints. The timeline as presented in section 10 seems to be based on best-case scenarios where the intervals between CCWG working periods, public comments and deliverables are based on tight, consequential timings that might be subject to delays. It would be valuable to understand what would happen if a section of the proposal does not move forward because of lack of consensus. Will it be withdrawn and reconsidered at a later stage?<br>- We express our concern at seeing that most of the proposed accountability enhancements are linked to the introduction of safeguard mechanisms. While we believe this might be necessary at a certain stage, we would like to underline that any enhancement of any accountability process must be linked and strongly supported by actions that improve the accountability literacy, culture and attitudes of those who are expected being held accountable. Therefore, we warmly recommend that the entire ICANN Board, and, most of all, ICANN staff – especially those daily involved in community engagement and operation management – go through regular accountability training programmes as well as a by-yearly audit process - done by an independent body - of their daily modus operandi (e.g. a proper, careful and regular review of the ICANN Documentary Information Disclosure Policy which in our opinion should occur as part of the accountability enhancements of Work Stream 1 instead of 2 as proposed by the CCWG).<br>- In order to make this process as transparent and inclusive as possible, we would recommend that any future draft for public comment is always accompanied by graphics that help the broader DNS community – generally made of time-starved executives – to better understand the implications of certain proposals at ICANN internal and external level. As a matter of fact one measurement for the success of such a process is the extent of community engagement which, to date, has been extremely low. Furthermore, we would recommend that any draft and/or graphics go through a proper language editing and consistency check to avoid that certain proposed mechanisms are named in a different way throughout the paper and graphics.<br>- We are concerned by the paragraph that underlines the uncertainty relating to the efforts required for Work Stream 1 implementation. Furthermore, we believe that several of the estimated timelines represent the best case scenario and invite the CCWG to present the community with a more detailed timeline under best and worst case scenarios.<br>- CENTR recommends 1) the CCWG further detail the proposal implementation timeline to foresee worse case scenarios and/or scenarios where the deployment of one or more sections of the proposal might be postponed due to the lack of community consensus; 2) that any enhancement of any accountability process be linked and strongly supported by actions that improve the accountability literacy, culture and attitudes of the ICANN Board and staff. | Concerns - New Idea<br>**Summary / Impression:**<br>- No clear timeframe. Provide best case scenario and worst case scenario<br>- Assess proposals from a detailed perspective to evaluate feasibility<br>- Concerned most enhancements are linked to introduction of safeguard mechanisms. It must be linked to culture, literacy and attitudes. Staff and Board should go through regular accountability training programs and yearly audit processes<br>- DIDP should be Work Stream 1<br>- Accompany any future public comments with graphics to better understand implications<br>- Any draft to go through proper language editing and consistency check<br><br>**Actions suggested:**<br>- Provide scenario for timeline<br>- Include aspects of culture<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |

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| **82** | CCAOI | The CCWG Accountability draft seems quite complex and this might make it more difficult for stakeholders to participate in the process. For more engagement of the global community outside ICANN, the latter must promote greater engagement through more face to face meetings across the world and outreach activities. There seems to be a lack of in-depth discussion of jurisdiction of ICANN-Especially, US jurisdiction of ICANN. There should also be emphasis on accountability track including financial accountability of ICANN, and use of proceeds from new gTLD auctions. The focus on accountability should not be limited to ICANN, but also contributors such as IETF, RIRs, National Names and Number Registries and other players including respective staff and secretariats. | Concerns - New Idea<br>**Summary / Impression:**<br>- Complex draft. It makes it difficult to participate in process<br>- Greater engagement and outreach needed<br>- Lack of in-depth discussion of jurisdiction<br>- Emphasis on accountability track including financial and use of proceeds from new gTLD auctions needed<br>- Focus should not be limited to ICANN. Extend to key players (IETF, RIRs, Names and Number Registries)<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |
| **83** | SSAC | The SSAC notes the relatively short time available for consideration of the draft proposal, driven by a timeline set by external events such as the expiration of the contract between NTIA and ICANN related to IANA. Accordingly, the SSAC reserves the right to make additional comments as further details are developed. | Concerns<br>**Summary / Impression:**<br>Short timeframe available<br><br>**CCWG Response:**<br>The 2 nd public comment period will last 40 days. |
| **84** | CAICT | Unfortunately, this draft fails to provide versions in Chinese and other languages in a timely manner, and the comment period is too short to collect sufficient amount of comments from various stakeholders. Especially considering this draft is not a consensus based proposal, CAICT hopes ICANN and CCWG can provide full versions in multiple languages as soon as possible, extend the comment period, and put greater emphasis on enhancing accountability program development process, in order to avoid imbalance between enhancing ICANN accountability and IANA's function stewardship transition processes. | Concerns<br>**Summary / Impression:**<br>- Need for translations to be available sooner<br>- Too short of a timeframe available for Public Comment<br><br>**CCWG Response:**<br>The CCWG acknowledges your concern and is seeking ways to improve turnaround time of the translated drafts. Also, given the community feedback, the 2 nd Public Comment period will last 40 days. |
| **85** | SB | No comments on this section | / |
| **86** | RIR | The proposed plan does not clearly describe why the proposed multiplicity of community powers e.g. review process enhancements, recall of entire Board) is necessary beyond the powers of bylaw change ratification and individual director removal, that when taken together provide a concerned supermajority of the community sufficient authority to replace a controlling portion of the Board and secure any necessary redress. It is particularly important to have this elaborated in the plan since the additional powers increase implementation complexity, time, and risk. | Concerns<br>**Summary / Impression:**<br>- No description of why the proposed multiplicity of community powers is necessary beyond powers of Bylaw change ratification and Board director removal that when taken together provide a concerned supermajority of the community sufficient authority to replace a controlling portion of the Board and secure any necessary redress<br>- Additional powers increase implementation complexity, time, and risk<br><br>**Actions suggested:**<br>No additional actions required.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG will consider this feedback as it develops the next version |

**Stress Tests**

**SUMMARY for Stress Tests:**

Number of comments: 12
Number of agreements: 9
Number of concerns: 8
Number of confusion: 4
Number of divergence: 1
Number of new ideas: 1
Number of neutral: 1
NB: some comments are classified in two or more categories

**Abstract**
26 Stress tests in 5 Contingency categories were published for our public comment period: I. Financial Crisis or Insolvency (Scenarios #5, 6, 7, 8 and 9); II. Failure to Meet Operational Obligations (Scenarios #1,2,11, 17, and 21); III. Legal/Legislative Action (Scenarios #3, 4, 19, and 20); IV. Failure of Accountabilit y (Scenarios #10, 12, 13, 16, 18, 22, 23, 24 and 26); V. Failure of Accountability to External Stakeholders (Scenarios #14, 15, and 25). 9 of the 12 comments suggested agreement with (some of) the STs; 1 was a new idea and resulted in an additional 2 STs post PC1. 2 also included general comment. 8 comments noted concerns. 1 was neutral and one also indicated significant concern regarding which entity would have the Root Zone Maintainer role. The main issue/s or concerns and the response / action to each is detailed in the following table.

**Action items for CCWG:**
The following ST items were added post PC1 following the NTIA statement published on 16 June ( link ): ST NTIA-1: Test preservation of the multistakeholder model if individual ICANN AC/SOs opt out of having votes in community empowerment mechanisms; ST NTIA-2: Address the potential risk of capture (ST 12 and 13 partly address this, but not adequately for capture by internal parties in an AC/SO); ST NTIA-3: Barriers to entry for new participants; ST NTIA-4: Unintended consequences of "operationalizing" groups that to date have been advisory in nature (e.g. GAC). The ICANN Board letter also introduced stress test items ( link ). These are either addressed in PC2 documentation, or will be reviewed as part of the analysis performed on any additional STs. Specific modifications and adjustments based on many of the PC1 comments to the ST section resulted in modification of the 26 Stress Tests and/ or additional and new Scenarios, as outlined in the ST sections(s) of the PC2 documentation.

| # | Contributor | Comment | CCWG Response/Action |
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| **87** | RH | Stress test category III, Legal/Legislative Action: as the proposal correctly states the "proposed measures ... might not be adequate to stop interference with ICANN policies". In particular, they cannot stop interference from the country where ICANN is incorporated. Hence, as stated above, ICANN should be incorporated in a neutral country that is unlikely to interfere, for example Switzerland. Or ICANN should negotiate immunity of jurisdiction. | Concerns<br>**Summary / Impression:**<br>Stress tests cannot stop interference from country where ICANN is incorporated.<br><br>**Actions suggested:**<br>RH says, " ICANN should not be incorporated in the USA, or in any other powerful state that might be tempted to interfere with ICANN for political or economic reasons. It should be incorporated in a neutral state that is unlikely to interfere, for example Switzerland."<br><br>**CCWG Response:**<br>RH acknowledges that jurisdiction is distinct from where ICANN is organized and located." ICANN will be subject to the laws of the countries in which it operates" The CCWG notes no disagreement there.<br>On this point, ICANN's Articles of Incorporation and Bylaws Article XVIII require California incorporation and location. In WS1, the CCWG is not proposing any changes in ICANN's state of incorporation. ICANN relocation could be a subject for later debate, although any change to Articles or Bylaws would be subject to new community veto of the proposed change. |

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| **88** | DBA | We would like to underline that stress testing the proposal is of highest importance and we appreciate the work done by the CCWG Accountability in this regard. It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safe- guards against capture from any specific stakeholder group in any way, including in ICANN's policy development processes and decision making functions. | Agreement - Concerns<br>**Summary / Impression:**<br>Stress testing is of highest importance<br>Model must be truly multistakeholder<br>Safeguards against captures are needed including in PDP and decision-making<br><br>**Actions suggested:**<br>Include safeguards against capture.<br><br>**CCWG Response:**<br>Several stress tests address capture of AC/SOs and policy/decision-making functions (see, ST 12, 13, 26).<br><br>First draft of Stress Testing indicated need for transparency and participation processes within AC/SO charters and operating procedures. This is likely to be a WS2 item.<br><br>Still, the ST team has added new stress tests for capture by members of an AC/SO (see ST 33, suggested by NTIA, and ST 36, requested by ICANN) |
| **89** | WC comment 1 | The stress tests are comprehensive and indicate that the proposed changes should be able to withstand pressures from the environment, external and internal, to the ICANN ecosystem. | Agreement<br>**Summary / Impression:**<br>- Comprehensive stress tests<br>- Should be able to withstand pressures<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **90** | CRG | Are they any stress test yet about conflicts of interest internal to the corporation (Board- Management, Management-Management)? | Neutral - Concerns<br>**Summary / Impression:**<br>Are there stress tests about conflicts internal to the corporation?<br><br>**CCWG Response:**<br>CRG asks if there any STs for internal conflicts of interest within ICANN board and management. ST 9 comes closest, by examining corruption or fraud.<br><br>Of the existing accountability measures, there is an anonymous hotline for employees to use. And in 2013 ICANN published a Conflict of Interest review ( link ), see pages 4 and 5 for implementation of new policies.<br><br>The CCWG proposes community powers to challenge ICANN decisions or inaction via a binding IRP. And the community could block ICANN's operational plan or budget if the proposal were tainted by conflict of interests. Finally, the community could remove one or all ICANN directors. |

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| **91** | Govt-IN | It is noted that the stress test regarding appeals of ccTLD revocations and assignments (ST 21) has not been adequately addressed as the CCWG-Accountability awaits policy development from the ccNSO. Any subsequent accountability architecture should also take into account the results from this stress test. | Concerns<br>**Summary / Impression / Actions suggested:**<br>Stress test regarding appeals of ccTLD revocations and assignments (ST 21) has not been adequately addressed. Accountability architecture should take into account results from stress test.<br><br>**CCWG Response:**<br>In ST 21, the Stress Test team attempted to address this scenario. However, ccNSO has decided to undertake policy development pursuant to the Framework of Interpretation (Oct-2014), and requested that CCWG defer to that process. CCWG agreed. |

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| **92** | DP-DK | We also propose adding the following "Stress Tests" to test the adequacy of this formulation (see proposed fundamental Bylaw in Revised Mission, Commitments & Core Values:<br>Stress Test 1 :<br>At urging of the GAC, the Board directs ICANN's contract compliance department to take the view that, in order to comply with the mandatory PIC requiring a flow down clause in the registry-registrar contract that contemplates the termination of domain names for "abuse," the registries must provide assurances that registrars with whom they are doing business are actually enforcing that clause by terminating names whenever they receive any complaint of violation of applicable law. The Board insists that this mandatory flow down provision be included in all new contracts for legacy gTLDs upon renewal.<br>Current situation: no real recourse.<br>Proposed situation: Registry could challenge ICANN's actions as outside its Mission (development of consensus policies on issues uniform global resolution of which is necessary to assure stable operation of the DNS) on the grounds that this was not a consensus policy, nor one that was developed stable and secure operation of the DNS, and for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS. The IRP would likely find that imposition of this obligation, in the absence of consensus, is not within ICANN's powers.<br>Stress Test 2:<br>ICANN terminates registrars on the ground that they do not terminate domain names claimed to have been used to provide access to materials that infringe copyright. ICANN takes the position that, despite the absence of any court orders or due process, and even when the registrar does not host the content in question, it would be "appropriate" to delete the domain name where registrars have received infringement complaints (of a specified kind, in specified numbers) from rightsholders, and that, therefore, the registrar is required by section 3.18 of the Registrar Accreditation Agreement, to delete the accounts or lose its accredited status.<br>Current situation: No real recourse.<br>Proposed situation: An aggrieved party could bring an IRP claim arguing that imposition of this requirement, by mandatory contract, is invalid as a violation of ICANN's Mission on the grounds that: (1) Neither the contract clause nor the policy of enforcing it in this manner was developed by consensus, but unilaterally by ICANN staff; (2) The policy being implemented is unrelated to "ensur[ing] the stable and secure operation *of the DNS "* but rather relates to an entirely different set of policy goals; (3) Nor is it a policy "for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and /or stability *of the DNS "*; and finally (4) it represents an attempt by ICANN to "use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide." We believe such an action would be likely to succeed. | New Idea<br>**Summary / Impression / Actions suggested:**<br>David Post and Danielle Kehl requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.<br><br>**CCWG Response:**<br>The ST team added 2 new stress tests for the 2nd draft, ST 29 (similar to ST23), and ST30.<br><br>In both these new stress tests, the proposed accountability measures would be adequate to challenge ICANN enforcement decisions. |

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| **93** | IA | IA strongly supports the results of stress test 18 regarding the Board's response to GAC advice. However, disagrees with paragraph 636, which states that the threat posed by stress test 18 "is not directly related to the transition of IANA stewardship." We view this issue as directly related to the transition and believe that it is essential that relevant actions be taken to implement this change before the transition is complete | Agreement with comment<br>**Summary / Actions suggested / CCWG Response:**<br>IA agrees with ST 18, and suggests that it is directly related to the IANA transition.<br><br>First, the ST team made this designation on the narrow criteria of whether the IANA transition provoked the stress test scenario. In the case of ST18 and GAC voting, this is not related to IANA contract.<br><br>The "related to IANA" designation was for informational purposes only, and did not determine whether a change is part of WS1 or WS2. To avoid confusion, this designation was removed from 2 nd draft proposal. |
| **94** | Govt-ES | - Test 21: opposed to this stress test. It is based on contentious policy (RFC 1591) and thus, should not be used to test the robustness of new accountability mechanisms. Furthermore, appeal mechanisms to delegation and re-delegation of ccTLDs have been left aside of the accountability enhancements proposed by the CCWG.<br>- Note Singapore GAC Communiqué states the following regarding the Frame of Interpretation WG outcome: "The GAC notes the work of the ccNSO FOIWG, and its efforts to provide interpretive clarity to RFC1591. The GAC welcomes the FOIWG's recognition that, consistent with the GAC's 2005 Principles, the ultimate authority on public policy issues relating to ccTLDs is the relevant government. As such, nothing in the FOIWG report should be read to limit or constrain applicable law and governmental decisions, or the IANA operator s ability to act in line with a request made by the relevant government."<br>- Test 4: We fail to see how accountability mechanisms can be used to defy a decision not taken by ICANN, but by a third party, i. e., a Government. Thus, we recommend doing without this stress test.<br>- Test 12: It grabs our attention that a stress test named "Capture by one or several groups of stakeholders" is so focused on governments and the GAC. Even in the case of the other SO/ACs, it is stated that they need accountability and transparency rules to prevent capture from outside each community, but little is said about ICANN's capture by an internal community other than the GAC.<br>- Measures to prevent capture by other groups should be proposed. Otherwise, this stress test overlaps with stress test 18. | Concerns<br>**Summary / Actions suggested / CCWG Response:**<br>ES opposes ST 21, regarding revocation and re-assignment of ccTLD manager. In ST 21, the Stress Test team attempted to address this scenario. However, ccNSO has decided to undertake policy development pursuant to the Framework of Interpretation (Oct-2014), and requested that CCWG defer to that process. CCWG agreed, and therefore ST 21 is not being cited to suggest any changes as part of CCWG proposal.<br>--<br>ES recommends doing without ST 4 regarding new regulation or legislation. This stress test evaluates how the community could challenge ICANN's decision in reaction to new legislation /regulation. The improved IRP could overturn ICANN's decision, allowing the community to pursue other means of reacting to the regulation /legislation, such as further policy development or litigation.<br>--<br>ES notes that ST 12 focuses on capture by GAC, whereas there are other capture scenarios. Several stress tests address capture of AC/SOs and policy/decision-making functions. (see ST 12, 13, 26). The ST team also added new stress tests for capture by members of an AC/SO (see ST 33, suggested by NTIA, and ST 36, requested by ICANN)<br><br>First draft of Stress Testing indicated need for transparency and participation processes within AC/SO charters and operating procedures. This is likely to be a WS2 item.<br>--<br>ES does not agree with ST 18. The ST team notes that the scenario in ST 18 is entirely conceivable –GAC can change to majority voting instead of the absence-of-objection method it has always used. The bylaws change suggested by ST 18 is designed to preserve the "mutually agreeable solution" obligation as it has always been applied – to GAC advice that is supported by consensus. |

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| | | - Test 18: We cannot agree with this stress test being included in the final report. ICANN Bylaws state that the Board shall duly take into account Governments' advice "on public policy issues". - This is the key point: the GAC brings the public policy perspective into ICANN. The GAC advice to the Board is not anything further than an advice that is not binding on ICANN. If the Board doesn t agree with a particular piece of GAC advice, it has to enter into a process with the GAC to try and find a "mutually acceptable solution". Again, if this cannot be found, the Board is still free to do what it feels appropriate, including simply not following GAC advice. We fail to see where the contingency or the risk of government capture lays. Advice adopted by a majority of GAC members would still qualify as “public policy advice” which ICANN should afford to ignore. In short, we call on the CCWG to respect GAC s ability to approve its own working methods (Article XI.Section 2.1 c) of the Bylaws) and require the Board to fully consider advice agreed according to GAC internal procedures.<br>- Test 14: We find it is pointless to keep this particular stress test at this moment in time, when the community is actually dealing with the termination of the Ao<br>- Test 15: While the AoC actually states that ICANN should be headquartered in the USA, and the Articles of Incorporation set forth that ICANN is a non-profit public benefit corporation under the California law, we do not believe this should be incorporated into a core or fundamental value of ICANN (page 21), for the reason that the remaining of ICANN subject to Californian Law is not fundamental to the global Internet community. | GAC can still offer advice that is not supported by consensus, and that advice would still be “duly taken into account” by ICANN.<br>--<br>ES does not think that ST 14 is necessary since we are bringing AoC commitments into the Bylaws. However, it was ST 14 that suggested the inclusion of AoC into the bylaws, so we shall retain ST 14 as part of that process. Para 507 of 2 nd draft states, “After these aspects of the Affirmation of Commitments are adopted in ICANN bylaws, ICANN and the NTIA should mutually agree to terminate the Affirmation of Commitments.”<br>--<br>Regarding ST 15, the CCWG 2nd Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255.. |

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| **95** | RySG | - RySG agrees that the so-called “Stress Tests” have been valuable as a tool to weigh the risks and reward of various proposals. As such, we believe the incorporation of the bylaws changes recommended by the CCWG interim proposal would help to enhance ICANN’s accountability to the community and NOT doing so would undermine it.<br>We are interested in whether and how the CCWG-Accountability intends to handle Stress Tests where the proposed Accountability Mechanisms are identified as “inadequate” or “partially inadequate”.<br>Stress Tests 5, 6, 7, and 8: in the assessment of proposed accountability measures in the case of financial crisis or other loss of revenue: we do not believe that simply leveraging increased fees is a viable solution to this Stress Test and recommend that instead the stress test looked at how ICANN’s expenditures could be constrained to reflect the decline in revenue, while minimizing the negative impacts on the key services that it provides.<br>This assessment also raises a more general issue of how the proposed community powers will interact with the contracts between ICANN and its contracted parties. We are concerned about the ability for these agreements to be revised other than through the existing procedures in the Registry Agreement and Registrar Accreditation Agreement. If this is within the intended scope of the community powers, we request that further clarity is provided to permit more substantive comment in the next comment round.<br>Stress Test 16: ICANN engages in programs not necessary to achieve its technical mission, is described as being directly related to the IANA Stewardship Transition. We believe that this is a general issue not directly related to the IANA Stewardship Transition. We request that this statement be revised to reflect this general nature or that greater clarity be provided as to why this Stress Test is directly tied to the IANA Stewardship Transition.<br>Stress Test 20: “Preventive: During policy development, the community would have standing to challenge ICANN Board decisions about policy and implementation.” There is a temporal issue in this statement in that the board should not be making policy or implementation decisions before a policy development process was complete, except in limited, emergency circumstances. We suggest that this statement be revised and revised to reflect the processes for Policy Development as defined in the ICANN Bylaws.<br>Stress Test 26: The assessment of proposed accountability mechanism refers to how this would be handled if the action of concern resulted from the board decision. Additional discussion should be included to consider whether these mechanisms would be sufficient if the issue followed from staff decisions and actions that did not directly follow from a board decision, as overturn of the Board decision would not be the appropriate fix. | Agreement - Concerns<br>**Summary / Actions suggested/ CCWG Response:**<br>RySG asks how CCWG will react to STs that are scored as “inadequate” or “partially adequate”. First, the CCWG intends to adjust proposed accountability measures to the extent feasible in order to address all stress tests. However, as noted in our first draft, “ We discovered that while some risk mitigation was possible, it became clear that no accountability framework could eliminate the risk of such events or entirely alleviate their impact.”<br>--<br>RySG asks how community powers (incl IRP decisions) could drive revisions to registry and registrar agreements. The ST team notes that proposed changes to ICANN’s Mission and Core Values are partly designed to constrain ICANN’s ability to impose obligations outside its limited technical mission. Core Value in para 187 states that “ICANN shall have no power to act other than in accordance with, and as reasonably appropriate to achieve its Mission. “<br>--<br>RySG notes that ST 16 is not related to the IANA transition. In the second column, the ST team noted “As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to expand scope without community support. But as a result of IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain IANA contract with NTIA.” The “related to IANA” designation was for informational purposes only, and did not determine whether a change is part of WS1 or WS2. To avoid confusion, this designation was removed from 2nd draft proposal.<br>--<br>RySG notes that ST 20 had temporal mismatch. We corrected para 782 to read, “Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation.”<br>--<br>RySG notes that ST 26 should also address actions of ICANN staff in the absence of an actionable board decision. The ST work team agrees that staff actions should be challengeable via reconsideration or IRP, and is working with WP2 and WP3 to address this in the next draft proposal. |

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| **96** | BC | - BC notes that important questions with respect to the Root Zone Maintainer still need to be resolved (p.77). Insight into the process of transitioning the Root Zone Maintainer would help ensure there is a well-established structure and process for approval of major architectural and operational changes to the Root Zone environment. The BC calls on the CCWG to clarify which entity will have this role and to establish the process that would be used for consultation with the global multi-stakeholder community. | Agreement - Concerns<br>**Summary / Impression:**<br>- Important questions with respect to the Root Zone Maintainer still need to be resolved.<br><br>**Actions suggested:**<br>Clarify which entity will have Root Zone Maintainer role and to establish the process that would be used for consultation with the global multi-stakeholder community.<br><br>**CCWG Response:** Stress Tests 19 and 25 looked at Root Zone Maintainer role. ICANN and NTIA are considering the Root Zone Maintainer role in parallel with IANA stewardship transition. At this time there is no information available. |
| **97** | IPC | - The phrasing of Stress Test #23 (page 85) seems one-sided. While there may be a danger that "ICANN uses RAA or other measures to impose requirements on third parties outside scope of ICANN Mission," the more plausible danger is that ICANN will fail to enforce contractual obligations and consequently will harm third parties. The stress test exercise is described in paragraph 18 as applying "a set of plausible, but not necessarily probable, hypothetical scenarios" in order to "gauge how certain events will affect a system, product, company or industry." The contractual enforcement failure just described would certainly affect the companies and industries that depend on trademark and copyright protection. The stress test should be adjusted to reflect this, and overall the risk of ICANN's failure to consistently and transparently enforce contracts must be effectively addressed in any accountability framework. | Agreement<br>**Summary / Impression / Actions suggested:**<br>- Stress test #23 is one-sided: contractual enforcement failure would certainly affect the companies and industries that depend on trademark and copyright protection.<br><br>**CCWG Response:**<br>In para 864 of 2 nd Draft proposal, CCWG notes that registrants and users can be aggrieved parties entitled to challenge a board decision that reduces TM and copyright protections that fall within ICANN's Mission, Commitments and Core Values, or established policies. |
| **98** | USCIB | - para 550: We note that important questions with respect to the Root Zone Maintainer still need to be resolved. Direct insight into the process of transitioning the Root Zone Maintainer would help to ensure that there is a well-established structure and process for approval of major architectural and operational changes to the Root Zone environment. USCIB commends that any future proposal to clarify which entity will have this role, and further, to explicitly establish the process that would be utilized for consultation be a topic of public consultation with the multistakeholder community. | Agreement – Concerns – Divergence<br>**Summary / Impression:**<br>- Important questions with respect to the Root Zone Maintainer still need to be resolved.<br><br>**Actions suggested:**<br>Clarify which entity will have Root Zone Maintainer role and to establish the process that would be used for consultation with the global multi-stakeholder community. Create a separate stress test.<br><br>**CCWG Response:** Stress Tests 19 and 25 looked at Root Zone Maintainer role. ICANN and NTIA are considering the Root Zone Maintainer role in parallel with IANA stewardship transition. At this time there is no information available. |
| **99** | Govt-BR | With regards to stress tests, Brazil considers that the definition of contingencies is an important tool to test the resilience of the proposed accountability structure. | Agreement<br>**Summary / Impression:**<br>Definition of contingencies is an important tool.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **100** | SR | - para 406 Although it may be out of scope, a 6th stress test category might be capture of root zone by ITU or other body. As there is no legal or technical barrier to such an event - only reputation and political (e.g. arising from para 499). Thus far the US government has provided political cover from this. I see para 596 attempts to address but may be insufficient.<br>- para 452-454 PTI should be forced to publish any audit results in full (e.g.SOC2) and have separate legal advisors from ICANN. e.g., para 549.<br>- para 581, 657 - and reputation loss that could lead to capture.<br>- para 585 YES!<br>- para 613 From past community discussions, if community driven, an "ICANN foundation" may be a desirable outcome.<br>- 663 YES!<br>- 707,708 YES! | Agreement plus suggestions<br>**Summary / CCWG Response:**<br>Sue Randel suggests an additional stress test for capture of IANA root zone by ITU or other body. As noted in several stress tests, the proposed bylaws changes, binding IRP, and change regarding GAC advice are sufficient to prevent ICANN actions to transfer control of root zone if that transfer were not supported by IANA customers and by supermajority of ICANN Membership.<br><br>--<br>Regarding ST 1 and 2, Sue Randel suggests that PTI have separate legal advisors and publish its audits. This suggestion is for the ICG to consider, and does not affect ST 1 & 2.<br>--<br>Regarding ST 10 & 24, Sue Randel suggests adding “reputation loss” that could lead to capture. Based on feedback, this has been done.<br>--<br>Regarding ST 16, Sue Randel notes that an ICANN Foundation might handle programs outside ICANN’s technical mission. Perhaps an item to be considered post-transition. |

**Revised Mission, Commitments & Core Values**

*Question 1: Do you agree that these recommended changes to ICANN's Mission, Commitments and Core Values would enhance ICANN's accountability?*

*Question 2: Do you agree with the list of requirements for this recommendation? If not, please detail how you would amend these requirements.*

***37*** *Comments submitted*
***31*** *Agreements*
***16*** *Concerns*
***2*** *Confusion*
***10*** *New Ideas*

| # | Contributor | Comment | CCWG Response/Action |
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| **101** | JS comment 1 | - Could tensions arise in practice between para 35 ('ICANN accountability requires compliance with applicable legislation in jurisdictions where it operates') and para 51/2/iii/2 ('any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values')? | Concerns<br>**Summary / Impression:**<br>Could tensions arise in practice between compliance with jurisdiction and decision to defer to input from authorities must be consistent with ICANN core values and commitments.<br><br>**Actions suggested:**<br>Consider need to reconcile limitation on compliance with deference to input from public authorities with both Commitments /Core Values and applicable law.<br><br>**CCWG Response:**<br>To the extent ICANN is directly subject to any applicable law it must comply with that law, and nothing in the proposed Bylaws is intended to change that (nor could it). This reality is recognized in the proposed Core Values that calls on ICANN to comply with relevant principles of international law, applicable law, and international conventions.<br><br>In the ICANN policy development context, however, "advice" from public authorities may go beyond what is required or prohibited by applicable law. In addition, the specifics of applicable law may vary from jurisdiction to jurisdiction. In discerning the global public interest through the bottom-up multistakeholder process, the Commitments and Core Values are designed to reflect widely established principles of fairness and due process, and to provide a stable and predictable foundation for ICANN policy development.<br><br>The CCWG also notes that the ICANN Bylaws, including its Commitments and Core Values, do not and cannot displace the rights of sovereigns. All governments retain the right and authority to apply their laws and regulations to actors and actors subject to their jurisdiction. International law provides other formal intergovernmental mechanisms to prescribe behaviors where international powers agree on a common standard. |
| **102** | DBA | - Strengthened principles for ICANN, including a new Mission Statement, Commitments and Core Values, which i.e. aim at keeping ICANN within its technical mandate and focuses on its core mission. | Agreement<br>**Summary / Impression:**<br>Supports strengthened principles, including new mission statement and core values which aime at keeping ICANN's technical mandate and focuses on core mission.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **103** | WC comment 2 | Has the working group, when it comes to tightening up the Principles section discussed whether to include a commitment towards freedom of expression? And the reason I raise this is that one of the accountability issues is the question of who the community as accountability forum is accountable to. And one of the answers is to say that ICANN as a whole is accountable to democratic standards. An important aspect of the logical infrastructure as a system of unique identifiers, that ICANN is to be the steward for, is that it is an infrastructure which underpins humanity's freedom of expression. And I was wondering if that has been discussed for inclusion in the revised Bylaws. | Concerns<br>**Summary / Impression:**<br>This raises a variety of "who is watching the watchers" questions<br><br>**Actions suggested:**<br>Consider an explicit reference to freedom of expression as a Commitment and/or Core Value to further safeguard fundamental right.<br><br>**CCWG Response** :<br>The revised ICANN Mission Statement explicitly provides that ICANN shall not engage in or use its powers to regulate services that use the Internet's unique identifiers, or the content that they carry or provide. As the commenter points out, this is not the same as an affirmative undertaking to promote free expression on the Internet.<br><br>The CCWG-Accountability extensively discussed the opportunity to include into a Commitment related to human rights, within ICANN's stated Mission, in the ICANN Bylaws. The group commissioned a legal analysis of whether the termination of the IANA contract would induce changes into ICANN's obligations, within its defined Mission, with regards to Human Rights. While no significant issue was found to be directly linked to the termination of the IANA contract, the group acknowledged the recurring debates around the nature of ICANN's accountability towards the respect of fundamental human rights within ICANN's Mission. The group has achieved consensus on including a human rights related Commitment in ICANN's Bylaws within its defined Mission. However no particular wording currently proposed achieved consensus. Reiterating its commitment to articulate concrete proposals as part of its mandate, the CCWG-Accountability is calling for comments on this approach and the underlying requirements. |
| **104** | DCA-T | Additional text for para 89 Employ open, transparent and bottom-up, [private sector led multistakeholder] policy development processes that (i) seeks input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice TO WHOM DUE DILIGENCE ON CONFLICT OF INTEREST HAS BEEN PERFORMED UPON, and (iii) ensure that those entities most affected can assist in the policy development process | Agreement – Concerns<br>**Summary / Impression:**<br>- Current Bylaws are too weak and permit excessive discretion.<br>- Support limiting ability of ICANN Board to change Bylaws.<br><br>**Actions Suggested** : Specifically call out that expert advice must be free from conflict of interest.<br><br>**CCWG Response** : The CCWG appreciates this input. ICANN policies currently include measures to prevent conflicts of interest. |

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| **105** | NM | We provide for changes in the by-laws, but it may be that we would be better off making clear that core principles are not subject to change. The ultimate goal of the organization is to act in the interest of the public as a whole, without special treatment of any business, private entity, individual, or government. The inherent founding principle that this entity exists for the overall public good and not for the commercial benefits of any individual or group should be a core principle that cannot be changed, no matter how many people go for it. | Agreement – New Idea<br>**Summary / Impression:**<br>- Clarify that core principles are not subject to change<br>- Goal of ICANN is to act in interest of public<br>- Founding principle that ICANN exits for public good should be a core principle<br><br>**Actions suggested:**<br>- Prohibit changes to Commitments and Core Values<br>- Create Core Value stating that ICANN exists for the overall public good and not for the commercial benefits of any individual or group<br><br>**CCWG response:**<br>ICANN exists, per its Mission Statement, to coordinate the global Internet's unique identifiers and ensure the stable and secure operation of those systems. The primary Commitment contained in the proposed Bylaws is that ICANN must operate for the benefit of the Internet community as a whole. The CCWG discussed the idea of making the Mission Statement, Commitments, and Core Values unchangeable, but ultimately concluded that so long as sufficient safeguards are in place to prevent capture, flexibility should be maintained. The Mission Statement, Commitments, and Core Values are, however, proposed as Fundamental Bylaws, which cannot be changed without community approval. |
| **106** | Afnic | The revised Mission, Commitments and Core Values are more specific in the current draft that they were before. Clearer bylaws are an obvious enhancement for accountability. | Agreement<br>**Summary/Impression:**<br>- More specific in current draft than before<br>- Clearer Bylaws are an obvious enhancement<br><br>**Actions suggested** :<br>None<br>**CCWG response:** The CCWG thanks you for your comments |
| | | - We have alternative proposals that strengthen the statement of ICANN's Mission so that it can serve effectively as an *enforceab le* limitation on ICANN's powers (and we propose several "Stress Tests" to test the adequacy of our formulation). | Agreement – Concerns – New Idea<br><br>**Summary / Impression:**<br>CCWG has made significant progress in designing a durable accountability structure, but there are important omissions and/or clarifications that need to be addressed.<br><br>**Actions suggested:**<br>- Clarify and strengthen the separation between DNS policy-making and policy-implementation by limiting the role of the Board to (1) organize and coordinate ICANN' s policy development process and (2) implementation (only) of consensus policies emerging from that process<br>- Revise proposed Mission Statement to read: |

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| **107** | DP-DK | - One central risk of the transition is that a largely unregulated and unconstrained ICANN will leverage its power over the DNS to exercise control over non-DNS-related Internet conduct and content. ICANN has (and has always been conceived of as having) a limited technical mission: in the words of its current Bylaws, that mission is to "to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of [those] systems." It should exercise those powers (but *only* those powers) necessary to carry out that mission effectively. Articulating precisely what that mission is and what and those powers are, and doing so in a manner that will effectively circumscribe the exercise of the corporation's powers and constrain its ability to exercise other powers, or to stray into policy areas outside of or unrelated to that mission, is a critical and indispensable task of the transition. The CCWG Draft Proposal recognizes this risk, and we strongly endorse its stated goals: (a) "that ICANN's Mission is limited to *coordinating and implementing* policies that are designed to ensure the stable and secure operation of the DNS and are reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS,"; (b) that its Mission "does *not* include the regulation of services that use the DNS or the regulation of the content these services carry or provide," and that (c) "ICANN's powers are 'enumerated' – meaning that anything not articulated in the Bylaws are outside the scope of ICANN's authority." (emphases added).<br>- The goals the CCWG is pursuing in this section of the CCWG Draft Proposal, and in the re-stated Mission, are critically important ones. We strongly support the central thrust of the CCWG recommendations, and believe it can be articulated even more directly than in the draft. ICANN's Bylaws should explicitly recognize that the corporation's role in DNS policy-making is limited to: "coordinat[ing] the development [of] and implementation of policies" that are (a) "developed through a bottom-up, consensus-based multistakeholder process," (b) designed to "ensure the stable and secure operation of the DNS," and for which (c) "uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS." This helps to clarify that ICANN's role (and, therefore, the primary role of its Board of Directors) is *to coordinate a consensus-based policy-development process, and to implement the policies that emerge from that process.*<br>- A constitutional balance for the DNS must preserve and strengthen the separation between DNS policy- *making* and policy- *implementation.* ICANN's position in the DNS hierarchy gives it the *power* to impose its policies, via the web of contracts with and among registries, registrars, and registrants, on all users of the DNS. One critical constraint on the exercise of that power is that it is *not* free to impose on those third parties whatever policies it chooses – even those it believes in good faith to be in the "best interest" of those Internet users. It is the Internet stakeholder community, acting by consensus, that has the responsibility to formulate DNS policy. ICANN's job is a critical though narrow one: to *organize and coordinate* the activities of that stakeholder community – which it does through its various Supporting Organizations, Advisory Committees, and Constituencies – and to *implement* the consensus policies that emerge from that process. | "(a) ICANN's Mission is to coordinate the development and implementation of policies that are developed through a bottom-up, consensus-based multistakeholder process, designed to ensure the stable and secure operation of the DNS, and for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS.<br>"(b) ICANN shall have no power to act other than in accordance with, and as reasonably necessary to achieve, its Mission. Without in any way limiting the foregoing absolute prohibition, ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide.""<br>- Adopt a new stress test to test the alternative formulation<br><br>**CCWG Response:**<br>The CCWG appreciates this input, much of which has been reflected in the 2 nd Draft Proposal. |

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| | | - Power checks power. Although this separation has gotten muddier over the last 15 years, it has always been an essential component of ICANN's consensus-based, bottom-up policy development scheme – modeled, as it was, on the consensus-based, bottom-up processes that had proved so effective in managing the development and global deployment of the DNS and related Internet protocols in the period prior to ICANN's formation. It is a critical safeguard against ICANN's abuse of its power over the DNS. Effective implementation of this limitation will go a long way towards assuring the larger Internet community that ICANN will stick to its knitting – implementing policies which relate to the openness, interoperability, resilience, and/or stability of the DNS, arrived at by consensus of the affected communities.<br>- We believe that the implementation of this principle in the CCWG Draft Proposal can be substantially improved and strengthened. To begin with, it is not as clear and it could and should be that the statement of ICANN's Mission is meant to serve as *an enforceable limitation on ICANN's powers – i.e.*, that it is a means of enumerating those powers, and thereby of declaring what the corporation can, and cannot, do. The Proposal's demarcation between and among ICANN's Mission, its "Core Values," and its "Commitments" is overly complex and confusing. It is not clear which are meant to be enforceable enumerations of the corporation's power – to be included in a Fundamental Bylaw and enforceable by the Independent Review Board - and which are more generally advisory or aspirational, "statements of principle rather than practice" that are "deliberately expressed in very general terms." By covering so much ground between them, the structure detracts from, rather than enhances, the force of those provisions that *are* desig ned to serve as actual limits on the corporation's powers (as opposed to those that are merely aspirational). There are many good reasons to state aspiration and advisory guides to future corporate action, but we suggest that they be more clearly separated from the enumerated powers.<br>- We also suggest that the relevant CCWG-proposed Bylaw provision – that "ICANN shall not undertake any other Mission not specifically authorized in these Bylaws" – may not function effectively to limit ICANN to activities within the narrowly-stated limits of its Mission. Precisely because the Mission, Core Values, and Commitments cover so much overlapping ground, there is a vast range of action that ICANN might take that could be justified with reference to some element or elements appearing on those lists, and thereby deemed to have been "specifically authorized in these Bylaws." We believe this could detract, importantly, from the effectiveness of the Mission statement as a meaningful limit on what ICANN can and cannot do.<br>- We propose the following alternative as a Fundamental Bylaw, which we suggest would be a clearer and more direct statement of the principle to be implemented and therefore more likely to be adequately enforceable:<br>"(a) ICANN's Mission is to coordinate the development and implementation of policies that are developed through a bottom-up, consensus-based multistakeholder process, designed to ensure the stable and secure operation of the DNS, and for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, and/or stability of the DNS; "(b) ICANN shall have no power to act other than in accordance with, and as reasonably necessary to achieve, its Mission. Without in any way limiting the foregoing absolute prohibition, ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide."" | |

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| **108** | IA | - IA agrees that ICANN's Mission Statement, Commitments, and Core Values are instrumental to ensuring and enforcing ICANN accountability, and supports the concept that they should form ICANN's "constitutional core." ICANN's conduct should be measured against these provisions and ICANN must be accountable for meeting these standards, as well as for not exceeding its scope of responsibilities.<br>- IA supports changes to ICANN's Bylaws to impose binding obligations on ICANN to operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law, and international law and conventions through an open and transparent process.<br>- The scope of ICANN's authority should be specifically enumerated.<br>- IA supports the clarification to ICANN's Mission Statement that the scope of its authority does not include the regulation of services that use the DNS or the regulation of content these services carry or provide.<br>- IA supports the clarification to the Core Values that any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values<br>- IA suggests the continued use of the phrase "private sector led" in the Bylaws and other documentation. The term has been used since ICANN's inception to mean "non-governmental," and not commercial. If any alternative term is used, it must be clear that it is meant that ICANN will remain non-governmental led.<br>- IA, however, seeks clarification on the inclusion of new criteria associated with balancing commitments and core values. The new language appears to import concepts from U.S. constitutional law jurisprudence. But under U.S. law, these tests are typically applied when one fundamental value (e.g., equal protection or freedom of speech) is infringed, not when the courts are seeking to balance competing fundamental interests. And the proposed tests, while useful for the context in which they were originally developed, do not provide any guidance as to how ICANN should actually balance competing interests. Unless CCWG can provide more information about how the new text would assist in decision-making, the Internet Association suggests retaining the existing language. | Agreement<br>**Summary / Impression:**<br>- IA Supports the revised Mission Statement, Commitments and Core Values and supports the continues use of the phrase "private sector led"<br>- IA seeks clarification on the new language for balancing Commitments and Core Values. According to IA (and other commenters) the proposed text is too US-centric and is typically applied when one fundamental value is being infringed, not when the courts "are seeking to balance competing fundamental interests." IA concludes that the criteria do not provide guidance "as to how ICANN should actually balance competing interests."<br>**Actions suggested:**<br>Clarify inclusion of new criteria associated with balancing commitments and core values. In favor of continued use of "private-sector led"<br>**CCWG response:**<br>The CCWG appreciates this input. A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the simpler proposed balancing test for competing Core Values. |
| | | | Concerns – Divergence – Confusion<br>**Summary / Impression:**<br>- The government of Spain objects to the proposed language that clarifies that ICANN's deference to public authorities must be tempered by adherence to ICANNs own Bylaws, including its Commitments and Core Values.<br>- The government of Spain notes that any such limitation would be ineffective to the extent that ICANN' s actions would be inconsistent with applicable principles of sovereignty or law.<br>- The government of Spain believes that the principle of decision-making in the public interest should appear higher in the text.<br>- The government objects to the removal of a reference to local law. |

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| **109** | Govt-ES | The proposed text " *While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities in accordance with the Bylaws and to the extent consistent with these Fundamental Commitments and Core Values* . " Request the underlined text be deleted. Neither the current Bylaws nor the Articles of Incorporation limit the ability of governments to issue advice to the ICANN Board. This is because it would be ineffective as governments would still be obliged to protect general public interests (paragraphs 68 and 69 of the Tunis Agenda and page 6 of the Net Mundial Statement). Moreover, this is not in the best interest of the global Internet community ICANN pledges to serve as managing the Internet system of unique identifiers in the public interest is the first and foremost mission of ICANN (sections 2 and 3 of the AoC and sections 3 and 4 of the AoI)<br>- In this respect, acting for the benefit of the global Internet users and ensuring its decisions are made in the public interest should feature higher in the Bylaws, either in the definition of its mission or as one of its first core values.<br>- Core values para 69. There is no justification to strike out the explicit mention to local law when reflecting this provision of the AoI into the Bylaws. Local law plays an essential role in ICANN's legal environment, as for instance data retention period or Whois accuracy issues easily prove. | **Actions suggested:**<br>Feature public interest higher in Bylaws. Reinstate core values p69.<br><br>**CCWG response:**<br>The CCWG appreciates this input. A number of government commenters strongly objected to the proposed change in existing Core Value 11 which states that ICANN, " While remaining rooted in the private sector," should recognize "that governments and public authorities are responsible for public policy" and should duly taking into account governments' or public authorities' recommendations. After lengthy conversation, the CCWG proposes to address these concerns in two ways:<br><br>• *First* , to remove confusion about the meaning of "private sector" in the ICANN Bylaws, we propose to expressly state that the private sector includes business stakeholders, civil society, the technical community and academia.<br><br>• *Second* , we propose to remove the language that was read by some commenters to remove ICANN's obligation to consult with the GAC on consensus Advice. Instead, we propose to amend Article XI of the Bylaws, to provide that each advisory committee should provide a rationale for its advice, with references to relevant applicable national or international law where appropriate. The proposed language also implements the recommendation of ATRT2 requiring ICANN to work with the GAC to facilitate the GAC developing and publishing rationales for GAC Advice at the time Advice is provided.<br><br>• *Third* , we propose to clarify that the Independent Review Process applies to all violations of the ICANN Bylaws, including violations resulting from ICANN's action or inaction based on input from advisory committees or supporting organizations. |

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| **110** | RySG | - RySG notes a difference of opinion on language pertaining to ICANN "remaining rooted in the public sector." We support the definition of Public Sector proposed in the draft proposal and do not believe that this clarifying language is inconsistent with the multi- stakeholder model. With respect to the obligation to avoid capture, it is not clear whether the CCWG-Accountability intends to address this through specific language or through community balancing mechanisms built into the proposed community empowerment structure. We advise that this be achieved through the latter; otherwise defining and identifying instances of capture may be difficult and introduce subjectivities. We believe that the checks and balances described in the draft proposal, which will be reflected in the revised bylaws, help to avoid capture.<br>- If implemented, the RySG believes the recommended changes to ICANN's mission, commitments and core values would help to enhance ICANN's accountability to the global multi-stakeholder community. They are more clearly and strongly articulated than in the existing bylaws.<br>- We are especially supportive of the recommended clarification that ICANN's powers are enumerated.<br>- RySG supports the list of requirements included in the recommendation, provided that the community has the ability to approve or reject any future changes initiated or advanced by the ICANN Board | Agreement<br>**Summary / Impression:**<br>- The Registry Stakeholder Group supports retention of ICANN's obligation to remain "rooted in the public sector" and notes that this language is consistent with the multi-stakeholder model.<br>- The RySG supports use of the proposed community empowerment structure (rather than Bylaws language) to prevent capture.<br>**Actions suggested:**<br>Clarify whether the CCWG intends to address capture through specific language or through community balancing mechanisms built into the proposed community empowerment structure.<br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal contains a proposed additional Core Value that states that in performing its Mission, ICANN will strive to achieve a reasonable balance between the interests of different stakeholders. |
| **111** | CCG | The proposed Mission provides that ICANN will be subject to international law. The only reference made to any particular convention in the proposal is with respect to WHOIS database adhering to privacy conventions. An exhaustive, or at the very least, an indicative list of applicable international treaties /conventions should be provided. | New Idea<br>**Summary / Impression:**<br>The CCG suggests that an indicative list of applicable international treaties and conventions should be used to define ICANN's obligation to comply with international law.<br>**Actions suggested:**<br>Provide a list of applicable international treaties /conventions<br>**CCWG response:**<br>The CCWG appreciates this input, but decided not to catalogue applicable international treaties /conventions. Some of this may be addressed in the context of ongoing discussions regarding inclusion of a commitment to comply with fundamental human rights. In addition, the 2 nd Draft Proposal clarifies that this applies to relevant principles of international law and conventions. |
| | | | Agreement - New Idea<br>**Summary / Impression:**<br>- The BC supports the changes to ICANN's Mission Statement, Commitments, and Core Values.<br>- The BC proposes to strengthen paragraph 60 to ensure that ICANN does not attempt to establish obligations on non-contracted parties.<br>- The BC urges the CCWG to fully reflect the AoC obligations regarding new gTLD safeguards about malicious abuse, sovereignty concerns, and rights protection in the revised bylaws.<br>**Actions suggested:** |

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| **112** | BC | - BC, in general, supports the changes to ICANN's Bylaws in the areas of Mission, Commitments, and Core Values. When coupled with legally enforceable community power to block, or in some cases approve, Board-proposed amendments to the Bylaws, these changes would enhance ICANN's accountability.<br>- BC looks forward to IETF language on ICANN's mission with respect to protocol, port, and parameter numbers, which is still a missing element.<br>- BC supports the CCWG proposal to limit the scope of ICANN' s mission via the Bylaws: "ICANN shall not undertake any other Mission not specifically authorized in these Bylaws." (paragraph 60 on p.20). However, the BC proposes a change to the next sentence in paragraph 60, which now reads: *"...ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide"*.<br>- BC strongly support the proposition that ICANN should not attempt to establish obligations on non-contracted parties. Paragraph 60 should be clarified and we propose that it should read as follows: *"ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."*<br>- Regarding the balancing test among competing Commitments and Core Values, the BC seeks clarification as to why changes are needed to existing language. Any amendments to the existing language should promote prompt resolution of issues – not the lack of action. The BC strongly urges the CCWG to address this in the next iteration of the proposal.<br>- BC supports the use of the phrase "private sector led" in the Bylaws.<br>- BC s upports ICANN's commitment stated in paragraph 336 (p.59), arising from the *Affirmation of Commitments* required review of gTLD expansions: *"ICANN will ensure that as it expands the top-level domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection." While paragraph 337 indicates this language will be added to the Bylaws core values section, it is only partially reflected in paragraph 107 (p.26), which adds the phrase "enhances consumer trust and choice". The BC therefore urges the CCWG to implement the entire commitment from the Affirmation of Commitments, including "malicious abuse issues, sovereignty concerns, and rights protection"* | Consider suggested language change. Clarify why changes are needed to existing language regarding balancing test among competing Commitments and Core Values.<br><br>**CCWG response:**<br>The CCWG appreciates this input.<br><br>WP2 discussed the suggestion put forth by the BC (Comment 109) and others comment to add language regarding contract issues: *"ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."* The group felt that on balance this addition was not necessary. The limit on ICANN's ability to regulate services and content does not preclude ICANN from entering into contracts and enforcing its contracts in furtherance of its Mission. For example, a number of applicants for new gTLDs made voluntary commitments to better serve registrants and end users and to address concerns about competition, consumer protection, right protection, etc. Nothing about enforcing those voluntary commitments would be inconsistent with ICANN's Mission.<br><br>A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the simpler proposed balancing test for competing Core Values.<br><br>The full AOC commitment on expansion of the top level domain space will be remove added to the Review Section and modified to state: "I n any expansion of the top-level domain space will address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection." |

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| **113** | .UK | While we welcome the approach in this proposal, some of the wording needs more thought. (Wording like "to the extent feasible" and "where feasible," for example, rather negates ideas considered to be fundamental.) Given the significant role of the mission, commitments and core values in underpinning the new accountability structure, we would question why they should not be considered at the level of fundamental bylaws for allowing changes. Changes here should be at a minimum subject to rigorous debate and command good community support.<br>Paragraph 56: This appears to duplicate text from paragraph 55, but with a different emphasis. We would note that ICANN does not coordinate the development and implementation of policy for ccTLDs except in exceptional circumstances. | Agreement<br>**Summary / Impression:**<br>- More thought needed in wording.<br>- Given significant role of mission, commitments and core values, why should they not be considered at level of fundamental bylaws for allowing changes.<br>- Paragraph 56 is a duplicate from paragraph 55<br><br>**Actions suggested:**<br>More thought needed in wording.<br><br>**CCWG response:**<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal eliminates the "where feasible" language, creates the Commitments and Core Values as Fundamental Bylaws. The 2 nd Draft Proposal does not modify or affect the manner in which ccTLD policies are developed. |

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| **114** | IAB | - We suggest a clarification to the following existing bylaws text in paragraph 56: "The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN: 1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are Domain names (forming a system referred to as "DNS"); Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and Protocol port and parameter numbers; 2. Coordinates the operation and evolution of the DNS root name server system; 3. Coordinates policy development reasonably and appropriately related to these technical functions." We believe the verb "coordinates" gives the wrong impression about ICANN's core function, particularly for those outside of the ICANN community who are not familiar with the ecosystem of entities involved in developing and managing policies and identifier assignments related to core Internet registries. Furthermore, since there are many sets of unique identifiers that ICANN is not involved in administering, it would be more accurate to use the term "core Internet registries" rather than referring to the Internet's unique identifier systems. We suggest the edited text below to make both of these points more clear: "The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to support, at the overall level, core Internet registries, and in particular to ensure the stable and secure operation of those registries. In particular, ICANN: 1. Supports the allocation and assignment of values in three categories of registries as directed by the consensus processes in the responsible operational communities. These categories are Domain names (forming a system referred to as "DNS"); Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and Protocol parameters; 2. Supports the operation and evolution of the DNS root name server system; 3. Supports policy development reasonably and appropriately related to the DNS." With these edits, we believe the paragraphs that further articulate ICANN's role (57-60) would not be necessary because item (1) circumscribes ICANN's mission to carrying out identifier allocation and assignment at the direction of the relevant communities. At the very least, it obviates the need for paragraph 59, which we view as unnecessarily constraining the relationship between the IETF and ICANN. That relationship has benefited from fluidity over the years and that characteristic should be preserved going forward. | Agreement - New Idea<br>**Summary / Impression:**<br>The IAB suggests language clarifying ICANN's limited role with respect to coordination of unique identifiers for "core internet registries" rather than the whole of the Internet's "unique identifier systems."<br><br>**Actions suggested:**<br>Consider suggested language<br><br>**CCWG response** :<br>The CCWG appreciates and carefully considered this input. On balance, the CCWG elected to retain the reference to coordination, but clarified ICANN's limited Mission. |
| | | - Para 50, 71-76: The need to balance competing interests exists in ICANN's current Bylaws. USCIB seeks clarification as to why changes are needed to existing language. Any amendments to the existing language should promote prompt resolution of issues and not inactions. USCIB strongly urges the CCWG to address this in the next iteration of the proposal. | Agreement – New Idea – Concerns<br>**Summary / Impression:**<br>- The USCIB supports the retention of the term "private sector"<br>- The USCIB proposes to strengthen paragraph 60 to ensure that ICANN does not attempt to establish obligations on non-contracted parties.<br>- USCIB also seeks clarification on the new language for balancing Commitments and Core Values.<br>- The USCIB urges the CCWG to fully reflect the AoC obligations regarding new gTLD safeguards about malicious abuse, sovereignty concerns, and rights protection in the revised bylaws.<br><br>**Actions suggested:** |

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| **115** | USCIB | - Para 58: The current draft does not contain ICANN's mission with respect to protocol, port, and parameter numbers (which is to be provided by IETF). We wait for this important element.<br>- Para 60, para 337: We strongly support the proposition that ICANN should not attempt to establish obligations on non-contracted parties. Indeed, ICANN's entire multi-stakeholder structure is built on a self-regulatory system implemented through contractual obligations and thus ICANN can only establish contractual obligations on parties with which it has privity through a negotiated and mutually agreeable contract /amendment with such parties. Therefore, para 60 should be clarified and we propose that it should read as follows: " *ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties.* "<br>- We also note and support ICANN's obligation at paragraph 337, "ICANN will ensure that as it expands the top-level domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection." Paragraph 337 says this language will be added to the bylaws core values section, which USCIB supports. However, the entirety of this section does not appear in the proposed bylaw core value changes proposed by the CCWG and we request that the entirety of this language be added.<br>- para 89: We support the retention of the term "private sector." It is both historically accurate and an important element to retain.<br>- para 269: The proposed text for insertion in the bylaws is "where feasible, and appropriate, depending on market mechanisms..... " We feel that there is a large range of opinions on the role of the market. The AoC, however, is stronger in its support of the marketplace, so we would suggest deleting the words "and appropriate". | Strengthen paragraph 60, clarify new language for balancing Commitments and Core Values and urge ICANN to reflect new gTLD AoC<br><br>**CCWG response:**<br>The CCWG appreciates this input.<br>WP2 discussed the suggestion to add language regarding contract issues: *"ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."* The group felt that on balance this addition was not necessary. The limit on ICANN's ability to regulate services and content does not preclude ICANN from entering into contracts and enforcing its contracts in furtherance of its Mission. For example, a number of applicants for new gTLDs made voluntary commitments to better serve registrants and end users and to address concerns about competition, consumer protection, right protection, etc. Nothing about enforcing those voluntary commitments would be inconsistent with ICANN's Mission.<br><br>A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the simpler proposed balancing test for competing Core Values.<br><br>The full AOC commitment on expansion of the top level domain space will be remove added to the Review Section and modified to state: "I n any expansion of the top-level domain space will address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection."<br><br>Finally, the 2 nd Draft Proposal implements the USCIB's suggestion to remove the "feasible and appropriate" language. |

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| **116** | LINX | - We consider it essential that ICANN adopt a Mission in its Bylaws that is sufficiently clear to be justiciable – that is, for an independent body to objectively rule on whether a particular action is authorised by the Mission or is ultra vires.<br>- LINX emphasises the importance of the following points: a. We support the clarification that ICANN's Mission is limited to the enumerated powers, and we agree with the CCWG's proposed statement of what the Mission is;<br>b. We support the inclusion of an explicit statement that ICANN's Mission does not include the regulation of services that use the DNS, or the regulation of the content these services carry or provide; c. We congratulate the CCWG on finding an imaginative way to identify certain Core Values as " Commitments " that should be adhered to absolutely, without need to balance against each other, while others may involve trade-offs. We support the chosen Commitments.<br>- LINX is concerned by the reference to the "global public interest" in paragraph 105: a. We would strongly object to the inclusion of a general, unqualified commitment to the "global public interest" as this amounts to a general authorisation for the decision-maker to do whatever they feel is best in their almost unconstrained discretion. That would be inappropriate; b. Paragraph 105 qualifies the "global public interest" with "identified through the bottom-up, multistakeholder policy development process and are accountable, transparent, and respect the bottom-up multistakeholder process"; c. In our view this improves the term, but still risks asking the ICANN community, through the PDP, to seek to fix all the troubles in the world, and inviting them to take ICANN beyond its defined mission in pursuit of the global public interest as the ICANN community sees it. We would therefore remove the reference to "the global public interest" in Paragraph 105. | Agreement<br>**Summary / Impression:**<br>Linx generally supports the proposed changes to the Mission Statement, Commitments and Core values but seeks a clarification to the term "global public interest" to ensure that ICANN (a) remains within its limited mission and (b) identifies public interest values consistent with that mission through the bottom up multi-stakeholder process.<br><br>**Actions suggested:**<br>Clarify "global public interest".<br><br>**CCWG response:**<br>The CCWG appreciates this input. The group extensively discussed the issue of defining the "global public interest" identified by this commenter and others. The 2 nd Draft Proposal incorporates a number of changes designed to prevent Mission creep in the name of ensuring the "global public interest." |
| **117** | JPNIC | Yes. We believe it enhances ICANN's accountability by clearly defining the scope of ICANN's missions, to ensure ICANN focuses to conduct its activities within this scope. We especially find it important, that "ICANN's Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide" We also agree to designate certain Core Values as Commitments listed below, which are all essential principles in ensuring ICANN remains accountable in maintaining the stability of the Internet and how the Internet and bottom up, transparent, open form should be facilitated.<br>1. Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet<br>2. Limit its activities to those within ICANN's Mission that require or significantly benefit from global coordination;<br>3. Employ open, transparent, bottom-up, multistakeholder processes; and<br>4. Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.<br>Yes, agree with the requirements listed help ensure that ICANN's mission is more clearly described, based on what has been commonly shared and agreed by the ICANN community, that ICANN conducts its activities under its scope, ensures stability and reliability of its services. We also agree that ICANN should defer to input from public authorities to be consistent with ICANN's Commitments and Core Values. This is an important point to cover. | Agreement<br>**Summary / Impression:**<br>JPNIC supports the proposed revisions to the Mission Statement, Commitments, and Core Values and believes that ICANN should defer to input from public authorities that is consistent with ICANN's Commitments and Core Values.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| **118** | IPC | - Generally agrees with the recommended changes to ICANN's Mission, Commitments, and Core Values. These changes help create a culture of accountability within the organization.<br>- IPC is concerned that the proposal in paragraph 60 to add to the Bylaws a statement that "ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers or the content that they carry or provide" could be read too broadly. We assume there is no intent here to constrain ICANN's ability to enter into or enforce contractual provisions that require those making these identifiers available to take into account how they are used in specified circumstances – for example, to require domain name registration services to adopt and enforce policies against prohibited or abusive uses of domain names. We urge that this very broad proposed language be reviewed and refined to reduce the risk of any interpretation that would constrain ICANN's ability to enforce its contractual obligations.<br>- Agrees with the requirements for this recommendation. Given recent events it is clear that maintaining a strict definition of ICANN's mission and scope is essential to organizational performance and operational accountability. | Agreement - Concerns<br>**Summary / Impression:**<br>The IPC general supports the proposed revisions to the ICANN Mission Statement, Commitments, and Core Values, but is concerned that the prohibition on regulation of services or content could be read to constrain ICANN's authority to enter into and enforce contract prohibitions on abusive use of the domain name system.<br><br>**Actions suggested:**<br>Clarify p60.<br><br>**CCWG response** : The CCWG appreciates this input, and discussed the suggestion to add language regarding contract issues: *"ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."* The group felt that on balance this addition was not necessary. The limit on ICANN's ability to regulate services and content does not preclude ICANN from entering into contracts and enforcing its contracts in furtherance of its Mission. For example, a number of applicants for new gTLDs made voluntary commitments to better serve registrants and end users and to address concerns about competition, consumer protection, right protection, etc. Nothing about enforcing those voluntary commitments would be inconsistent with ICANN's Mission. |
| **119** | Govt-BR | Brazil fully supports the suggestion of incorporating ICANN's specific mission into its bylaws (p.19 -20). Moreover, we support that the global multistakeholder community should be provided with accountability mechanisms to ensure that the corporation acts strictly in accordance with its mission.<br>- References to the leadership of the private sector ("private sector led", "rooted in the private sector") are inadequate and contradict the spirit of multistakeholderism that should govern the corporation. The fact that ICANN is currently incorporated as a "non-profit organization" reinforces this understanding. | Agreement<br>**Summary / Impression:**<br>The government of Brazil supports the proposed revisions to the ICANN Mission Statement.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. We have modified the reference to private sector leadership to clarify that it refers to commercial stakeholders, civil society, the technical community, and academia. |

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| **120** | MPAA | - Paragraph 337 notes that the language in paragraph 336 will be added to the Bylaw Core Values, however this language doesn't appear in the proposed Bylaw Core Values updates proposed by the CCWG. MPAA supports the obligation reference in 336 and we suggest the language, in its entirety, be added.<br>- The proposed language in paragraph 60 is too broad. While we strongly support the notion that ICANN must not attempt to regulate non- contracted parties, we also assume it is not the intent to constrain ICANN's ability to enter into, interpret or enforce contractual obligations. The new accountability mechanisms must not minimize ICANN's ability to enforce contractual obligations and these obligations should be negotiated as they have been in the past, with ample input from the global multi-stakeholder community. | Agreement - Concerns<br>**Summary / Impression:**<br>The MPAA generally supports the proposed revisions to the ICANN Mission Statement, Commitments, and Core Values, but is concerned that the prohibition on regulation of services or content could be read to constrain ICANN's authority to enter into and enforce contract prohibitions on abusive use of the domain name system.<br><br>**Actions suggested:**<br>Refine paragraph 60.<br><br>**CCWG response** :<br>The CCWG appreciates this input, and discussed the suggestion to add language regarding contract issues: *"ICANN shall not engage in or use its powers to attempt to establish contractual obligations on companies with which it is not in privity of contract and shall not attempt to establish contractual obligations on contracted parties that are not agreed by such parties."* The group felt that on balance this addition was not necessary. The limit on ICANN's ability to regulate services and content does not preclude ICANN from entering into contracts and enforcing its contracts in furtherance of its Mission. For example, a number of applicants for new gTLDs made voluntary commitments to better serve registrants and end users and to address concerns about competition, consumer protection, right protection, etc. Nothing about enforcing those voluntary commitments would be inconsistent with ICANN's Mission. |
| **121** | CDT | - CDT fully support the proposed changes to ICANN's Mission, Commitments and Core values. We believe that these changes – and particularly the notion of enumerated powers – should ensure that ICANN respects and acts in conformance with its mission and that any attempts to change that mission must be subject to greater thresholds and to community assent.<br>- CDT supports the more detailed elaboration of the core values and commitments and agree with the strict limitations that the proposal suggests with regard to "balancing" one core value with another.<br>- CDT support the incorporation of the Affirmation of Commitments (AoC). The AoC's reviews and other provisions that specifically lay out a series of expectations of behavior and similar commitments are key components of the overall enhancement of ICANN's accountability. Their inclusion is essential. | Agreement<br>**Summary / Impression:**<br>- CDT supports the proposed revisions to ICANN's Mission Statement, Commitments, and Core Values, including the revised balancing test.<br>- CDT supports the incorporation of the AoC reviews and other provisions as essential components of ICANN's accountability.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| **122** | USCC | - Yes, the recommended changes do represent a positive move towards enhancing ICANN's accountability. We want to encourage the CCWG to stay the course on creating assurances that accountability mechanisms are binding.<br>- Yes we support the list of requirements included in the recommendation, but this support is contingent on the community having the ability to approve or reject any changes that the ICANN Board seeks to implement in the future.<br>- however, wish to raise concerns with one bylaws change regarding modifying the "balancing" language describing how ICANN will evaluate situations when one commitment must be reconciled with another commitment or core value. This new language, closely tracks language on "strict scrutiny" and "intermediate scrutiny" tests that are a part of U.S. legal jurisprudence. These standards were not developed to be used to weigh multiple competing interests or values. Therefore, the original language covering balance and reconciliation of competing values ought to be retained.<br>- However, in order to avoid confusion and ensure ICANN is able to best serve its core mission, we suggest the language in 337 be added to the bylaws. We further suggest paragraph 60 be amended to indicate that without prejudice to ICANN's ability to interpret or efforts to ensure compliance with its contracts, ICANN does not enjoy broad regulatory authority and will not engage in or use its power to regulate entities with which it does not have a contractual relationship, and shall not attempt to establish additional requirements on parties beyond those to which the parties agree. | Agreement - Concerns<br>**Summary / Impression:**<br>- USCC supports the revised Mission Statement, Commitments and Core Values and supports the continues use of the phrase "private sector led"<br>- USCC is concerned about the new language for balancing Commitments and Core Values. According to IA (and other commenters) the proposed text is too US-centric and is typically applied when one fundamental value is being infringed, not when the courts "are seeking to balance competing fundamental interests." IA concludes that the criteria do not provide guidance "as to how ICANN should actually balance competing interests."<br><br>**Actions suggested:**<br>Add language in 337 to Bylaws and amend paragraph 60.<br><br>**CCWG response:**<br>The CCWG appreciates this input. A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the simpler proposed balancing test for competing Core Values. |

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| **123** | INTA | - Agrees with these recommendations but would like to see the Community have the ability to challenge a decision made by ICANN on the basis that it contravenes one or more of the mission statements, Affirmation of Commitments ("AoC"), or core values. Such a challenge should be arbitrated by a third party and the procedure for any arbitration procedures should be outlined in advance.<br>- Agrees in principle with enumerated goals and recommendations. However, there must be accountability to the Internet community of governments, NGOs, and individual stakeholders, each of whom should have available a mechanism to challenge a decision by ICANN.<br>- With regard to the proposed incorporation of AoC paragraph 7, we note that the introductory provision of a new Section 8 in Article II of the Bylaws presently reads, "ICANN **shall** adhere to transparent and accountable budgeting processes, **providing [reasonable] [adequate] advance notice to facilitate stakeholder engagement in policy decision- making** ..." We believe that the use of the term "advance" is insufficient, as ICANN often provides inadequate time for comment periods, and the resulting limitation on adequate review is especially difficult for large membership organizations such as INTA, which represents trademark professionals from around the world. Therefore, we recommend that this phrase read, "providing reasonable and adequate advance notice." | Agreement<br>**Summary / Impression:**<br>INTA generally agrees with the proposed revisions to the Mission Statement, Commitments, and Core values, but supports a community challenge mechanism.<br><br>**Actions suggested:**<br>Strengthen "advance" – consider "providing reasonable and adequate advance notice"<br><br>**CCWG response:**<br>The proposed changes to the Independent Review contemplate a community challenge. The 2 nd Draft Proposal provides for a community rejection of the budget and strategic plan. |
| **124** | .NZ | - The changes would improve the clarity of ICANN's mission and make it easier for the community to ensure that the organisation doesn't engage in scope creep.<br>- The reconciliation test set out on page 17 of the report is also an improvement on the current language in the Bylaws.<br>- Making these parts of the bylaws hard to change without broad community support would also help give assurance that ICANN won't engage in scope creep. | Agreement<br>**Summary / Impression:**<br>- .NZ supports the proposed changes to ICANN's Mission Statement, Commitments, and Core Values.<br>- .NZ also supports the revised balancing test, and inclusion of these provisions as Fundamental Bylaws.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG thanks you for your comments. |
| **125** | HR2251 | - Control over the management of the Internet domain name system will not be exercised by a governmental or intergovernmental body.<br>- The bylaws of ICANN have been amended to provide for the following: No director or officer of ICANN may be selected by or represent a governmental or intergovernmental body.<br>- The board of directors of ICANN is prohibited from voting on advice or a policy proposal offered by the Governmental Advisory Committee unless such Committee reaches consensus regarding such advice or proposal. For purposes of the preceding sentence, the term "consensus" means general agreement in the absence of any formal objection.<br>- ICANN is committed to upholding freedom of speech, freedom of the press, freedom of assembly, and freedom of association and has adopted and implemented standards that are at least as protective of such freedoms as is the First Amendment to the Constitution.<br>- ICANN is prohibited from engaging in activities unrelated to ICANN's core mission or entering into an agreement or modifying an existing agreement to impose on a registrar or registry with which ICANN conducts business any condition (such as a condition relating to the regulation of content) that is unrelated to ICANN's core mission. | Neutral<br>**Summary / Impression:**<br>The comment consists of proposed United States legislation that has been superseded by subsequent events.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** : The CCWG appreciates this input. The 2 nd Draft Proposal incorporates many safeguards designed to prevent mission creep. |

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| **126** | NCSG | No ICANN action should violate fundamental human rights. We therefore welcome and note with approval that the call to forebear from content regulation in the mission statement section shows a positive concern for human rights.<br>- The NCSG supports a clear statement of ICANN's limited technical mandate. We agree that ICANN's mission should be limited to the coordination and implementation of policies and procedures required to facilitate the stable and secure operation of the DNS.<br>- We applaud the recognition that ICANN's Mission does not include the regulation of services that use the DNS or regulation of the content that these services carry or provide.<br>- We also applaud the CCWG's recognition that the existing bylaw language describing how ICANN should apply its Core Values is weak and permits ICANN to exercise excessive discretion.<br>- In paragraphs 69-100 NCSG believes the CCWG should avoid overly broad references to furthering "the public interest;" such references should be more specific and refer to a "public interest goal within ICANN's mandate." ICANN does not have a mandate to pursue the general public interest; it is intended to serve the public interest only within its narrow DNS-related scope of activity.<br>- Paragraph 105 There is horribly redundant wording here: " ens ure that decisions are made in the global public interest identified through the bottom-up, multistakeholder policy development process and are accountable, transparent, and respect the bottom-up multistakeholder process." This should be simplified to: "Ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent."<br>- Paragraph 107 We prefer the original wording, with the exception of adding "in the DNS market." The current revision muddles and undermines the clear intent of this passage, which was to encourage ICANN to rely on competition and market mechanisms. The addition of the words "healthy" and "enhances consumer trust" introduce vague criteria that in many ways contradict competitive market criteria. The addition of "consumer choice" is unnecessary as that value is already encompassed by a commitment to competition.<br>- Paragraph 110 This paragraph is incorrect as it currently stands; it says "governments and public authorities are responsible for public policy." As ICANN deals with a global arena, it should say that "governments and public authorities are responsible for public policy in their jurisdictions." We also believe that the phrase "duly taking into account the public policy advice of governments" should be changed to "duly taking into account the advice of the GAC," as it is GAC - not "governments" - that formally provide advice to the board under the bylaws and not all of its advice deals with public policy.<br>- We fully support the changes to the Core Values and the designation that certain Core Values are considered Commitments - values that should rarely (if at all) be balanced against each other - and the incorporation of various provisions from the Affirmation of Commitments. We support the addition of respect for Human rights to the core values and support the addition of an obligation for human rights impact analyses for ICANN decisions to the mission. NCSG has consistently recommended that ICANN adopt the "Respect, Protect, and Remedy" framework which was developed for private corporations and that ICANN benchmark its human rights compliance by joining the Global Network Initiative. These would provide simple ways to further strengthen this core value. | Agreement – Concerns – New Idea<br>**Summary / Impression:**<br>- The NCSG agrees that ICANN should forebear from content regulation and supports the proposed revisions to ICANN's Mission, Commitments, and Core Values.<br>- The NCSG supports the revised balancing test<br>- The NCSG is concerned about overly broad references to the "public interest" – suggests clarification to ensure ICANN remains within the scope of its mission<br>- The NCSG proposes revised wording for paragraphs 105, 107, and 110<br>- NCSG has consistently recommended that ICANN adopt the "Respect, Protect, and Remedy" framework<br><br>**Actions suggested:**<br>Clarify "public interest" and consider wording for paragraphs 105, 107, and 110<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal focuses on the need to ensure that ICANN stays within its Mission, and that in carrying out its Mission the bottom-up multistakeholder policy development process is used to identify the public interest. The Draft also revises the language of paragraphs 105 and 107. While we understand the objection to paragraph 110, the CCWG elected to retain the current Bylaws wording.<br><br>The CCWG-Accountability extensively discussed the opportunity to include into a Commitment related to human rights, within ICANN's stated Mission, in the ICANN Bylaws. The group commissioned a legal analysis of whether the termination of the IANA contract would induce changes into ICANN's obligations, within its defined Mission, with regards to Human Rights. While no significant issue was found to be directly linked to the termination of the IANA contract, the group acknowledged the recurring debates around the nature of ICANN's accountability towards the respect of fundamental human rights within ICANN's Mission. The group has achieved consensus on including a human rights related Commitment in ICANN's Bylaws within its defined Mission. However no particular wording currently proposed achieved consensus. Reiterating its commitment to articulate concrete proposals as part of its mandate, the CCWG-Accountability is calling for comments on this approach and the underlying requirements. |

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| **127** | MM | Clearly defining ICANN's mission and putting into place efficient and effective institutional mechanisms for enforcing those limitations is the most important element of the ICANN accountability reforms.<br>I applaud the recognition that ICANN's Mission does not include the regulation of services that use the DNS or the regulation of the content these services carry or provide. I hope this can serve as a strong constraint on existing and future ICANN contracts, some of which already violate that principle.<br>I also agree with the CCWG's recognition that the existing bylaw language regarding the application of ICANN's Core Values is weak and permits ICANN to exercise excessive discretion. That being said, there are still elements in the draft that lend themselves to an expansive mission. In paragraphs 69-110, there are many references to furthering "the public interest." These references need to be modified to refer only to a "public interest in the openness, interoperability, resilience, security and/or stability of the DNS" or a "public interest goal within ICANN's mandate." Paragraph 107, which was intended to encourage ICANN to rely on competition and market mechanisms rather than top-down regulation, has also been altered in a way that suggests a more expansive vision of ICANN's remit. The addition of the concepts "healthy" and "enhances consumer trust" introduce vague criteria that differ from and may contradict competitive market criteria. The addition of "consumer choice" is unnecessary as that value is already encompassed by a commitment to competition. In general, I prefer the original wording, with the exception of adding "in the DNS market."<br>Paragraph 110 fundamentally misrepresents the role of governments in ICANN. Currently it says that "governments and public authorities are responsible for public policy." As ICANN deals with a global arena, it should say that "governments and public authorities are responsible for public policy *in their jurisdictions* ." We also believe that the phrase "duly taking into account the public policy advice of governments" should be changed to "duly taking into account the advice of the GAC," as it is GAC and not "governments" that formally provide advice to the board under the bylaws, and not all of its advice deals with public policy. | Agreement - Concerns<br>**Summary / Impression:**<br>- MM agrees that ICANN should forebear from content regulation and supports the proposed revisions to ICANN's Mission, Commitments, and Core Values.<br>- MM is concerned about overly broad references to the "public interest" – suggests clarification to ensure ICANN remains within the scope of its mission<br>- The NCSG proposes revised wording for paragraph 107 and 110<br><br>**Actions suggested:**<br>Clarify "public interest"<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal focuses on the need to ensure that ICANN stays within its Mission, and that in carrying out its Mission the bottom-up multistakeholder policy development process is used to identify the public interest. The Draft also revises the language of paragraphs 105 and 107. While we understand the objection to paragraph 110, the CCWG elected to retain the current Bylaws wording. |

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| **128** | GG | Google does not support the CCWG-Accountability's proposed revisions to bylaws language addressing balancing and reconciliation of competing core values. In its Proposal, the CCWG-Accountability proposes modifying the "balancing" language in the bylaws to describe how ICANN will evaluate situations when one commitment must be reconciled with another commitment or core value. This new language, which among other 2 things requires some reconciliations to be "justified by an important, specific, and articulated public interest goal . . . [and] narrowly tailored using the least restrictive means reasonably available," appears to be taken from so-called "strict scrutiny" tests that U.S. courts use to 3 evaluate First and Fourteenth Amendment challenges. The proposal suggests that in reconciling core values, ICANN should use a version of the U.S. Supreme Court's intermediate scrutiny tests/. These standards are not appropriate for ICANN. In situations where U.S. courts employ strict or intermediate scrutiny tests, there is usually only one core value to be upheld (e.g., free speech, equal protection). These tests are not designed to provide guidance when balancing multiple compelling interests that lead to different conclusions. For that reason, the tests often favor governmental inaction. But in the face of competing core values, the Internet ecosystem depends on ICANN continuing to act, albeit in a way as faithful as possible to the many interests at stake. The strict scrutiny test does not provide ICANN with any guidance for how to address this conundrum, nor does it provide any predictability for the community that depends on ICANN's decision. We recognize, however, that the current test is vague: it, too, provides little guidance to the ICANN board and staff and little predictability to parties affected by ICANN's actions. At its core, the bylaws provision amounts to an exhortation that ICANN bodies to "exercise [their] judgment." We urge the CCWG-Accountability to develop a proposal that provides 5 meaningful guidance in balancing ICANN's commitments and core values, while avoiding a bias in favor of preserving the status quo, even if the status quo itself does not represent the best effort to balance competing commitments and core values. | Agreement - Concerns<br>**Summary / Impression:**<br>Google is concerned about the new language for balancing Commitments and Core Values. According to IA (and other commenters) the proposed text is too US-centric and is typically applied when one fundamental value is being infringed, not when the courts "are seeking to balance competing fundamental interests." IA concludes that the criteria do not provide guidance "as to how ICANN should actually balance competing interests."<br><br>**Actions suggested:**<br>D evelop a proposal that provides meaningful guidance in balancing ICANN's commitments and core values, while avoiding a bias in favor of preserving the status quo.<br><br>**CCWG response:** The CCWG appreciates this input. A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the simpler proposed balancing test for competing Core Values. |
| **129** | Board | How will the principles proposed to enhance and improve the Mission and Core Values of ICANN be tested against the bylaws in their entirety? Given that modifying the Mission and Core Values was not part of the community discussion at the Singapore meeting, what is the CCWG-Accountability doing to highlight this change as part of the suite of recommendations? In asking this question, we are supportive of the idea that the mission statement and core values should be refined. | Concerns – Confusion<br>**Summary / Impression:**<br>The Board questions how the revised language will be tested. The Board expresses concerns that this language was not part of the discussion in Singapore.<br><br>**Actions suggested:**<br>Consider testing the principles proposed to enhance and improve Mission and Core Values<br><br>**CCWG response** : The CCWG appreciates this input. The proposed revisions to the Mission, Commitments, and Core Values have existed in draft form since January of this year and were discussed in Singapore. We received numerous comments on these changes in the first comment period, and modified the proposal in response. |

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| **130** | CENTR | - The recommendations in the draft include revising ICANN's Bylaws to clarify the scope of ICANN's policy authority, reflect key elements of the Affirmation of Commitments, and establish a set of "Fundamental Bylaws" which can eventually be amended based on prior approval by the Community. While we agree that ICANN's Mission statement might require language refinement against the scope of ICANN's policy authority, that the current Bylaws might also be reviewed to reflect the key elements of the Affirmation of Commitments and that the Board should have a limited ability to change the key accountability provisions, we support the list of requirements that represent the basis of the recommendation but we do not believe that these changes alone will improve accountability at ICANN Board and staff level. As a matter of fact and as stated earlier, we recommend that – once the accountability enhancements are enforced – both ICANN staff and Board go through regular training programmes to increase their accountability literacy and culture which are of paramount importance if the community likes to have the accountability spirit at the next level. Moreover, we think that introducing a distinction between "ICANN Commitments" and "ICANN Core Values" may just add unnecessary complexity within an already over-structured statutory framework. We would also like to point out that one of the first elements to be clarified is to make sure that any Bylaws do not contain "competing values", but rather "complementary values".<br>- CENTR believes that introducing a distinction between "ICANN Commitments" and "ICANN Core Values" may just add unnecessary complexity within an already over-structured statutory framework; | Agreement Concerns<br>**Summary / Impression:**<br>- CENTR supports the proposed changes but is unconvinced that these changes are sufficient to ensure accountability of the Board and staff.<br>- CENTR calls for regular training to increase accountability literacy and culture.<br>- CENTR questions the distinction between Commitments and Core Values may add unnecessary complexity.<br><br>**Actions suggested:**<br>Consider training programs on accountability literacy. Clarify that Bylaws do not contain "competing values", but rather "complementary values".<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal maintains the distinction between Commitments and Core Values, and distinguishes the way in which these principles may be balanced. Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. In any situation where one Core Value must be balanced against another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process. |

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| **131** | I2Coalition | The i2Coalition strongly supports the inclusion of language limiting ICANN's activities to those that further its mission, as well as changes to ICANN's Bylaws requiring ICANN to carry out its activities in accordance with applicable law and international law and conventions through an open and transparent process. In particular, it supports clarifying ICANN's Mission Statement to state explicitly that the scope of ICANN's authority does not include the regulation of services that use the domain name system (DNS) or the regulation of content these services carry or provide. However, the i2Coalition has concerns regarding the inclusion of new criteria associated with balancing commitments and core values. The new language suggests that "strict scrutiny" and "intermediate scrutiny" concepts imported from U.S. constitutional law should guide ICANN in making decisions that implicate multiple commitments or core values. But under U.S. law, these tests are typically applied when one fundamental value (e.g., equal protection or freedom of speech) is infringed. They are not designed to provide guidance when balancing multiple compelling interests that lead to different conclusions. For that reason, the tests often favor governmental inaction. But in the face of competing core values, the Internet ecosystem depends on ICANN continuing to make decisions, rather than refrain from acting. The strict scrutiny and intermediate scrutiny tests do not provide ICANN with any guidance for how to address this conundrum. For these reasons, we believe that the existing language regarding balancing and reconciliation of competing core values ought to be retained. The i2Coalition supports the clarification to the Core Values that any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values. This is important to the goal of accountability; public authorities would have the ability to provide input into ICANN decisions, while ensuring that all ICANN actions are compliant with its Bylaws. | Agreement – Concerns<br>**Summary / Impression:**<br>Strong support for including language limiting activities and clarifying Mission statement to state that ICANN's authority does not include regulation of services. Concerns regarding inclusion of new criteria associated with balancing. Strict scrutiny and intermediate scrutiny do not provide ICANN with any guidance on how to address conundrum. Supports the clarification to the Core Values that any decision to defer to input from public authorities must be consistent with ICANN's Commitments and Core Values.<br><br>**Actions suggested:**<br>Retain existing language on balancing and reconciliation<br><br>**CCWG response** :<br>The CCWG appreciates this input. A number of commenters were uncomfortable with the proposed balancing test, on the grounds that it might tend to favor inaction. We agreed with this input and modified the proposed balancing test language accordingly. Specifically, we have eliminated the test for balancing Commitments, on the grounds that these reflect ICANN's fundamental compact with the community and are intended to apply consistently and comprehensively to ICANN's activities. We retained the simpler proposed balancing test for competing Core Values. |
| **132** | NIRA | - NIRA agrees with recommended changes and requirements. | Agreement<br>**Summary / Impression:**<br>Agrees with recommended changes.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG thanks you for your comments. |

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| **133** | ALAC | Para 50, Section 3.1.1.a: The ALAC believes that in accordance with the Affirmation of Commitments, ICANN has a responsibility to develop policies that will foster user trust in the DNS. The ALAC understands that ccTLDs are outside of ICANN scope in regards to this.<br>- believes that fostering trust in the DNS must be incorporated into the ICANN Bylaws. This can be accomplished by adding the phrase "and to foster user trust in the DNS" to Paragraph 56 as well as including it in Commitments. The reference in paragraph 107 is not sufficient since that is in relation solely to competition.<br>Para 65: The ALAC believes that it is appropriate to define the reference to Private Sector leadership as explicitly meaning NOT led by the governments. Furthermore, although it is led by the private sector (as defined here), governments do have a role to play in the ICANN Multistakeholder model.<br>- recommends caution on classing any Bylaws related to reviews as fundamental without a provision for altering the timing, with widespread community agreement, but without requiring a formal Bylaw change. | Agreement – New Idea<br>**Summary / Impression:**<br>- ALAC proposes new language to "foster user trust in the DNS" in paragraph 56 and the Commitments<br>- ALAC believes that paragraph 107 is inadequate to reflect the relevant provisions of the AOC<br>- ALAC proposes that "private sector leadership" in paragraph 65 should be defined as meaning "not lead by governments"<br>- ALAC urges caution on making reviews-related bylaws fundamental bylaws.<br><br>**Actions suggested:**<br>Consider new language, define "private sector leadership" in paragraph 65.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The language from the AoC regarding, among other things, user trust, will be included in the Revie w section as follows to: "In any expansion of the top-level domain space will address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection." |
| **134** | LAB | - Para 56 the syntax is overly complex and ambiguous (does the "which" refer to "policy", "process" or "systems"?). I suggest the syntax be simplified. I suggest too that "open, transparent" be inserted directly before "bottom-up".<br>- Para 76, the words "in a way that is substantially related to that interest" seem superfluous and could thus be deleted.<br>- 86, I suggest that the rather lengthy phrase "relevant principles of international law and applicable law and international conventions" be replaced by simply "international and domestic law" (assuming that "applicable law" is intended to encompass national/domestic law).<br>- Para 87, I suggest deleting "internet" from the phrase "internet DNS".<br>- Para 111, I suggest the following wording: "Striving to ensure that the interests of one or more interest groups are not advanced at the undue expense of others". | Agreement – New Idea<br>**Summary / Impression:**<br>Lee Bygrave generally supports the proposed revisions and makes several suggestions to clarify and enhance the wording.<br><br>**Actions suggested:**<br>Consider language revisions.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Report incorporates these suggestions. |
| **135** | RSSAC | We note that the proposed bylaws revision (p. 20) includes a placeholder for language relating to the root server system in an updated description of ICANN's mission. We expect to contribute proposed language on this point as the process of revising the bylaws proceeds. | **Neutral**<br>**Summary / Impression:**<br>The RSSAC will provide language for the placeholder description of ICANN's mission with respect to the DNS root servers.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input and looks forward to receiving proposed language from the RSSAC. |

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| **136** | RIR | - A clear definition of the scope of ICANN's Mission, Commitments and Core Values could contribute positively to the enhancement of ICANN's accountability.<br>- In particular the RIR community fully supports the description of ICANN's mission with regard to the coordination of policy development for Internet number resources page 20, paragraph 57):<br>"In this role, with respect to IP addresses and AS numbers, ICANN's Mission is described in the ASO MoU between ICANN and RIRs."<br>- With regards to ICANN's core values in the Bylaws and in particular page 25, paragraph 89, the RIR community notes that the term "private sector led multistakeholder" and similar terms) have been used by the NTIA in describing ICANN, but the RIRs describe their policy development processes using terms such as "inclusive, open, transparent and bottom-up". These different descriptions are compatible, provided it is understood that "private sector led" does not exclude government participation. | Agreement<br>**Summary / Impression:**<br>The RIR community supports the changes to ICANN's Mission Statement, Commitments, and Core Values. It notes that the phrase " private sector led multistakeholder," which has been used by NTIA, is compatible with the RIR's approach so long as it does not exclude government participation.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **137** | DotMusic | DotMusic agrees with the recommended changes to ICANN's Mission, Commitments, and Core Values. These changes will help create a culture of accountability within ICANN. However, DotMusic is concerned that a Bylaws statement that "ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers or the content that they carry or provide" can be interpreted too broadly. DotMusic recommends that this broad proposed language be reviewed and refined to reduce the risk of any interpretation that would constrain ICANN s ability to enforce any contractual obligation. | Agreement - Concerns<br>**Summary / Impression:**<br>DotMusic generally supports the proposed revisions to the ICANN Mission Statement, Commitments, and Core Values, but is concerned that the prohibition on regulation of services or content could be read to constrain ICANN's authority to enter into and enforce contract prohibitions on abusive use of the domain name system.<br><br>**Actions suggested:**<br>Consider refining some language.<br><br>**CCWG response** :<br>WP2 discussed the concerns expressed regarding contract issues, and the suggestion to modify this language. The group felt that on balance that clarification was not necessary. The limit on ICANN's ability to regulate services and content does not preclude ICANN from entering into contracts and enforcing its contracts in furtherance of its Mission. For example, a number of applicants for new gTLDs made voluntary commitments to better serve registrants and end users and to address concerns about competition, consumer protection, right protection, etc. Nothing about enforcing those voluntary commitments would be inconsistent with ICANN's Mission. |
| **138** | Siva | The proposed changes would indeed enhance ICANN's Accountability. However, ICANN's adherence to the Accountability framework would depend on the commitment of the ICANN Board and its Members, Constituencies and its participants, Executive and Staff to the notions of Accountability, which ought to exceed the legal commitments of the organization and its constituents. Accountability standards would have to become inherent to the organization. This needs to be achieved by an ongoing process which could begin with an elaborate exercise in work stream 2 | Agreement – New Idea<br>**Summary / Impression** :<br>Siva generally supports the proposed changes but believes that true accountability requires a cultural change that goes beyond legal commitments.<br><br>**Actions suggested:**<br>Consider an ongoing process.<br><br>**CCWG response** :<br>The CCWG appreciates this input and agrees that accountability is an ongoing process. |

**Fundamental Bylaws**

*Additional Question: The CCWG-Accountability welcomes feedback on whether there is a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to propose new Fundamental Bylaws or changes to existing ones. In particular, the CCWG-Accountability welcomes feedback on whether the Mission should be subject to even higher thresholds of Board or community assent.*

*Question 3: Do you agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability?*

*Question 4: Do you agree with the list of requirements for this recommendation, including the list of which Bylaws should become Fundamental Bylaws? If not, please detail how you would recommend amending these requirements.*

***38*** *Comments Submitted*
***36*** *Agreements*
***5*** *Concerns*
***7*** *New Ideas*
***1*** *Divergence*

| # | Contributor | Comment | CCWG Response/Action |
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| **139** | RH | Only the membership should have the power to change the Bylaws. | Agreement – New Idea<br>**Summary / Impression:**<br>Mr. Hill supports concept generally but believes only membership should have the power to amend the Bylaws.<br><br>**Actions suggested:**<br>Consider membership as the sole entity to have power to change Bylaws.<br><br>**CCWG response** : Under the 2 nd Proposed Draft, Fundamental Bylaws may be changed only with the agreement of the community. The community may reject other changes proposed by the Board. |
| **140** | JS comment 1 | - Motivate more explicitly the creation of Fundamental Bylaws. Currently para 113 simply asserts that 'CCWG-Accountability believes', without specifying the grounds for this belief. Since the creation of Fundamental Bylaws adds considerable complication to the proposal, perhaps greater justification of the step is wanted? Indeed, why would Fundamental Bylaws inherently enhance accountability, as implied at para 122? Could situations not arise where a particular Fundamental Bylaw worked against accountability and, owing to its 'fundamental' character, would be harder to correct?<br>- The proposal repeatedly refers to ICANN's 'limited technical mission' and the need to avoid 'mission creep'. Where in practice would the line be drawn between 'technical mission' and wider activity? Could one person's legitimate mandate be another's mission creep? What lies behind this concern? Would it be helpful to be more specific in this regard: e.g. that ICANN should not embark on unduly restrictive regulation of the domain name industry; or that ICANN should not interfere in the operations of ccTLDs? | Concerns<br>**Summary / Impression:**<br>- Mr. Scholte suggests that the need for "Fundamental Bylaws" and the assumption that they would contribute to accountability requires greater justification.<br>- Ms. Scholte questions the community's expressed concerns about "mission creep" and suggests greater specificity with respect to this concern.<br><br>**Actions suggested:**<br>Motivate the creation of Fundamental Bylaws. Clarify where the line is between ICANN's limited mission and wider activity.<br><br>**CCWG response** : The CCWG appreciates this input. The 2 nd Draft Proposal reflects the inclusion of Fundamental Bylaws and clarifies that ICANN may not act outside of its Mission. |

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| **141** | auDA | - auDA supports the concept of utilising "fundamental bylaws" as another mechanism for facilitating accountability. the concept of fundamental bylaws that restrict the ICANN Board's ability to change these tenets is similar to the "golden bylaws" concept auDA proposed as part of our initial response to the consultations of the CWG on IANA transition.14 Although the foci of the CWG and CCWG differ, auDA supports the concept of using such mechanisms as the primary tool for delivering accountability.<br>- auDA supports the list of items that the CCWG proposes could be afforded coverage by fundamental bylaws<br>- auDA notes the CCWG's observation that the language for underlying Bylaw provisions has not yet been reviewed by Legal Counsel and ". . . is only conceptual in nature at this stage. . ." and, accordingly, welcomes the opportunity to provide additional / revised commentary once such advice has been provided and analysed. | Agreement – Concerns<br>**Summary / Impression:**<br>- auDA supports the concept of Fundamental Bylaws and the proposed list to be made fundamental.<br>- auDA notes need for legal review of proposed language.<br><br>**Actions suggested:**<br>Have legal counsel review the language for underlying Bylaw provisions.<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that any final bylaws language will be reviewed by legal counsel and adopted in accordance with the requirements for notice and comment. |
| **142** | DBA | In particular, we would like to emphasize the following:<br>Creating a set of Fundamental Bylaws. | Agreement<br>**Summary / Impression:**<br>Emphasizes Fundamental Bylaws.<br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG thanks you for your comments. The 2 nd Draft Proposal reflects the inclusion of Fundamental Bylaws. |
| **143** | CRG | - To question 1a) ICANN values and fundamental Bylaw proposals call for more general values than the present narrow technical scope under the USG stewardship. For example: *ICANN is accountable to all its members, users and open and free Internet. ICANN is accountable for the IANA, functions as well as a stable, resilient, open and efficient DNS Market.....* Then ICANN should be measured against those higher/more general standards. But the proposed amendments mix present technical objectives with more general (future) standards. It will be a hard discussion if we start with an amended text, but guess thats the reason we have so many lawyers involved.<br>- Based on my personal experience in ATRT2, I consider the AoC to be the best basis for the actual constitutional core values, from which the new By Laws have to be drafted. For example, if the community commits to a “market” model in the fundamental Bylaws as per above, the discussion of “private sector led” o not led, becomes less relevant and maybe it can be preempted. The proposal has to respect some strict hierarchy of values first, technical conditions second, etc. so as not to get boggled down in details further down the road in the best UN fashion.<br>- Q3. It should be part of WS to establish at the level of Management, the internal clarity of operative roles and the level of internal separation of powers between them. This cannot be left to the discretion of any new CEO anymore. The question is so important in terms of internal accountability, that it should be embedded in the Fundamental By Laws pre-transition (WS1) so has to have it protected under the highest threshold possible.<br>- Q4. WS1 should develop a minimum requirement of internal checks and balances and transparent arms length relationships should be established at least for the major organisational areas of (a) policy development, (b) compliance and (c) operational functions, including but not limited to IANA. | New Idea<br>**Summary / Impression:**<br>- Mr. Gutierrez proposes to add an additional fundamental bylaw that specifies the operative roles of ICANN staff and Board and the level of internal separation of powers among them.<br>- Internal checks and balances should be place to separate policy development, compliance, and operational functions of organization.<br><br>**Actions suggested:**<br>Consider adding an additional fundamental bylaw on roles of staff and board and separation of powers. Consider internal checks and balances.<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that the 2 nd Draft Proposal incorporates the AoC commitments into ICANN’s Bylaws. The review and redress provisions are designed to ensure that ICANN can be held for all violations of its Bylaws and Articles of Incorporation. |

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| **144** | DCA-T | - Q3. Indeed the ICANN's Bylaws should be harder to change than others. These would be deemed Fundamental Bylaws; these identified sections of the bylaws should be well designated and marked.<br>- Q4. The proposed increase of the voting threshold to 3/4 of votes in favour of the change (higher than the usual threshold of 2/3) Is acceptable, however the members of the board in question must also demonstrate their understanding of the proposals through proper study so that it is not just passed by vote without due considerations. The board members should be careful not to be just approvers of proposals; they must do so under justifiable and necessary means. | Agreement – New Idea<br>**Summary / Impression:**<br>- Generally supports concept of Fundamental Bylaws, including specified list.<br>- In addition to voting threshold, Board members must demonstrate their understanding of proposed changes before approving.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws may only be changed with the approval of the community. |
| **145** | NM | We provide for changes in the by-laws, but it may be that we would be better off making clear that core principles are not subject to change. The ultimate goal of the organization is to act in the interest of the public as a whole, without special treatment of any business, private entity, individual, or government. The inherent founding principle that this entity exists for the overall public good and not for the commercial benefits of any individual or group should be a core principle that cannot be changed, no matter how many people go for it. | Agreement – New Idea<br>**Summary / Impression:**<br>Perhaps better to prohibit change to core principles and Mission altogether.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws may only be changed with the approval of the community. |
| **146** | AFRALO | Q3. The creation of fundamental bylaws that require the consent of the community to be changed is a good approach and would enhance the accountability of ICANN board to the community.<br>Q4. AFRALO members believe that the fundamental bylaws should include the fundamental standing issues such as the mission and the core values of the organization, excluding any functional or operational issue. | Agreement – New Idea<br><br>**Summary / Impression:**<br>- Supports basic concept of Fundamental Bylaws.<br>- Should include Mission, Core Values, and other "fundamental standing issues".<br><br>**Actions suggested:**<br>Fundamental Bylaws should include Mission, Core Values, and other "fundamental standing issues"<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values - may only be changed with the approval of the community. |

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| **147** | Afnic | Q3. Afnic supports the idea of fundamental bylaws, in the sense it's a way to balance the powers of the Board through the empowerment of the Community (see below). This set of fundamental bylaws is interesting only if the empowered community is put in place.<br>Q4. Afnic agrees with the list of fundamental bylaws proposed and, in order to achieve the IANA stewardship transition, insist on the importance of including in the fundamental bylaws the provisions for reviews that are part of CWG-Stewardship work as well as the creation of the CSC. | Agreement – New Idea<br><br>**Summary / Impression:**<br>- Good idea but only meaningful if empowered community is in place.<br>- Include CWG Stewardship reviews and creation of CSC as Fundamental Bylaw<br><br>**Actions suggested:**<br>Include the provisions for reviews that are part of CWG.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community. |
| **148** | Govt-IN | It is appreciated that the current proposal suggests that fundamental bylaws should stay intact unless change is called for by the community. It is important for ICANN to have a well defined mission, commitments and core values that should be reflected in its organisational DNA, objectives and prioritisation approach. | Agreement<br>**Summary / Impression:**<br>- Important to have a well-defined mission, commitments and core value that should be reflected in DNS<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input and agrees on the importance of articulating a well-defined Mission for ICANN. |
| **149** | DP-DK | We strongly endorse the use of Fundamental Bylaws as a means of assuring the broader Internet community that ICANN will continue to live up to the commitments it is making as part of the transition for the foreseeable future, and that these fundamental constraints on the abuse of its power will not themselves be subject to easy manipulation. | Agreement<br>**Summary / Impression:**<br>Endorses Fundamental Bylaws as a means of assuring that ICANN will continue to live up to commitments and that fundamental constraints on abuse will not be subject to easy manipulation<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| **150** | IA | - IA agrees that classifying some Bylaws as "Fundamental Bylaws" will enhance ICANN's accountability by restricting its ability to change certain Bylaws with only a two-thirds majority.<br>- The CCWG may want to examine whether there is a way to ensure that the need for binding Independent Review panels is enshrined in a Fundamental Bylaw without binding the community to the precise formulation recommended by the CCWG. Although the process set forth by the CCWG seems reasonable, it may be the case that it needs to be modified at the margins once parties have had some experience with it.<br>- IC believes that it is a requirement for the ICANN principal office or headquarters to be located in Los Angeles should be included as a Fundamental Bylaw. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- May need flexibility to modify details of IRP with experience.<br>- HQ in Los Angeles should be Fundamental Bylaw.<br><br>**Actions suggested:**<br>Consider binding IRP and HQ in California as Fundamental Bylaws<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw. |
| **151** | eco | - Making some bylaws more robust than others, i.e. the idea of creating Fundamental Bylaws, is a good one. The described process seems to strike an appropriate balance between making it harder to change these bylaws and at the same time allowing for changes whenever substantial parts of the community deem this to be required. Some flexibility needs to be retained for an organization working in a rapidly changing environment.<br>- Fundamental Bylaws, changes to which require approval, are an appropriate measure to enhance ICANN's accountability.<br>- The list of items qualifying for Fundamental Bylaws should be kept as short as possible and only encompass those clauses that are needed to protect the accountability architecture as such. Based on the suggestions made in the draft report, the list of items appears to be appropriate. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- Keep list short as possible<br>- May need flexibility to modify details in light of experience and changing environment.<br><br>**Actions suggested:**<br>Keep list of items as short as possible.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **152** | Govt-ES | - The organization needs a stable and predictable legal and jurisdictional environment and these requirements could certainly be included in the Bylaws as a way to ensure compliance with the accountability measures designed. But prescribing a particular jurisdiction now would preclude other jurisdictions that could perfectly fit and comply with these requirements (in and out the USA) from hosting the organization in the long run.<br>- On the other hand, jurisdiction is already a task of Work Stream 2 (page 90) of the CCWG, and enshrining ICANs current jurisdiction as a fundamental bylaw would pre-empt the future work of WS2 in this regard. It is essential that when that process begins, the global public interest is taken into account and all relevant stakeholders have their say, including governments. | Agreement – Concerns<br><br>**Summary / Impression:**<br>Supports general approach. Jurisdiction should not be prescribed in Bylaws at this time<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw. |

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| **153** | RySG | - Executive Summary refers to "reviews required by the CWG-Stewardship." We support the recommendation that these reviews be incorporated into the Fundamental Bylaws and recommend that the procedures for implementing the outcomes of such reviews that are determined by the CWG-IANA are also included within that fundamental bylaw 10<br>- Yes. Establishing an approval threshold of 75% would serve to ensure a substantial percentage of the affected community agrees with proposed changes.<br>- RySG agrees with the list of proposed Fundamental Bylaws, with one recommended addition. We believe that ICANN's current bylaw (Article XVIII, Section 1) establishing ICANN's principle office location, which is consistent with the Affirmation of Commitments Section 8b establishing ICANN's headquarters location, should be made a Fundamental Bylaw. R eason: All of the accountability mechanisms and reforms currently proposed by the CCWG assume ICANN ' s continued operation under California not-for- profit corporate law. If that assumption were to change, all of the current accountability reform efforts would need to be re-assessed and started anew.<br>- The RySG also strongly supports the recommendation that the CWG-Stewardship's proposed IANA Function Review, including CWG-identified requirements for implementing the outcomes of the IFR, should be added to the ICANN Bylaws, as a Fundamental Bylaw. | Agreement<br>**Summary / Impression:**<br>- Supports general approach, voting threshold, proposed list.<br>- Supports adding HQ requirement as Fundamental Bylaw.<br>- CWG IANA Function Review and CWG-identified requirements should be Fundamental Bylaws.<br><br>**Actions suggested:**<br>CWG IANA Function Review and identified requirements as Fundamental Bylaws.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw. |
| **154** | JH | According to the current proposal, I agree that the introduction of Fundamental Bylaws would enhance ICANN's accountability. Because if we say something is wrong, we should have right criteria, which should be the Fundamental Bylaws. Although ICANN has Bylaws now, there are still many problems. This proposal should point out these problems and give specific amendments. For example, many problems have already been raised by the communities: the transparency of Nomcom, the representativeness of the ICANN Board of Directors (It is questionable whether board members selected from each community represent the community or just themselves), the ICANN Board membership and voting rights issues, which law should ICANN follow. It is critical to have Bylaws under the ground of community consensus, because it is the criteria to judge whether ICANN does sth wrong or right decision. If the criteria is problematic, it is impossible to discuss about the latter issues. | Agreement<br>**Summary / Impression:**<br>- Agrees Fundamental Bylaws would enhance accountability.<br>- Critical to have Bylaws underground of community consensus to judge criteria.<br><br>**Actions suggested:**<br>Proposal should point out problems and give specific amendments **.**<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community. |

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| **155** | BC | - BC supports the concept of designating certain Bylaws as Fundamental Bylaws that would require majority approval by community Members. Also, the BC supports the CCWG's proposal that 75% of community Members must vote in favor of any proposed change to Fundamental Bylaws.<br>- However, we suggest that the CCWG explore a way to ensure that the need for binding Independent Review is enshrined in a Fundamental Bylaw without fixing every aspect of Independent Review Panel procedure in the Fundamental Bylaw itself. The specific IRP procedures proposed are new, and the community and Board may wish to modify them based on gained experience without having to meet the very high bar established by enshrining these specific details in a Fundamental Bylaw. We need to ensure the process remains sufficiently flexible to address the needs of the community as the Internet continues to evolve.<br>- Additional Fundamental Bylaws:Article XVIII Section 1, the location of ICANN's principal office<br>- BC believes that Article 18 should be a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed without broad community approval. Moreover, the BC hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- May need flexibility to modify details of IRP with experience.<br>- HQ in Los Angeles should be Fundamental Bylaw.<br>- Article 18 should be Fundamental Bylaw<br><br>**Actions suggested:**<br>Add article 18 and HQ in Los Angeles as Fundamental Bylaws.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2 nd Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, the IRP, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw |
| **156** | .UK | We support the general concept of fundamental bylaws.<br>3.2.3.3: While we recognise the need to have a high bar to changing a fundamental bylaw, this can also be an impediment to necessary change. We wonder whether some thought should be given to exceptional mechanisms that can define and assess necessary changes (addition of new, abrogation or amendment of existing) in exceptional circumstances, something akin to a constitutional conference. | Agreement<br>**Summary / Impression:**<br>Supports general approach but suggests consideration of exceptional mechanisms – e. g., "constitutional conference"<br><br>**Actions suggested:**<br>Consider exceptional mechanisms that can define and assess necessary changes.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal does provide for amendment of Fundamental Bylaws, but only with the consent of the community. The proposed Community Forum may provide a vehicle for the discussion of needed changes. |
| **157** | USCIB | Q3. Yes. Critical elements that require a high standard to change, are important both from a stability standpoint, and also to address legitimate concerns for the integrity of the transition.<br>Q4. paragraph 337, "ICANN will ensure that as it expands the top-level domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection." Paragraph 337 says this language will be added to the bylaws core values section, which USCIB supports. However, the entirety of this section does not appear in the proposed bylaw core value changes proposed by the CCWG and we request that the entirety of this language be added. | Agreement – Concerns<br>**Summary / Impression:**<br>Supports general approach but requests inclusion of entire AoC provision regarding TLD expansion in Core Values.<br><br>**Actions suggested:**<br>Include entire AoC provision regarding TLD expansion in Core Values **.**<br><br>**CCWG response** :<br>All elements of the AoC haven been incorporated into the 2 nd Draft Proposal. The specific language identified by the USCIB is now contained in the Review Section of the Bylaws. |

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| **158** | LINX | - LINX support the introduction of Fundamental Bylaws.<br>- LINX agree with the CCWG's selection of bylaws for "Fundamental" status and do not identify any omissions.<br>- LINX caution against excessive use of "Fundamental" status: ascribing bylaws ' Fundamental ' status recklessly would force the community to use what is intended to be an exceptional mechanism more routinely. This would weaken the protection for those bylaws that do deserve entrenchment. We therefore advise approaching with caution any recommendations to give additional bylaws fundamental status.<br>- LINX believe the threshold suggested by CCWG for changing Fundamental Bylaws is appropriate.<br>- LINK are willing to be persuaded that a mechanism should be created for the Community to add or amend Fundamental Bylaws, but this should be subject to a very high threshold within each community. Merely requiring the unanimous support of all SOACs should not be sufficient (or perhaps even necessary): if there is only a bare majority within GNSO this should not be sufficient. | Agreement<br>**Summary / Impression:**<br>- Generally support, but avoid excessive use of "Fundamental" status.<br>- Very high level should be established to amend or add to Fundamental Bylaws<br>- Voting threshold ok<br><br>**Actions suggested:**<br>Add very high threshold within each community to add/amend Fundamental Bylaw<br><br>**CCWG response** :<br>The CCWG appreciates this input, which is reflected in the 2 nd Draft Proposal. |
| **159** | JPNIC | Yes. By distinguishing Fundamental Bylaws from the other Bylaws, with explicit community approval required for its changes, it ensures changes to key components of the Bylaws will only take place with clear community support, and avoids the Board passing Fundamental Bylaw changes without getting noticed by the community. We also recognize the need for Fundamental Bylaws is identified by CWG-Stewardship.<br>Yes, we agree all of them to be included in the Fundamental Bylaws. Including the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee. | Agreement<br>**Summary / Impression:**<br>General support – including need for CWG Stewardship requirements such as IANA Function Review and Customer Standing Committee<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **160** | CWG-St | - Work on the CWG Separation Process (previously Separation Review) has been further developed within the CWG and we expect that this will be more fully described in the forthcoming proposal from the CWG-Stewardship. We are not yet in a position to provide full details ahead of the closure of the this public comment period on June 3rd, but do expect to work with you in future to effectively communicate any additional requirement, including the possible use of a fundamental bylaw to deal with this.<br>- The CCWG Accountability initial proposals describe the scope of the "fundamental bylaws" in section 3.2.4. It is proposed that the "Reviews that are part of the CWG-Stewardship's work – the IANA Function Review and any others they may require, as well as the creation of a Customer Standing Committee" would be considered Fundamental Bylaws. As such, any change of such Bylaws would require prior approval by the community. | Agreement<br><br>**Summary / Impression:**<br>General support – including need for CWG Stewardship requirements such as IANA Function Review and Customer Standing Committee<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2 nd Draft Proposal, Fundamental Bylaws – which includes the Mission Statement, Commitments, and Core Values, as well as the CWG-Stewardship dependencies - may only be changed with the approval of the community. |

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| **161** | IPC | - The IPC does not believe that there is a need for additional means to propose or amend Fundamental Bylaws, other than those proposed by the CCWG. The IPC is not necessarily opposed to increasing the supermajority thresholds proposed by the CCWG, but any change must be carefully analyzed to avoid a single stakeholder veto situation. Furthermore, there should be a degree of deference to existing supermajority thresholds of general applicability.<br>- "Fundamental Bylaws" should be those bylaws that are *fundam ental* to the mission and core values of ICANN. These bylaws should be harder to change because of their fundamental nature, not merely because they are designated as such.<br>Thus, the introduction of bylaws that are harder to change does not, by itself, enhance ICANN's accountability. Rather, it is the substance of these bylaws that must be reviewed to determine whether they will affect ICANN's accountability. That said, if these bylaws are fundamental in nature, they should be more protected from changes by the Board.<br>- The IPC is generally supportive of the bylaws which have been proposed to be "fundamental." However, as noted below, the IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw: *ICANN affirms its commitments to: 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.* | Agreement – Agreement – New Idea<br>**Summary / Impression:**<br>- IPC believes that this status should apply only to Bylaws that are fundamental to the mission and core values of ICANN.<br>- Supports proposed list but add AoC paragraph 8b re HQ in US<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>All elements of the AoC haven been incorporated into the 2 nd Draft Proposal. The specific language identified by the IPC is now contained in the Review Section of the Bylaws. |
| **162** | Govt-BR | CCWG should consider reviewing Article XVIII, Section 1, of ICANN's bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a "fundamental bylaw". | Agreement – Concerns – Divergence<br>**Summary / Impression:**<br>- The Government of Brazil that Article 18 should not receive status of Fundamental Bylaw.<br><br>**Actions suggested:**<br>Article 18 as Fundamental Bylaw.<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that the current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw. |
| **163** | MPAA | - MPAA fully supports the concept of making certain bylaws Fundamental Bylaws that enjoy special protection and can only be changed based on prior approval by the Community. The five items proposed to have the status of Fundamental Bylaws (p. 5) will ensure a stable, autonomous and self-governing ICANN that is not easily altered or swayed by the Board or any external forces.<br>- MPAA suggests that the existing ICANN bylaw requiring the principal office of ICANN be in the State of California, USA, also be designated as a Fundamental Bylaw. See additional comment on this topic in the Nexus section below.<br>- Regarding transparency in the proposed IRP process, the MPAA believes it will be important for the community to be aware of the filing of IRPs in an open and timely manner. This will allow parties "materially affected" by the IRP process and eventually decisions to fully participate.<br>- The US Courts provide a de facto check on ICANN's adherence to its bylaws and the rule of law. Litigation represents a last resort to be used only in the event of a catastrophic failure of the multi-stakeholder process, but the mere existence of that option has a stabilizing effect. As such, and as mentioned above, MPAA suggests that current ICANN bylaw Article 18, Section 1 be made a Fundamental Bylaw. requiring 75% community voting approval for any change, would go a long way to ensure a stable and accountable ICANN post transition. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- May need flexibility to modify details of IRP with experience.<br>- HQ in Los Angeles should be Fundamental Bylaw.<br>- Article 18 should be Fundamental Bylaw requiring 75% community approval for change.<br><br>**Actions suggested:**<br>Article 18 and HQ in Los Angeles as Fundamental Bylaws.<br><br>**CCWG response** :<br>The CCWG appreciates this input and note that the current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw |

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| **164** | CDT | - CDT agrees that the addition of fundamental bylaws enhances ICANN accountability and supports a role for the community with regard to approving new bylaws or changes to existing bylaws. The latter is a critical element in ensuring that ICANN does not stray from its mission, commitments and core values.<br>- CDT supports the proposed list of current bylaws that would become fundamental bylaws. We also support the inclusion of the IANA Function Review (the periodicity of the review, as well as the Special Review) and the Customer Standing Committee (CSC) as a minimum set of IANA related mechanisms that should be brought into the fundamental bylaws. | Agreement<br>**Summary / Impression:**<br>- Supports general approach and list<br>- Include IANA Function Review and CSC as Fundamental Bylaws<br><br>**Actions suggested:**<br>Add CSC and IFR as Fundamental Bylaws<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **165** | CIRA | I believe the introduction of specific 'fundamental bylaws', while limiting the Board of Directors' ability to modify these bylaws may be effective as a check against mandate creep on the part of the organization. | Agreement<br>**Summary / Impression:**<br>Supports general approach as effective check against mandate creep.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **166** | SR | I believe the thresholds proposed are sufficient at this time. | Agreement<br>**Summary / Impression:**<br>Supports general approach and thresholds<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **167** | USCC | - Yes, the threshold ensuring that 75% of the impacted community approves of the proposed changes will enhance accountability.<br>- Yes it is useful to elevate certain bylaws, in particular those preventing mission creep would ensure accountability and allow ICANN to focus on its core duties.<br>- However, given this higher voting threshold, the CCWG should consider how to strike a balance between providing an appropriate level of detail and creating the flexibility to add improvements to new processes created by the plan.<br>- Suggests the inclusion of a new bylaw aimed at the prevention of government capture or undue ICANN influence on public policies unrelated to ICANN's core mission. This would be achieved through additional transparency, requiring that ICANN or any individual acting on ICANN's behalf make periodic public disclosure of their relationship with any government official, as well as activities, receipts and disbursement in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN. | Agreement<br>**Summary / Impression:**<br>- Supports general approach and thresholds<br>- Consider need for flexibility to add improvements to new processes<br>- Consider adding new Fundamental Bylaw aimed at safeguard against government capture, e.g., disclosure of relationship to governments, etc.<br><br>**Actions suggested:**<br>Consider safeguard against Government capture as a Fundamental Bylaw<br><br>**CCWG response** :<br>The 2 nd Draft Report retains the concept of private sector leadership in the Commitments and Core Values. Fundamental Bylaws may be changed, but only with the consent of the community. The 2 nd Draft Proposal provides a number of safeguards against capture by any single part of the community, including governments and public authorities. |

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| **168** | INTA | Q3. agrees that there should be certain bylaws considered "fundamental," in that they embody core principles and goals and, hence, are more difficult to amend or abrogate. However, establishing "fundamental" bylaws does not necessarily provide a remedy if the Community perceives that ICANN is not following a fundamental bylaw, or any other bylaw for that matter. We strongly support a mechanism in which an aggrieved party or group can seek redress if it has credible evidence that ICANN is not adhering to a fundamental bylaw.<br>Q4. agrees, in general, with the bylaws which have been proposed to be "fundamental." However, after review, we suggest the addition of AoC ¶ 8b as a mechanism(s) for establishing the IRP (§4.1), and Community powers (§§5.3–5.6) should be included as a "fundamental" bylaw | Agreement<br>**Summary / Impression:**<br>- Supports general approach and thresholds<br>- Necessary but not sufficient – requires dispute resolution mechanism<br>- Add Aoc paragraph 8b and Community Powers as Fundamental Bylaws.<br><br>**Actions suggested:**<br>Add Aoc paragraph 8b and Community Powers as Fundamental Bylaws.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. |
| **169** | .NZ | - Yes. In the context of a membership model, making some parts of the bylaws harder to change – and the authorisation of such changes being more broadly done than simply by the Board – would be a meaningful enhancement to ICANN's accountability in the post-contract environment.<br>- Yes – the requirements set out are reasonable, and the proposed list of Fundamental Bylaws is appropriate. The membership model on which this new accountability system rests should also be Fundamental, whether it is set out in the Bylaws or the Articles. | Agreement<br>**Summary / Impression:**<br>- Supports general approach and thresholds<br>- Add membership model as Fundamental provision in Bylaws or Articles<br><br>**Actions suggested:**<br>Add membership model as Fundamental provision<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2nd Draft Proposal, Fundamental Bylaws – which includes the membership model - may only be changed with the approval of the community. |
| **170** | HR2251 | Requirements: ICANN has adopted, if necessary through amendment to its bylaws, all additional measures recommended by the multistakeholder community through the IANA Stewardship Transition Coordination Group, the Cross Community Working Group on Enhancing ICANN Accountability, and the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions. | Agreement<br>**Summary / Impression:**<br>Requirement for ICANN to adopt if necessary through amendment to Bylaws measures recommended by community through ICG, CWG, CCWG<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG has considered this input. |

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| **171** | NCSG | - Supports the empowerment of the ICANN community through the introduction of fundamental bylaws. - supports the importance of preserving the ICANN's narrow mandate and believes that a higher threshold for initiating a new or changing an existing fundamental bylaw and a role for the community to approve such bylaw changes are essential components in that regard.<br>- Support the list of suggested fundamental bylaws as well as the addition of reviews that are a part of the CWG Stewardship' s work. | Agreement<br>**Summary / Impression:**<br>- Supports general approach, list and thresholds<br>- Include IANA Function Review and CSC as Fundamental Bylaws<br><br>**Actions suggested:**<br>Include IANA Function Review and CSC as Fundamental Bylaws<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2 nd Draft Proposal, Fundamental Bylaws – which includes the CWG-Stewardship dependencies - may only be changed with the approval of the community. |
| **172** | GG | While we support designating some bylaws as fundamental, fundamental bylaws should not be overly detailed. Fundamental bylaws should be flexible enough to adapt to evolving experience. We agree with the CCWG-Accountability's proposal to designate certain bylaws as fundamental and the requirement to require support from the community, as well as a ¾ vote of the ICANN Board, in order to change any fundamental bylaws. However, given 6 this higher voting threshold, the CCWG-Accountability should consider whether some fundamental bylaws might be unnecessarily detailed. For example, we agree that the fundamental bylaws should include a requirement for a binding, accessible Independent Review Process (IRP) mechanism that reaches both substantive and procedural complaints. However, because the ICANN community to date has no experience with this new IRP process, the procedures will likely evolve in light of experience. At this time, the detailed procedures governing how the IRP operates should not be fixed in the language of the fundamental bylaws. | Agreement<br>**Summary / Impression:**<br><br>- Supports general approach.<br>- Include IRP as Fundamental Bylaw, but retain flexibility to reflect experience (i.e., do not create operational rules as Fundamental Bylaws)<br>- Consider whether others are too detailed, create too much inflexibility<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Under the 2 nd Draft Proposal, Fundamental Bylaws – which includes the IRP - may only be changed with the approval of the community. At the same time, implementation of the IRP, including the detailed rules under which it will operate, will require significant work, supported by expert advice, which will be undertaken in Work Stream 2 and which are not themselves proposed as a Fundamental Bylaw. |
| **173** | CENTR | We believe that the introduction of so-called "Fundamental Bylaws" that should be "harder" to change than other provisions, would moderately improve ICANN's accountability. The entire ICANN "rulebook" should apply to all ICANN Board members and/or staff without distinguishing among core values that would then become "frozen". | Agreement<br>**Summary / Impression:**<br>- Supports general approach and thresholds<br>- Necessary but not sufficient – entire "rulebook" should apply to all<br><br>**Actions suggested:**<br>Consider "rulebook".<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that the 2 nd Draft Proposal contemplates and IRP with authority to consider alleged violations of any provision of ICANN's Bylaws. |

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| **174** | NIRA | - NIRA supports that the proposal be subjected to higher assent by the community.<br>- NIRA agrees with the introduction of Fundamental Bylaws and requirements of the recommendation. It expects that Fundamental Bylaws would be scarcely used, and where they are use, the wishes and powers of the community would be allowed to prevail over that of the Board including recalling the Board. | Agreement<br>**Summary / Impression:**<br>- Supports general approach, list and thresholds<br>-<br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **175** | RIR | There is general support the introduction of Fundamental Bylaws. Regarding the list of Bylaws that should become Fundamental Bylaws, most of them indeed contain fundamental principles. However, the RIR community does not believe that the requirement for ICANN to remain in the United States of America is fundamental, but rather is an administrative issue. | Agreement<br>**Summary / Impression:**<br>- Supports general approach, list and thresholds<br>- HQ/incorporation are administrative matters, not Fundamental Bylaws<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The current Bylaws/Articles continue to specify that ICANN is a California non-profit corporation, headquartered in California, but this language is not proposed as a Fundamental Bylaw. |
| **176** | Siva | Fundamental Bylaws would minimise the likelihood of misdirections in ICANN governance. On the need for such changes as part of Work Stream 1, it is not necessary to rush these changes as a part of the pre-transition proposals. The proposals for fundamental bylaw changes require deeper deliberations, more thoroughly done as part of Work Stream 2, which ICANN could irrevocably commit to facilitate and sufficiently empower. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- Requires deeper calibration and should be part of Work Stream 2<br><br>**Actions suggested:**<br>Reconsider in WS2.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

**Independent Review Panel Enhancement**

*Question 5: Do you agree that the proposed improvements to the IRP would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

*43 Comments Submitted*
*38 Agreements*
*14 Concerns*
*4 New Ideas*
*2 Confusion*

| # | Contributor | Comment | CCWG Response/Action |
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| **177** | RH | "Third party international arbitral bodies would nominate candidates". That is too vague. The proposal would have to specify some specific bodies. But I propose that this provision be deleted entirely. I doubt that any arbitral body has enough knowledge and experience to be able to propose candidates. I would propose instead that ICANN itself ask for nominations, as it did for the PIC DRP. | New Idea<br>**Summary / Impression:**<br>Do not seek nominations from international arbitral bodies; rather ICANN to call for nominations.<br><br>**Actions suggested:**<br>See above.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The 2 nd Draft Proposal addresses this concern on page 41. The selection of panelists would follow a 4 -step process: ICANN, in consultation with the community, will initiate a tender process for an organization to provide administrative support for IRP, beginning by consulting the community on a draft tender document.<br><br>ICANN will then issue a call for expressions of interest from potential panelists; work with the community and Board to identify and solicit applications from well-qualified candidates with the goal of securing diversity; conduct an initial review and vetting of applications; and work with ICANN and community to develop operational rules for IRP.<br><br>The community would nominate a slate of proposed panel members.<br><br>Final selection is subject to ICANN Board confirmation. |

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| **178** | JS comment 1 | - How can the costs of non-compliance be made sufficiently high that parties will follow the rulings? For example, the Dispute Settlement Mechanism of the World Trade Organization has binding rulings, but sometimes rich and powerful states can pay the (for them relatively modest) fine and continue with the violating behavior.<br>- Is some more precise definition of 'independence' wanted? The concept is given no specification. If someone were to challenge the 'independence' of a proposed panelist on the IRP, how would the validity or otherwise of the objection be determined? Is it sufficiently specific to say the person is not 'beholden to ICANN´ (para 125); how would that beholden-ness be concretely assessed? | Concerns<br>**Summary / Impression:**<br>- Consider how to make cost of non-compliance high enough to incentivize compliance<br>- Define "independence" more precisely to avoid unnecessary challenges<br><br>**Actions suggested:**<br>Provide definition of "independence".<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The IRP process does not involve the imposition of fines or penalties. Rather, the 2 nd Draft Proposal anticipates that decisions of the IRP will be binding to the maximum extent permitted by law, and enforceable by a court of competent jurisdiction. In addition, the Community Powers, including the power to recall the Board, provides additional support for the integrity of the process.<br><br>The 2 nd Draft Report provides that members of the Standing Panel must be independent of ICANN, including ICANN SOs and ACs. To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. Provisions to permit a party to object to a member of the proposed decisional panel on the basis of prejudice could be explored in this process. |
| **179** | auDA | Bolstering the process for Independent Review to hold ICANN to a "substantive standard of behaviour rather than just an evaluation of whether or not its action was taken in good faith". That these review processes are proposed by the CCWG to be binding upon the ICANN Board, is a welcome improvement. | Agreement<br>**Summary / Impression:**<br>Supports general approach<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>CCWG appreciates this input |

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| **180** | DBA | New and improved appeal mechanisms: An IRP Panel that is binding, affordable, more accessible, broadened in scope as well as a reformed Reconsideration Process. | Agreement<br>**Summary / Impression:**<br>Supports general approach<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **181** | WC comment 1 | Reforming the way in which the Independent Appeals mechanisms function enables those affected by the Board's decisions to have the basis for such decisions to be tested in a fair and accessible process. | Agreement<br>**Summary / Impression:**<br>Supports general approach<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **182** | WC comment 2 | The question of whether the community should resolve disputes over its powers by arbitration or recourse to the courts is a very interesting question in the sense that it may be that the executive of the US government in the form of Department of Commerce is handing over oversight and accountability in a proposal to the community of ICANN, but the courts - the legal or judicial accountability- still remains in terms of the courts in California and legislative accountability remains in terms of what's in the non-profit corporation legislation. So are we left with the argument that the community should not be seen to be going to the courts for enforcement, and therefore arbitration is a better solution, or is it really a way of perhaps avoiding the fact that there still is judicial accountability for ICANN even after the transition? I obviously haven't been party to all of the discussions so I'm really not fully able to assess this. | Neutral<br>**Summary / Impression:**<br>We are left with the argument that the community should not be seen to be going to the courts for enforcement, and therefore arbitration is a better solution, or is it really a way of perhaps avoiding the fact that there still is judicial accountability for ICANN even after the transition?<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal reflects a recognition of the need for a dispute resolution panel that understands ICANN and has the ability to create guiding precedent over time to reduce disputes. |

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| **183** | DCA-T | - The Independent review process is a very important redress mechanism for the users of ICANN's services; the ICANN's existing Independent Review Process (IRP) could be having some limitations as have been identified by the panels that are currently handling different IRP's of the new gTLD process.<br>- The Independent Review Process (IRP) panels need to be more empowered to be able to do its duties as an independent yet judicial mechanism that can propose or produce declarations without the fear of a veto by a disagreeing ICANN Board.<br>- The IRP Panels ought to feel well empowered to perform it duties transparently and with the confidence that a resulting ruling will carry the day. Therefore it is important that the rulings from the IRP are binding rather than merely advisory.<br>- On accessibility, applicants have shied away from accessing these services due to the expensive nature of the IRP. Thus the IRP should be made more be accessible, both financially and from a standing perspective, transparent, efficient. Therefore the burden of the legal fees would be on ICANN<br>- Results from the IRP should not make ICANN to immunize or insulate itself more to 'WIN' in future rather it should take into account the recommendations of the IRP panels and be used to enrich the operation of ICANN in the foreseeable future.<br>- The time limits set for filing IRPs should be extended to at least 9 months from the date of the decision that is being challenged, having taken into account the additional (elapsed) time expended on Reconsideration and Cooperative Engagement Processes (CEP). The point is that delays in preliminary/exploratory processes might affect a final decision to institute an IRP, if the preliminary processes prove unsatisfactory, and time limitation should not stop an aggrieved party from seeking accountability through the IRP procedure.<br>- Since the purpose of an IRP is to contest ICANN board or staff actions against policy, an IRP should focus really on accountability and should not be dismissed on a flimsy technicality. An adjudicating IRP Panel should allow a plaintiff to re-file or amend an IRP filing if it is deemed to have been filed incorrectly.<br>- An IRP Panel should be able to determine financial claims and damages and make such awards accordingly.<br>- A party that institutes an IRP against ICANN should also be allowed to exercise the option of seeking redress and relief in a regular court of Law within the judicial system if the IRP is seen as restricted. The overall aim is to seek justice for any wrongful action.<br>- Composition of Panel; Expertise : Most of ICANN ' s activities are rendered by volunteers, however there is need for significant training for anybody deemed fit to offer a consultancy or legal expertise, particularly international arbitration expertise and expertise, developed over time, about the DNS and ICANN's policies, practices, and procedures.<br>- Anyone who renders advisory services to ICANN that shall be admitted as evidence or expert must be able to understand the operations of the DNS to be able to provide relevant and actionable advice.<br>- A Standing IRP Panel should not be normative. Each IRP Panel should be constituted afresh for any IRP to ensure that the neutrals are not influenced to take the details and procedures of a particular IRP proceeding and use that in trying to decide a different IRP Process. | Agreement – New Idea<br>**Summary / Impression:**<br>- Supports general approach<br>- IRP needs to be more empowered<br>- IRP needs to be more accessible<br>- IRP decisions should have precedential value<br>- Time limits should be relaxed<br>- Permit re-filing and/or amending<br>- Permit complaining party to go to court as well as IRP<br>- Panelists should have necessary expertise<br>- Each IRP panel should be constituted "afresh"<br><br>**Actions suggested:**<br>Consider proposed amendments.<br><br>**CCWG response** :<br>The CCWG appreciates this input and considered these suggestions. For example, although the 2 nd Draft Report does not extend the filing deadline to 9 months, the proposal would require filing from the time an affected party becomes aware of the alleged violation and how it allegedly affects them. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |

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| **184** | AFRALO | AFRALO members appreciate the reinforcement of the Independent review Process. | Agreement<br>**Summary / Impression:**<br>Supports general approach<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input |
| **185** | Afnic | - Afnic is of the opinion that the IRP is an answer long awaited by the community, to have an independent, affordable and binding decision making body that allows affected parties to challenge ICANN's decisions.<br>- Afnic is also convinced that the existence of such an IRP has to be included in the fundamental bylaws, along with the obligation for ICANN to fund adequately this process.<br>- However, in the spirit of enhancing the Community powers, and of recognizing the international nature of this IRP, Afnic suggests the following amendments: 11: The geographical diversity shouldn't be achieved only by "reasonable efforts". Here like in other parts of the proposal (see below) Afnic recommends to strengthen this diversity, by including the following provision: no more than 2 members of the panel from the same region (5 regions); 14. a.: Prior to the submission by "third party international bodies" it should be stated the ICANN has to launch an international public tender; 14. b: Icann Board should send to the "community mechanism" not only the list of candidates it has selected, but the full list of eligible candidates, in which it should isolate the candidates proposed by the board; 19: as for pro bono representation, the complainants should ask for it from the start directly to the panel. The panel (and not ICANN) would allow the complainant to have free access, after examining the non-frivolous nature of its complaint, and the impossibility to afford the expense of the IRP. There's no reason why only community and non for profit complainants should access this pro bono representation, as some SME's (small or medium size enterprise) or individuals can be affected by decisions ICANN makes. In order to avoid the multiplication of complaints by individuals, collective complaints should also be considered as eligible. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- IRP should be independent, binding, affordable, and accessible to affected parties<br>- IRP should be a Fundamental Bylaw<br>- Diversity requirements should be strengthened<br>- Provide for pro bono representation for all<br>- Consolidate multiple complaints<br><br>**Actions suggested:**<br>Include it as a Fundamental Bylaw and consider proposed amendments.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Report implements the goal of capping the number of members of the panel from the same region, and significantly modifies the selection process to reflect these suggestions. It provides for the consolidation of similar complaints, in a manner to be determined as part of Work Stream 2. |
| | | - We enthusiastically support the CCWG Draft Proposal's efforts to overhaul and reform ICANN's existing Independent Review Process (IRP). Independent review is the final piece of the constitutional puzzle – a third "branch," independent of the other two ( *i.e.*, both the Board *and* the community/members), with neither a policy-making nor a policy-implementation role, which can serve as a neutral arbiter in disputes regarding the exercise of those powers by the other components of the institution. We agree that the IRP should possess the main structural features set forth in the CCWG Draft Proposal.<br>- We have alternative proposals that can strengthen the Independent Review Process by defining its core mission more precisely, consolidating references to the IRP's powers in one place in the Bylaws, giving the Board an "override" or "veto" power, exercisable only upon supermajority or unanimous vote, over IRP decisions, and adding several features that will help the IRP develop the institutional weight and institutional power it will need to perform its critical task adequately. | Agreement – New Idea<br>**Summary / Impression:**<br>- Supports general approach<br>- Define IRP core mission more precisely; Board to have "override" or "veto" only upon supermajority or unanimous vote<br>- Substantive standard to determine whether ICANN is complying with Bylaws, most importantly Mission; should not become a catch-all institution<br>- Specific additional/refined language proposed<br>- SEE DETAILED PROPOSALS AND SUGGESTIONS<br><br>**Actions suggested:**<br>Consider proposed amendments.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| | | - **The Substantive Standard of IRP Review.** Like the Board of Directors, the IRP will function most effectively if its powers are confined narrowly to its core mission, which in the IRP's case is *to determine whether ICANN is complying with the provisions of the Bylaws* – including, importantly, the provisions regarding ICANN's Mission and powers. The IRP should *not* become a general-purpose catch-all institution to which anyone who might claim that ICANN has acted badly towards them, or has harmed them in some way, has recourse. Defining the IRP's mandate too broadly will embroil the institution in any number of ordinary commercial disputes, distracting and deflecting it from its core mission. ICANN, of course, is and will continue to be enmeshed in a complex web of contracts between and among registries, registrars, and registrants, and the disputes that inevitably arise concerning performance under those contracts are already subject to commercial arbitration (see, *e.g.* , § 5.2 of the Base Registry Agreement); we have no reason to believe that that system has been inadequate for that task, or that the IRP is meant to supplant or augment it. The IRP's powers need to be carefully delineated so that it excludes this class of disputes from the scope of its jurisdiction.<br>- the power that the IRP *does* require to achieve its narrow but critical mission – the power to overturn and invalidate Board action that is inconsistent with the Bylaws – is itself subject to abuse, and the IRP's exercise of *its* powers, like the corresponding powers of the Board, needs to be kept within narrow constraints. As is the case with the Board's powers, a careful and precise enumeration of the IRP's power will help to achieve that goal.<br>- We believe the language in the CCWG Draft Proposal can be tightened up considerably in this regard. At various points in the draft, the IRP's duties are deemed to include resolving the question of "whether ICANN is staying within its limited technical Mission"; whether it is "abiding by policies adopted by the multistakeholder community"; whether "in carrying out its Mission and applying consensus policies it is acting in accordance with ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values, or ICANN policies"; whether "in carrying out that Mission, [it] acts in a manner that respects community-agreed fundamental rights, freedoms, and values"; whether its actions "violate community-approved standards of behavior, including violations of established ICANN policies"; and whether it has complied with "policies established to hold ICANN accountable to legal requirements applicable to non-profit corporate and charitable organizations." We believe these formulations are much broader than necessary for the IRP to serve its "constitutional" function. We would propose consolidating references to the IRP's powers in one place in the Bylaws, and stating them more directly:<br>The Independent Review Panel shall have the power to determine whether ICANN has acted (or has failed to act) in violation of these Bylaws. Any person materially harmed by action or inaction by ICANN in violation of these Bylaws may file a claim with the IRP to remedy that violation.<br>- **Binding decision** . The CCWG Draft Proposal states that "the intent is that IRP decisions should be binding on ICANN." The draft is not entirely clear, however, as to how that will be accomplished, and there appears to be some confusion about how that principle will be implemented in the Bylaws and how it will operate in practice. | The 2 nd Draft Report incorporates a number of these suggestions. For example, it clarifies the IRP's mandate to limit it to violations of ICANN's Bylaws and/or Articles of incorporation. It also provides that decisions should be binding "to the maximum extent permitted by law," and includes measures to distinguish this process from standard commercial arbitration as suggested. With regard to the latter suggestion, the 2 nd Draft Proposal recognizes that implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld.<br><br>Although the 2 nd Draft Proposal does not incorporate the recommendation that all decisions be made by the full Standing Panel, it does provide for institutional weight, memory, and power through the ability to appeal the conclusion of a 3 member decisional panel to the full Standing Panel. |

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| **186** | DP-DK | In particular, there appears to be an open question as to whether, or the extent to which, California law permits the Board to agree, in advance and via a specific provision in the Bylaws, to comply with the decisions of an Independent Review Panel. The Proposal notes that that "the IRP could not address matters that are *so material to the Board that it would undermine its statutory obligations and fiduciary roles to allow the IRP to bind the Board* ," [2] without any indication of the matters that might fall into that category (and therefore outside of IRP review/control). The legal memorandum attached to the CCWG Draft Proposal has a discussion of this question, though it does not provide much clarity on this question.<br>- Here as well there is no explanation of what powers are part of the Board's "core powers" that would not be subject to independent review. It is, potentially, a very troubling restriction on the IRP's ability to carry out its mission, which is to help ensure that the Board does not exercise *any* of its powers beyond the confines set forth in the Bylaws. An IRP that cannot examine the exercise of the Board's "core powers" might – depending on the definition of "core powers" – be an ineffective and toothless check on improper Board action. It is very difficult, without a better understanding of this constraint, to evaluate the likely effectiveness of the IRP as an accountability mechanism, and we strongly urge the CCWG to obtain additional clarification from counsel on this question.<br>We also would propose the following, as a possible means of implementing the principle that IRP decisions bind the corporation without running afoul of the requirement that "all corporate powers shall be exercised by or under the direction of the Board": In addition to an explicit requirement that that the Board shall comply with IRP decisions, giving the Board the power to refuse to comply – an "override," or "veto," power – exercisable *only* upon supermajority (or even unanimous) action by the Board. This has a number of features to recommend it. It could serve as a useful check on the IRP's powers and the possibility of "rogue decision-making" by the IRP; the combination of a high voting threshold (which could be as high as 100%) and the representation of the various ICANN communities on the Board will help ensure that resisting an IRP directive in any particular matter has broad community support; and it would appear to comply with the requirement that the Board retains direction and control over corporate action, insofar as it retains the ability to "decide for itself" whether or not to comply with IRP directives (though the non-compliance option is one that can only be exercised by a extraordinary Board action).<br>- **Independence, Transparency, and Precedent.** We are concerned that in a number of crucial features, the IRP, as described in the CCWG Draft Proposal, appears to be modeled along the lines of ordinary commercial arbitration. The IRP's mission is far removed from ordinary commercial arbitration, and will require a different structure, modeled more closely on the constitutional courts common in civil law countries – institutions whose task, like the IRP's, is to determine whether the terms and limitations set forth in the relevant foundational documents have been complied with - than on commercial arbitration systems. This is a task that ordinary commercial arbitrators are never called upon to undertake. | |

- There are many reasons why ICANN's existing IRP process – which has been a feature of ICANN's structure since its inception – has failed, in the eyes of virtually all observers, to serve as an effective check on ICANN's powers. The Bylaw modification, adopted in 2012, authorizing the IRP to evaluate only whether a narrow class of Board *procedural* misconduct had occurred – "did the Board act without conflict of interest in taking its decision? did the Board exercise due diligence and care? did the Board members exercise independent judgment in taking the decision?" – rather than applying a *substantive* standar d (did the Board act in compliance with all provisions of the Bylaws, including the substantive restrictions on its power?) certainly played a very significant part.
- But we would suggest that an additional cause of the failure of the process is that it, too, has been modeled far too closely on ordinary commercial arbitration. The IRP process is, in its current configuration, outsourced to a third party "international dispute resolution provider" chosen by the ICANN Board – currently, the International Center for the Settlement of Investment Disputes (ICSID)), an institution with long-standing experience in providing arbitration and mediation services for complex international commercial disputes. The outside provider has the responsibility for choosing the members of the IRP "standing panel", designating a "Chair" of the Standing Panel, determining the size (1-person or 3-person) of the IRP panel that will hear any individual dispute, and assigning individual members of the standing panel serve as panelists. This is a familiar arbitration mechanism that functions quite effectively for ordinary commercial disputes. But it is ill-designed for the fundamental purpose the IRP is meant to serve. It is not reasonable to give a single arbitrator, chosen by a third-party provider, who may have little or no prior contact with or understanding of the complex world of DNS policy-making, who may never again be called upon to examine any aspect of ICANN's operations or to consider its role in the management of DNS resources, who has no body of prior precedential decisions to use as a guide to decision-making and little or no incentive to add to the stock of well-reasoned and persuasive decisions, the power to decide (with no appeal of the decision permitted) that Board action contravened fundamental principles embodied in the corporation's foundational documents and was therefore invalid. The Board's reluctance, over the years, to allow *this* process to exercise *that* power is, in a sense, entirely understandable.
- Unlike an ordinary "standing panel" of available arbitrators, the IRP "Standing Panel" needs to be an independent *institution* , with institutional weight, institutional memory, and institutional power, if it is to perform its central task with the requisite degree of seriousness and gravity that is required.
While we believe that much of the CCWG's Draft Proposal is consistent with this notion, we do not believe that the proposal goes far enough in this direction. We would propose, to begin with, that the CCWG reconsider its decision to have members of the IRP "Standing Panel" nominated by "international arbitral bodies." We do not believe those institutions, as skilled as they may be in handling commercial disputes, are appropriately tasked with finding persons with the combination of "legal expertise and a strong understanding of the DNS" that will make them successful IRP members. Appointment by the Board of Directors subject to supermajority Community confirmation should be sufficient for that task.

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| | | - More importantly, we suggest that the IRP should not be structured as a “standing panel” comprising a number of arbitrators who are available for service on individual 1- or 3-person panels for the purpose of resolving individual disputes before being returned to the available “pool.” The IRP should hear and decide cases *as an institution* , with all members participating in all cases. The institution, speaking as an institution with a single institutional voice, needs to develop and stand behind its decisions, which will make them harder to ignore.<br>It will also make the development of a true precedential system far more likely. By placing the weight of the entire institution, and not merely the views of a small subset of members of a largely anonymous pool of available arbitrators, behind the decisions it makes, it makes it more likely that prior decisions will be respected and that decisions that will serve as prior precedent in the future are explained and justified in a reasonable manner, as required for a precedential system to function effectively. | |

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| **187** | IA | - Improvements to the Independent Review Panel will be among the most important tools to enhance ICANN's accountability<br>- IA generally agrees with the proposed requirements.<br>- IA agrees that the scope of the IRP should include actions or inactions possibly in violation of ICANN's Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values, or ICANN policies.<br>- IA supports the independence of IRP Panelists from the ICANN board, staff, SOs, and ACs.<br>- IA has a concern that the IRP process would allow parties to bring new arguments to the IRP without first vetting them through the community's policy development channels. That the process does not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the IRP after policy development has concluded.<br>- IA suggests that the CCWG carefully consider whether additional safeguards—such as requiring parties or their trade associations to participate in a public comment process for instances in which there is a challenge to an existing community-developed policy or where ICANN has sought public comment on implementation of an existing policy—could prevent these eventualities while still preserving an accessible IRP process. The requirement to comment publicly would not apply to instances where ICANN simply contravenes existing policy or pursues implementation without seeking public comment.<br>- Under a strengthened IRP process, the Internet Association agrees that parties should be able to seek review of both substance and procedure. However, ICANN's decision-making should be accorded deference, and overturned only if a decision is arbitrary or not based on a reasonable interpretation of the relevant documents and factors. Under this standard, ICANN's failure to follow is own processes would be both arbitrary and unreasonable.<br>- IA believes that further consideration and clarification is needed regarding what decisions are binding and whom they are binding upon. We suggest that disputes within ICANN should be made binding and thus enforceable in courts of law. Outside parties that are involved in a dispute with ICANN should be able to seek legal recourse outside of ICANN.<br>- IA supports having IRP panels making precedential decisions with some restrictions. Future panels should be permitted to apply precedent, but only in closely analogous cases. Otherwise, prior decisions should serve only as guideposts. Consider a fallback mechanism in situations where the panel finds that a prior panel decision appears to be clearly incorrect based on new circumstances or evidence or was wrongly decided. | Agreement – Concerns<br>**Summary / Impression:**<br>- Supports general approach<br>- Issues for review should be raised in policy development process – not raised after the fact<br>- Substantive and procedural review should be permitted – but ICANN should be afforded deference<br>- Clarification is needed regarding when decisions are and are not binding.<br>- Support for precedential decision-making with some limitation. Application in only closely analogous cases, otherwise just "guideposts"<br>- Provision for review of clearly erroneous decisions<br><br>**Actions suggested:**<br>Consider additional safeguards. Clarify what decisions are binding and upon whom.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal seeks to clarify that the IRP decisions are to be binding "to the maximum extent permitted by law." On the other hand, the 2 nd Draft Proposal provides that 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. We propose that IRP panelists may rely on prior decisions in rendering their decisions. However, we have provided a mechanism for appealing the decisions of a 3 member decisional panel to the full Standing Panel in order to minimize the risk of clearly erroneous decisions. The proposal permits panelists to consider prior decisions to the extent that they address similar factual situations. Clearly erroneous decisions may be appealed to the full Standing Panel.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |

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| **188** | eco | - The proposed improvements to the IRP and reconsideration process would definitely enhance ICANN's accountability.<br>- However, the CCWG does not seem to have reached out to experts on the subject matter. Suggest reach out to experts in the field and rely on their suggestions when it comes to details of the revised IRP.<br>- As long as the basic principles, such as accessibility, independence, binding nature of decisions and decisions on the merits of the case (and not only on process) are preserved, internationally recognized standards or best practice could and should be followed when it comes to fleshing out the details. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- Consult with subject matter experts<br>- Internationally recognized standards or best practice could and should be followed<br><br>**Actions suggested:**<br>Reach out to experts on the matter.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, ***appropriate experts*** **,** and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |
| | | Just as many other stakeholders, the French government have been a long-time advocate of more effective and affordable means of appeal and redress at ICANN, with adequate guarantees of independence. We consider that the proposed overhauling of the IRP in part 4 of the CCWG initial draft proposal definitively addresses such concerns. Our responsibility as government is nevertheless to stress that the new IRP has to remain an internal mechanism within ICANN and we would particularly insist on: 1. Avoiding the creation of a legal arbitration court on the basis of the CCWG-accountability initial draft proposals for the new IRP. On that basis, stakeholders would hardly be supplied with: either the guarantees of independence that, on the one hand, international arbitration usually does provide; or the guarantees of affordability that, on the other hand, international arbitration usually does not provide. In addition, stakeholders would also risk being prevented from going to other courts to have their complaints examined once they submitted them to the new IRP; 2. Having the ICANN community itself, through the "SO/AC Membership Model", select the IRP panellists, and not only confirm the selection of the IRP panellists by the Board, for better guarantees of independence; 3. Also giving the ICANN community only, through the "SO/AC Membership Model" (and with a very high degree of support e.g. 34), the power of remove an IRP panellist, for even better guarantees of independence.<br>- One of the innovations that we deem most important is that the new IRP will no longer be limited in its capacity to judge of the merits of a complaint by an aggrieved party. This will greatly expand the standard of review of the current IRP<br>- Govt-FR support the expansion of the standard of review for the IRP.<br>- Govt-FR approve that the new IRP's ability to judge on the merits just came from the expansion of its standard of review to ICANN policies. | Agreement – Concerns<br>**Summary / Impression:**<br>- Supports general approach<br>- Should remain "internal mechanism within ICANN"<br>- Trade-offs with respect to affordability and independence<br>- Community to select panelists<br>- Community power to remove panelists<br>- Supports expanded scope of review<br>- Enforcement issues are unclear – why would language in current bylaws regarding court enforcement remain? Isn't ability to recall Board sufficient for enforcement?<br>- New IRP should judge on the merits of future complaints but we cannot legally have only the new IRP do that in the future. This is the "fork in the road" clause permitted by law on international arbitration, which stipulates that an aggrieved party must have the opportunity to choose to go before other competent courts in order to have their complaints examined, before losing that opportunity by agreeing to go to arbitration.<br>- There is no legal certainty of enforcement.<br>- Gaps between common legal practices with regard to choosing international arbitrators and the new IRP.<br>- Affordability of the new IRP should certainly not come at the expense of the independence of the panelists. |

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| 189 | Govt-FR | - However, the issue of enforcement of the new IRP's decisions remains, however, unclear. It seems that the maximum expansion of the standard of review for the new IRP is intended to remain within ICANN's limited competencies. We therefore understand why the power to enforce or bind the Board with the new IRP's decisions would be sought within the ICANN community. We are unclear, however, why it would also be sought outside of ICANN (Draft prop., section 4.1, §133, item 18.c: "in the court of the US and other countries that accept international arbitration results").<br>- Recognizing the IRP as an international court of arbitration would be a major issue because arbitration is strictly regulated by law. In France as in many other countries, two parties can agree on arbitration only after one party feels that the other party fails to respect the terms of an existing contract. Furthermore, the two parties have to waive their right to go before courts of other jurisdictions. For those stakeholders who do not currently have a contract with ICANN, such as governments, there might be room for an agreement with ICANN on arbitration by the new IRP on the basis of other existing documents (Bylaws etc), so it might be possible for us to consent to arbitration by the new IRP on the decision-making procedures followed by the Board, simply because such procedures already exist and are well-documented. However, as a party that might be aggrieved by future ICANN policies, we would have a legal problem consenting to arbitration by the new IRP on the merits of a complaint. As a matter of fact, law would not allow us to already consent to arbitration with ICANN, and waive our right to go before other courts than the new IRP, on the basis of non-existing, or yet-to-be documented policies. We want the new IRP to judge on the merits of future complaints but we cannot legally have only the new IRP do that in the future. This is the "fork in the road" clause permitted by law on international arbitration, which stipulates that an aggrieved party must have the opportunity to choose to go before other competent courts in order to have their complaints examined, before losing that opportunity by agreeing to go to arbitration. In the case of the new IRP, this clause would give way to the possibility, for those stakeholders who could feel aggrieved by ICANN policies in the future, to go before other competent courts in order to have the merits of their complaints examined. It would also imply that ICANN should be ready to recognize the competency of alternative courts for merits of complaints by stakeholders aggrieved by its future policies.<br>This legal entanglement makes the solution to stress test #12 (forcing resignation of ICANN Board member(s) if they were to ignore binding IRP decisions) all the more important to us. The "fork in the road" clause has consequences in terms of enforcement of decisions taken on the merits of complaints with respect to future ICANN policies. Its very existence implies that stakeholders cannot be provided with legal certainty of enforcement of such decisions through the new IRP alone. Legal certainty of enforcement would come only with additional guarantees for decisions by other competent courts. In other words, since ICANN is based in the US, the US authorities themselves should give stakeholders guarantees on the exequatur for decisions taken by alternative courts regarding future ICANN policies. Should legal certainty of enforcement not be obtained through the new IRP alone, we would recommend stakeholders to content themselves with practical certainty of enforcement of decisions taken on the merits of future complaints. This seems achievable indeed, if (and almost only if) the Board were automatically spilled after ignoring a binding decision of the new IRP. An interim Board would have to be chosen and charged with enforcing the IRP decision which was ignored by the former Board. | - Are all stakeholders, including governments, expected to legally recognize the IRP as an international court of arbitration whenever they want to file a complaint? If so, does ICANN understand that it has to acknowledge the competency of alternative courts for merits of complaints by stakeholders aggrieved by its future policies?<br>- Would it t not be sufficient that the power to enforce the new IRP's decisions would lie only within ICANN community's power to recall the entire Board, and not "in the court of the US and other countries that accept international arbitration results"? In other words, that the new IRP remains an internal mechanism within ICANN and does not become a legal arbitration court?<br><br>**Actions suggested:**<br>Clarify enforcement of IRP decisions and concept of standing panel. Elaborate on independence of panel.<br><br>**CCWG response** :<br>The CCWG appreciates this input. In particular, the 2 nd Draft Proposal clarifies that the role of the IRP will be to determine whether or not an action or inaction violates ICANN's Bylaws/Articles. Although certain actions of the Single Member will be required to use the IRP, in general, ICANN does not have the ability to limit the authority of the courts in jurisdictions where ICANN does business. Accordingly, outside of this context, ICANN cannot prevent individuals or entities (including governments) with standing to seek the assistance of a court of competent jurisdiction.<br><br>As the government of France suggests, the 2 nd Draft Report provides that the community will select IRP panelists, subject to Board confirmation.<br><br>The 2 nd Draft Proposal provides that IRP decisions will be binding "to the extent permitted by law." Complainants would have the right to seek the assistance of a court of competent jurisdiction to enforce – but not to second guess – binding IRP decisions. |

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| | | We finally feel compelled to point out gaps between common legal practices with regard to choosing international arbitrators and the new IRP.<br>- It should be pointed out that it is not common legal practice to decide what party should support the costs of international arbitration, which are usually rather high, before it even takes place. Although we understand that ICANN's financial support would provide stakeholders with more affordable appeal mechanisms, the affordability of the new IRP should certainly not come at the expense of the independence of the panellists. The idea of a standing panel for the new IRP therefore needs to be clarified (Draft prop., section 4.1, §133, item 17). In the case of a 3-member panel, it is indeed common practice that each party, the defending party and the aggrieved party, freely chooses an arbitrator and that the two selected arbitrators choose the third, which gives both parties adequate guarantees of independence of the arbitrators. Yet in the case of the new IRP, ICANN and the party aggrieved by a decision of its Board would have to draw the panellists from a standing panel of arbitrators, who would not only be financially supported by the defending party (ICANN, Draft prop., section 4.1, §133, item 13), but who would also have been selected by the defending party (the Board, Draft prop., section 4.1, §133, item 14b), which seems to give fewer guarantees of independence of the panel.<br>- Since ICANN's new Statement of Mission, Commitments, and Core values, are to be incorporated in its Bylaws (Draft prop., section 3.1, §50), are we right in considering that the new IRP's ability to judge on the merits, rather than on procedures, only lies in the expansion of its standard of review to ICANN policies?<br>- Are we correct in understanding that standard international courts of arbitration, such as the ICC, were not considered as adequate for the new IRP mechanism because of the expansion of its standard of review from ICANN's Bylaws and Articles of Incorporation to ICANN policies?<br>- Must we then understand that all stakeholders, including governments, are expected to legally recognize the IRP as an international court of arbitration whenever they want to file a complaint against any action or inaction of the ICANN Board?<br>- If so, does ICANN understand that it has to acknowledge the competency of alternative courts for merits of complaints by stakeholders aggrieved by its future policies? And since ICANN is based in the US, would the US authorities themselves give stakeholders guarantees on the exequatur for decisions taken by alternative courts regarding future ICANN policies?<br>- Would it therefore not be sufficient that the power to enforce the new IRP's decisions would lie only within ICANN community's power to recall the entire Board, and not "in the court of the US and other countries that accept international arbitration results"? In other words, that the new IRP remains an internal mechanism within ICANN and does not become a legal arbitration court?<br>- Could the CCWG-accountability therefore elaborate more on the independence of the new IRP standing panel? | The 2 nd Draft Report continues to provide that ICANN would support the costs associated with the operation of the Standing Panel. It provides, however, that filing fees may be imposed to limit abuse of the process. As the government of France points out, however, financial support intended to make the IRP more accessible should not come at the expense of panelist independence. As suggested, the 2 nd Draft Proposal provides that each party in an IRP would choose one panelist (from among the members of the standing panel), who would then select the third panelist.<br><br>Members must be independent of ICANN, including ICANN SOs and ACs. Members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |

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| **190** | Govt-ES | We applaud the enhancements put forward for the refurbished IRP (and RR), which will contribute to improve the community' s power to appeal ICANN's decisions.<br>- Standing: The fact that only already "materially affected" parties have a standing in the IRP could prevent stakeholders from using the IRP (or the RR) in case that damage or harm has not been produced yet (i.e.: approval of new gTLDs in highly regulated sectors without adequate safeguards). This loophole should be filled. Govt-ES suggest to expand the scope of legitimacy to file an IRP to a "prospectively affected" party which demonstrates that severe harm will likely be done to the interests it defends, although this damage is not suffered yet. The government as such is not materially harmed and will never be, but they have a duty to preserve the applicability of their national laws and should have the chance of doing so through ICANN accountability mechanisms.<br>- Panel composition: Although the rule should be to appoint panelists from the standing panel, there may be situations where the complexity, local impact of the decision or specialized nature of the conflict require more than technical advisory and would warrant the appointment of a panelist that does not belong to the standing panel. The procedure should provide for this appointment to be made as an exception to the rule.<br>- Language and diversity: The selection of English as primary working language (page 33) may hamper the implementation of the diversity principle that drives the IRP. More flexibility should be allowed in the selection of the language to be used. Rules of procedure for organizations like WIPO (http://www. wipo.int/amc/en/arbitration/rules/newrules.html) or the International Chamber of Commerce (http://www.iccwbo.org /Products-and- Services/Arbitration-and-ADR/Arbitration/ICC-Rules-of-Arbitration/), that allow the parties to choose the working language, could be taken into account in this regard. In addition, the selection of panellists coming from the affected area and with a better understanding of the issue should be foreseen.<br>- Selection of panelists: The appointment process outlined in the CCWG proposal, in which the ICANN Board would select panellists for the standing panel, subject to community confirmation, affords little community involvement and control over this process. We suggest the Board open a public consultation before selecting the panellists and take into account views expressed. Alternatively, the community group could make the selection to be confirmed later on by the Board.<br>- Timelime: A deadline for lodging challenges should be set in the rules of procedure. In the current IRP, it is 1 month. We propose that it is fixed at a minimum of 2 months in general, and no deadline in cases of inaction of the Board. The same periods could be set as well for the Reconsideration Request process. | Agreement – Concerns<br>**Summary / Impression:**<br>- Supports general approach<br>- Must protect "prospectively affected" party that demonstrates likelihood of harm done to interest it defends<br>- Language and diversity issues are key. Consider allowing parties to choose the working language; ensure panelists from affected areas<br>- Board should open public consultation before selecting panelists to be confirmed by community or vice versa.<br>- 2 month deadline for lodging challenges of ICANN action; no filing deadline for inaction<br><br>**Actions suggested:**<br>Consider proposed process enhancements.<br><br>**CCWG response** :<br>The CCWG appreciates these comments, and notes that the 2nd Draft Proposal incorporates a number of the suggested improvements.<br><br>For example, Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff action where a complainant can demonstrate:<br>*Harm that cannot be cured once a decision has been taken or for which there is no adequate remedy once a decision has been taken;<br><br>*Either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits; and<br><br>*A balance of hardships tipping decidedly toward the party seeking the relief.<br><br>Under the 2 nd Draft Proposal, t he selection of panelists would follow a 4 -step process: ICAN N, in consultation with the community, will initiate a tender process for an organization to provide administrative support for IRP, beginning by consulting the community on a draft tender document. ICANN will then issue a call for expressions of interest from potential panelists; work with the community and Board to identify and solicit applications from well-qualified candidates with the goal of securing diversity; conduct an initial review and vetting of applications; and work with ICANN and community to develop operational rules for IRP. The community would nominate a slate of proposed panel members. Final selection is subject to ICANN Board confirmation.<br><br>The 2 nd Draft Proposal also provides that the deadline for filing will run for a fixed period (to be determined) running from the time the affected party becomes aware of the violation. |

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| **191** | RySG | - Provide further clarify about how panel determinations would be implemented, The Draft proposal states that "the panel may not direct the Board or ICANN on how to amend specific decisions, it shall only be able to make decisions that confirm a decision by ICANN, or cancel a decision, totally or in parts." We believe that it would be useful to further explain how this would work in practice.<br>- Review and refine standing requirements to address the possibility of frivolous complaints. The requirements for standing establish that the IRP may be used by "any person /group/entity "materially affected" by an ICANN action or inaction in violation of ICANN's Articles of Incorporation and /or Bylaws, including commitments spelled out in the proposed Statement of Mission, Commitments & Core Values or ICANN policies." While we agree that the IRP should be more accessible, we have concerns that these requirements could make the IRP vulnerable to frivolous requests that could be time consuming and costly. As an alternative, we recommend that the IRP could be made available to parties directly affected by a decision. For parties that are not directly affected parties the Supporting Organizations and Advisory Committees could be the parties given standing to file; this would in effect allow these community groups to provide a screening function in determining whether complaints met the materiality threshold.<br>- Provide further detail about the fee structure for using the IRP ←<br>Define whether restrictions on post-term appointments are term-limited ←We support the introduction of term limits and limitations on post-term appointments. We ask that the CCWG-Further clarify the restrictions on post-term appointments<br>- RySG strongly supports a binding IRP and a membership structure to ensure the enforceability of any decisions.<br>- The community must have standing to ensure the ICANN Board abides by and implements any binding IRP decision. A standing panel of experts will help.<br>- Enabling a supermajority of ICANN members to file an IRP without burdensome fees will add an important and effective mechanism for community empowerment<br>- RySG supports further community work on examining the issue of a super-majority of the membership being able to veto certain key Board decisions, so the community could avoid being forced to engage in a lengthy IRP process. | Agreement – New Idea<br>**Summary / Impression:**<br>- Supports general approach<br>- Clarification needed regarding determinations; binding; implementation<br>- Mechanisms to prevent abusive resort to IRP are needed; particularly standing to bring community challenge. This is an important area for accountability but is also subject to abuse so care is needed.<br>- Details on fee structure<br>- Term limits and limits on post term appointments are critical<br><br>**Actions suggested:**<br>Clarify determinations. Provide detail about cost structure.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The 2nd Draft Proposal addresses many of these issues. It clarifies, for example, that decisions will be binding "to the maximum extent provided by law." It also provides for a single, non-renewable five year term, and indicated that post term limits on engagement with ICANN will be established.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |

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| **192** | CCG | - The proposal suggests IRP panelists will be compensated by ICANN. This could affect the independence of the arbitrator. Even though the proposal maintains the panelist will be independent of ICANN, its SOs and ACs, he/she would draw remuneration from ICANN. To cite a widely followed practice, this could be an instance under the "Non- waivable Red list" in IBA Guidelines on Conflicts of Interests in International Arbitration.<br>- Geographical diversity will purportedly be taken into consideration while forming the panel for IRP. Given that the panel would consist of only 7 members, more details on how such diversity would be accommodated will be welcome.<br>- Initiation of an IRP: Matters specifically reserved to any "Members" of ICANN in the Articles or Bylaws would be excluded from IRP review. Likewise, the IRP could also not address matters that are so material to the Board that it would undermine its statutory obligations and fiduciary roles to allow the IRP to bind the Board."<br>The last two sentences need further clarification. Will Stress Tests be required to understand the consequences of the last two instances in this paragraph?<br>- IRP can be initiated also cover actions of ICANN board/staff that are against ICANN policies. ICANN policies have been defined as "legal requirements applicable to non-profit corporate and charitable organizations". Therefore ICANN policies would include only local California laws. Can an IRP be initiated when an action of ICANN does not adhere to any international convention that the complainant is a party to?<br>- The proposal requires that parties amicably try to resolve the dispute before arbitration is commenced. There is no clarity on the role of courts which have jurisdiction with respect to applicable California law. Will these avenues have to be exhausted first? If an IRP is initiated, does that prevent parties from approaching the courts? The only mention of courts in the proposal has been made with respect to enforcement of the IRP awards. | Agreement – Concerns<br>**Summary / Impression:**<br>- If ICANN pays, panelists will not be sufficiently independent (See IBA guidelines on "Non-waivable Red List" conflicts of interest)<br>- Geo diversity must be considered<br>- Standing issues require clarification; including interplay with statutory rights of members<br>- Exhaustion of remedies and mediation? What is required?<br><br>**Actions suggested:**<br>Provide detail on how diversity will be accommodated. Clarify role of Courts.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The CCWG agrees that independence is of paramount importance. At the same time, one of the major complaints about the current IRP is that it is very costly and therefore inaccessible. To balance this, the 2 nd Draft Proposal provides that Members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP. These are standard provisions used to ensure an independent judiciary.<br><br>The 2nd Draft Proposal provides that the IRP has the authority to determine (a) whether an action/inaction violates ICANN's Bylaws and Articles and (b) to address issues within the rights of the Single Member. Decisions are intended to be binding to the maximum extent permitted by law. We have modified the Constructive Engagement Process to permit any party to invoke formal mediation, or to terminate informal resolution efforts if it concludes in good faith that further efforts are likely to produce agreement. |

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| **193** | JH | - According to the existing design, IRP Panel is the judge to determine. The independence of IRP is very important. IRP Panel should not belong to ICANN Board, and should not only report to the ICANN Board (I think there is a translation problem in Chinese version. According to the current Chinese translation, IRP Panel only reports to ICANN Board. I see English is different) and should be binding upon the ICANN Board. To emphasize again, the mechanism should ensure that IRP must make independent and impartial decisions. Moreover, the Panel should make clear decision, including pointing out who is wrong, as well as the reasons. In addition, it is necessary to have re-appeal procedure.<br>- Even if the IRP determined that ICANN is wrong, how to deal with the wrong decision? The existing proposal did not clarify this part. There are two options to solve this problem: First option is to develop a set of punishment measures and be written into Bylaws by the communities. Second, do not develop a set of punishment measures. ICANN Bylaws only includes the ground of the two extreme cases. For specific cases, communities propose specific solutions and then vote. | Agreement – Concerns<br>**Summary / Impression:**<br>- Independence of panelists is critical (translation issue?)<br>- Mechanism for reviewing clearly erroneous decisions<br><br>**Actions suggested:**<br>Clarify how to deal with wrong decisions.<br><br>**CCWG response** :<br>The CCWG appreciates this input and agrees that independence is critical, and has proposed a number of measures to ensure that members of the Standing Panel are sufficiently independent. Members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP. It also provides that decisions of a 3 member panel may be appealed to the full Standing Panel sitting *en banc*. The panel will determine whether an action or inaction of the Board or Staff violates ICANN's Bylaws or Articles of Incorporation, and to require ICANN to address any violation, but is not empowered to tell ICANN *how* to address a particular violation. |

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| **194** | BC | - In general, BC supports the proposed improvements to the IRP. A standing committee of independent compensated experts with ICANN experience will lead to better decisions.<br>- BC agrees that redress should be available when a particular action or inaction "violates either (a) substantive limitations on the permissible scope of ICANN's actions, or (b) decision-making procedures, in each case as set forth in ICANN's Bylaws, Articles of Incorporation, or Statement of Mission, Commitments, and Core Values or ICANN policies." However, we believe that ICANN's decision-making should be reviewed under an abuse-of-discretion, rather than a de novo standard: The panel should ask whether a decision was based on a consideration of the relevant factors and whether ICANN committed a clear error of judgment. Under this standard, ICANN's failure to follow its own processes would constitute an abuse of discretion.<br>- BC is particularly supportive of allowing the community to have standing to file an IRP and relief from having to pay legal fees (p.32). If a supermajority of ICANN Members votes to initiate an IRP, we must ensure they have standing and access to the mechanism. This would have been useful, for example, in example challenging ICANN's decision to allow both singular and plural forms of the same string as new gTLDs.<br>- BC supports having IRP decisions be precedential and enforceable in US courts. (p.34)<br>- BC has some concern that the IRP process proposed by the CCWG would allow parties to introduce new arguments without first vetting them through the community's policy development channels.<br>- BC is concerned that the process does not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the IRP after policy development has concluded. Such an approach could create operational inefficiency and could undermine the bottom-up, consensus-based process for developing policy within ICANN.<br>- BC suggests that the CCWG carefully consider whether additional safeguards, such as requiring parties or their trade associations to participate in a public comment process for instances in which there is a challenge to an existing community-developed policy or where ICANN has sought public comment on implementation of an existing policy -- could prevent these eventualities while still preserving an accessible IRP. The requirement to comment publicly would not apply to instances where ICANN simply contravenes existing policy or pursues implementation without seeking public comment. | Agreement<br>**Summary / Impression:**<br>- Supports general approach<br>- Substantive and procedural review supported; but reviewed under an "abuse of discretion" standard<br>- Support for precedential weight<br>- Parties must not be permitted to stand by the sidelines and then complain once policy development processes have been completed<br><br>**Actions suggested:**<br>Consider additional safeguards.<br><br>**CCWG response** :<br>The CCWG appreciates this input. After extensive discussion, the CCWG felt that Panel decisions should be based on each IRP panelist' s assessment of the merits of the claimant's case. Under the 2 nd Draft Proposal, the panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts. All decisions will be documented and made public and will reflect a well-reasoned application of the standard to be applied.<br><br>The CCWG also extensively discussed the concerns expressed by the BC about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing IRPs on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process. On the other hand, those who are aware of ICANN would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The CCWG is concerned about potential abuse of the IRP process, and propose to address this issue as part of Work Stream 2.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review. |

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| **195** | .UK | This process, of necessity, is complicated and heavy. Hence we welcome the statement in paragraph 16 (page 34) in favour of informal resolution. This could be usefully given more visibility early in the section.<br>We would also encourage some responsibility within ICANN for identifying who might be affected by the organisation's decisions and increased outreach to those communities which are not involved in ICANN should be part of the public interest commitment. This is particularly important when time-limits for submitting an appeal are short.<br>We welcome more effective appeals procedures. It is obviously important to ensure due process is respected to underpin ICANN decisions. It is also reasonable that decisions can be challenged and to allow such processes to be well informed and effective. ICANN needs to have robust, clear and fair mechanisms to give credibility to its processes. Not least important would be to ensure that disputes do not drag on, undermining the organisation's credibility.<br>However, we do believe that some more thought needs to be given to the interests of parties that are not directly involved in ICANN, particularly those who might be seriously impacted by policy developed without their knowledge. It is fundamental to serving the public interest that mechanisms should include processes for receiving, understanding and responding to wider interests even when they come in late in processes. Appeals and reconsideration processes do not appear to provide affected parties any clear process and this favours decisions focussed on the ICANN community's own interests. | Agreement – Concerns<br>**Summary / Impression:**<br>- General support for more effective dispute resolution.<br>- More focus on informal resolution<br>- More thought needs to be given to the interests of those not directly involved in ICANN<br><br>**Actions suggested:**<br>Clarify process.<br><br>**CCWG response** :<br>The CCWG welcomes this input and agrees that these processes must be designed to protect anyone materially affected by ICANN' s action or inaction in violation of its Bylaws /Articles – whether or not they are aware of and participate in ICANN's work.<br><br>Accordingly, the 2 nd Draft Proposal provides that any filing deadline should run from the time a party becomes aware of the violation. At the same time, it requires speedy resolution of any IRP, once commenced. As proposed, the Panel should complete work expeditiously; issuing a scheduling order early in the process, and in the ordinary course should issue decisions within a standard time frame (six months). The Panel will issue an update and estimated completion schedule in the event it is unable to complete its work within that period.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review |

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| **196** | USCIB | In general, USCIB agrees with the proposed improvements.<br>Specific comments:<br>- USCIB supports the creation of a standing pool of arbitrators, although we would urge that the pool of potential candidates be broadened to ensure participants have the requisite international arbitration expertise combined with an understanding of ICANN and the DNS.<br>- A liberal approach to who may petition the panel, coupled with the ability of the Panel to provide for loser pays/fee shifting in the event it identifies a challenge as frivolous, seems a good balance between open access to due process, and mitigating delay tactics. The independent nature of the panel also is a crucial element.<br>- Strongly supports the proposed scope of review. Parties should be able to seek review of both substance and procedure. Redress should be available when a particular action or failure to act "violates either (a) substantive limitations on the permissible scope of ICANN's actions, or (b) decision-making procedures, in each case as set forth in ICANN's Bylaws, Articles of Incorporation, or Statement of Mission, Commitments, and Core Values or ICANN policies."<br>- Be mindful that IRP procedures should encourage parties to participate in the bottom-up ICANN policymaking process in an active and timely way so that issues can be addressed and resolved at an earlier stage of the process if at all possible. We would appreciate the CCWG-Accountability's proposals for how to strike this balance in the next version of this proposal, seeking to ensure that the IRP is not abused by those seeking to override community-developed and approved policies.<br>- There appears to be a risk that one party could file an IRP to a 1-person panel and overturn community-led policy if the IRP panel decided in its favor. There is some fear that this could put too much power in the hands of few people and create binding precedent that is impossible to overturn. Thus, a new stress test should be considered for this situation, and if the result is unsatisfactory, consideration of a community-based override with a high voting threshold.<br>- With respect to enhancements for both the *Independent Review Panel* and the Reconsideration Process, provide definitions of "materially affected" and "materially harmed" to clarify if such terms refer to economic harm or would include broader concepts of harm to an entity. | Agreement<br>**Summary / Impression:**<br>- General support<br>- Balance access and potential for abuse<br>- Strong support for expanded scope of review<br>- Process should encourage participation in bottom up policy development process; do not reward standing on the sidelines<br>- Stress tests should be considered for erroneous decisions by panel – community override?<br>- Need to define "materially affected" and "materially harmed"<br><br>**Actions suggested:**<br>Consider new stress test and define "materially affected" and "materially harmed".<br><br>**CCWG response** :<br>The CCWG appreciates this input. After extensive discussion, the CCWG felt that Panel decisions should 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. All decisions will be documented and made public and will reflect a well-reasoned application of the standard to be applied.<br><br>The CCWG also extensively discussed the concerns about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing IRPs on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process. Others, who are aware of ICANN, would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>We are concerned about potential abuse of the IRP process, and propose to address this issue as part of Work Stream 2. The 2 nd Draft Proposal does, however, eliminate to possibility of single member IRP decisions.<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review. |

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| **197** | LINX | - Broadly, we support the changes proposed by the CCWG to the IRP.<br>- In particular, we emphasise the importance of the following changes, which we consider essential to support NTIA transition: Empowering both the community and individuals to bring an IRP case alleging ultra vires activity by ICANN, to prevent mission creep, enforce compliance with established multistakeholder policies, provide redress for due process violations, and protect the multistakeholder process through meaningful, affordable, access to expert review of ICANN actions. We cannot stress the importance of this strongly enough.<br>- We do question the following: a. The reservation of certain issues to "Members of ICANN" alone; b. While we recognise that we cannot, in law, allow the IRP to "address matters that are so material to the Board that it would undermine its statutory obligations and fiduciary roles to allow the IRP to bind the Board", we consider the aim should be to minimise the range of matters to which this can apply, including by taking steps that would place the Board under a legal duty to follow the IRP; c. The IRP, not the Board, should determine what is excluded from its remit on this heading. If the Board disagrees with an IRP decision to rule on these grounds, it will disapply the IRP's ruling: this will discourage the Board from making excessive and unreasonable (and unreviewable) claims regarding its fiduciary duties.<br>- The Bylaws incorporate a duty on ICANN to appoint additional members to the Standing Panel as needed in order to prevent undue delay in IRP cases being heard.<br>- Geographic and cultural diversity of panellists is desirable in order to achieve confidence in the legitimacy of the IRP, but not at the expense of effectiveness. Especially given the very limited number of panellists proposed, we would caution against any hard rules in this regard. However, we do support a provision that geographic diversity should be taken into account when making panel selections.<br>- Prospective panellists should only be eligible for appointment if they are willing to confirm their commitment to the Core Values. This would allay any (no doubt unwarranted, but nonetheless corrosive) suspicions that cultural diversity would lead to a lessened commitment to those Core Values.<br>- To preserve the independence of IRP panellists, we recommend that their term should be quite long (e.g. seven years) –they can of course resign early if they so wish – and that they be barred from reappointment. The bar on future appointments to positions within ICANN should be designed to present them taking other remunerated work from ICANN, during or after the conclusion of their term (e.g. consultancy work), with a savings clause permitting them to undertake (after their term concludes) paid review of the effectiveness and sufficiency of the IRP process itself.<br>- Timeliness of IRP complaints: Rules introducing time bars for IRP complaints should not prevent parties from bringing a complaint promptly when they are first affected by an ICANN action merely because that action occurred long ago.<br>- Community Powers: The proposed changes to the IRP would achieve the goal of creating a credible and enforceable mechanism to limit ICANN's activities to its intended scope, provided that the Board abides by IRP decisions. This gives rise to a requirement for two things, both of which are essential:<br>- A mechanism by which the Board becomes legally obliged to abide by IRP decisions, as opposed to having a fiduciary duty to prefer its own opinions of what is best for ICANN over IRP rulings; and | Agreement<br>**Summary / Impression:**<br>- General support – importance of meaningful access to provide redress for due process violations and protect the multistakeholder process through meaningful, affordable access to expert review<br>- Careful attention to what is excluded from binding nature of review<br>- Need to provide for appointment of additional members of standing panel to prevent undue delay<br>- Diversity of panelists is critical; not at the expense of effectiveness<br>- Ensure independence through longer terms with no re-appointment<br>- Review filing deadlines.<br><br>**Actions suggested:**<br>Consider proposed enhancements.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal clarifies that IRP decisions are intended to be binding "to the maximum extent permitted by law." The proposal does provide for a community IRP on the grounds that ICANN violated its Bylaws (including by exceeding its mission).<br><br>The 2 nd Draft Proposal provides for a minimum (but not a cap) of 7 panelists. This number could increase depending on need.<br><br>The 2 nd Draft Proposal provides that panelists should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP.<br><br>Finally, the CCWG has recommended that the filing deadline run from the time a harmed party *becomes aware* of the alleged violation. |

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| | | - A mechanism whereby a Board that failed to abide by IRP rulings (or other specifically enumerated community powers, such as a Board spill), for any reason, could be challenged in court and a decision enforced upon it | |
| **198** | JPNIC | - Overall, we agree that improvements to the IRP would enhance ICANN's accountability. However, we recommend to review whether all requirements listed for IRP must be in WS1 or can be considered as further improvements in WS2. For example, we see geographic diversity as an improvement but it may not be critical before the transition and there may be a few other elements which is not a must to agree as WS1.<br>- We further recommend that if its implementation becomes a delaying factor in the IANA Stewardship Transition, to consider its implementation post transition, given there is assurance from the ICANN Board to implement the proposal on IRP. The CWG-Stewardship has identified that ccTLD delegation and re-delegation as outside the scope of ICANN Accountability CCWG. The budget, which is another core related to the IANA function will be addressed by the community empowerment mechanism. | Agreement – Concerns<br>**Summary / Impression:**<br>- General support for more effective dispute resolution.<br>- Concern whether this can be encompassed within Work Stream 1 and without delaying CWG – Stewardship implementation<br><br>**Actions suggested:**<br>Consider some requirements in WS2<br><br>**CCWG response** :<br>he CCWG appreciates this input. Implementati on of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created in Work Stream 2 by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |
| | | - In our view, the IRP as a whole should continue to take on an ever-greater role in ensuring ICANN's accountability to the community, and the Proposal represents a significant first step in helping to achieve this.<br>- While we concur with the vast majority of points raised in the Proposal, certain items seemed worthy of additional comment, either because: (1) we consider them to be especially important and potentially deserving of an even greater level of treatment in the Proposal; or (2) we disagree, in whole or in part, with the suggestions of the CCWG with respect to that particular item, and feel that it should be worth a "second look."<br>1. Impact of IRP declarations: We strongly agree with other commenters (see ¶ 131) as well as the interlocutory "Declaration on the IRP Procedure" issued by the Panel in DCA Trust v. ICANN (see https://www.icann.org/en/system/files/files /irp- procedure-declaration-14aug14-en.pdf) that the process should be deemed "binding" upon the Board to the fullest extent possible, and should not be merely "advisory" in nature. We also concur with the CCWG's recommendation (see ¶ 133, sub. 18b) that IRP decisions be "precedential," with a certain degree of "weight" given to prior decisions. | Agreement<br>**Summary / Impression:**<br>- Concur with most points<br>- Strongly agree that declarations of the IPR should be binding on the Board to the fullest extent possible<br>- Agree that prior decisions should receive a certain degree of weight<br>- More clarification is needed on what items are "so material to the Board" that it would undermine its statutory obligations<br>- Members should be trained on the workings and management of the domain name system<br>- Allow for panel expertise to be supplemented on an as needed basis by qualified experts<br>- Diversity is important but subsidiary to a meritocratic desire for excellence<br>- Welcome expanded scope of review<br>- Concerns about accessibility must be balanced with the need for a truly unbiased and impartial decision-making<br><br>**Actions suggested:**<br>Clarify material exclusion of items. Expand on independence. |

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| **199** | IPC | 2. Matters excluded from IRP: Assuming the "membership" organizational model is adopted according to the CCWG's Proposal (see ¶ 180), it would seem reasonable to the IPC that a great many if not all matters "specifically reserved" to the "members" (e.g., recall of the Board or individual directors, budgetary approvals, etc.) should be deemed to be outside the scope of IRP review when exercised by the members. See ¶ 133, sub. - However, the additional exclusion of items "so material to the Board that it would undermine its statutory obligations and fiduciary roles" is vague and demands additional clarification. Ibid. Prior to moving forward, objective standards for determining what matters would undermine the Board's statutory obligations and fiduciary roles should be developed. A mechanism for making such a determination, including consideration of a procedure for allowing members to have the final say in making such a determination, should be adopted.<br>3. Panel expertise/training: The IPC considers "training on the workings and management of the domain name system" (see ¶ 133, sub. 10) to be a very welcome addition.<br>- Candidates with both significant legal and technical expertise to be highly attractive, and that each skill be represented by at least one individual panelist may cause considerable delay in panel appointments, as has happened in past IRP. Allowing for panel expertise to be supplemented, on an as needed basis, by qualified experts with specialized knowledge makes a good deal of practical sense.<br>4. Geographic diversity: We generally agree with the CCWG that IRP panels should strive to have "diversity in geographic and cultural representation." See ¶ 133, sub. 11. However, this desire for diversity must be subsidiary to a meritocratic desire for excellence.<br>5. Standard of Review: The CCWG's efforts to expand the applicable standard of review to also include "substantive limitations on the permissible scope of ICANN's actions" (see ¶ 133, sub. 9) are highly commendable and should be fully supported.<br>6. Decision Methodology: According to the CCWG, IRP panels should be permitted to "undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts." See ¶ 133, sub. 17b. We concur with this approach, and would also direct the CCWG's attention to the language found in the IRP decision Booking.com v. ICANN:<br>7. Panel Independence: While we agree that the "independence" both real and perceived of an IRP panel is highly desirable, we think additional consideration is needed on how best to achieve this in actuality if, as recommended by the CCWG, "panelist salaries" or other forms of compensation are borne completely by ICANN. Admittedly, ensuring broad access to the procedure for as many interests as possible (including non-profits and others with limited financial resources) is itself a laudable goal. CCWG is encouraged to consider that concerns over accessibility should be balanced with the need for truly unbiased and impartial decision-making, which can often only be achieved through various types of cost- sharing and allocation. | **CCWG response** :<br>The CCWG appreciates this input and has incorporated many of these suggestions into the 2 nd Draft Proposal 2 nd Draft Proposal . Th e proposed language now states that IRP decisions will be binding "to the maximum extent permitted by law." It contemplates training for panelists, and for experts to be available to any panel upon request.<br><br>Based on community input, the CCWG proposes that the IRP would be authorized to hear complaints that involve the specified rights of the Single Member.<br><br>IRP panelists must be independent of ICANN, including ICANN SOs and ACs. The Proposal provides that members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP.<br><br>We are concerned about potential abuse of the IRP process, and propose to address this issue as part of Work Stream 2. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review. |

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| **200** | Govt-BR | - Welcomes the suggestion of establishing an appeal's mechanism within the ICANN structure that is capable of settling disputes between parties in a truly independent manner.<br>- Decisions made by the IRP should be binding to the ICANN organization and should not be overruled by national courts where ICANN is legally established. It is our understanding that the autonomy of the IRP would be seriously undermined if this condition cannot be met.<br>- Supports a standing panel of 7 independent members and decisional panels comprised of 3 members. Brazil considers that geographic, cultural and gender diversity is a key element and should be a mandatory criterion in the selection of IRP panelists.<br>- Similarly to the Dispute Settlement mechanism of the World Trade Organization (WTO) – which is regarded as highly efficient and predictable – ICANN's IRP should be comprised of clearly defined steps with firm deadlines. | Agreement<br>**Summary / Impression:**<br>- Brazil welcomes an enhanced independent review mechanism.<br>- Its decisions should be binding and not overruled by courts where ICANN is domiciled.<br>- Geographic, cultural, and gender diversity are critical<br>- IRP should establish clearly defined steps and firm deadlines.<br><br>**Actions suggested:**<br>Include clearly defined steps.<br><br>**CCWG response** :<br>The CCWG appreciates this input and the suggestions have been incorporated into the 2nd Draft Proposal. IRP decisions are intended to be binding "to the maximum extent permitted by law." Diversity is a priority, and special outreach will be undertaken to identify qualified candidates from around the world. We agree that clear rules are critical to the success of the enhanced IRP, and these will be developed as part of Work Stream 2. |

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| **201** | MPAA | - MPAA supports the proposed enhancements to the Independent Review Process including the call for a fully independent judicial/arbitral function and the intent that IRP decisions are not only binding on ICANN but will set precedent for future decisions. However we feel greater clarity is needed on several points: Standard of Review (p. 32) currently places the burden to demonstrate a violation on the party challenging an action or inaction. More clarity around the level of evidence required by the offended party is needed. A set of requirements should exist that ensure the standard of evidence is not unnecessarily high, but high enough to ensure an effective IRP.<br>- MPAA supports the CCWG proposal that any person/group /entity, including 3rd parties, has standing to participate in the IRP process however to ensure an IRP that is truly accessible to the community we suggest that continued discussion is needed to define exactly what constitutes "material harm" (p.31).<br>- MPAA suggests that the CCWG clarify if the notion of a right-of-review is available in the current plan, ensuring an independent and objective review of all parties in the IRP process. | Agreement<br>**Summary / Impression:**<br>- MPAA generally supports this idea but believes clarification is needed with respect to standard of review; level of evidence required, etc.<br>- Broader standing is appropriate to ensure community accessibility, but "material harm" standard requires clarification<br>- Is a "right of review" available under the current plan?<br><br>**Actions suggested:**<br>Clarify Standard of Review and level of evidence required. Expand on "material harm". Clarify whether right-of-review.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The 2nd Draft Proposal provides that Panel decisions will be based on each IRP panelist's assessment of the merits of the claimant's case. 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 . The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts. All decisions will be documented and made public and will reflect a well-reasoned application of the standard to be applied.<br><br>The decision of any 3-member panel may be appealed to the full Standing Panel, sitting *en banc* .<br><br>Implementation of these enhancements will necessarily require additional, detailed work. D etailed rules for the implementation of the IRP (such as rules of procedure – including elaboration on the material harm standard) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |
| **202** | CDT | - Supports the enhancements proposed for the Independent Review Process. The IRP is in need of an overhaul and the proposed enhancements – a binding, accessible and independent process that would hold ICANN to a substantive standard of behavior – will contribute significantly to ICANN's overall accountability and to ensuring that ICANN does not stray from its mission and its commitment to its multistakeholder community. | Agreement<br>**Summary / Impression:**<br>CDT supports enhanced IRP; binding, accessible, and independent process is needed.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| **203** | CIRA | In general, I agree that the powers of the IRP should be enhanced. I would support an IRP that is independent of ICANN, low cost has decisions that are binding, and is streamlined in its processes. I would also like to go on record as stating that any proposed appeal mechanism should not include ccTLD delegation and/or re-delegation issues. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- Should not include ccTLD delegation and/or re-delegation issues<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal specifically excludes disputes related to ccTLD delegation and redelegation from the scope of the IRP. |
| **204** | USCC | -The changes to IRP are a step in the right direction, but many more details regarding due process and standard of review need to be added. Any final accountability plan must feature widely accepted principles on transparency, due process, and fundamental fairness, as well as incorporate well-settled international adjudicatory norms. The decisions of the IRP should be binding and not subject to rejection by the ICANN Board as they currently are.<br>- this section is one in need of further development and we plan to engage further as the draft plan continues to develop.<br>- We support that the CCWG seeks to strengthen and expand the use of the IRP – including for review of not only procedural difficulties, but substantive problems as well.<br>- While we agree that review should be available for both substantive and procedural concerns, we believe that actual decisions should be reviewed under an abuse of discretion standard rather than the de novo standard currently contemplated by the Proposal. In this model, failure to follow processes would qualify per se as an abuse of discretion. Pure de novo review would arguably allow individuals to end run around the policy process and undermine decisions made by the community.<br>- The Chamber further supports encouraging active participation during the policy development process as the best means to solve stakeholder concerns. Therefore, we suggest changes to the proposal that ensure parties cannot bring new arguments to the IRP without availing themselves of the community's well-established policy development processes.<br>- suggests adding these basic transparency and due process improvements to other ICANN review processes, such as the pre-IRP Cooperative Engagement Process, requests for reconsideration of staff action, and petitions to the Ombudsman. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- Decisions should be binding.<br>- Expanded scope of review is supported but actual decisions should be reviewed under an abuse of discretion standard rather than a de novo standard as that would permit individuals to "end run around the policy process and undermine decisions made by the community."<br>- Process should require/encourage participation in policy development process and not permit "standing on the sidelines."<br>- Basic transparency and due process requirements are needed.<br><br>**Actions suggested:**<br>Consider transparency requirements.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>After extensive discussion, the CCWG felt that Panel decisions should 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. All decisions will be documented and made public and will reflect a well-reasoned application of the standard to be applied.<br><br>The CCWG also extensively discussed the concerns about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing IRPs on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process. Others, who are aware of ICANN, would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The CCWG has proposed changes to the Cooperative Engagement Process, Reconsideration, and Ombudsman function to improve transparency and due process. |

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| **205** | INTA | - Agrees with the proposed IRP improvements, especially those regarding the effect of the decisions as being binding and not merely advisory and precedential. The IRP should have authority to review and prevent "mission creep" or actions in derogation of the Statement of Mission, Commitments & Core Values, the bylaws (both Fundamental and regular), as proposed, as well as grievances concerning appointment and removal of Board members.<br>- INTA recommends a low threshold of the "materially affected" standing requirement.<br>- With respect to the selection and appointment of panelists (subsection 14), we recommend that an aggrieved party shall have the right to move to recuse a panelist if there is a credible basis for bias.<br>- Regarding enforcement of judgments of the IRP, we recommend that the parties agree in advance to be bound by the decision of the Panel, which agreement shall be enforceable in a California court with jurisdiction over ICANN.<br>- We believe that the review of IRP decisions should include a request for reconsideration, as well as an en banc review, at the discretion of the IRP.<br>- The IRP should elect a chief administrator/arbiter. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- Decisions should be binding.<br>- Approve standard of review.<br>- "Materially affected" standing requirement should be low.<br>- Ability to recuse panelist for bias.<br>- Exhaustion of remedies should be required.<br><br>**Actions suggested:**<br>Consider proposed process amendments.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal provides that IRP decisions should be binding "to the maximum extent permitted by law." As proposed, the IRP would be authorized to review ICANN actions or inactions alleged to be in violation of ICANN's Bylaws and Articles, including any actions that exceed the scope of ICANN's Mission. The proposal does provide for an en banc review of any t-member panel decision. |
| **206** | .NZ | We broadly support the direction set out but have not scrutinised the proposal in depth. We offer the following comments:<br>- It is important to ensure that the IRP process cannot be used in a frivolous or vexatious way, and we will review more detailed proposals in the next Public Comment with that concern in mind.<br>- We suggest a "first cab off the rank" approach to the allocation of panellists – both for one-member and three-member panels (in the latter case, the third panellist). A guaranteed rotation of panellists avoids any panellist or subset having undue influence in the development of the precedentiary body of case work the system will create, and avoids complainants choosing a particular panellist for any reason.<br>- We also query the interaction of the Ombudsman with the IRP and suggest the CCWG give further thought to this. There must be clarity for the community as to when each (IRP or Ombudsman) is the right forum to use. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- Need to control abusive and frivolous resort to IRP<br>- "First cab off the rank" approach to establishing panels.<br>- Further thought needed regarding interaction of Ombudsman and IRP.<br><br>**Actions suggested:**<br>Consider how to control abusive resort and expand on Ombudsman-IRP interaction.<br><br>**CCWG response** :<br>The CCWG appreciates this input. It is concerned about potential abuse of the IRP process, and proposes to address this issue as part of Work Stream 2. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld.<br><br>The CCWG will review the role and independence of the Ombudsman as part of Work Stream 2. |

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| **207** | HR2251 | - ICANN has an external, independent process for reviewing and resolving disputes between ICANN and external parties, including members of the multistakeholder community, in all matters related to the operations and policy decisions of ICANN. Such process includes the ability to reverse decisions of the board of directors. | Agreement<br>**Summary / Impression:**<br>General support.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The 2nd Draft Proposal provides for independent review and dispute resolution, which would have the authority to issue binding decisions as to whether a complained of action or inaction violates ICANN's Bylaws and/or Articles. |
| **208** | NCSG | - NCSG believes that a strong independent appeals mechanism is critical to enhancing ICANN's accountability. We strongly support the binding nature of the proposed process and the accessibility of this mechanism, particularly in relation to the cost burden of the mechanism.<br>- ICANN has a limited Mission, and it must be accountable for actions that exceed the scope of its Mission. This suggest that IRP should provide a means of challenging actions that exceed ICANN's scope simply because they exceed its scope, not just because they have a negative "material affect" on the challenger. Either that, or ICANN-created restrictions on fundamental rights such as freedom of expression or privacy, must be considered "material affects" and so specified in the proposal. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- IRP should provide a means of challenging actions that exceed Mission – whether or not they have a "material affect" on the challenger.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The authority of the IRP would extend to actions/inactions alleged to be in violation of ICANN's Bylaws and/or Articles. The proposal provides for a Community IRP, and permits prospective and injunctive relief. In addition, the community, acting through the Single Member, has authority to bring IRPs addressing issues within its authority (as specified in the Bylaws) without a need to demonstrate "material affect." |

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| **209** | MM | I agree very strongly with the purposes of the IRP as enumerated in 133. I also agree with a standing IR Panel, though I am concerned about the selection of the standing panel by ICANN itself. The mechanisms of community approval need to be better specified, and I would suggest a veto process, similar to *voir dire* challenges in U.S. jury selection, that allows minority interests to reject judges they view as biased or inimical to their interests. We need to know more about what kind of challenges would be reserved to members and which would be open. My biggest concern here is that the CCWG proposal presents the IRP as something that can prevent mission creep and other violations of ICANN's mission and core values. To make ICANN accountable for actions that exceed the scope of its Mission, the CCWG should consider having the IRP provide a means of challenging actions that expand or deviate from ICANN's mission simply because they exceed its scope, not just because they have a negative "material affect" on the challenger. Either that, or ICANN-created restrictions on fundamental rights such as freedom of expression or privacy, must be considered "material effects" and so specified in the proposal. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- More clarity on selection – veto or voir dire process?<br>- More clarity on members and derivative rights<br>- IRP should provide a means of challenging actions that exceed Mission – whether or not they have a "material affect" on the challenger.<br>- Human rights as auto "material effect" standard?<br><br>**Actions suggested:**<br>Clarify selection process and provide a means of challenging actions that expand or deviate from ICANN's mission.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The scope of the IRP includes allegations regarding violations of ICANN's Bylaws or Articles, including actions that exceed the scope of ICANN's Mission.<br><br>The selection of panelists would follow a 4 - step process: ICANN, in consultation with the community, will initiate a tender process for an organization to provide administrative support for IRP, beginning by consulting the community on a draft tender document.<br><br>ICANN will then issue a call for expressions of interest from potential panelists; work with the community and Board to identify and solicit applications from well-qualified candidates with the goal of securing diversity; conduct an initial review and vetting of applications; and work with ICANN and community to develop operational rules for IRP.<br><br>The community would nominate a slate of proposed panel members.<br><br>Final selection is subject to ICANN Board confirmation. |

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| **2 10** | GG | - GG supports creating a process for meaningful review of ICANN Board or staff actions through a standing, independent group of expert.<br>- We support the creation of a binding IRP mechanism, but the procedures governing that mechanism should more explicitly encourage clear, informed, and participatory decision-making.<br>- While we agree with the need to create a binding IRP mechanism, we encourage the CCWG-Accountability to modify its proposal in two respects. First, we believe that parties participating in the IRP ought to have previously participated, if applicable, in the public comment process by either submitting their own comments or being members of a trade association, stakeholder/constituency group or some other associated group that submitted a comment on its members' behalf. While some may view this as overly restrictive or burdensome, Google believes that this policy is analogous to the requirements imposed by other rulemaking proceedings and will encourage greater participation by the community – 9 at an earlier stage in ICANN's decision-making process, when many issues can be more proactively identified and resolved. In our view, this requirement would not pose a substantial burden for appellants because participating in ICANN's public comment process does not require specialized expertise or lengthy submissions. The only requirement would be for the appellant to have presented its arguments informally when given an opportunity to do so. Second, we believe that actual decisions should generally be reviewed under an abuse of discretion standard rather than the de novo standard currently contemplated by the Proposal. In this model, failure to follow processes would qualify per se as an abuse of 10 discretion. Pure de novo review would arguably allow individuals to end run around the policy process and undermine the finality of decisions made by the community. It is critical for the stability and efficiency of the Internet ecosystem for ICANN decisions, properly taken and subject to a transparent and accountable review process, to have a degree of finality and predictability. For similar reasons, we appreciate the Proposal's clarification that delegation and re-delegation (with the exception of the ccTLDs) will be handled through a unitary process. 11 However, we recognize that the abuse of discretion standard for review of ICANN staff and board decisions, combined with the limited veto powers we discuss below, may make it unreasonably difficult for ICANN community members to challenge decisions taken by ICANN in the rare instance that they are overwhemingly opposed by the community. While there might be several ways to address this concern, one approach would be to adopt a different standard of review for IRP challenges brought by the community as a whole, as opposed to an individual entity. In such situations, the CCWG-Accountability could consider mandating that panels to review ICANN's decisions de novo. We look forward to working with the CCWG-Accountability to ensure that a united ICANN community can provide a meaningful check on major ICANN decisions without unduly impeding operational efficiency. | Agreement<br>**Summary / Impression:**<br>- General support.<br>- Parties to IRP must have previously participated in any applicable public comment or policy development process.<br>- Concern about pure "de novo" review and use of IRP to end run around policy development process<br>- "conc of discretion" standard may make it unreasonably difficult for community members to challenge certain decisions taken by ICANN – should there be a different standard for challenges brought by the community rather than individual entities?<br><br>**Actions suggested:**<br>Expand on procedures governing mechanism and consider proposed modifications.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>After extensive discussion, the CCWG felt that Panel decisions should 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. All decisions will be documented and made public and will reflect a well-reasoned application of the standard to be applied.<br><br>The CCWG also extensively discussed the concerns expressed by the BC about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing IRPs on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process. Others, who are aware of ICANN, would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The CCWG discussed potential abuse of the IRP process, and proposes to address this issue as part of Work Stream 2. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review. |

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| **211** | Board | - We agree that the Independent Review Process needs to be refined; with the standard better defined to meet the needs of the community, and that it is important to have binding decisions arising out of that process, as appropriate.<br>- The proposed enhancements to the Independent Review Process (IRP) still appear to require further detail, including issues such as standing and remedies, as well as definitional work. What steps are in place to avoid overloading the seven-person IRP panel with frivolous or vexatious complaints? We anticipate further questions after more details are provided. | Agreement<br>**Summary / Impression:**<br>We agree the process needs to be refined. More detail is needed.<br><br>**Actions suggested:**<br>Details needed on standing and remedies. Definitional work is also needed.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal expands on and clarifies a number of the details of the enhanced IRP. Nonetheless, implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure – including elaboration on the material harm standard) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. |
| **212** | CENTR | - We agree that the proposed improvements to the Independent Review Process would enhance ICANN's accountability, however having ICANN shouldering all the administrative costs of maintaining the system (including the panelist salaries) might undermine its independence. We invite the CCWG to investigate possible alternatives, including the option of having the IRP managed by an internationally recognized body. That might simplify the appointment procedure which in the draft CCWG paper appears to be extremely complex and, to a certain degree, incomplete.<br>- The panelists must be as independent as possible. Furthermore, we support the notion that panelists must have international arbitration expertise, additionally, but not exclusively, in the DNS environment. We would also like to highlight the importance of having multicultural, multinational and multilingual panelists.<br>- Concerning the recommendation that IRP decisions should be based on precedents, we do not support this principle as any decision must always be duly substantiated and based on policies that might have evolved over the years.<br>- Last but not least we reiterate the requirement that any appeal mechanism must not cover ccTLD delegation and/or re-delegation issues.<br>- CENTR agrees that the proposed improvements to the Independent Review Process would enhance ICANN's accountability, however having ICANN shouldering all the administrative costs of maintaining the system (including the panelist salaries) might undermine its independence; invites the CCWG to investigate possible alternatives, including the option of having the IRP managed by an internationally recognised body; reiterates the requirement that any appeal mechanism must not cover ccTLD delegation and/or re-delegation issues. | Agreement – Concerns<br>**Summary / Impression:**<br>- General support for more effective dispute resolution.<br>- Independence is key; so is diversity<br>- Decisions should not have precedential weight.<br>- Should not cover ccTLD delegation and/or re-delegation issues.<br><br>**Actions suggested:**<br>Investigate alternatives to ICANN shouldering costs, including IRP managed by internationally recognized body.<br><br>**CCWG response** :<br>The CCWG appreciates this input. As previously indicated, issues related to ccTLD delegation and redelegation are outside the scope of the IRP's authority.<br><br>We agree that independence and diversity are of paramount importance, and have enhanced those discussions in the Second Proposed Draft.<br><br>While the 2nd Draft Proposal does permit panelists to consider previous decisions, any material change in policy would likely render a prior decision less relevant – if not irrelevant - in a new setting. |

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| **213** | NIRA | NIRA agrees with the proposed improvements and requirements. However, NIRA notes that the provision that ICANN Board bears the burden of legal fees specified in 6 (in reference to 5.1) sounds unfair and should be reconsidered though there is a disclaimer in the proposal. NIRA would follow the development of this recommendation. Proposed timeframes and deadlines are sufficient. | Agreement - Concerns - Confusion<br>**Summary / Impression:**<br>- NIRA notes that the provision that ICANN Board bears the burden of legal fees specified in 6 (in reference to 5.1) sounds unfair and should be reconsidered though there is a disclaimer in the proposal.<br><br>**Actions suggested:**<br>Reconsider Board to bear legal fees.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal provides that ICANN should bear costs associated with the Standing Panel and any 3 member decisional panels. It provides, however, that filing fees may be considered to discourage abuse of the process. |
| **214** | ALAC | Para 133, Section 13: The ALAC notes that although independence from ICANN is required, there is no such requirement with respect to independence from other parties related to the dispute. Such parties could be contracted parties, or local, national or international entities related to the dispute. | Agreement - Concerns<br>**Summary / Impression:**<br>- Independence from other parties including contract parties, local, national, or international entities, etc.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input and the 2nd Draft Proposal reflect the views presented. To ensure independence, term limits should apply (5 years, no renewal), and post-term appointment to Board, NomCom, or other positions within ICANN would be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs/ACs, or any other party in an IRP. |
| **215** | LAB | - My principal criticism of the draft proposals relates to the interrelationship of the IRP and RPE. The relationship between the two review processes is not explained; nor is it self-evident. The CCWG-Accountability ought to clarify the extent to which each procedure necessarily deals with different types of complaints. At present, there seems to be a possibility for overlap – i.e., that a matter could be treated under the RPE and then the IRP. Yet, from the draft proposals, there is no firm indication that the CCWG-Accountability intends the RPE to be a preliminary "light-touch" form of review that is ordinarily initiated before embarking on an IRP. If it has not already done so, the Working Group ought to consider the pros and cons of integrating RPEs into the IRP scheme.<br>- Regarding the IRP, it is unclear whether or not this will permit face-to-face meetings or only involve electronic document exchange. The issue ought to be clarified. | Confusion<br>**Summary / Impression:**<br>- Clarify inter-relationship between IRP and RPE<br>- Face to face meeting or just e-doc exchange?<br><br>**Actions suggested:**<br>Clarify inter-relationship between IRP and RPE.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Detailed rules regarding the operation of the IRP will be developed as part of Work Stream 2, to date there has been no decision regarding hearings or the need to initiate a request for reconsideration prior to initiating an IRP. |

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| **216** | ZR | It is suggested that the Proposal should develop a mechanism to ensure the whole IPR and related procedures are transparent and open. It is also necessary to set up a review mechanism to check how ICANN implement the IPR's results or suggestions, and what to do if ICANN fails to make improvement. Meanwhile, the geographical and professional diversity should be taken into consideration while forming the panel for IRP. | Agreement - Concerns<br>**Summary / Impression:**<br>- Concerns transparency and openness<br>- Geographical and professional diversity should be considered in forming panels.<br><br>**Actions suggested:**<br>Concerns transparency mechanism.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal stresses the need to review and reform the transparency of dispute resolution processes, as part of Work Stream 2. If ICANN fails to implement a binding decision of an IRP decisional panel, a complainant would have the right to seek the support of a court of competent jurisdiction to enforce the panel's decision. The report also stresses the need for diversity among the members of the Standing Panel. |
| **217** | RIR | - In principle there is no objections to the proposed amendments to the Independent Review Panel and the Reconsideration Process. However, the RIR community expresses their concern regarding the time needed to implement all proposed requirements and whether the time required for implementation of some of the requirements would be a delaying factor for the IANA stewardship transition. It is suggested that while implementation of these measures should start as soon as possible, the IANA transition should be allowed to proceed while that implementation is underway. A more detailed timeline of tasks within the implementation process, relative to the IANA transition timeline, would be helpful to clarify which are expected to precede the IANA transition, and which to follow.<br>- Furthermore the RIR community stresses that there are separate, well-established appeal mechanisms for disputes relating to Internet number resources. In particular there is:<br>1. An arbitration process described in the ASO MoU for disputes relevant to the global policy development process<br>2. An arbitration process described in the draft Service Level Agreement between the five RIRs and IANA Numbering Services Operator for disputes relevant to the IANA numbering services.<br>3. A bottom-up process for any concerns that a third party may have relating to Internet number resources issues.<br>- Imposing different appeal procedures than the ones agreed upon and used by the numbers community would be contradictory to the bottom-up principle. Therefore, it is strongly suggested that disputes relating to Internet number resources be excluded from the scope of the proposed appeal mechanisms. | Agreement - Concerns<br>**Summary / Impression:**<br>- General support for more effective dispute resolution.<br>- Concern whether this can be encompassed within Work Stream 1 and without delaying CWG – Stewardship implementation<br>- Notes availability of alternative dispute resolution mechanisms for numbering<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review. |

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| **218** | DotMusic | - DotMusic agrees with the "Declaration on the IRP Procedure" issued by the Panel in DCA Trust v. ICANN[1] that the process should be deemed binding upon the Board and should not be merely "advisory". We also agree with the CCWG s recommendation that IRP decisions be precedential and consistent with appropriate "weight" given to prior decisions.<br>- Furthermore, the statement that additional exclusion of items "so material to the Board that it would undermine its statutory obligations and fiduciary roles" is too vague and requires additional clarification.<br>- DotMusic believes that "training on the workings and management of the domain name system" is meaningful, especially in light of the inconsistent New gTLD Program's Community Objection process that has harmed DotMusic materially as well as other community members. As such, with respect to panel appointments, it is critical that candidates be selected based on their expertise on the related subject-matter, excluding those with merely peripheral expertise. Allowing for panel expertise to be enhanced as deemed appropriate by qualified experts with specialized knowledge in the subject-matter is a practical and meaningful measure.<br>- With respect to decision-making, IRP panels should be permitted to "undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts" [2] consistent with the IRP decision Booking.com v. ICANN: "Nevertheless, this does not mean that the IRP Panel may only review ICANN Board actions or inactions under the deferential standard advocated by ICANN in these proceedings. Rather, as explained below, the IRP Panel is charged with "objectively" determining whether or not the Board s actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board s conduct be appraised independently, and without any presumption of correctness." [3]<br>- Furthermore, ICANN should consider the incorporating appropriate controls in the Cooperative Engagement Process (CEP) and IRP to prevent anti-competitive behavior by certain actors. For example, in the New gTLD Program both the CEP and IRP processes have been used extensively as an anti-competitive tool by a few gTLD applicants if they failed to prevail in their contention set.<br>[1] See https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf<br>[2] See ¶ 133, 17b<br>[3] See https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf, P.32-33, ¶ 111 | Agreement - Concerns<br>**Summary / Impression:**<br>- Agrees with “Declaration on IRP Procedure” issued by DCA Trust v. ICANN and with CCWG’s recommendation that IRP decisions be precedential and consistent with appropriate weights given to prior decisions<br>- Statement about exclusion material items requires clarification<br>- Training on management of DNS is meaningful especially in light of gTLD program’s community objection process<br>- Critical to have candidates selected based on subject-matter expertise<br>- Panels should be permitted to undertake a de novo review of case, make findings of fact and issue decisions based on fact.<br>- Consider incorporating appropriate controls in Cooperative Engagement Process and IRP to prevent anticompetitive behavior by certain actors.<br><br>**Actions suggested:**<br>Clarify exclusion material items and consider incorporating control in CEP and IRP.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2nd Draft Proposal reflects many of these suggestions. The Draft provides an alternative (mediation) to the CEP, at the choice of either party.<br><br>The CCWG discussed potential abuse of the IRP process, and propose to address this issue as part of Work Stream 2. Implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review. |

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| **219** | Siva | IRP by these proposals, is somewhat enhanced. But it requires a larger Judicial process within, that would be unlimited in its scope. Just to define unlimited, such a Judicial process would bring even the organization's core values and fundamental bylaws within its Judicial remit. Such a body could hear challenges against the constitution of NomCom, Board, hear a challenge against the appointment of a Board Member or against the balance prevailing between ACs and SOs. ICANN requires an internal judicial process way above the existing redressal mechanisms. | Agreement - Concerns<br>**Summary / Impression:**<br>- General support for more effective dispute resolution.<br>- Concern whether this can be encompassed within Work Stream 1 and without delaying CWG – Stewardship implementation<br>- Notes availability of alternative dispute resolution mechanisms for numbering<br><br>**Actions suggested:**<br>Consider larger Judicial process.<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that implementation of these enhancements will necessarily require additional, detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. They may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, we propose to subject the IRP to periodic community review.<br><br>The 2 nd Draft Proposal also provides that the Standing Panel will have a minimum of seven members, but that number is not a cap. |

**Reconsideration Process Enhancement**

*Question 6: Do you agree that the proposed improvements to the reconsideration process would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements. Are the timeframes and deadlines proposed herein sufficient to meet the community's needs? Is the scope of permissible requests broad / narrow enough to meet the community's needs?*

***27*** *Comments Submitted*
***24*** *Agreements*
***15*** *Concerns*
***3*** *Divergence*
***7*** *New Ideas*
***2*** *Confusion*

| # | Contributor | Comment | CCWG Response/Action |
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| **220** | auDA | Make these areas primary focus as recommendations are finalized: 1) improvement and strengthening of ICANN's Request for Reconsideration process, including a significant expansion in scope; and 2) refinement in the role of the ICANN Ombudsman including direct preliminary involvement in the reconsideration process (replacing the current role of ICANN's legal team). | Agreement<br>**Summary / Impression:**<br>- Make strengthening IRP process a priority including a significant expansion in scope<br>- Make refinement in role of Ombudsman including preliminary involvement in reconsideration process<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **221** | DBA | New and improved appeal mechanisms: An IRP Panel that is binding, affordable, more accessible, broadened in scope as well as a reformed Reconsideration Process. | Agreement<br>**Summary / Impression:**<br>Supports a reformed reconsideration process<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **222** | CRG | - Does the Reconsideration process remain in place and is it required to be tried first before initiating the IRP?<br>- I would suggest the proposal of the Reconsideration process should try to make the difference between Board action /inactions vs. Staff action/inaction easier. | Agreement New Idea<br>**Summary / Impression:**<br>- Individual – indirect support for proposal with two additional ideas:<br>- Make reconsideration a requirement before IRP.<br>- Differentiate between Board and staff action /inaction.<br><br>**Actions suggested:**<br>Make the difference between Board actions /inaction vs. staff action/inaction easier.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Report provides that actions/inactions of both the staff and Board are within the scope of reconsideration, and that the full Board should make the final determination in both cases. In Work Stream 2, the detailed procedural rules for the IRP will be examined, including in what circumstances a complainant must first initiate a request for reconsideration. |
| **223** | AFRALO | AFRALO members appreciate the reinforcement of the reconsideration mechanism proposed in the report. | Agreement<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **224** | DCA-T | - Composition of the Board Governance Committee and the NGPC must be different to provide fairness and rationale in the decision making.<br>- Any outcome for reconsideration request should be reviewed by an independent group to ensure that the same group that made a decision that is being challenged, for which a reconsideration request is sought, are not the same group that will look into the reconsideration and adopt/ratify the earlier decision that they made. A group cannot keep or ratify/approve its own counsel.<br>- Improvement of the transparency mechanisms will play a big role in determining the fairness of decisions made. Thus recordings / transcripts should be posted of the substantive Board discussions on the option of the requester.<br>- It will be acceptable to also provide a rebuttal avenues and opportunity to the BGC's final recommendation (although requesters can't raise new issues in a rebuttal) before the full Board finally decides. | New Idea – Concerns – Confusion<br>**Summary / Impression:**<br>- Composition of the Board Governance Committee and the NGPC must be different<br>- Independent group to review outcomes of reconsideration requests for fairness.<br><br>**Actions suggested:**<br>Consider r ebuttal avenues and opportunity to the BGC's final recommendation.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal contemplates that Reconsideration Requests will first be reviewed by the Ombudsman (as opposed to ICANN Legal). It also provides that the full Board – and not just the BGC – will make final determinations in all cases. The Proposal contemplates the enhanced IRP as a method of appeal of Board decisions on reconsideration requests. |

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| **225** | Afnic | Afnic agrees that there is a strong need to enhance the reconsideration process. Ombudsman implication is a good step. Furthermore, and as long as reconsideration requests are taken in charge by the Board Governance Committee, the implementation of a thorough and independent annual audit on Board members potential conflict of interest seems to be needed. | Agreement – New Idea<br>**Summary / Impression:**<br>Suggests an annual audit on Board members vs conflict of interest.<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Draft Proposal contemplates that the Ombudsman – rather than ICANN Legal – will undertake initial review Requests for Reconsideration, and that all final determinations will be made by the full Board. |

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| **226** | IA | - Strongly agrees that reform of the reconsideration process is needed … and supports the majority of the proposed enhancements and the proposed timelines.<br>- However, does not support allowing reconsideration where the ICANN board has failed to consider "relevant," rather than "material" information. In most jurisdictions, the standard for relevancy is extremely low.<br>- CCWG [should] clarify, rather than eliminate, the requirement that parties (or coalitions in which parties are a member) must participate in the applicable public comment process before seeking reconsideration.<br>- Concerned that eliminating such a safeguard would not create the right incentives, as it would invite parties to use the reconsideration process as an end run around policy development by allowing parties<br>to raise concerns only on reconsideration after policy development has concluded. CCWG should carefully consider whether additional safeguards in the reconsideration process could prevent these eventualities while still preserving an accessible IRP process.<br>- Agrees that the Board's reliance on its internal legal department is cause for concern. We support an initial review by an Ombudsman, but only if the review is conducted free from the involvement or influence or interference by ICANN's legal department or outside counsel. | Agreement – New Idea – Divergence<br>**Summary / Impression:**<br>- does not support allowing reconsideration where the ICANN board has failed to consider "relevant," rather than "material" information. In most jurisdictions, the standard for relevancy is extremely low.<br>- CCWG [should] clarify, rather than eliminate, the requirement that parties (or coalitions in which parties are a member) must participate in the applicable public comment process before seeking reconsideration.<br>- CCWG should carefully consider whether additional safeguards in the reconsideration process could prevent these eventualities while still preserving an accessible IRP process.<br>- agrees that the Board's reliance on its internal legal department is cause for concern.<br>- supports an initial review by an Ombudsman, but only if the review is conducted free from the involvement or influence or interference by ICANN's legal department or outside counsel.<br><br>**Actions suggested:**<br>Clarify requirement that parties must participate in the applicable public comment process before seeking reconsideration. Consider additional safeguards.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal specifically notes the requirement of Ombudsman independence, which will be considered in Work Stream 2.<br><br>The CCWG also extensively discussed the concerns expressed by the BC about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing Requests for Reconsideration on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process underway. On the other hand, those who are aware of ICANN would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The 2nd Draft Proposal maintains the "relevant" information standard on the grounds that the Reconsideration process is the fastest and least costly formal dispute resolution mechanism. |

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| **227** | eco | - The proposed improvements to the IRP and reconsideration process would definitely enhance ICANN's accountability. | Agreement<br>**Summary / Impression:**<br>It would enhance accountability<br><br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **228** | RySG | - agrees that the proposed improvements to the reconsideration process would help to enhance ICANN's accountability<br>- agree with the list of requirements and believe that the proposed timeframes and deadlines are reasonable and will likely meet the substantial majority of the community's needs.<br>- the scope of permissible requests is appropriate | Agreement<br>**Summary / Impression:**<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **229** | JH | I agree that the proposed improvements to the reconsideration process would enhance ICANN's accountability. But the list of requirements for this recommendation is not enough. The proposal only empowered community the power to remove ICANN Board of Directors and recall of the Board. But apparently, not all the wrong decisions need to use the two measures, only for extreme situation. Actually, other punitive measures/solutions mechanism/regulation could be considered. | Agreement – Concerns – Confusion<br>**Summary / Impression:**<br>Wants more options for reconsideration to avoid having to remove directors or entire Board.<br><br>**Actions suggested:**<br>Expand list of requirements.<br><br>**CCWG response** :<br>The CCWG appreciates this input. Because the 2 nd Draft Proposal adopts a membership model, the community would not be solely reliant on Board recall to enforce its authority. |

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| **230** | BC | In general, supports the CCWG proposal to change the standard for Reconsideration Requests to include the amended Mission and Core Values for ICANN. (p.36)<br>- also supports the CCWG proposal to increase transparency by requiring full documentation of the ICANN Board Governance Committee's dismissal of any Reconsideration Request. (p.37)<br>- supports the CCWG proposal to bypass ICANN legal department for the first substantive evaluation of Reconsideration Requests.<br>- believes this review by the Ombudsman is appropriate only if the review is conducted free from the involvement or influence of or interference by ICANN's Legal Department or outside counsel. Matters of policy should go directly to the Board Governance Committee. (p.37)<br>- supports requiring the full ICANN Board to vote on final determinations of Reconsideration Requests. (p.37)<br>- However, has concerns with the proposal to allow reconsideration for failure to consider any "relevant" material. In most U.S. jurisdictions, the standard for relevancy is extremely low. Under the California Evidence Code, relevant evidence is "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action" (emphasis added).11 Any decision made by the Board or the staff is likely to overlook *some* relevant evidence. If failure to consider relevant evidence is grounds for reconsideration, nearly every decision is subject to reconsideration. Therefore, the BC recommends retaining the "material information" standard set forth in the current Bylaws.<br>- also has some concern that the Reconsideration process proposed by the CCWG would allow parties to introduce new arguments without first vetting them through the community's policy development channels. This could eliminate the requirement to participate in applicable public comment processes. We are concerned that the proposed process might not create the right incentives: it invites parties to stand on the sidelines during the policy development process and bring their concerns to the Reconsideration Process after policy development has concluded. These could undermine the bottom-up, consensus-based process for developing policy. | Agreement – Concerns<br>**Summary / Impression:**<br>- Believes this review by the Ombudsman is appropriate only if the review is conducted free from the involvement or influence of or interference by ICANN's Legal Department or outside counsel. Matters of policy should go directly to the Board Governance Committee<br>- However, has concerns with the proposal to allow reconsideration for failure to consider any "relevant" material. In most U.S. jurisdictions, the standard for relevancy is extremely low. recommends retaining the "material information" standard set forth in the current Bylaws.<br>- also has some concern that the Reconsideration process proposed by the CCWG would allow parties to introduce new arguments without first vetting them through the community's policy development channels (having participated)<br><br>**Actions suggested:**<br>R etain the "material information" standard set forth in the current Bylaws.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal specifically notes the requirement of Ombudsman independence, which will be considered in Work Stream 2.<br><br>The CCWG also extensively discussed the concerns expressed by the BC about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing Requests for Reconsideration on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process underway. On the other hand, those who are aware of ICANN would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The 2nd Draft Proposal maintains the "relevant" information standard on the grounds that the Reconsideration process is the fastest and least costly formal dispute resolution mechanism. |

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| **231** | USCIB | We support the revisions to the Reconsideration Request with the following suggestions:<br>- Strongly suggest clarification that the Ombudsman must be fully independent of ICANN Legal staff in order to conduct the initial review as proposed. It should also be ensured that the office of the Ombudsman is properly staff so as to avoid bottlenecks in the review process.<br>- Reiterate concerns expressed regarding the IRP process: be mindful of the fact that procedures should encourage parties to participate in the bottom-up ICANN policymaking process in an active and timely way so that issues can be addressed and resolved at an earlier stage of the process if at all possible. We would appreciate the CCWG-Accountability's proposals for how to strike this balance in the next version of this proposal, seeking to ensure that the Reconsideration Request is not abused by those seeking to override community-developed and approved policies.<br>- With respect to enhancements for both the Independent Review Panel and the *Reconsideration Process* , provide definitions of "materially affected" and "materially harmed" to clarify if such terms refer to economic harm or would include broader concepts of harm to an entity. | Agreement – Concerns<br>**Summary / Impression:**<br>- Strongly suggest clarification that the Ombudsman must be fully independent of ICANN Legal staff in order to conduct the initial review as proposed. It should also be ensured that the office of the Ombudsman is properly staff so as to avoid bottlenecks in the review process.<br>- ensure that the Reconsideration Request is not abused by those seeking to override community-developed and approved policies.<br>- With respect to enhancements for both the Independent Review Panel and the Reconsideration Process, provide definitions of "materially affected" and "materially harmed" to clarify if such terms refer to economic harm or would include broader concepts of harm to an entity.<br><br>**Actions suggested:**<br>Clarify that Ombudsman is independent of legal staff. Provide definitions of "materially affected" and "materially harmed".<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal specifically notes the requirement of Ombudsman independence, which will be considered in Work Stream 2.<br><br>The CCWG also extensively discussed the concerns expressed by the BC about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing Requests for Reconsideration on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process underway. On the other hand, those who are aware of ICANN would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The 2nd Draft Proposal maintains the "relevant" information standard on the grounds that the Reconsideration process is the fastest and least costly formal dispute resolution mechanism. |
| **232** | LINX | We support the CCWG's proposals regarding the reconsideration process. | Agreement<br>**Summary / Impression:**<br>Support proposal<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| **233** | JPNIC | Overall, we agree that improvements to the reconsideration process would enhance ICANN's accountability. However, we would like to request for more clarifications on why this must be in WS1, given there are other accountability mechanisms to be in place. We generally support improvements and further consideration on reconsiderations but if there are any contentious issues, which does not get resolved before the IANA Stewardship transition, we recommend that some of the requirements to be added as further improvements of reconsideration as WS2. | Agreement – Concerns<br>**Summary / Impression:**<br>Not critical to have all aspects of reconsideration completed for the transition. More controversial or complex issues could be for WS2<br><br>**Actions suggested:**<br>Consider further improvements as part of WS2.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal contemplates that the proposed changes will be made as part of Work Stream 1, but does not anticipate that this would be a cause of delay for the transition. |
| **234** | IPC | - The IPC also strongly supports many of the CCWG's recommendations for improving the Request for Reconsideration ("RfR") process, with particular emphasis on the provisions concerning improvements to transparency mechanisms (e.g., recordings, transcripts, etc. see ¶ 154); document disclosure policies (see ¶ 164); and opportunities for rebuttal after the BGC's final recommendation but prior to Board decision (see ¶ 155).<br>- The IPC also in principle supports the efforts to extend RfR filing deadlines, though considers thirty (30) days to still be a bit on the lean side. See ¶ 161. While the IPC is mindful of the underlying goal of resolving disputes quickly, and does not feel that the timelines need to extend nearly as long as traditional statutes of limitations (or what might otherwise be considered "laches" under common law), further consideration is nonetheless encouraged to try and identify a slightly broader window to allow time for reasonable investigation of the merits of potential claims. See ¶¶ 139, 161; see also Bylaws Art. IV, § 2, Para. 5(a).<br>- Initial review by the Ombudsman (or anyone with mediation training that can serve in a facilitative, rather than adversarial, role) is another potentially useful approach that will likely reduce costs and, at minimum, help reduce the number of issues to be decided in the proceedings. See ¶ 149.<br>- We also support the CCWG's efforts to broaden the RfR standards and applicability (e.g., changing "material" to "relevant" as listed in ¶ 142; as well as removing highly subjective dismissal criteria such as "vexatious" or "querulous" as listed in ¶ 146). However, while we do consider the RfR process to be a useful accountability tool in certain situations (e. g., involving ICANN staff action/inaction), we feel that an expanded role for the IRP is more likely to ensure a greater degree of consensus and more adequately protect the interests of the community. | Agreement – Concerns<br>**Summary / Impression:**<br>- Supports the efforts to extend RfR filing deadlines, though considers thirty (30) days to still be a bit on the lean side.<br>- Does not feel that the timelines need to extend nearly as long as traditional statutes of limitations (or what might otherwise be considered "laches" under common law), further consideration is nonetheless encouraged to try and identify a slightly broader window to allow time for reasonable investigation of the merits of potential claims.<br><br>**Actions suggested:**<br>Consider a broader window to allow time for investigation.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal retains the 30 day filing window as a reasonable balance among the interests of stakeholders whose interests may be competing. |

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| **235** | GG | - GG supports creating a process to recall, in exceptional circumstances, individual ICANN Board members, though as noted below we are concerned about the proposed power to remove the Board as a whole given the potentially destabilizing effects of such a move.<br>- The reconsideration request process should also encourage more efficient decision-making. As with other aspects of ICANN's operations, Google believes that any changes to the Request for Reconsideration process should enhance accountability while at the same time promoting efficiency. For this reason, we believe that prior participation in the relevant public comment process should continue to be a requirement for parties to have standing to ask for a reconsideration request, for the reasons outlined in the above IRP discussion. Moreover, we urge the CCWG-Accountability to reconsider changes to the standard used when evaluating the scope of information that the ICANN Board should consider before acting or failing to act in a way that adversely affects a party. The Proposal suggests changing this standard from "material information" to "relevant information," meaning 12 that in order to avoid challenge, the Board would be forced to consider information beyond that which is material to the decision at issue. This is a significant and novel change to the quantity and breadth of information that the Board would be forced to consider, leading the Board to an impossible decision between being overwhelmed with information – making decisions take longer, without necessarily being better – or not taking into account some information that meets the low threshold of "relevance" and risking a series of requests for 13 reconsideration that degrade the predictability and efficiency of ICANN's operations. For these reasons, Google urges the drafters of the Proposal to retain the present "material information" standard in these provisions of the bylaws. | Agreement – Concerns – Divergence<br>**Summary / Impression:**<br>- We believe that prior participation in the relevant public comment process should continue to be a requirement for parties to have standing to ask for a reconsideration request<br>- Does not support The Proposal suggests changing this standard from "material information" to "relevant information,<br><br>**Actions suggested:**<br>Change standard from "material information" to "relevant information".<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Report adopts a membership model for ICANN going forward, which reduces the community's need to rely on Board removal for enforcement.<br><br>The 2nd Draft Proposal maintains the "relevant" information standard on the grounds that the Reconsideration process is the fastest and least costly formal dispute resolution mechanism. |
| **236** | CDT | - We also support the proposed changes to the Reconsideration Process. Again, these enhancements are central to ICANN's overall accountability and to empowering the community. CDT supports the increased role of the Ombudsman in lieu of ICANN's lawyers and encourages greater responsiveness by ICANN's DIDP. | Agreement<br>**Summary / Impression:**<br>- Supports these central enhancements and increased role of Ombudsman<br>- Encourages greater responsiveness by ICANN's DIDP<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal specifically notes the need to review and enhance the DIDP as part of Work Stream 2. |

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| **237** | USCC | - The proposed improvements would help enhance ICANN's Accountability<br>- In general, we agree that reform of the reconsideration process is needed. However, we urge the CCWG to reconsider changes to the standard used when evaluating the scope of information that the ICANN Board should consider before acting or failing to act in a way that adversely affects a party. The Proposal suggests changing this standard from "material information" to "relevant information," meaning that in order to avoid challenge, the Board would be forced to consider all relevant information before making a decision. This is a significant change to the quantity and breadth of information that the Board would be forced to consider because the threshold for relevancy could be considered quite low. For these reasons, the Chamber urges the drafters of the Proposal to retain the present "material information" standard in the reconsideration provisions of the bylaws.<br>- We recommend that the CCWG retain the requirement to participate in a public comment process before seeking reconsideration, but modify it as proposed above in the context of seeking independent panel review.<br>- The Board's reliance on their internal legal department is cause for concern, particularly because their primary legal obligation is to protect ICANN. We support an initial review by an Ombudsman, but only if the review is conducted free from the involvement or influence of or interference by ICANN's Legal Department or outside counsel. The Ombudsman must be truly independent, including in both staff and monetary resources. | Agreement – Concerns – Divergence<br>**Summary / Impression**<br>- We believe that prior participation in the relevant public comment process should continue to be a requirement for parties to have standing to ask for a reconsideration request<br>- Does not support The Proposal suggests changing this standard from "material information" to "relevant information,<br>- The Board's reliance on their internal legal department is cause for concern, particularly because their primary legal obligation is to protect ICANN. We support an initial review by an Ombudsman, but only if the review is conducted free from the involvement or influence of or interference by ICANN's Legal Department or outside counsel. The Ombudsman must be truly independent, including in both staff and monetary resources.<br><br>**Actions suggested:**<br>Reconsider changes to the standard used when evaluating the scope of information.<br><br>**CCWG response** :<br>The CCWG appreciates this input.<br><br>The 2 nd Draft Proposal specifically notes the requirement of Ombudsman independence, which will be considered in Work Stream 2.<br><br>The CCWG also extensively discussed the concerns expressed by the BC about incentives to "sit on the sidelines" during a policy development process. The group concluded, on balance, that barring parties from bringing Requests for Reconsideration on the basis of failure to participate in a PDP was unworkable. Some potential complainants may be totally unaware that there is a policy development process underway. On the other hand, those who are aware of ICANN would appear to have little incentive to sit out a PDP on issues that concern them.<br><br>The 2nd Draft Proposal maintains the "relevant" information standard on the grounds that the Reconsideration process is the fastest and least costly formal dispute resolution mechanism. |

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| **238** | INTA | - Agrees and we also suggest that ¶ 142(e) should be amended to add, after "relevant information" or "one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on information, and subsequent to the action or inaction, there is a material change in that information."<br>- We recommend changing ¶ 149 to state that Ombudsman "should" (not "could") make initial recommendation to the BGC. | Agreement – Concerns<br>**Summary / Impression:**<br>- Add, after "relevant information" or "one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on information, and subsequent to the action or inaction, there is a material change in that information."<br>- Ombudsman "should" (not "could") make initial recommendation to the BGC.<br><br>**Actions suggested:**<br>Expand paragraph 142 and edit paragraph 149.<br><br>**CCWG response** :<br>The CCWG appreciates this input, which has been incorporated into the 2 nd Draft Proposal. |
| **239** | .NZ | We broadly support the direction set out but have not scrutinised the proposal in depth. It is important to ensure that the reconsideration process cannot be used in a frivolous or vexatious way, and we will review more detailed proposals in the next Public Comment with that concern in mind. | Agreement – Concerns<br>**Summary / Impression:**<br>It is important to ensure that the reconsideration process cannot be used in a frivolous or vexatious way<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |
| **240** | CENTR | We support both the broadening of the types of decisions which can be re-examined to include ICANN Board/staff action /inaction against ICANN's Mission or core values as stated in the Bylaws, and the improvement in terms of transparency regarding dismissal cases. At the same time, and considering possible calendar constraints, we recommend the deadline for a reconsideration request be increased to 45 days. On the other hand, final decisions should have a much shorter deadline. The 120 days deadline is too long and might imply negative collaterals on those impacted by ICANN Board/staff action /inaction. Therefore, final decisions should be issued within 90 days as ultimate deadline. | Agreement – Concerns<br>**Summary / Impression:**<br>- Recommends the deadline for a reconsideration request be increased to 45 days<br>- The 120 days deadline is too long and might imply negative collaterals on those impacted by ICANN Board /staff action/inaction. Therefore, final decisions should be issued within 90 days as ultimate deadline.<br><br>**Actions suggested:**<br>Rectify deadline for final decisions.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Report retains the filing and decision making deadlines in the 1rst Draft on the grounds that this reflects the best balance in addressing the needs of stakeholders who may have competing interests in the outcome of a RfR. |
| **241** | NIRA | NIRA agrees with recommended changes and requirements. | Agreement<br>**Actions suggested:**<br>None<br><br>**CCWG response** :<br>The CCWG thanks you for your comment. |

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| **242** | ALAC | - Section 4.2: Regarding the enhancements to the Reconsideration Process, many recent reconsideration requests involved decisions of external panels. The ALAC suggests that the proposal be explicit as to whether such decisions are eligible for reconsideration and if so, how they are to be carried out (purely Board reconsideration or re-chartering a new and/or expanded panel). The CCWG should also consider whether discrepancies between multiple panel results could be the subject of reconsideration.<br>- Para 156: The ALAC supports adding specific target deadlines for resolution of reconsideration requests, but suggests that they be worded as to allow for extraordinary situations which might require elongation of the allowed period. Paragraph 159 makes such an allowance for the 60 day period but not for the 120 day period. | Agreement – Concerns – New Idea<br>**Summary / Impression:**<br>- Many recent reconsideration requests involved decisions of external panels. The ALAC suggests that the proposal be explicit as to whether such decisions are eligible for reconsideration and if so, how they are to be carried out (purely Board reconsideration or re-chartering a new and/or expanded panel). The CCWG should also consider whether discrepancies between multiple panel results could be the subject of reconsideration.<br>- Para 156: The ALAC supports adding specific target deadlines for resolution of reconsideration requests, but suggests that they be worded as to allow for extraordinary situations which might require elongation of the allowed period. Paragraph 159 makes such an allowance for the 60 day period but not for the 120 day period.<br><br>**Actions suggested:**<br>Clarify whether applies to external panels' decisions. Allow for extraordinary situations in timeline.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal provides that the IRP is available to resolve inconsistencies among decisions by "expert panels" such as those used in the new gTLD process. |
| **243** | LAB | - My principal criticism of the draft proposals relates to the interrelationship of the IRP and RPE. The relationship between the two review processes is not explained; nor is it self-evident. The CCWG-Accountability ought to clarify the extent to which each procedure necessarily deals with different types of complaints. At present, there seems to be a possibility for overlap – i.e., that a matter could be treated under the RPE and then the IRP. Yet, from the draft proposals, there is no firm indication that the CCWG-Accountability intends the RPE to be a preliminary "light-touch" form of review that is ordinarily initiated before embarking on an IRP. If it has not already done so, the Working Group ought to consider the pros and cons of integrating RPEs into the IRP scheme. | Concerns<br>**Summary / Impression:**<br>Relationship between the IRP and the RPE unclear.<br><br>**Actions suggested:**<br>Clarify relationship between IRP and RPE process.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The 2 nd Dr aft Proposal expands the scope of the RfR in a manner that permits (but does not require) it to be used as a preliminary review. Detailed rules for the IRP will be developed as part of Work Stream 2, and could include requirements for filing an RfR prior to invoking the IRP process in appropriate circumstances. |

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| **244** | RIR | (note, same as RIR comment on IRP)<br>- In principle there is no objections to the proposed amendments to the Independent Review Panel and the Reconsideration Process. However, the RIR community expresses their concern regarding the time needed to implement all proposed requirements and whether the time required for implementation of some of the requirements would be a delaying factor for the IANA stewardship transition. It is suggested that while implementation of these measures should start as soon as possible, the IANA transition should be allowed to proceed while that implementation is underway. A more detailed timeline of tasks within the implementation process, relative to the IANA transition timeline, would be helpful to clarify which are expected to precede the IANA transition, and which to follow.<br>- Furthermore the RIR community stresses that there are separate, well-established appeal mechanisms for disputes relating to Internet number resources. In particular there is:<br>1. An arbitration process described in the ASO MoU for disputes relevant to the global policy development process<br>2. An arbitration process described in the draft Service Level Agreement between the five RIRs and IANA Numbering Services Operator for disputes relevant to the IANA numbering services.<br>3. A bottom-up process for any concerns that a third party may have relating to Internet number resources issues.<br>- Imposing different appeal procedures than the ones agreed upon and used by the numbers community would be contradictory to the bottom-up principle. Therefore, it is strongly suggested that disputes relating to Internet number resources be excluded from the scope of the proposed appeal mechanisms. | Agreement – Concerns<br>**Summary / Impression:**<br>Agree but concerned about the time required to implement and that this might delay the transition.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input. The CCWG doesn't believe that implementation of these RfR enhancements, which requires only an adjustment of the Bylaws, will impede the IANA transition. |

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| **245** | DotMusic | - DotMusic has been harmed numerous times as a result of inconsistent and unpredictable determinations that have been a common theme throughout the New gTLD Program with respect to Legal Rights Objections, Community Objections and other New gTLD Program-related Determinations (e.g. A Request for Re-consideration filed by a competitor against DotMusic's Public Interest Commitments [1]). In all these cases, there was no appeal mechanism in place to hold the Panel or the ICANN BGC accountable for their Determinations.<br>- Moreover, DotMusic reiterates its concern about the anonymous nature of the panels determining the results of the Community Priority Process (CPE). Such a lack of transparency harms community applicants, favors non-community applicants and harms ICANN's accountability. Keeping the CPE panelists identity a secret and not allowing community applicants to communicate with CPE panelists also undermines transparency and further harms ICANN's accountability.<br>[1] In this case, the competing applicant s obstructive filing (See .Music LLC Reconsideration Request 15- 6, https://www.icann. org/en/system/files/files/reconsideration-request-15-6-music-redacted-17apr15- en.pdf) has resulted in delays in DotMusic's Community Priority Evaluation invitation and the inclusion of a disclaimer pertaining to DotMusic's PIC clarification section (See https://gtldresult.icann.org/application- result /applicationstatus/applicationdetails:downloadpicposting/1392?t: ac=1392). While the disclaimer states that the clarifications will not be part of DotMusic's Registry Agreement, DotMusic commits that the copyright provisions contained in the clarification section will be incorporated in its Registry Agreement<br><br>- DotMusic supports many of the CCWG's recommendations to improve the Request for Reconsideration (RfR) process, especially in areas concerning improving transparency mechanisms, document disclosure policies, and an opportunity for rebuttal prior to the Board's final determination. It is recommended that ICANN also considers incorporating an Initial review with the Ombudsman, who can serve a facilitative role in the process and help increase efficiency. DotMusic also supports the CCWG s efforts to broaden the RfR standards and applicability to change "material" to "relevant" as well as removing highly subjective dismissal criteria such as "vexatious" or "querulous". It is noteworthy to indicate that only two RfR's have ever actually been accepted by the BGC (ICANN Board Governance Committee), which may be a result of a conflict of interest. This is because the ICANN BGC has an inherent bias in favor of ICANN Staff since both the BGC and Staff serve ICANN's best interests. An independent body without any relation to ICANN might be better suited to take this role of deciding RfR's | Agreement – Concerns – New Idea – Confusion<br>**Summary / Impression:**<br>- Many new gTLD related issues.<br>- Recommends reconsiderations be heard by an independent body.<br><br>**Actions suggested:**<br>Consider incorporating an Initial review with the Ombudsman.<br><br>**CCWG response** :<br>The CCWG appreciates this input. |

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| **246** | Siva | - Reconsideration process must be above any possible tendency on the part of the organization at various levels to adhere to defensive postures on wrong decisions or indecisions, actions or inactions, by the Community, Staff and Board, however unfair and wrong. Reconsideration ought to move beyond being a review of whether a certain process was followed in a decision and become an elevated framework for reconsideration within which comprehensive reviews would be made for fair and binding directives.<br>- Reconsideration process is a Board Governance Committee process that is a peer review process in matters relating to action / inaction by the Board and it becomes an Executive Review process in matters concerning Staff Action/Inaction. Due to the 'peer' review nature of the process, it is an internal process, or almost a self-evaluation process. When an issue reaches this process, the BGC ought to have an unrestrained scope and a total willingness to correct a wrong decision / inaction by all available means. This is how the Reconsideration process needs to be designed and understood by Staff, Board and the Community.<br>- The Ombudsman process is defined as an independent process, hence the independence of the Ombudsman needs to be total and complete. The Ombudsman could be empowered to investigate complaints against ICANN at any level, and with this end, the office of the Ombudsman needs to be constituted as unrestrained and uncontained.<br>- The Accountability design process could cross examine the role of an independent Judiciary in a balanced Democracy to find if certain features of a balanced governance structure could be drawn in the design of the reconsideration processes in ICANN Governance. | Concerns – New Idea – Confusion<br>**Summary / Impression:**<br>- Many differing views on reconsideration.<br>- Sees current process as a peer review which cannot meet the requirements because it is conflicted.<br>- Recommends that the Ombudsman should be completely independent and able to investigate all complaints<br><br>**Actions suggested:**<br>None.<br><br>**CCWG response** :<br>The CCWG appreciates this input and notes that many of your concerns regarding the current proposal are actually addressed by the IRP. |

**Mechanism to empower the Community**

*Additional questions: Do you agree that the introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability?*

*What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.*

*Question 7: What guidance, if any, would you provide to the CCWG-Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies.*

**Tag count**

Total comments: 49
Agreement: 31
Concern: 21
Confusion: 8
Divergence: 7

**Macro level / overarching issues**

- Avoid a system that allows for “ICANN insider” capture (224, 226, 227, 229, 241)
- Linkage of SO/AC system to relevant stakeholders or the “global public” (224, 229, 234, 262)
- Legal challenge for states in any “joining” re GAC, others (225, 237, 241, 252)
- Cascading accountability concerns - how are mechanism participants held accountable (224, 225, 226, 227, 229, 230, 235, 236, 241)
- Mutual, not just linear, accountability (227, 229)
- Don’t have courts (any courts) making decisions for ICANN (225, 232, 252, 265)
- Diversity of participation (224, 229, 234, 236, 241, 243, 252)
- Promote effective govt involvement on public policy issues/relevant issues (226, 233, 234, 241)

**1. Mechanism for community powers**

Supports a mechanism to allow community powers (248, 250, 251, 252, 254, 255, 259, 260, 264, 269, 270)

Mechanism should be people not weighted votes / greater clarity on this to ensure diverse voices are heard (243, 251, 258)

Comments:

Time impact on participants - would model be more demanding? (255)
Conflict of Interest obligations on decision-making in community mechanism (229, 262)
Risks and scenarios of between-member legal action (262)
Links between advice from ACs and decision-making - how preserved / dealt with? (262)
Indemnify participants against legal action from exercising membership powers (265)
No indemnities for single-member actions (265)
Avoid future sclerosis (224, 246)
Reconsider two-tier Board model if this de facto emerges (231)
Encourage broader GAC participation (233, 234)
Avoid creating accountability at expense of expertise (255)
Lack of trust challenge to resolve (246, 265)
Simplicity of approach important (250)
Jurisdiction (252)
Question rationale for supermajority to veto changes to Bylaws (238)
Concern over community decisions being overruled by Board or national courts (252)
Safeguards to ensure there aren't constant challenges between Board and community (271)

**2. Enforceability**

Supports enforceable model for powers (237, 238, 239, 240, 242, 245, 248, 249, 251, 254, 255, 257, 259, 269)
- board member removal only (265)

Does not support enforceable model for powers (225, 250, 260, 265)

Comments:

Question whether enforceability undermines multistakeholder approach (225, 260)

**Membership model**
Supports membership model generally include legal persons (223, 235, 236, 237, 238, 239, 240, 242, 245, 247, 251, 253, 254, 257, 258, 259, 260, 269)

Support membership model but limited to enforcement only (248, 265)

Concerns with membership model
- UAs may risk higher hurdles for involvement of ccTLDs in the ccNSO where govt is the manager (225, 255)
- implementation detail needed (251, 260, 261, 266, 267, 268, 269)
- complexity and unclear benefit (246)
- existing structures will struggle to organize into UAs (225)
- Do not remove influence of voices outside the SO/AC structure (255)
- Restrictions from UAs for govt based participants or others (225, 232, 241, 252, 255, 264)
- Be sure legal risk to participants is not changed (236)
- lack of clear safeguards against capture (226, 241)
- need better understanding of risks and liabilities (262)
- clarity on legal aspects and membership (263)

Does not support membership model

- complexity (225, 249)
- costs (225)
- Not allow existing stakeholders to participate (225, 232, 249)
- risk of legal exposure for participants (225, 232, 265)

Comments:

Allow individual participants to join, not SOs/ACs (223)
Let SOs and ACs choose their own model - UA or other legal form or individuals (237, 251)
Impact testing of membership model (262)
Sees UAs for membership as simple (251)
What if an SO/AC chooses not to become a member, impact? (262)
How will bodies that don't elect Directors participate (242)
Role of NomCom (242)
Don't "transform" the SOs ACs into UAs - use them only for accountability powers (263)

**Voting weights / Influence**
Supports proposed voting weights (231, 236, 240, 242, 245, 247, 250, 256, 259, 260)

Changes to proposed voting weights (226, 232, 249, 251, 255, 258, 259, 260, 261, 262, 265)

- GNSO needs more influence:
  - 7 votes suggested (249)
  - More flexible votes so more GNSO influence when needed (251)
  - Business interests need more weight (258)
- Prefer GAC remain advisory (226, 237, 255)
- Query SSAC votes with respect to advisory (259)
- Prefer Alternative A for votes (238)
- More closely align votes to Board appointment shares (260)
- Better alignment between stakeholders and numbers - more for SOs, none for SSAC, less for ALAC, none for GAC (261)
- Equal voice for SSAC/RSSAC as others (Alternative B) (232, 262, 265)
- RSSAC prefers to remain advisory as a Board appointed committee (266)
- SSAC prefers to remain advisory only (267)

Balance represented in chosen thresholds (246)

**New/alternative suggestions and comments**

Suggest renaming mechanism "Multistakeholder Assembly/Chamber/Council" so it is able to be better understood (224)
Public Accountability Forum proposal (227)
Mutual Accountability Roundtable proposal (227)
Avoid capture / insider influence through e.g. mechanism term limits, no path to Board from mechanism (229)
Cultural diversity and Strong conflicts of interest policy key to for mechanism (241)
Review role and structure of NomCom (242)
SO consensus advice should have attention paid as per AC consensus advice (242)

Inappropriate implementation but agreed principles - CCWG should start again (225)

Awaiting / seeking further detail (239, 247, 251, 261, 263, 265)

| # | Contributor | Comment | CCWG Response/Action |
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| **247** | RH | - I agree that turning ICANN into a membership organization is the way forward: if the membership is sufficiently broad, and ICANN is accountable to its membership, then adequate accountability will be ensured.<br>In some countries (in particular in Switzerland), non-profit associations are, by law, accountable to their membership, in the sense that the membership has full powers to amend the bylaws (called statues in Switzerland), elect and revoke the Board, approve and review the budget, etc. See articles 60 ff. of the Swiss Civil Code . If we accept the principle that accountability is ensured by the members, then I don't understand why the members of ICANN should not have full powers. The membership should have full powers, not just some powers.<br>- Membership should consist of the members of the SO and AC, not the SO and AC themselves; i.e. direct entities.<br>ICANN will be subject to the laws of the countries in which it operates, unless it is granted immunity of jurisdiction. - But ICANN will primarily be subject to the laws of the country in which it is incorporated. If California law does not allow the membership to exercise full powers, then it might be better to incorporate ICANN elsewhere. Why should the directly concerned entities elect representatives that elect the ICANN Board, when the directly concerned entities can elect the Board themselves?<br>- Question: Agrees. The membership model is better than a "designator" model. | Agreement<br>**Summary / Impression:**<br>-Generally supportive of membership.<br><br>-Prefers individual membership (as in members of SOs and ACs are the members of ICANN); Swiss jurisdiction; membership preferred to designator.<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment and has considered it in its discussions. Comments from counsel on the Swiss framework indicates there are no significant advantages to such a model: the problem posed by the lack of legal recognition of the SOs and ACs is not unique to California law. Swiss law has the same requirement that members in a corporation /nonprofit association be legal persons.<br><br>In any event, the CCWG's Second Draft Proposal includes a different model – the Community Mechanism as Sole Member – detailed in Section 6. We encourage you to read this part of the proposal and to offer any further comments you may have. |

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| **248** | JS comment 1 | - Presumably 'SO/AC Membership Model' would not be comprehensible to, or resonate with, wider audiences. Something like ´Multistakeholder Assembly/Chamber/Council', which would name the multistakeholder principle that NTIA has required and ICANN embraces?<br>- The proposal could address more directly the issue of maximizing correlation between 'the ICANN community' and the (continually evolving) wider world of global Internet stakeholders. Indeed, at para 45 there is a (somewhat complacent?) equation of 'the community' with 'the people'. This correspondence is not automatic and requires proactive cultivation. The proposal is still thin on concrete measures in this regard. How can one ensure that the multistakeholder mechanism will adequately encompass all affected circles? Would any adjustments in the AC and SO constructions be advisable at this juncture to obtain a better congruence? The current draft persuasively argues for 'participation reflecting the functional, geographic, and cultural diversity of the Internet' (para 97); and specifies that review groups 'must be as diverse as possible' (para 273). However, the proposal suggests few concrete measures for putting these principles into practice.<br>- Could the formula which constitutes 'the Community' in the empowerment mechanism (set out at 2.6.1.2) be adjusted in future, as and when the prevailing arrangement is found inadequately to reflect the constellation of ICANN stakeholders at that future time? The world of 2045 is likely to be quite different from that of 2015 – will ICANN's constitution allow it readily to change with the times?<br>- How will participants in the empowerment mechanism be held accountable to wider stakeholder circles, both within ICANN (i.e. the ACs and SOs) *and beyond* ? Legislators in democratic nation-states are subject to election by the general population, but delegates in the ICANN 'parliament' would only be elected by ACs and SOs, whose connections to wider constituencies – and that so-called 'global public interest' – can be quite thin? How does one ensure that the community empowerment mechanism does not become a vehicle for capture of ICANN by insider activists? Is this a weak point that opponents of the transition could target? | Concerns - Confusion<br>**Summary / Impression:**<br>- Issue of connecting ICANN with relevant stakeholders (is SO/AC model adequate?). Does not recognize open nature of ICANN community and analyses it as a closed group.<br>- Is ability to change preserved?<br>- How are mechanism participants held accountable to their appointing circles?<br>- How to avoid insider capture?<br><br>**Actions suggested:**<br>"Multistakeholder Assembly/Chamber /Council' as a title for the community mechanism<br>- further discussion on accountability for mechanism participants<br>- need to clarify whether mechanism is a group of people meeting, or just "votes cast"<br>- stress testing insider capture point?<br>[note ST12 - does deal with capture, but not insider capture - will be expanded by ST-WP, and a new ST will be created to deal with rogue voting of SO/AC reps.]<br>**CCWG Response:**<br>Thank you for your input. Certain issues, like reorganization of the SO/ACs for greater accountability to their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2.<br><br>The CCWG's Second Draft Proposal includes a different model – the Community Mechanism as Sole Member – detailed in Section 6. We encourage you to read this part of the proposal and to share your views on how it deals with this, as well as any further comments you may have. We hope that the Second Draft is more readable and less inexplicable than the previous.<br><br>The very broadest questions you have raised are arguably at the heart of ICANN's overall legitimacy as a vehicle for Internet governance. Dealing with all of them is beyond our scope as a CCWG tasked with defining accountability improvements. |
| | | - auDA does not agree with the CCWG's assumption about the 'degree of enforceability' expectations of the global multi stakehol der community. The CCWG appears to have focussed primarily upon the current inability of the community to enforce its rights through a formal legal process, to address circumstances where the ICANN Board ignores the input of the community. auDA observes that the CCWG has seemingly identified this need for legal enforceability as a fundamental tenet of the accountability review, despite the costs, complexities and instabilities associated with delivering this goal. auDA disagrees with the CCWG that the benefits of legal enforceability outweigh these negative side effects. | Divergence<br>**Summary / Impression:**<br>- Sees membership model as incompatible with ICANN multistakeholder approach.<br>- Sees a drive for enforceability as driving the choice of model.<br>- Does not agree that legal enforceability of powers is needed.<br>- Sees practical or political difficulties in SOs/ACs becoming legal persons to enforce member or designator powers.<br>- Concerned re keeping legal persons accountable to the SOs/ACs they represent in membership model. |

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| **249** | auDA | - auDA believes that the multi stakeholder model (that ICANN is a core part of) should be allowed to perform the functions it was established for and operate with collaboration, negotiation and consensus building. Mechanisms for escalation and arbitration should underpin the future of this model. auDA believes that, in the extremely unlikely event that the community would to move sue ICANN, the entire system of multi stakeholderism and the very structure of ICANN would be irreparably and irreversibly broken, rendering the ability to initiate legal action and the prospect of the community "winning" its case a moot point.<br>- In addition to our general cost vs benefit concerns about the value of enforcing accountability upon ICANN through legal means, auDA holds specific concerns about the implications this solution will have on sections of the ICANN community. In order to deliver legal enforceability, ICANN would either need to be radically remodelled into a membership based organisation or SOs and ACs would need to appoint formal designators as holders of the community's powers over ICANN. In either case, the SOs and ACs would need to become legal entities in their own right.<br>- Some SOs and ACs would, due to their structures, struggle to become an "unincorporated association", as would be required to ensure legal status. As such, "shadow entities" would be required to assume this role and act upon the instructions of their responsible SO or AC. This adds a new, untested level of complexity to ICANN structures. The shadow entities would require mechanisms to ensure their ongoing funding and support and would likely require contracts between them, ICANN and each other, resulting in very significant and complex changes. Fur ther, a great number of accountability and operational mechanisms would need to be built in to ensure these shadow entities always adhered to their "parent" community's instructions. Communities would also need to enshrine systems for voting and selecting people to participate in their shadow entity. It is unclear whether all SOs and ACs could, given their structures, develop such voting mechanisms. In all these ways, an additional operational layer adds the need for a great number of new governance mechanisms. Addi tionally, bodies such as the ccNSO Council would need to appoint designees to participate in the shadow entity. This may not be appropriate or feasible for a number of ccTLD managers whose domestic arrangements prevent them from assuming a role that involves jurisdiction in the United States.<br>- The CCWG states that:". . .community participants would have the choice of opting in and participating in this new accountability system or to simply keep on doing what they do today in an ICANN that is more accountable than it is today". auDA disagrees with this statement. The CCWG is proposing a model that is purporting to empower the community, but is actually disempowering some stakeholders and decreasing their ability to effectively and directly affect the operations of ICANN.<br>- A further negative effect of adopting a legal / membership structure is the ability for the unincorporated association or its members to be sued themselves. For example, Vox Populi Registry, which operates ".sucks" has recently threatened legal action22 against ICANN and "its constituent bodies" for defamation and other alleged breaches of US law. While ICANN can currently be held to account in US courts, ICANN's constituent bodies (which are not legal entities) cannot. Should the proposal of the CCWG proceed, it would be possible for aggrieved parties to initiate action directly against SOs and ACs (or their shadow entities). auDA believes this is a significant and unacceptable risk. | - Concerned re legal risk for SOs /ACs through making them legal persons or creating UAs as legal envelopes for community powers<br>- In overall comments, asks the CCWG to restart the implementation thinking.<br>- Confusion re non-necessity for ICANN participants to “join” UAs to participate in powers<br><br>**Actions suggested:**<br>Clarification of no need to join a UA under any scenario to fully exercise rights (same concern came thru in CENTR draft BoD statement)<br><br>Further CCWG discussion on enforceability point, as a fundamental decision to be made<br><br>Does further work need to be done on legal risk arising or is this adequately covered in the legal material prepared?<br><br>**CCWG Response:**<br>Thank you for these comments. The CCWG has taken your comments into consideration. While the CCWG notes disagreement in the underlying assumptions, such as legal enforceability for community empowerment, the group is adjusting its community empowerment model to account for concerns, political and practical, that have been raised in your submission.<br><br>We encourage you to read the Second Draft Proposal, in particular section 6, which sets out the new Community Mechanism as Single Member model that addresses many of the concerns raised in your comment. We welcome any further comments in response to the revised proposal. |

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| **250** | DBA | - DBA emphasizes empowering the community with regard to i.e., spilling the Board, re- viewing/revoking the budget and strategic /operating plans and amending the Fundamental Bylaws.<br>- The new structure (community mechanism) would be composed of ICANN's SO's and AC's as either members or designators with voting power. With regard to the role of governments, we believe that the Governmental Advisory Committee (GAC) should continue to be an advisory body.<br>- Governments have a legitimate responsibility with regard to public policy concerns, which should be duly taken into account. As such it is important that governments are given appropriate weight in the proposed multi- stakeholder reviews, including the ATRT Reviews. Moreover, as the organization will change, new ways for GAC engagement should be explored.<br>- It is of crucial importance to ensure that the new governance model is truly multistakeholder-based. To this end there must be safeguards against capture from any specific stakeholder group in any way, including in ICANN's policy development processes and decision making functions. | Agreement<br>**Summary / Impression:**<br>- Generally supports the powers and the mechanisms<br>- Believes GAC should remain advisory<br>- Need govt input on pub pol matters and into e.g. ATRT reviews<br>- Need to avoid capture from any particular stakeholder group<br><br>**Actions suggested:**<br>Further conversations with GAC and test against GAC feedback<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the community empowerment model.<br><br>We encourage you to read the Second Draft Proposal, in particular section 6, which sets out the new Community Mechanism as Single Member model. The model is a new approach to empowering the community, developed in response to the feedback received on our first draft proposal.<br><br>The new model preserves the same allocation of voting – that is, the GAC will have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development.<br><br>Please note that currently no SO or AC has voting powers. With the proposed mechanism, the relative influence of the community groups except for SSAC and RSAC are maintained and no single group gets more influence than under the current system.<br><br>There are no proposals to change the GAC's participation in reviews – though the GAC chair would not in future be one of the two people deciding who serves on review teams. C ertain issues, like reorganization of the SO/ACs for greater accountability to their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2.<br><br>We welcome your further comments. |
| | | - The question of who will guard the guardians has arisen in the CCWG-Accountability's discussion space – put forward most clearly by Jan Aart Scholte (see above comment 246). | |

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| | | - Michael Goodhart has addressed the issue in this way: *In thinking about how to translate models and modalities of democratic accountability to the transnational context, scholars have naturally focused on the question of who is entitled to hold power-wielders to account. That is, they have emphasized the process of democratic accountability. This approach has not been terribly fruitful, because in world politics, the logic of democratic accountability breaks down. The familiar democratic mechanisms don't and can't work because their legitimacy turns out to have less to do with the mechanisms themselves than with certain distinctive features of the Westphalian state: First, the symmetry and congruence between citizens and rulers and between the laws and policies rulers make and their constituents; second, the peculiar status of the people, whose standing as a source of democratic legitimacy is a function of its taken-for-grantedness. Identifying democratic standards of accountability independently from the mechanisms with which they are commonly associated, advances the debate on accountable international relations.* In other words, Goodhart argues that in global governance at present the solution to the issue of representation is to identify democratic standards and values and use those as the template against which to measure an international organisation's accountability.<br>- Frank Vibert argues that we need to recognise that we are living in an era which has seen the rise of unelected bodies or `non-majoritarian institutions' at national and global level. He has identified a number of features of such unelected bodies: 1 Most operate in technically sophisticated areas; 2 Almost all rely on sources outside the government for information and knowledge; 3 With this specialised information and knowledge they form their own communities. As such, non-majoritarian institutions like ICANN are epistemic communities which are bound by a set of values, knowledge and standards rather than elected representatives of the billions of Internet users or netizens. At this stage of human development it is simply not possible for ICANN to hold global elections as it tried to do in 2000. That may be possible as technology changes in the future. Nor is there a fully representative system of world government at this point in history. What ICANN does have in its system of governance is a strong set of stakeholders from governments, business, civil society and the technical community. If the current proposal of the CCWG-Accountability is substantially accepted, this form of multi-stakeholder governance will constitute the ICANN community formally as one that has not simply a supportive or advisory role but one that has powers to hold the Board to account against a set of values and standards. This lays new ground in global governance.<br>- As Richard Mulgan has pointed out, the danger of posing the question of who guards the guardians in a non-majoritarian representative context is that it leads to the problem of infinite regress: | Agreement - Concerns or generally supportive, with suggestions:<br><br>**Summary / Impression:**<br>- Can't have endless watchers watching the watchers – linear accountability chains have no logical end point<br>- Mutual accountability must be involved as well as principal/agent accountability<br>- Cautions that avoiding insider problem is very important<br>- Supports Public Accountability Forum suggestion made elsewhere<br>- Points way to understanding the mutuality of " reciprocated, mutual accountability" The various internal, external mechanisms being established give us this sort of reciprocated accountability.<br><br>**Actions suggested:**<br>Consider a Public Accountability Forum or Mutual Accountability Roundtable of all SOs /ACs and Board and CE, alongside the principal /agent style of membership model<br><br>**CCWG Response:** |
| **251** | WC comment 1 | | |

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| | | *If the only way of making one body accountable for how it holds others accountable is to establish a further agent of accountability to watch how this body holds others accountable, then this further agent itself will need to be held accountable by someone else and so on ad infinitum. The problem of how to guard existing guardians thus leads to a search for further guardians to guard existing guardians, a search that must be ultimately fruitless in the absence of a final guardian who does not need guarding* . Mulgan' s solution to this problem is to propose a form of reciprocated, mutual accountability: *In such a structure, two or more parties are accountable to each other, rather than each being accountable to a different party, as in a linear chain of accountability. The legislature and the judiciary as well as holding the executive to account, are also accountable to each other. Courts can hold legislatures accountable for adherence to the law, including the basic rules of the constitution, while legislatures can hold the judiciary accountable for reasonable interpretation of existing law* .<br>- The question this raises is whether there is a space for mutual accountability within ICANN's systems of accountability and governance that can go some way to addressing the question of who guards the guardians. The question that Jan Aart Scholte raises - `How does one ensure that the community empowerment mechanism does not become a vehicle for capture of ICANN by insider activists?' needs to be answered. Perhaps in addition to the community powers and the suggestion of a Public Accountability Forum, consideration could be given to establishing a Mutual Accountability Roundtable.<br>- The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new community powers and possibly a Public Accountability Forum construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets once a year at the ICANN meeting that constitutes the annual general meeting. The form would be a roundtable of the Board, CEO and all supporting organisations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year at the end of each AGM who would be responsible for the next Mutual Accountability Roundtable. There could be a round of each structure giving an account of what worked and didn't work in the year under review, following by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement. It could be argued that this form of mutual accountability would contradict and undermine the `linear chain of accountability' established in the new community powers and cause confusion. The answer to this is that ICANN needs a combination of accountabilities to manage its complexity as an organisation. In the IANA transition, it is critically important for ICANN to have a strong principal-agent relationship at the centre of its accountability system to replace that of the NTIA. However, that system is vulnerable to charges that the community assuming the role of accountability holder or forum is itself not representatively accountable to the global public of Internet users. To address this requires a way of introducing a system of mutual accountability as well as a recognition that ICANN is accountable as a whole ecosystem to a set of democratic standards and values captured in its Bylaws. | Thank you for your suggestion. In WS1, the CCWG is focused on elements necessary for the transition of IANA Functions stewardship. The Community Empowerment model was developed to complete the requirements.<br><br>In our Second Draft Proposal, and in part in response to your feedback, we have suggested the creation of an ICANN community forum that could fulfill the role you propose for a Mutual Accountability Roundtable. This is detailed in Section 6.4 of the revised proposal.<br><br>We welcome your feedback in response. |

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| **252** | WC comment 2 | The second point that I don't quite follow in the discussion is where some people are arguing for unincorporated associations as a form of membership which seems to be the overall position of the group. But there's also an argument that individual chairs of SOs and ACs could assume that membership. I was just wondering if there's any clarity on that issue. | Confusion<br>**Summary / Impression:**<br>Unclear why unincorporated associations is argued as a form of membership and how it relates to individuals Chairs of SO/ACs.<br><br>**Action suggested:**<br>Need to resolve UA/whole SO/AC versus individuals exercising membership. Need to confirm the mechanisms for accountability in t he various arrangements.<br><br>**CCWG Response:**<br>The CCWG has considered different forms of Community Empowerment, including membership models, and revised its proposal extensively in response to public feedback.<br><br>We encourage you to read the Second Draft Proposal, in particular section 6, which sets out the new Community Mechanism as Single Member model. The model is a new approach to empowering the community, developed in response to the feedback received on our first draft proposal.<br><br>We welcome your further comments. |
| **253** | JS comment 2 | - One is to maximize the correlation between the ICANN community as represented in the community empowerment mechanism and the evolving wider world of global Internet stakeholders. Already one sees that the functional, regional and social distribution of participation in the IANA transition deliberations does not always correspond to the map of current Internet stakeholders. To be concrete, suppliers are much more present than users, the North Atlantic and Anglophones are much more present than their share of actual and prospective Internet engagement, and there is disproportionately low participation of young persons and women. The CCWG draft proposal acknowledges the issue of 'diversity', but no concrete steps are advanced to address the situation. In particular what, if anything, is going to be done - immediately and/or in the longer term - regarding the composition and workings of the community empowerment mechanism? Otherwise the purported 'empowerment' mechanism might in practice actually marginalize some important stakeholders. For example, would one do nothing if the SOs and ACs delivered a 'community empowerment mechanism' composed entirely of middle-aged white Anglophone businessmen from urban Euro-America-Australia?<br>- A second key point is the accountability of those who hold ICANN to account, particularly through the new community empowerment mechanism. This can be a major challenge for private global governance institutions, as the current scandal around FIFA strikingly illustrates. How does one ensure that appointments to the 'community empowerment mechanism' do not become the object of cosy insider deals, where a small group of well-connected veterans control the show and become divorced from the wider world of constituents to whom they are meant to answer? Where membership of the community empowerment mechanism becomes a stepping-stone to membership of the board? One could imagine steps like a term limit, a prohibition on subsequent board membership, and intensified efforts by ICANN to attract new blood. The CCWG report could at a very minimum explicitly identify the issue of community accountability. Otherwise a skeptic can worry that the activist community has a blind spot and/or complacency on its own accountabilities. | Concerns and suggestions.<br>**Summary / Impression:**<br>- Call for diversity which is mentioned but not actioned in CCWG draft - as part of ensuring global MS community is holding ICANN to account, not insiders.<br>- Suggests ways to help prevent insider capture (term limits, no mechanism / board crossovers, efforts to attract new blood).<br><br>**Actions suggested:**<br>Further CCWG discussion on these points<br><br>**CCWG Response:**<br>Thank you for your suggestions and comments. The CCWG has improved its proposal by including the following safeguards in its 2 nd dra ft proposal:<br>- The openness of the SO/AC structure to new participation is a Work Stream 2 subject for the CCWG.<br>- Further work is needed on the question of avoiding those involved with accountability mechanisms simply being past or future decision-makers.<br>- The overall question of insider /outsider control or dominance, and the true openness of ICANN to new voices, is, as mentioned, on the agenda for WS2. |

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| **254** | NM | I share Jan Aart Scholte's concerns about the accountability of the groups and how they're selected. If we are not more specific, we can find ourselves in an infinite regression of groups that oversee the groups that oversee the groups that oversee the groups. It is important that we be more specific that in order to participate, the groups have to be able to demonstrate that their own mechanisms for internal governance and for keeping their membership fresh and independent are sufficient. If we do not set minimum requirements for what qualifies as a "community" with oversight authority, this will not have any meaning. | Concerns<br>**Summary / Impression:**<br>Accountability of the groups selecting mechanism participants - put obligations on these to be open and accountable.<br><br>**Actions suggested:**<br>WS2 review of SO/AC accountability?<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments. Cer tain issues, like reorganization of the SO/ACs for greater accountability and openness to their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2.<br><br>The suggestion of a Public Accountability Forum is one the CCWG is eager to explore early in its WS2 work. It could be organized under the auspices of the proposed ICANN community forum – see section 6.4 of the Second Draft Proposal for further details. |
| **255** | CRG | B. YES, but in my view at this stage of the draft that it would also make the internal difference between SO/AC delegates to the Board and NomCom delegates within the BOARD more obvious<br>C. If the voting Members are not going to meet in a separate council, and delegates to the Board will have to follow the instructions of the community mechanism, leaving us factually with a two-tier Board, new operating principles may be necessary at the highest level (By laws).<br>In my view and in the stated interest of minimum changes, WS1 should re-consider an earlier suggestion of the Northern European two tier Board. | Agreement and suggestion<br>**Summary / Impression:**<br>Generally favourable.<br>If no actual body of people in mechanism, reconsider the North European two-tier board approach.<br><br>**Actions suggested:**<br>None - two-tier board divergent from central approach.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG does not see the need for Board restructuring at this (WS1) stage: the CWG requirements asked only for more right towards the Board, not new options for selecting the Board nor for how it is structured. While the CCWG recommendations might lead to Board restructuring, this is not an area of focus for WS1 (but could be considered as part of WS2).<br><br>The proposed ICANN community forum will provide the opportunity for the community to publicly discuss issues and inform decisions made by the board. However, no two-tier structure is introduced and the least invasive changes to the current system are made.<br><br>All of the reforms proposed by the CCWG require bylaws changes. |

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| **256** | AFRALO | - They do not see the unincorporated associations as a good means for SOs and ACs to exercise the powers included in the report because the practical application of the UA setup seem to be problematic and complicated. One of the problems is the fact that some of the community stakeholders may be unable and/or unwilling to become a UA, which means that they will not contribute to the community decision making process while exercising the proposed community powers. Also creating the UA may expose the SO/AC to legal issue as they may be sued within the California jurisdiction, which may harm the community members.<br>- Any other form of legal entity to represent the SOs and ACs wouldn't be acceptable if it leads to suing those entities in courts.<br>- All the accountability mechanisms should avoid leading to courts as much as possible. In fact, the AFRALO members do not accept that ICANN affairs be managed by courts in whatever the jurisdiction is.<br>- The community group that will act on behalf of the respective community stakeholders to exercise the powers mentioned in the report should be as inclusive as possible. AFRALO members prefer equal footing for all SOs and ACs, but can live with the composition proposed in the report. | Concerns / Confusion / Divergence<br>**Summary / Impression:**<br>- Does not accept UAs for reason of complexity / practical grounds and risk of legal risk arising.<br>- Same concern with other legal entities.<br>- Does not accept the risk of ICANN affairs being managed by courts<br>- Equal footing for all SOs/ACs suggested, but can accept current proposal.<br><br>**Actions suggested:**<br>Clarity and group exploration of nature and role of UAs remains necessary.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has considered different forms of community empowerment, including membership, and is revised its proposal to take into account concerns raised in the Public Comment.<br><br>The CCWG has developed the Community Mechanism as Sole Member model that addresses many of the concerns you raise. See section 6 of the Second Draft Proposal for more details.<br><br>We note that ICANN will always be based somewhere, and that court action is always a possibility. The package the CCWG has assembled seeks to resolve differences or concerns on substantive ICANN matters within the IRP, and procedural concerns as well. Courts always remain a last resort, as they are today. |
| **257** | Govt-AR | Governments have a relevant role at the national level; this must be considered in any new structure. Governments must have a role in multistakeholder reviews, with equal participation among other stakeholders. | Agreement<br>**Summary / Impression:**<br>CCWG proposal does provide these roles for government.<br><br>**Actions suggested:**<br>Should the question be asked of a commensurate modification in the GAC special bylaws provisions as they become equal-footed stakeholders?<br>**CCWG Response:**<br>The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the Community Empowerment model. In the Second Draft Proposal, the GAC will, if it chooses to to do, have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development.<br><br>There are no proposals to change the GAC's participation in reviews – though the GAC chair would not in future be one of the two people deciding who serves on review teams. |

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| **258** | Govt-IN | - Community empowerment is a quintessential part of ICANN Accountability, and it is appreciated that the CCWG Accountability's current proposal has identified community empowerment as an essential building block.<br>- There must be robust oversight mechanisms, under which ICANN should be accountable to the global multistakeholder community, with adequate representation of geographical and linguistic diversity.<br>- ICANN's accountability to various stakeholders may be calibrated in the context of the different roles played by stakeholders on various issues. In particular, a higher level of accountability towards Governments is required in areas where Governments have primary responsibility, such as security and similar public policy concerns.<br>- In addition, ICANN must make efforts to broaden participation in the Government Advisory Committee (GAC), to take into account the views and concerns of Governments currently not having representatives on the GAC. | Agreement - Concerns<br>**Summary / Impression:**<br>- Accountability through community empowerment supported<br>- Geographic and linguistic diversity in accountability mechanisms is important<br>- Greater accountability to governments for areas of government responsibility e.g. security, public policy matters.<br><br>**Actions suggested:**<br>WS2 to investigate GAC participation (or ask GAC to investigate the same)?<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the Community Empowerment model. In the Second Draft Proposal the GAC will, if it chooses, have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development.<br><br>The CCWG's view is that the accountability improvements at the heart of its proposal do not require differential participation, as they generally deal with ICANN-wide issues. As such, different voting weights depending on the issue is not supported in the Second Draft Proposal. Section 6.3 of that Proposal deals with voting weights. |
| **259** | DCA-T | - The recommendation that ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) would each form unincorporated associations, and through these associations would exercise the rights they would gain as a "Member" of ICANN.<br>- It is important to formulate the membership criterions of the SO' s and AC's so that there is accountability within them and this can translate into a better ICANN. | Agreement<br>**Summary / Impression:**<br>Need to ensure the accountability of the SOs and ACs themselves in the membership model.<br><br>**CCWG Response:**<br>The CCWG has considered different forms of Community Empowerment, including membership. It has developed the Community Mechanism as Sole Member model that addresses many of the concerns you raise. See section 6 of the Second Draft Proposal for more details. In our view this largely deals with the concerns you raise, though there are ongoing issues of SO/AC accountability that will feature as part of our Work Stream 2 work. |

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| **260** | Afnic | B - Provided that the legal advice states that the establishment of an “empowered community” assembly, being the assembly of members, will not change the liability and risks for all ICANN participants, this proposal only brings added value to the current situation (ref : 180. 5)<br>- Afnic welcomes this proposal that applies the accountability principles to the multistakeholder nature of ICANN. As the current organization of SOs and ACs is supposed to represent all the stakeholders, it’s essential that these stakeholders should be fully empowered to undertake the checks, balance, review and redress process that come with accountability.<br>- As for the reference model, Afnic is of the opinion that 5 seats per SOs/ACs (except for RSSAC and SSAC) is a good number. Afnic notes the rationale for it, which is to allow geographical diversity, but advise that this geographical diversity should be included in the bylaws, along with the provisions for the empowered community. It should therefore be stated that each SOs /ACs should designate no more than two representatives from the same region.<br>- Finally, Afnic feels that the designation rules for each SOs/ACs, if they should be set by the constituency themselves, should be aligned between constituencies, and fully transparent. Furthermore, the designation mechanism itself should be, either organized by a third party to the constituency (for instance, an ICANN election office) or reviewed by external observers. | Agreement<br>**Summary / Impression:**<br>- Clarity that no new legal risks created for participants important<br>- Support empowering the SO/AC structure through membership approach<br>- Importance of diversity in community mechanism<br>- Consistent and transparent rules across SOs and ACs in designation role [ Check : does this refer to appointment of directors or something else?]<br>- Designation organised external to the SO/AC (e.g. an ICANN election office)<br><br>**Actions suggested:**<br>Mandate geographic diversity in the community mechanism.<br><br>**CCWG Response:**<br>Thank you for your suggestion. In WS1, the CCWG is focused on elements necessary for the transition of IANA Functions stewardship. The Community Empowerment model was developed to complete the requirements, and in the Second Draft Proposal the Community Mechanism as Sole Member does so (see section 6). The CCWG has not however adopted your proposal to require geographic diversity – as part of the new model, no representatives are chosen, with votes in the CMSM cast by existing SOs and ACs. Considering SO/AC accountability is part of Work Stream 2.<br><br>We look forward to your further comments in response to the updated Proposal. |

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| **261** | Govt-DE | - The envisaged membership structure (or similar constructs) would enable the SO/ACs to directly influence ICANN's work and exert greater oversight, ensuring adequate regard to all community interests. Germany would like to suggest that any choice of form of organisation for ICANN as a public benefit corporation should not preclude stakeholder groups from deciding if and how they want to partake as members.<br>- ICANN's new organisational structure needs to meet the requirements of governments in a multistakeholder environment. In our view governments have an important role to play, particularly on global public policy issues. To this end, Germany sees no need to change the status of the GAC as an advisory body. It is necessary that governments continue to participate in decision-making processes via the multistakeholder model. To ensure ICANN's strong commitment to the public interest GAC advice will need to be duly taken into account in any future form of organisation. We are of the opinion that matters of public interest can be addressed best in this manner. Any legal or political assessment of the specifics of GAC's future engagement with and within an empowered ICANN community should not be precluded. With regard to the multistakeholder approach in general it should be ensured that no singular interest can outweigh those of the community as a whole or the public in general. | Agreement / Suggestions<br>**Summary / Impression:**<br>- General support of the model with choice of participation by stakeholders as members important to preserve/include<br>- Governments should remain advisory through GAC<br><br>**Actions suggested:**<br>GAC discussion, as mentioned in response to other comments<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments and has engaged further with the GAC about how they envision their role in the community empowerment model. In the Second Draft Proposal, the GAC will, if it chooses, have equal access to and use of the community powers, while still remaining an Advisory Committee in the context of ICANN policy development. This is set out in section 6 of the revised Proposal. In developing this Community Mechanism as Sole Member model, great care has been taken to design a system where there are no new obligations or barriers created to the participation of any group, including the GAC and its members.<br><br>Whether or not GAC remains advisory only is a topic the CCWG continues to discuss, and encourages the German Government to debate with its fellow GAC members.<br><br>Certain issues, like reorganization of the SO /ACs for greater accountability to and participation of their global communities, are longer-term issues and not appropriate for WS1. These are issues worth considering as part of the various SO/AC reviews and as part of the larger task of WS2. |
| | | - We have alternative proposals that can distribute the power to enforce the Bylaws more broadly to representatives of the ICANN community. | Agreement / suggestion<br>**Summary / Impression:**<br>- Current structure only allows California AG to deal with breaches of bylaws<br>- Accountability requires the bylaws to be able to be enforced by a broad category of community representatives - and on this basis strongly support the membership model<br>- Prefer Alternative A (4 votes for SOs, 2 votes for ACs) for votes in the community mechanism, but don't finalise until powers finalised (esp their supermajority thresholds)<br><br>**Actions suggested** :<br>None<br><br>**CCWG Response:** |

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| **262** | DP-DK | - One of the most serious accountability anomalies in ICANN's current configuration is that, as a California non-profit corporation without members, any action that it takes in violation of its Bylaws can *only* be remedied in court by means of a lawsuit initiated by the California Attorney General; no other person has legal standing to bring such an action. This is, in our view, a crucial accountability problem. Enforcement of the ICANN Bylaws – whatever they may ultimately say, with whatever important limitations and representations they may contain as a result of this accountability process – should not be in the hands of a single person, whoever that person may be. To put it plainly, the entire accountability Proposal rests on the notion that the ICANN Bylaws bind the corporation in meaningful ways, and that the Bylaws – including the important new provisions to be added as part of this accountability process itself – will be adhered to. Seeing to it that that occurs is a critical part – perhaps *the* critical part – of any effective accountability scheme. The Bylaws are not self-executing; distributing the power to legally compel compliance with their terms to a broader category of community representatives, while it will not guarantee that the corporation's future actions are all within the limits set forth in the Bylaws, is a most important part of the overall enforcement arsenal. Like the US government oversight it is designed, in part, to replace, it is a power that may never need to be overtly exercised, but its existence will help to give weight and substance to the Bylaws and to shore them up as a means of insuring proper and appropriate corporate behavior. We therefore strongly support the creation of a membership structure for ICANN as a means of distributing that enforcement power more broadly to representatives of the ICANN community.<br>- The CCWG Draft Proposal suggests that the membership body would consist of 29 members, chosen in a weighted manner as follows: each of the three Supporting Organizations (the Address Supporting Organization, the Country Code Supporting Organization, and the Generic Names Supporting Organization) would have the right to appoint *five* members; two of the four Advisory Committees (the At Large Advisory Committee and the Government Advisory Committee) would also have the right to appoint *five* members; and the remaining two Advisory Committees (the Root Server System AC and the Security and Stability AC) each would appoint *two* members. We understand the rationale for weighting the various groups in this manner, and for the discrepancy in treatment accorded to the different Advisory Committees. The goal was to give ". . . the bulk of influence on an equal basis between the three SOs with which ICANN deals with policy development and the two ACs that are structurally designed to represent stakeholders (Governments and Internet users, respectively) within ICANN . . . while giving the other ACs a more limited role because they are primarily concerned with specific technical and operational matters and have not been constituted as "representative" of any particular stakeholder community. We prefer alternative A – in which each of the SOs receives four votes and each AC receives 2 votes – because it is both simpler and, as the Draft notes, "more closely aligned with ICANN's existing structure," giving "the bulk of influence to the SOs, while guaranteeing a say for the ACs on an equal basis among them." A final decision on these alternative voting models should, however, await final decision on the powers that are granted to members in the Bylaws, and the manner in which those powers are to be exercised. In particular, given the requirement (see below) that the powers to be exercised by the members will in all cases require supermajorities, the two alternatives will have different consequences for coalition-formation (depending on what those supermajority provisions entail). | Thank you for your comment. The CCWG agrees with you that the issue of enforcement of the Bylaws is an important one, and will factor this into its development of the 2 nd draft proposal. This includes a revised proposal for the Community Empowerment model, which is an integral part of such enforcement questions. The Community Mechanism as Sole Member, described in Section 6 of the Second Draft Proposal, does achieve the enforceability the community requires.<br><br>The CCWG does not share your perspective regarding Alternative A for the distribution of votes between SOs and ACs. There was very little support in public comments for this alternative. Our Second Draft Proposal maintains the proposed distribution of voting weight. |

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| **263** | IA | - The SO/AC membership model in the Draft Proposal is still in its preliminary stages.<br>- IA anticipates that this topic will remain subject to future rounds of comments and, reserves the right to submit further comments on this proposal when more details are provided.<br>- With that understanding, Internet Association believes that this model is sound.<br>- The membership model, coupled with having the SOs/ACs form unincorporated associations, gives the community the most power and enables SOs/ACs to enforce IRP awards against ICANN. It is, thus, the strongest of the proposed models for ICANN accountability. We also believe that the membership model is valid even if some SOs/ACs fail to form unincorporated associations. The Internet Association believes the Designator Model could be a sufficient alternative if the SO/AC Membership model is not accepted by the community. | Agreement<br>**Summary / Impression:**<br>- Support membership model, with caveat that it is still under development<br>- Model provides most power to the community<br>- Allows IRP findings to be enforced<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG broadly agrees with you and considered this feedback as it develops the next version of the proposal. We recommend you consider the revised Community Empowerment model in our second draft proposal: the Community Mechanism as Sole Member. This is detailed in section 6 of the revised Proposal. We welcome your comments assessing this new approach. |
| **264** | eco | - Proposed powers are an essential part of a proposal to replace the historic relationship between ICANN/IANA and the USG.<br>- Based on the legal advice received, the membership model appears to be the best proposition to operationalize the requirements established by the CCWG. eco fully supports the working method used by the CCWG based on requirements.<br>- The most appropriate implementation model to translate established requirements into working structures and processes should be used. This includes that the established powers and mechanisms are sufficiently robust and cannot be ignored or easily be overturned. As a matter of last resort, enforcement of community powers must be possible.<br>Question 7. The CCWG has suggested a relative influence of the various groups based on an analysis of their composition and based on assumptions that a certain number of votes could facilitate geographic diversity. These suggestions are supported. However, the relative powers might need to be revisited based on feedback received from the groups in question. As long as the general idea of the suggested model is preserved, there should be flexibility in determining the final relative influence. | Agreement<br>**Summary / Impression:**<br>- Support model and the way it arose from specifying requirements<br>- Enforcement must be possible<br>- Relative powers in mechanism should be tested based on feedback<br><br>**Actions suggested:**<br>Consider revisiting relative powers based on feedback received from groups in question.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG broadly agrees with you and considered this feedback as it developed the Community Mechanism as Sole Member model described in section 6 of the Second Draft Proposal. We look forward to your comments on this revised approach. |
| | | - Govt-FR await further details on how the principle of cultural diversity and a strict conflict of interest policy will be implemented in order to mitigate the risk of capture of the new institutional framework of ICANN by individuals or groups of individuals.<br>- The proposed internal checks and balances mechanisms insufficiently address the risk of capture by individuals or groups of individuals of the new empowered entities within ICANN: "SO /AC Membership Model" and IRP, in addition to the Board. In order to mitigate the risk of capture of the new "SO/AC Membership Model", or even that of the Board, by a group of individuals, we would therefore expect all stakeholders within SOs and ACs to respect the principle of cultural diversity as identified in the NETmundial "Roadmap for the future evolution of internet governance" "There should be meaningful participation by all interested parties in Internet governance discussions and decision-making, with attention to geographic, stakeholder and gender balance in order to avoid asymmetries"<br>- The new institutional framework of ICANN also remains exposed to the risk of capture by individuals who could take advantage of a weak conflict of interest policy.<br>- It is necessary to have an ex-ante thorough conflict of interest policy providing some oversight over the selection of individual Board members, and leading to the exclusion of one or several of them. | Concerns - Confusion<br>**Summary / Impression:**<br>- Cultural diversity, strict conflicts of interest policy need to be assured<br>- Risk of capture insufficiently guarded against.<br>- To help with both concerns, refers to NetMundial statement on cultural diversity<br>- Concern re subjecting GAC as an UA to California law - need to have treaty to be subject to law, and proposed model needs to allow states to participate on an equal basis<br>- Concern empowered community could override GAC advice on public policy issues<br>- Concern empowered community could change bylaws to end requirement for ICANN to duly take GAC advice into account<br>- There is perhaps confusion between recognizing that GAC advice is advice and not oversight. |

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| **265** | Govt-FR | - Govt-FR c all for the strictest conflict of interest policy to be implemented at Board, IRP and “SO/AC Membership Model” levels.<br>- We are concerned that governments are expected to willingly consent to subject the GAC to California Law. In light of the above, we expect that the “ SO/AC Membership Model ” will need a legal vehicle for initial implementation. We understand, that flexible as it may seem, California Law offers only but a few options for implementation of the “SO/AC Membership Model”. Moreover, it appears that all of them require stakeholders to give SOs and ACs legal status under California Law (Draft prop., section 5.1.1, §180, item 1).<br>- Legal recognition of the GAC is an issue for France because States are subjects of international law only. This is why France does not recognize the GAC as a legal entity today. Like most States, only on the basis of an international treaty has France legally recognized – under international law – organisations that it has participated in.<br>- Requiring France, or any other State, to legally recognize – under foreign law and in the absence of an international treaty – an intergovernmental body that it participates in like the GAC, is in fact unprecedented.<br>Those are very serious concerns that currently under investigation in by our legal Department.<br>- Has the CCWG-accountability considered that requiring legal recognition of the GAC by individual States could lead to a situation where one single State might, willingly or unwillingly, prevent the GAC to be empowered in the “SO/AC Membership Model”? Or worse: where some States might not even be able to be GAC members (anymore or in the future) if the GAC was empowered in the “SO/AC Membership Model"? Not only might the proposed implementation of the “SO/AC Membership Model” under US Law give lower chances to empowerment of the GAC, it also might leave governments lower chances to respect their international agreements through an empowered GAC.<br>- Are we correct in understanding that the “SO/AC Membership Model” would nonetheless give members of other SOs and ACs the opportunity to vote and defeat an empowered GAC, in spite of governments’ “rights and responsibilities for international Internet-related public policy issues” (as stated in Paragraph 35 of the Tunis Agenda and recalled in NETmundial Multi-stakeholder Statement, 2.I.1)?<br>- Only governments, not ICANN stakeholders, can tell what public policy advice is and how to provide such advice. With regard to future Bylaws changes, are we correct in considering that the proposed “SO/AC Membership Model” will always expose the GAC to attempts by members of other SOs and ACs to change Bylaws art. XI.2 in order to not even duly take into account GAC advice in the future? Has the CCWG- accountability also considered that the new Core Value 11 might in fact create paradoxical situations by recognising that GAC advice is always public policy advice which the Board or the empowered community could nonetheless disregard as non- public policy advice? | **CCWG Response:**<br>Thank you for your comment. The CCWG will consider the suggestion made regarding the Conflicts of Interest policy as part of its Work Stream 2 efforts – the group does not see this as integral to the Work Stream 1 effort. In respect of diversity, at this stage the CCWG believes this to be a matter best addressed in Work Stream 2, the future work it has to do following the IANA Stewardship transition.<br><br>The CCWG has clarified matters and addressed many of the other concerns raised as it developed the next version of the proposal. In particular, the nature of the Community Empowerment model and the obligations that different versions of it might cause for ICANN participants, including governments, has being very carefully scrutinized. The revised Community Empowerment mechanism in our Second Draft Proposal (detailed at Section 6) addresses many of the concerns raised by the French Government, in our view – and in particular in respect of the legal requirements our previous model included, which could have limited the potential participation of governments in the GAC.<br><br>We welcome your further comments on the Second Draft Proposal. |

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| **266** | RySG | - Clarify how bodies that do not elect directors will participate in the Community Empowerment Mechanisms<br>The proposal however is silent on procedures for the Advisory Committees, namely the GAC, that do not elect directors. We ask that that further details be provided about whether these groups will also be expected to (or allowed to) for an unincorporated association and, if not, how they will participate in the revised community empowerment mechanisms.<br>- Review the role and structure of the NomCom under the revised community structure. The proposal seems to imply that the NomCom would be included as a member in the ICANN membership structure. We request that further details be provided about whether the NomCom would participate in the Community Empowerment mechanisms as a standalone body. We generally prefer that these mechanisms be deployed by a balance of the other community "members," particularly given imbalances in the existing NomCom composition.<br>- Include procedures for handling Supporting Organization Advice that is supported by Consensus<br>We believe that the Bylaw Clarifications regarding Advisory Committee Advice that is supported by consensus should apply equally to that from ICANN Supporting Organizations, which provide advice in addition to developing Consensus Policy. We believe it is important for the community to be able to force the Board's hand if they are unresponsive to advice from SOs as well as ACs (387).<br>- RySG generally supports the proposed membership structure, without which the community powers might be unenforceable<br>- RySG generally supports the proposed allocation of member votes outlined on Page 44 (para 191) of the interim proposal<br>- Reference Mechanism seems to be a reasonable approach to vote distribution, but there may have to be distinctions depending on the category of issue. It should distribute votes across the five organizations that are involved in policy development and it also provides the possibility of providing representation across the five ICANN regions or to balance representation across internal groups, such as the Stakeholder Groups in the case of the GNSO | Agreement / clarifications<br>**Summary / Impression:**<br>- Clarify how community mechanism works for SOs/ACs that do not select directors<br>- Query as to whether NomCom will participate in the community mechanism: preference from RySG is that it does not participate<br>- Generally support membership model which provides enforceable powers<br>- Generally support the influence suggested in the reference mechanism<br><br>**Actions suggested:**<br>Procedures for handling SO consensus advice should be incorporated in the bylaws<br><br>**CCWG Response:**<br>Thank you for your comment.<br><br>The Second Draft Proposal has clarified many of the matters you raise.<br><br>The NomCom will not participate in the Community Mechanism as it is not an ICANN SO/AC. The CCWG has developed a mechanism to remove NomCom-appointed directors – see section 7.3 of the Second Draft Proposal for details.<br><br>We urge you to analyze the revised Community Empowerment model proposed in our second draft proposal (section 6). It appears to us to address many of the matters raised in this comment.<br><br>Your suggestion regarding consensus advise from SOs is an interesting one which will be considered for inclusion in Work Stream 2. |

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| **267** | CCG | - As for the voting structure for the Empowered Community, the proposal states that the same has not been decided and will be up for public comment after the second draft proposal. Does the voting structure have any bearing on the viability of this proposal? We k now that 5 of the SOs and ACs in EC (Empowered Community) will have 5 votes each, however we do not know if these 5 votes reflect consensus within the communities.<br>- SOs will have 5 votes to ensure that diversity of views (geographical diversity) can be implemented. How will the same be ensured, what voting procedure will be followed by these SOs, can ICANN Bylaws provide for voting/consensus procedure within the SOs? | Confusion / queries<br>**Summary / Impression:**<br>- Query as to how SO/ACs cast votes - will this need to be by consensus?<br>- Query as to whether no decisions about these matters put the overall proposal at risk.<br><br>**Actions suggested:**<br>Consider voting/consensus procedure within SOs.<br><br>**CCWG Response:**<br>Thank you for your comment.<br><br>The CCWG has considered different forms of Community Empowerment, including membership, and has revised its proposal to take into account concerns raised in the Public Comment.<br><br>The Second Draft Proposal proposes a new mechanism, the Community Mechanism as Sole Member, to empower the community. Details are in section 6.<br><br>In particular, there is a view that SOs and ACs should be able to share their votes between different SGs or regions in the SO and AC, by formal agreement of the SO – or to decide that they will decide how to vote by consensus. It is up to participating SOs and ACs to decide how to do this. |
| **268** | BC | - BC supports the proposed allocation of votes among SO/ACs in the ICANN community.<br>- With 5 distinct votes, the GNSO could adequately reflect the diversity of interests between registries, registrars, commercial stakeholders, and non-commercial stakeholders. | Agreement<br>**Summary / Impression:**<br>General support: powers, members mechanism, allocation of voting<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. The Second Draft Proposal does show some changes to these matters (see section 6) and we encourage you to review it and provide comments. |

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| **269** | .UK | The discussion on "membership", "designator" and "unincorporated associations" under Californian law is not something we feel comfortable offering an opinion on. The argument is complex and it is not easy to see the real benefits of the different models through the detail provided.<br>We would, however, question the need to build complex legal structures within an organisation to allow the community to hold the Board it appointed to account. This seems to underline a lack of trust that needs to be addressed urgently: building new structures without developing trust in the organisation is not going to address the underlying issues.<br>There does need to be some thought about how often processes can be triggered. The mechanisms will be seriously disruptive to the organisation if and when they are used and we would be concerned if there were to be a continued process that distracted the organisation – stakeholders and the Board – from oversight of the organisation or from developing a clear vision and strategy for the challenges and opportunities that we will confront. We would like to see there being clear cooling-off periods – in particular aimed at rebuilding trust in the organisation – before allowing another process to be launched.<br>There is a delicate balance between thresholds introduced to prevent frivolous use of serious – and potentially damaging – actions on the one hand and making mechanisms useless because it is nearly impossible to trigger those mechanisms. We recognise that the CCWG has attempted to reconcile this. To some extent, the balance is stark because there is no clear escalation process leading to the "nuclear" options of sacking individual Board members or the entire Board, or to vetoing the budget.<br>We recognise that it should not be possible easily to put aside mechanisms that are in place to assure accountability. There is a downside to this: while the processes might be relevant and appropriate now, this might not be the case in the future. It might be possible for a small minority to prevent necessary institutional change in the future, thresholds locking ICANN into process that are no longer appropriate. This is, of course, a difficult issue and we are aware that the CCWG has given it some thought. | Concerns<br>**Summary / Impression:**<br>- Not comfortable giving opinion on mechanism, question the need to build complex legal structures<br>- Concern that model (membership) is driven by an underpinning lack of trust that needs to be addressed urgently<br>- Frequency of use of community powers needs to be structured to avoid instability/distractions<br>- Delicate balancing in thresholds<br>- Need to ensure a small minority cannot prevent necessary future structural changes<br><br>**Actions suggested:**<br>Incorporating "cooling off" periods (before?) community can use powers or escalate matters to other powers<br><br>**CCWG Response:**<br>Thank you for this comment. The CCWG understands your concerns and has considered them in the development of the Second Draft Proposal. In particular, the dialogue or discussion phase that occurs before the exercise of the main community powers helps to address your concerns (see the introduction to section 7 for the detail of this, and section 6.3 for the proposed ICANN community forum). We look forward to your further comments. |
| **270** | USCIB | Overall, USCIB supports the proposal that Supporting Organizations (SO) and Advisory Committees (AC) establish themselves as legal entities by forming unincorporated associations. We agree that this approach would provide an effective means for SOs/ACs to exercise the powers and rights of Members of a non-profit organization incorporated in California on a number of critical governance issues.<br>We further agree with the rationale used in assigning voting weights for the SOs and ACs as prescribed by the Reference Mechanism, in which the ASO, ccNSO, GNSO, At Large, and GAC communities each receive 5 votes, with the SSAC and RSSAC each receiving 2 votes. Para186: We note that all the implementation details, (such as how the communities will cast votes) will not be developed until the second draft, and we look forward to reviewing such details. | Agreement<br>**Summary / Impression:**<br>- Agreement with approach: power through membership mechanism<br>- Support voting rights as proposed<br>- Looks forward to details.<br><br>**Actions suggested:**<br>None<br>**CCWG Response:**<br>The CCWG thanks you for your supportive comment and agreement with overall direction. We look forward to your comments on the updated Second Draft Proposal, especially as it relates to a fresh approach to the Community Empowerment mechanism. See section 6 in particular. |

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| **271** | LINX | - LINX support the creation of new accountability powers for the community, and there needs to be some mechanism to utilise them.<br>- It seems likely that the community powers could be more simply and transparently exercised by the SOACs directly than via the Reference Model, which seems unnecessarily complicated.<br>- However, it appears the creation of "Membership" is necessary and unavoidable in order for the Bylaws to be binding on ICANN and enforceable, which is absolutely essential; concerns about complexity in some areas must not cloud the absolute requirement for ultimate enforceability.<br>- We recommend that the CCWG consider granting the community powers to be exercised by SOACs directly, leaving only the power of enforcement to members (and putting in place whatever is needed to limit the powers of membership to enforcement of the Bylaws / of key bylaws). If this were done, we suggest that membership of ICANN could be offered to any person (natural or legal) who chose to apply for it. We are aware that this idea has had no traction within the CCWG so far, but it would appear to solve a difficult problem, and we are unaware of any convincing (or even reasoned) argument being made that it would cause any harm itself.<br>- Community Powers: The proposed changes to the IRP would achieve the goal of creating a credible and enforceable mechanism to limit ICANN's activities to its intended scope, provided that the Board abides by IRP decisions. This gives rise to a requirement for two things, both of which are essential:<br>- A mechanism by which the Board becomes legally obliged to abide by IRP decisions, as opposed to having a fiduciary duty to prefer its own opinions of what is best for ICANN over IRP rulings; and<br>- A mechanism whereby a Board that failed to abide by IRP rulings (or other specifically enumerated community powers, such as a Board spill), for any reason, could be challenged in court and a decision enforced upon it<br>CCWG proposes four powers for the community: (i) Reconsider /Reject Budget or Strategic/Operating Plans; (ii) Reconsider/Reject Changes to ICANN Bylaws; (iii) Approve Changes to Fundamental Bylaws; (iv) Remove Individual Directors; (v) Recall Entire ICANN Board. | Agreement / Divergence<br>**Summary / Impression:**<br>- Supports creation of new accountability powers to be exercised by the community<br>- Considers reference model likely to be unnecessarily complicated, but membership is unavoidable in order to have enforceable powers<br>- Suggest consider granting only power of enforcement to members, leaving other powers with SOACs directly<br>- Supports individual membership role to provide the "enforcement" aspect of the compliance with bylaws<br>- Enforceability a critical concern (see p6 of actual comment)<br><br>**Actions suggested:**<br>Consider granting the community powers to be exercised by SOACs directly<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG agrees that enforcement is an underlying assumption of its work and in reviewing the community empowerment model through which this is applied, as well as enforcement of IRP rulings, has developed the refinements shown in the Second Draft Proposal – including the Community Mechanism as Sole Member model which deals directly with the simplification point (see section 6).<br><br>We look forward to your further comments in response to the second draft. |

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| **272** | ISPCP | - ISPCP believes a Membership model, allowing ICANN components (SOs/ACs) to enforce accountability through legal means, would carry a level of complexity and side effects. Some SO/ACs or constituencies would be in an extreme difficulty to become legal entities. This would carry jurisdictional and legal issues, funding issues and representativeness issues. It would not allow existing stakeholders to fully participate in the Multistakeholder process as of today.<br>- ISPCP believes that enforcement of accountability mechanisms would be better achieved by much simpler mechanisms.<br>- The weights given to the various parts of the community in the community mechanisms is very important question and is key to the accountability mechanisms proposed by the report. Yet, this issue is very briefly covered in the document without analysis of the rationale behind the approaches presented. The proposals do not take into account the work of the CCWG – "problem definition document". This document comprises an analysis on which stakeholders can affect ICANN or be affected by ICANN, either directly or indirectly.<br>- The weight proposed for the GNSO do not take into account the specifics of this supporting organization. All policies related to the gTLds are made within ICANN, whereas policies related to the number part are developed at regional level and most of it are regional policies. In a similar way policies related to the ccTLDs are only related to delegation/re-delegation at top level.<br>- As a consequence of the above, the GNSO is a large and complex organization comprising a large diversity of players (Registrars, Registries, Business, IPC, NPOC, NCUC, ISPCP) each of them needing to be directly represented.<br>- ISPCP suggests that 7 seats being allocated to GNSO (1 Registries, 1 registrars, 1BC, 1 IPC, 1 ISPCP, 1 NCUC, 1 NPOC) in the community mechanisms decision body described in the document. | Divergence<br>**Summary / Impression:**<br>- Complexity of membership model, would not allow existing stakeholders to fully participate as of today.<br>- and supports simpler mechanisms (but not specified - are they elsewhere?)<br>- Rationale for weights of influence in mechanism not established and not related to problem definition document<br>- GNSO deserves higher representation as all gTLD policy is made in GNSO - contrasts with ASO and ccNSO where most policy is made and implemented outside ICANN framework<br><br>**Actions suggested:**<br>Reconsider GNSO votes allocation.<br><br>**CCWG Response:**<br>Thank you for this comment. The CCWG has considered different forms of community empowerment model, including membership models, and revised its proposal to take into account concerns raised in the Public Comment. See the Second Draft Proposal for more information, including the simpler Community Mechanism as Sole Member model which replaces the previously suggested SO /AC membership model (section 6).<br><br>There is not broad support for a greater number of votes for the GNSO, but the CCWG is ensuring that SOs can allocate their votes to all relevant sub-units by ensuring the vote allocation decision within an SO is a matter for that SO to determine. The CCWG has clarified the voting mechanism in the updated arrangement. We welcome your comments on the second draft proposal. |

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| **273** | JPNIC | - We agree with the proposal to enhance community empowerment based on existing SOs/AC mechanisms, based on long tested experience, rather than basing it on a completely new mechanism. We have no objections to the composition currently suggested by the CCWG on representations from SOs and ACs.<br>- Yes, we agree that t he introduction of a community mechanism to empower the community over certain Board decisions would enhance ICANN's accountability. It is a common practice for stakeholders who appoint Board members within an non-profit organization, to have such mechanism. At the same time, we should seek for a balance of such powers, not to destabilize the system with too many challenges to move forward in key decisions needed to keep the organization running.<br>- Regarding the proposed options, for the community empowerment in general, we would like to see its implementation to be simple, while ensuring that it gives the community the powers it needs. Too much overhead should be avoided, and preference should be given to simplicity in its adoption.<br>- We are not sure whether it is essential for the SOs and ACs to have a legal standing while we note it is considered preferable by some members of the community. We would like to understand the reason that the legal standing is considered necessary, in balance with the possible cost implications and instability for ICANN. We would like to confirm whether there is a way to prevent abuse of this standing by the community, for stability of ICANN as an organization. | Agreement - Concerns<br>**Summary / Impression:**<br>- Broadly supportive of the granting of powers and a mechanism to do this<br>- Concerned to avoid destabilising ICANN<br>- Simplest possible implementation<br>- Not certain of need for legal standing for SOs and ACs<br><br>**Actions suggested:**<br>Clarify why legal standing is necessary in balance with the possible cost implications and instability for ICANN . Clarify abuse safeguards.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG agrees and notes that the focus for WS1 is to design the simplest, most effective model. Further powers can be contemplated in WS2. We look forward to your comments in regard to our Second Draft Proposal, which incorporates a revised Community Empowerment model that deals with some of the concerns you have raised regarding complexity and legal personality (see in particular section 6 which sets out the new Community Mechanism as Sole Member model).<br><br>Thank you for your comment. |

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| **274** | IPC | - The proposed “membership model” appears to be the most straightforward means to achieve enforceability of the proposed framework and is therefore supported by the IPC. The IPC is generally supportive of using a community mechanism to give the community certain powers regarding certain Board decisions.<br>- The IPC generally supports the use of a “membership model” to ensure accountability to and oversight by the community. The role of members in a non-profit corporation (such as ICANN) is naturally suited for this role.<br>The IPC also notes that the accountability structure proposed by the CCWG was designed with California law in mind, which underlines the need to keep ICANN domiciled and incorporated in California.<br>- The IPC believes that each SO and AC should be given fairly broad leeway to determine if and how it forms or otherwise provides a “legal person” to act as an ICANN member. The IPC does not find the concept of the “unincorporated association” (“UA”) complex, and notes with approval that it is lightweight and easy to form and manage (indeed, the IPC notes that many of the SO/ACs strongly resemble UAs already). However, it is possible that some SO/ACs may wish to form non-profit corporations rather than UAs, or may even wish to designate a natural person as the member, serving in an official capacity.<br>- The IPC does not believe that the creation of UAs or other legal persons will diminish ICANN’s functioning as a multistakeholder organization focused on building consensus. Similarly, the IPC does not believe that a rash of litigation will ensue merely because the ICANN community now has legal vehicles to use for litigation.<br>- The IPC agrees that the use of “designators,” on the other hand, would not be sufficient to support the accountability measures proposed by the CCWG.<br>- There are issues in implementation that must be dealt with before the IPC can fully endorse the membership model. Advice on the inf luence of the various groups in the community mechanism:<br>- The IPC has several concerns with the proposed composition and weighting of the membership as discussed in this section – 5 “votes” for each SO, At Large and GAC, and 2 “votes” for the RSSAC and SSAC.<br>- First, this bears little resemblance to the way directors are currently appointed to the board, and we assume that the CCWG is not proposing any change to the composition of the board.<br>- This tends to diminish the influence of the GNSO, which represents the most significant portion of ICANN’s work and revenues. Consideration should be given to a more flexible weighted voting structure, to avoid the situation in which SO’s and AC’s with no real involvement in the policy development, implementation or utilization of the matter under decision could effectively wield veto power over it.<br>- This composition is yet another ICANN structure where the IPC is essentially made non- existent. If the 5 GNSO votes are translated into 5 representatives, that leaves one representative per stakeholder group, along with one wild card. Again, the IPC is expected to homogenize its concerns with those of the ISPs and the general business community, and hope that a member of one of these groups can somehow represent all 3. However, it is far from clear whether the CCWG envisions a 29-member council of some sort, or whether there will just be 7 members, with weighted votes. Our concern regarding the latter is that it truly flattens and wipes out diverse voices, and practically speaking puts the RSSAC and SSAC on an equal footing with the other organizations, except when votes are taken. This must be clarified. | Agreement - Concerns<br>**Summary / Impression:**<br>- Overall supportive, considers UA's not complex, but lightweight and easy to form<br>- Choice for SOs and ACs whether they should exercise membership rights through UAs, non profit corporations, or by appointing individuals as members<br>- Designator mechanism insufficient<br>- Larger priority for GNSO proposed or “flexibility” in voting structure - different votes based on the issue being debated. Concerns about IPC being made "non-existent"<br>- Clarify whether the mechanism is a group of people or a homogenous vote weighting<br><br>**Actions suggested:**<br>Provide SO/ACs with leeway to determine if and how it forms. Consider a more flexible weighted voting structure. Clarify whether a 29-member council of some sort is envisioned, or whether there will just be 7 members, with weighted votes.<br><br>**CCWG Response:**<br>Thank you for your comment - the CCWG broadly agrees with you and has considered this feedback as it developed the next version of the proposal.<br><br>In particular, in the second draft we draw your attention to the revised Community Empowerment model, and to the clear potential for SOs and ACs to allocate their voting rights in a manner that suits their internal structure. As such the IPC would be able to secure representation and a voice, presuming the GNSO agrees to this (the proposal has SOs determining the internal sharing of their voting influence).<br><br>We look forward to your further comments on the revised proposal. |

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| **275** | Govt-BR | - Brazil supports accountability mechanisms that provide a clear separation of powers within the ICANN structure. In this regard, the 4 building blocks proposed by the CCWG-Accountability – 'Principles', 'Empowered Community', 'Board' and 'Independent Review Mechanisms' – might address, in principle, this concern.<br>- Welcomes the proposal to create a "mechanism to empower the community". The implementation of the "empowered community" concept as one of the building blocks of ICANN's accountability would contribute to increase the perception of legitimacy, on the part of all stakeholders, of the corporation s decisions.<br>- While working out the details of the specific mechanism, it will be important to ensure the participation of all relevant stakeholders independently of their status under the current ICANN structure, as the corporation's oversight should be transitioned to the global multistakeholder community and not to a limited number of stakeholder groups.<br>- while evaluating the proper legal status of the stakeholder representatives in the new empowerment mechanism, the CCWG-Accountability final proposal should ensure that effective decision power be granted to the community. It would defeat the purpose of accountability if decisions made by the community could be overruled by the ICANN Board or by national courts (which, again, refers to the issue regarding the corporation s existing "legal status").<br>- With respect to the involvement of governments, Brazil considers that the GAC is a legitimate stakeholder group with specific concerns and should, therefore, be part of the proposed community empowerment mechanism. Appropriate arrangements should be adopted in order to ensure that the different groups of stakeholders could participate in such mechanism on an equal footing. However, given the corporation s present "legal status", Brazil considers that unsurmountable difficulties may prevent governments to participate, in a representative manner, in such body. The final decision as to whether government representatives shall have seats in the new mechanism should, in any case, result from the deliberations among governments themselves.<br>- geographic, cultural and gender balance should constitute key principles in the formation of the community empowerment mechanism. Gender balance is another important element that should guide the selection of stakeholder representatives. | Agreement / Divergence<br>**Summary / Impression:**<br>- Generally supportive of the approach of a community empowerment mechanism but with caveats/different directions<br>- Participation broader than current limited stakeholder groups<br>- It should not be possible that decisions of community be overruled by board or by national courts (jurisdiction issues)<br>- GAC should be included, with participation for all governments, but tricky in current legal situation - and involvement to be decided by governments<br>- Diversity (geog, cultural and gender) should be critical.<br><br>**Actions suggested:**<br>Consider participation of broader stakeholders.<br><br>**CCWG Response:**<br>Thank you for your comments, many of which the CCWG agrees with. The Second Draft Proposal incorporates a fresh Community Empowerment mechanism on which we seek your further comments, regarding participation by the GAC and the overall question of enforceability of the community's rights. This is section 6 of the Second Draft Proposal.<br><br>In respect of diversity, at this stage the CCWG believes this to be a matter best addressed in Work Stream 2, the future work it has to do following the IANA Stewardship transition. |
| **276** | MPAA | - Strongly supports the membership model as proposed. The membership model is the most effective way to cement these accountability reforms into the DNA of ICANN and to ensure true accountability of ICANN to the global multi- stakeholder community. | Agreement<br>**Summary / Impression:**<br>Strongly supports. It is the most effective way to cement reforms into DNA.<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments. Note that the Second Draft Proposal includes a different but comparable approach with the Community Mechanism as Sole Member model (section 6). |

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| **277** | CDT | - A community empowerment mechanism is essential to realizing the levels of accountability and responsiveness to the community that will be required for ICANN and its multistakeholder community to thrive in the future.<br>- We commend the CCWG and its advisors for identifying models that would allow for the community to exercise the proposed powers. We do not subscribe to the view that expansion of community powers through the bylaws without the enforcement capability of a community mechanism would be adequate. Not only would this lessen and inhibit the community's empowerment, it could imperil the IANA transition model proposed by the CWG Stewardship – the lack of enforcement would remove the checks and balances needed to ensure that ICANN heeds the community when it acts as the IANA steward, contracting party and operator.<br>- We agree that the proposed membership model – including "legal personality" through unincorporated associations (UA) – could offer the greatest opportunity for the new community powers to be fully and most effectively realized.<br>- Supports the powers that are outlined in the CCWG proposal, sections 5.2 – 5.6. | Agreement<br><br>**Summary / Impression:**<br>- Generally supportive of membership model<br>- Supports enforceability as essential to IANA stewardship transition<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>Thank you for your comments and your broad support of the CCWG's first proposal. We urge you to read and consider our second proposal, which incorporates a revised Community Empowerment model (the Community Mechanism as Sole Member model (see section 6), and we look forward to your further comments on what we have proposed. |

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| **278** | CIRA | The CCWG has identified four building blocks that would form the accountability mechanisms required to enhance ICANN's accountability. I believe this is the right approach to structure the work of the CCWG, however, I would like to highlight a few specific concerns regarding the draft proposal.<br>- Central to the mechanisms identified by the CCWG's proposal is an empowered community. While I agree that the specific community powers identified (the ability to recall individual board members, 'spill' the entire Board of Directors, review and revoke ICANN budgets and strategic/operating plans, and amend the fundamental bylaws) are important, I would like to share a few concerns about the proposed new structure that would see the SO /ACs as ICANN members (referred to as the Reference Mechanism).<br>- As I understand it, the Reference Mechanism involves the SO /ACs forming parallel unincorporated associations (UA), in order to have the power under California law to enforce the accountability mechanisms as identified in the CCWG proposal. Otherwise, the structure and functioning of the SO/AC's could remain unchanged.<br>- A considerable number of ccTLD registries are operated by government bodies, and many of those are members of the ccNSO. As the ccNSO is a committee organized and recognized by the ICANN bylaws, its members are not required to enter into an agreement outside the parameters of the bylaws, thereby enabling their full participation in the ccNSO's activities. I am concerned that the creation of a formal legal association could result in some governments to pause before joining. I appreciate that it would be possible for such governmental agencies not to join the UA, but could this potentially create an organization which might be seen to be less open then the current ccNSO? I encourage the CCWG to examine the impact of a member-based structure on the global ccTLD community to ensure it is inclusive of all voices in the ccTLD community.<br>- The executive summary of the proposal explicitly states, "No third party and no individuals would become members of ICANN." While I agree that neither third parties nor individuals should be granted 'membership' status, I do believe that ICANN has been enriched by the participation of non-SO/AC aligned participants, and I would like assurances that these important voices will not be diminished should a membership-based model be adopted. Simply put, I would not like to see accountability come at the expense of expertise. With regard to the role of governments, I agree that the GAC should continue in an advisory role. I would prefer to see a model that would ensure that GAC advice, when backed by consensus, is given due consideration, and if rejected, is done so in a justifiable, transparent and open manner.<br>- Finally, while I appreciate the assurances that the work of the SO /ACs would continue fundamentally unchanged, I would like to better understand whether the proposed model would result in additional time commitments on behalf of members. | Agreement - Concerns<br>**Summary / Impression:**<br>- Agreement with empowered community and specific community powers identified<br>- Concerns about the risk that the formation of UA's would reduce the participation of government owned ccTLD registries in the ccNSO and thus reduce openness<br><br>**Actions suggested:**<br>- Examine the impact of a member-based structure on the global ccTLD community to ensure it is inclusive of all voices in the ccTLD community.<br>- Ensure that important voices of non-SO /AC aligned participants, will not be diminished should a membership-based model be adopted. accountability should not come at the expense of expertise.<br><br>**CCWG Response:**<br>Thank you for your comments. The CCWG is proposing a revised Community Empowerment model as part of its second draft proposal that addresses the concerns you have raised, in particular the inclusivity of the system and minimizing any barriers to participation. We urge you to consider it and provide further comments – in particular on section 6 which details the Community Mechanism as Sole Member model. |
| **279** | SR | Para 191 is reasonable as a start. We should have the ability to change later. | Agreement<br>**Summary / Impression:**<br>Para 191 refers to allocation of votes in the mechanism.<br><br>**Actions suggested:** None<br><br>**CCWG response:**<br>Thank you for your comment. The ability to change this at a later point will be there, through changes to the bylaws that set out the voting weights. |

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| **280** | USCC | - Strongly supports the membership structure proposal because it gives the community true enforceability. Significant legal work has gone into developing this portion of the proposal and without it, we fear that community powers would be unenforceable and there would be no true accountability. The membership model is the only way to secure these critical accountability reforms and to ensure true accountability of the ICANN Corporation, Board and management to the global multistakeholder community.<br>- Believes the Membership model provides the best opportunity to secure the enforceable community powers required to provide sufficient accountability at ICANN. We further believe that the Designator model could be a sufficient alternative if barriers arise in implementing a Membership model. | Agreement<br>**Summary / Impression:**<br>- Strongly supports membership model and the enforceability it ensures<br>- Designator model might be alternative option<br><br>**Actions suggested:** None<br><br>**CCWG Response** :<br>Thank you for your comment. The CCWG has proposed a revised Community Empowerment model in its second draft proposal, and we welcome your comments on this (section 6). |
| **281** | INTA | - generally supports the Membership model, which the report asserts is consistent with California law.<br>- does not support the proposed weighting of "community influence". In the current SO/AC structure business interests, except that of the contracted parties, are marginalized. INTA recommends that given the prevalence of trademark issues in the domain name system, in particular, business interests and advice be provided greater Community weight.<br>- also unclear how each organization will determine how its votes will be exercised and how many representatives, 1 or 5 for example, will participate in full votes of the Community mechanism. INTA is concerned that depending on how voting is structured, the voice of the trademark Community, and specifically the voice of the Intellectual Property Constituency, may be marginalized or not heard at all. | Agreement - Concerns<br>**Summary / Impression:**<br>- Generally supports membership model and powers<br>- Does not support weighting of community influence (voting)<br>- Concern about marginalization of voice of trade mark community/IPC<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has proposed a revised Community Empowerment model in its second draft proposal, and we welcome your comments on this. The second draft proposal also explains how SOs can share their votes flexibly among their various constituent parts. There is not broad support to allocate more voting weight to business interests, broadly expressed, and the revised proposal does not do this. |
| **282** | .NZ | - supports a community mechanism along the lines outlined by the CCWG. We have made broad comments in support of the approach in the first part of this comment.<br>- supports making use of the powers that can be granted to members in a non-profit public benefit corporation under California law. The powers proposed for members in the CCWG's report are powers we support and that can best, most reliably & most simply be delivered by a membership option.<br>- supports the proposed share of influence in the community mechanism, noting that it provides a broad cross-section of the Internet community with the ability to hold ICANN to account.<br>- We ask the CCWG to carefully consider whether it is appropriate to give a fully appointed AC (the SSAC) influence in this system, but await with interest the SSAC's own comments on this matter, and the comments of the GAC as to the workability of the model.<br>- We prefer the Reference Mechanism, not the alternatives presented. | Agreement Concerns<br>**Summary / Impression:**<br>Supports the community powers, the membership mechanism, the share of influence in the community<br><br>**Actions suggested:**<br>For the CCWG to carefully consider whether the SSAC's influence foreseen in this model is appropriate<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has proposed a revised Community Empowerment model in its second draft proposal, and we welcome your comments on this, particularly section 6, which sets out the new Community Mechanism as Sole Member model. |

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| **283** | NCSG | - Within NCSG there is support for both the membership and the empowered designator models. NCSG generally recognizes that the membership model provides a viable way of being able to realize the potential of the 6 enumerated powers.<br>- This said, there remain concerns that the membership model itself, including the unincorporated associations aspect thereof, may require considerable changes in the structures,processes and relative power of the ACs and the SOs and their constituent groups (Constituencies and Stakeholder Groups) that the CCWG may not have spent adequate time assessing. Some are also concerned about the accountability mechanisms available to stakeholders when using a separate UA in the proposed model. We suggest that this deserves further discussion and that an empowered designator model be considered as an alternative.]<br>- While an empowered designator model may not provide the tightest control nor the easiest means of achieving community empowerment, the extent to which the desired community powers can be realized should be further explored in a designator model for comparison. There may be some willingness to live with some flexibility in terms of enforcement of some of the desired community powers. Some NCSG members believe that internal mechanisms can be put in place to better align the board and the community on matters relating to the organization's budget and strategic plan such that tight legal enforcement on those matters is not the highest priority in this work.<br>- Some in NCSG support providing each SO/AC with five votes in the community mechanism and others do not support that relative weighting of votes in the community mechanism and instead believe the relative weights should be more closely modeled on communities appointing to ICANN's existing board of directors.<br>- Regarding the introduction of a community mechanism to empower the community over certain Board decisions, yes, we find this essential to securing the levels of accountability that are necessary for ICANN to be able to successfully function as a fully accountable, transparent and multistakeholder entity going forward.<br>- does not support the suggestion that the same levels of accountability and community empowerment could be achieved without such a mechanism. However we believe significantly more work needs to be done within CCWG regarding the specific model and the important details of that mechanism. For example, some are concerned that the emphasis on legal methods of enforcement particularly litigation, are inconsistent with, or simply antithetical to, the multi-stakeholder model and have potential to undermine this model in the long term. | Agreement - Concerns<br>**Summary / Impression:**<br>- Agrees that membership or designator model and powers identified would be viable to realize community empowerment.<br>- Some disagree with proposed weights of voting; should be more aligned with existing voting rights for BoD<br>- Concerns that UAs of membership model considerably change structures, processes and relative power of SOACs<br>- Concerns about available accountability mechanisms when using separate UAs<br>- Some are concerned that legal methods of enforcement particularly litigation, are inconsistent with the multi -stakeholder model and have potential to undermine this model<br><br>**Actions suggested:**<br>- Spend more time discussing and assessing changes in structures, processes and relative power of SOs/ACs as result of membership model<br>- Consider and further explore designator model as alternative,<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We look forward to your further comments. |

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| **284** | MM | I believe that this plan does not yet have a coherent and workable concept of membership. The draft has not made clear the full implications of selecting one of the two membership models considered by the CCWG (the designator model and the SOAC Unincorporated Association model). While it expresses a preference for the SOAC model, it is not entirely clear how that model would be implemented nor how it could be implemented without major realignments of power within ICANN that are unpredictable. The other problem with the membership proposal is the radical and rather odd rebalancing of voting power within ICANN that it proposes. Assigning an equal number of votes to GNSO, ccNSO, ASO, ALAC and GAC seems like an unfair allocation of voting power and one that works against aligning accountability with the stakeholders. When it comes to membership, it seems incongruous to this veteran of ICANN's policy making process to consider Advisory Committees members of the same status as Supporting Organizations. With the separation of IANA and ICANN proposed by the CWG-Stewardship, ICANN is now more focused, as it should be, on policy development for domain names. This means that the two names-oriented Supporting Organizations, the ccNSO and the GNSO, are the key arenas for policy development in the new ICANN environment, and thus they are the stakeholders with the greatest interest in ensuring that the ICANN board is held accountable. ICANN's role as the ratifier of global policies for numbers also justifies a membership status for the ASO, as the ASO represents an extensive global community for policy development organized around Regional Internet Registries. A membership proposal that assigned 5 votes to ccNSO, GNSO and ASO makes sense. It is the ACs that don't really make sense in this scheme. Providing two votes to a highly technical committee whose membership is appointed by the ICANN board (SSAC) seems obviously wrong. If members are the key stakeholders for holding the board accountable, why do we have board-appointed committees afforded special membership powers? Both GAC and ALAC are also outliers in this proposal. Although one could make some case for considering ALAC a member, because it does select board members under the current regime, in terms of membership and participation ALAC is about the size of a single Stakeholder Group in the GNSO. Giving it the same weight as either GNSO or ccNSO seems woefully unbalanced. If it is to be considered a member at all it should be only two votes as proposed for the RSSAC. It seems especially incongruous to have the Governmental Advisory Committee become a member entity equivalent to a supporting organization. The GAC does not select board members and is barred from doing so by the current bylaws. The GAC is not supposed to be a policy development entity (although it oftentimes does not seem to understand that itself), but a provider of advice to the board on the policies developed by the bottom up process. The legal status of a collection of national governments and Intergovernmental organizations forming an unincorporated association under the umbrella of ICANN seems extremely odd, and will probably prove to be unacceptable to the GAC itself. In short, the proposed membership allocation does not make sense and needs to be rethought. | Concerns Confusion Divergence<br>**Summary / Impression:**<br>- Proposal does not yet contain coherent and workable concept of membership. Proposal does not make clear full implications of implementing proposed mechanism<br>- Agrees with voting power proposed for SOs and RSSAC, disagrees with voting power for SSAC (appointed by board) and GAC. Disagrees with equal voting power for ALAC (proposes 2)<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised.<br><br>The CCWG hasn't proposed different voting weights in the Second Draft Proposal but has aimed to explain the rationale more clearly for its choice – see section 6.2 of the proposal.<br><br>We look forward to your further comments. |
| | | | Concerns - Confusion<br>**Summary / Impression:**<br>- Concerns/confusion about resulting rights of action against ICANN for individuals and risks of capture.<br>- Concerns about role/influence courts under Californian law would get<br>- Concerns about impact on participation and treatment of advice if an SO or AC would choose not become UA/not to participate as a member |

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| **285** | Board | - The membership model that is described within the CCWG-Accountability report is one of those main areas for which impact testing seems to be needed. One of the foundations of the CCWG-Accountability report is that a move to a membership model is a means to achieving the enhancements identified. The membership model is noted as providing a "viable" solution, with viable meaning "enforceable through a judicial process." (Annex A to 23 April 2015 Counsel memo.) Recognizing that there is continued debate surrounding this enforceability issue on the CCWG Accountability mailing list, the concept of membership and enforceability seems to raise some questions that should be considered prior to accepting a specific model, including analysis of what risks and liabilities are being introduced into the system as a whole. For example, while clearer community paths for impacting Board decisions may result in few situations where the community agrees that it is necessary to go to a California court to enforce a right against ICANN, there seems to be other questions about enforceability and impacts have not yet been considered. Such as: • What opportunities and rights of action are we opening up under law for individual members to bring against ICANN that cannot be constrained by the Bylaws? • What rights under law do members have to bring actions against other members, and what impact could that have on the multistakeholder model? Does this create opportunities for capture of ICANN or ICANN processes that are not an issue today? • Are all parts of the ICANN community comfortable with the role that California courts will assume in enforceability of accountability reforms through the membership model?<br>- If any SO/AC does not want to be a "member," how does this affect the proposed SO/AC Membership Model? Would it minimize that SO/AC's participation in the ICANN process if other SOs/ACs have the proposed powers and rights that the "missing" SO/AC does not?<br>- Under the current governance model, advisory committees are responsible for the provision of advice to the ICANN community and Board on certain areas (GAC for public policy issues; SSAC on security and stability concerns; RSSAC on root server stability; and ALAC on the interests of individual internet users.) For the areas of the proposal that rely upon a community "vote" to determine whether action should be taken, how are those pieces of advice proposed to be taken into account? How does the CCWG intend to deal with a Board action based on advice received from an AC that does not choose to become a member? What are the processes that the community would use to reject a Board action based on advice from the GAC, if it elected to do so? What is the basis for proposing to distribute two votes each to the SSAC and RSSAC (collectively less than any other single group in the voting model) when the Bylaws do not reflect any weighting of import across ACs? How does the CCWG contemplate ensuring that the security, stability and resiliency of the DNS be considered and maintained if the vote of the RSSAC and SSAC play such a limited role?<br>- To the extent that ICANN decisions are subject to review or approval through the ICANN "empowered community" model via members, how is that group of members subject to considerations of conflict of interest identification in its decision making?<br>+ How will the impact of a community mechanism decision be assessed with regards to the broad global public to which ICANN is responsible? And will stakeholders not directly involved in ICANN have a voice? | - Concerns about the limited influence of RSSAC and SSAC in proposed weights of voting, by consequence concerns about security and stability of DNS<br>- Concerns about influence of stakeholders that are not involved in SO or AC<br>- Concerns about conflict of interest within SOACs<br>- Concerns about risk of capture<br><br>**Actions suggested:**<br>Questions raised by community on concept of membership and enforceability, including analysis of what risks and liabilities are being introduced into the system as a whole, should be considered prior to accepting a specific model<br><br>Consider a threshold that requires more than one SO or AC to support the removal of a board member – thus ensuring that individual Board members are accountable to the whole community for their performance as a director, not just the SO or AC that originally selected them<br><br>**CCWG Response:**<br>Thank you for your comments – we appreciate the Board sharing its views direct in this manner through the public comment process.<br><br>Many of the questions raised and concerns noted are addressed in the CCWG's second draft proposal, particularly in its fresh Community Empowerment model (the Community Mechanism as Sole Member – see section 6). As this model does not have multiple members, many of the concerns you identify with respect to members acting against each other or the corporation are removed as risks. Very high thresholds are proposed for the Community Mechanism to exercise any of the other statutory rights members have under California law.<br><br>We note in respect of the last part of this comment that the purpose of the accountability tools the CCWG is developing is not to disrupt ICANN's commitment to the broad global public – which ICANN serves through its limited technical mission. It is to give ways for the community to hold the corporation to account when it is failing to achieve that overall goal. |

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| **286** | CENTR | - We highly recommend the CCWG carefully check the option of creating a formal membership body with the power to hold the ICANN Board accountable. As a matter of fact, we understand that the SO/AC Membership Model has been scrutinised from the ICANN Bylaws perspective, but not from the perspective of those organisations/companies that are expected to become "engaged". Therefore, considering this is one of the most sensitive elements in the entire proposal, we invite the CCWG to further investigate the model from a legal perspective and present an ad-hoc paper about it to the community to explain – as clearly as possible – who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members, as well as possible financial and administrative provisions of such a body. The current proposal fails to describe these crucial elements in plain and clear words.<br>- Furthermore, we firmly believe that sentences like "community participants would have the choice of option in and participating in this new accountability system, or to simply keep on doing what they do today in an ICANN that is more accountable than it is today" are poorly formulated and: introduce discrimination in processes that should be kept multistakeholder and bottom-up based; fail to acknowledge the existence of participants that may like to join the new model, but cannot do so because of the legal framework from which they operate.<br>- We support the principle that the existing functions and work of the SOs and ACs would continue being done within the framework of the ICANN Bylaws and that only the new accountability powers require use of the "unincorporated associations" mechanisms.<br>- CENTR recommends that the CCWG further investigates the membership model from a legal perspective and present an ad-hoc paper about it to the community to explain who is expected to become a member, under which jurisdiction the body will be incorporated, obligations and duties of current ccNSO Council members, implications for current ccNSO members, engagement options for non-ccNSO members as well as possible financial and administrative provisions of such a body; highlights the importance of keeping the multistakeholder model as one of the key principles of ICANN. | Concerns Confusion<br>**Summary / Impression:**<br>- Seek further detail for precise operation of the membership model in the scenario of the ccNSO<br>- Disagree with CCWG contention that ICANN Participants would have a choice about participating in accountability mechanisms and e.g. UAs. [ Drafter's note : this language was confusing in our PC report in retrospect. More correctly stated it would have said that because the UAs are the vehicle for SO to exercise membership powers, the powers are in reality exercised through and by the SO. No membership in the UA is required.]<br><br>**Actions suggested:**<br>further investigate the model from a legal perspective and present an ad-hoc paper about it, addressing among others the impact on ccNSO members<br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised.<br><br>The Community Mechanism as Sole Member model (see section 6 of the Second Draft Proposal) specifically resolves feared barriers to participation that were raised about the SO /AC membership model. No UAs need to be created for SOs or ACs and so our previous assertion that no changes are required of ICANN participants or their standing in relation to the organization is now more clearly accomplished.<br><br>We look forward to your further comments. |

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| **287** | NIRA | - NIRA agrees with the introduction of a community mechanism but is unsure what and how the proposal on unincorporated status for SOs and ACs would work since this is the only way that the community can challenge and veto the decisions of the ICANN Board based on the California Law. CCWG should a rethink of the issues as they relate to GAC. NIRA finds it difficult to comprehend how governments can become an unincorporated entity in another jurisdiction.<br>- NIRA would suggest a further exploration of globalization of ICANN that can provide a legal flexibility in the Bylaws that can allow the community exercise an oversight role similar to what NTIA currently does with ICANN.<br>- The fact that there are restrictions within the existing legal status of ICANN that has the Board as the final arbiter in any policy development and processes including budgets and Bylaws changes and the legal status of ICANN based on California Law are the underlying rationale.<br>- NIRA welcomes the proposal, however, it is unclear how the GAC fits in there, bearing in mind its working methods. | Agreement - Concerns<br>**Summary / Impression:**<br>- Support introduction of a community mechanism<br>- Unclear on how UAs would work<br>- Concern if govt' s can be involved in UA / unclear how the GAC would fit in the mechanism<br><br>**Actions suggested:**<br>Further exploration of globalization if ICANN to allow legal flexibility for similar accountability as NTIA does today<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We draw your attention in particular to section 6, which sets out the new Community Mechanism as Sole Member model.<br><br>We look forward to your further comments. |
| | | Section 5.1:<br>- has significant concerns with the concept of enforceability. With the exception of removal of one or more Board members, most ALAC members do not believe that legal enforceability is either required or desirable.<br>- has significant concerns that a formalising of Legal Accountability that will open the door to litigation between the ICANN Communities and the ICANN Organisation also opens the door to third parties using the system for ICANN to self-destruct. We see it as an aberration that ICANN Community and Organisation would sue each other, resulting in every ruling causing harm to ICANN. This would be a loss-loss scenario.<br>- specific concerns on the possibility of personal liability on volunteers who are not backed by any corporate employers who might have interests similar to theirs.<br>Moreover, if one looks at past cases where parts of the community were displeased with Board actions, it is difficult to find instances were:<br>• Sufficient parts of the community were displeased so as to trigger the kinds of powers we are now envisioning; and<br>• The situation was sufficiently severe as to warrant community action.<br>- understands that the prime intent of “enforceability” is not to take legal action, but to ensure that the community has the power to convince the ICANN Board that community wishes should take precedence. Nevertheless, the existence of such ultimate power is troublesome to many within the ALAC and At-Large.<br>- believes that even in the unknown future, if ICANN is to be viable, there must be sufficient goodwill to ensure community empowerment, and that the threat of removal will be sufficient to cover any eventuality where this is not the case.<br>• If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants. | Agreement - Concerns - Divergence<br>**Summary / Impression:**<br>- Disagrees with need for and desirability of enforceability, except is required for Board member removal. State that threat of removal will suffice<br>- Concerns that legal enforceability will open doors to destructive litigations and introduce personal liability arising participants in membership model<br>- A range of indemnities proposed for participants<br>- Suggest legal action restricted to situations where bulk of SOs/ACs support it (and no indemnities for single member actions)<br>- Prefer member model to designator model if choice must be made between them<br>- Support 5 votes per SO / AC (only ok w 2 for RSSAC/SSAC if they are), Alternative B<br><br>**Actions suggested:**<br>Investigate option of agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community as alternative to legal status members<br><br>Several recommendations/conditions if legal status for SOAC is supported by critical mass of SOACs<br><br>**CCWG Response:** |

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| **288** | ALAC | • ICANN must fully fund any legal or other actions taken by the above entities in enforcing the powers granted herein.<br>• Indemnification funds must be held in escrow to ensure that they will be available without requiring ICANN action to release them.<br>• Legal enforcement of community powers could ONLY be exercised if a critical mass of SO/ACs supported such action. Individuals and/or less than a critical mass of SO/ACs could not take such action and certainly would not be indemnified if such action could not be effectively controlled.<br>• The availability of indemnification and holding the funds in escrow must be enshrined in a Fundamental Bylaw.<br>In summary, enshrining the powers in the Bylaws is critical. Legal enforcement of them, with the exception of Board member removal, is of far less importance.<br>If a choice between Members and Designators must be made, the ALAC believes that Membership is the correct choice. It is a simpler and well understood concept. Even if designators could achieve the same results, it is a construct that is foreign to most of the community and will add another level of complexity to an ICANN which is already nearly impossible to explain to newcomers or outsiders. Since both require legal status, there does not seem to be anything in favor of the adoption of the Designator model.<br>- if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235).<br>- Section 5.1.2 Influence in the Community Mechanism: The ALAC would accept the Reference Mechanism of 5 votes per SO, the ALAC and the GAC, and 2 votes for the SSAC and RSSAC only if the SSAC and RSSAC agree. In all other matters, these ACs are according similar rights and privileges in ICANN and the ALAC sees no reason to alter that at this point. Although the size of the SSAC and RSSAC are “small”, so is the ASO, and there seems to be no question about according it full weighting status. We note that it might not be unrelated that the SSAC and RSSAC have been allotted lesser status and neither are represented in the CCWG. The SSAC has explicitly stated that it is not a chartering organization SOLELY due to lack of available resources and not due to lack of interest.<br>- In the absence of support for the Reference Mechanism by the SSAC and RSSAC, the ALAC supports Alternative B giving all ACs and SOs 5 votes.<br>- Five is the correct number to allow regional diversity to be adequately covered by those ACs and SOs that are organized base on ICANN’s regions.<br>- Under no circumstances would the ALAC agree to support Alternative A giving 4 votes to SOs and 2 votes to all ACs. | Thank you for your comments. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to the concerns you and others have raised.<br><br>In particular, the single member at the heart of the model removes the issue of members acting against each other, and the revised bylaws will impose very high thresholds on the CMSM exercising any o the statutory rights of membership – while being clearly empowered to do so if required.<br><br>Possible barriers to participation arising from the nature of the previous SO/AC membership model have also been addressed by this change.<br><br>We look forward to your further comments. |

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| **289** | RSSAC | We do note that in the past, the purpose of RSSAC was to act in an advisory role to the ICANN board and community. RSSAC is happy to continue in its role as an advisory body. However, the proposal from the CWG also places additional responsibilities and requirements upon RSSAC that need careful consideration. As a specific observation, some RSSAC members are uncomfortable with the membership mechanism proposed as long as RSSAC is structured as a board appointed committee under the current charter. RSSAC currently has no plans or capacity to undertake a re-structuring that would eliminate this concern. In order to create a positive consensus view in RSSAC about the CCWG proposal we need to know a great deal more about the implementation and operation of the structures and procedures it discusses. As a specific point, we surmise that formal action by the members would be rare, not likely in the course of normal operations and decisionmaking in ICANN, but it would help us to have that view confirmed. | Concerns<br>**Summary / Impression:**<br>- Generally happy to remain an advisory body<br>- Uncomfortable with membership as a board appointed committee and no plans to change that status<br>- Would need significantly more detail to understand full implications of membership approach<br><br>**Actions suggested:**<br>Confirm that formal action by members would be rare.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Mechanism that responds to some of the concerns you and others have raised.<br><br>In particular, the updated proposal offers RSSAC two votes within the Community Mechanism if they choose to join at a later stage (see section 6.2 of the Second Draft Proposal). Joining or not joining would remain at the discretion of the RSSAC.<br><br>We look forward to your further comments, including in particular whether you wish to remain listed as a possible participating AC. |

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| **290** | SSAC | In Section 5.1.2 of the Proposal, “Influence in the Community Mechanism,” the CCWG notes that it considered three mechanisms for allocating votes to Supporting Organizations (SOs) and Advisory Committees (ACs), and that the “Reference Mechanism” was the “most supported approach.” The Reference Mechanism allocates 5 votes to every AC and SO except SSAC and RSSAC, which are allocated 2 votes each. The CCWG provides the following rationale for preferring the Reference Mechanism to the two alternatives that it considered: b. The reasons to allocate a lower number of “votes” to SSAC in the Reference Mechanism is that it is a specific construct within ICANN designed to provide expertise on security and stability, rather than a group representing a community of stakeholders. At the end of Section 5.1.2, the CCWG asks: What guidance, if any, would you provide to the CCWG–Accountability regarding the proposed options related to the relative influence of the various groups in the community mechanism? Please provide the underlying rationale in terms of required accountability features or protection against certain contingencies. The SSAC has no comment at this time on the rationale for the Reference Mechanism, but makes the following observation and request concerning the role of the SSAC in any proposed new structure. According to its Charter, the role of the SSAC is to “advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems.”3 The SSAC has neither been given nor sought any standing for its advice other than that it be evaluated on its merits and adopted (or not) according to that evaluation by the affected parties. The SSAC believes that this purely advisory role is the one to which it is best suited, and asks the CCWG– Accountability to take this into account in its review of the options described in Section 5.1.2. The SSAC has no comment at this time on whether or not a legal structure is required or desirable to compel ICANN and the Board to respond to the SSAC’s advice. However, SSAC Comments on Cross Community Working Group Proposal on ICANN Accountability Enhancements SAC071 the SSAC is concerned about the way in which the proposed new SO/AC Membership Model might affect the way in which the SSAC operates, considering its narrow focus on security and stability matters and its reluctance to become involved in issues outside that remit. The SSAC expects that the community will adopt an organizational structure that recognizes the role and importance of high–quality expert advice on security and stability. The SSAC notes the relatively short time available for consideration of the draft proposal, driven by a timeline set by external events such as the expiration of the contract between NTIA and ICANN related to IANA. Accordingly, the SSAC reserves the right to make additional comments as further details are developed. | Concerns<br>**Summary / Impression:**<br>SSAC prefers to remain purely advisory only.<br><br>**Actions suggested:**<br>Take position of SSAC to remain purely advisory into account in review of the options described in Section 5.1.2.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Mechanism that responds to some of the concerns you and others have raised.<br><br>In particular, the updated proposal offers SSAC two votes within the Community Mechanism if they choose to join at a later stage (see section 6.2 of the Second Draft Proposal). Joining or not joining would remain at the discretion of the SSAC.<br><br>We look forward to your further comments, including in particular whether you wish to remain listed as a possible participating AC. |

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| **291** | SB | The accountability of the Board of Directors is absolutely essential. But it may only be accountable to organizations (SOs, ACs, Ralos...) which are, in turn, accountable themselves.<br>These organizations must consider the accountability of their operations vis à vis their participants and the other components of ICANN as an essential element.<br>To be clear and direct, I support none of the solutions which require the creation of structures (UA or others) complementary to the existing organizations.<br>This is due to several reasons:<br>• **Inequality** : certain organizations will not be able to / will not want to implement this type of structures.<br>• **Complexity** : this adds a further layer to the already complex ICANN system.<br>• **Increased litigiousness** : favors the recourse to the courts to decide on disputes which could be settled by other means (consensus building, mediation, reconsideration, and even recourse to the independent review process IRP.)<br>**Trust** should / must be the cornerstone of the accountability system.<br>But if this is not enough, in order to allow "community" representatives to access certain powers currently, to the 5 proposed powers (see discussion of these powers later in the document) they must be integrated into ICANN's bylaws before the transition.<br>So let's start by defining in detail the composition, the selection, and the operation of the structure that will represent the "community" and what needs to be changed in the bylaws for the latter to receive the powers that will be ultimately be required.<br>And if in the framework of these new bylaws a disagreement were to arise between the Board of Directors and the "community," a reconsideration would be resorted to, or even the Independent Review Process IRP.<br>Trust, consensus building, and transparency must be the keys in the processes involving the "community" and the Board of Directors. Replacing them with a legalistic solution can only undermine the organization's strategic objectives and the spirit in which volunteers get involved particularly end users. | **CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised.<br><br>In particular, the new Community Mechanism as Sole Member model reduces the risk of litigation compared against what we had proposed earlier (see section 6 of the Second Draft Proposal).<br><br>We look forward to your further comments. |
| **292** | ZR | - Regarding the community power, I am not very clear that the "community" here whether includes the end user. If not, is it any channel available for end user or netizen to learn about how the ICANN Board makes a decision, or the decision making process be more open and transparent to the public. From the Proposal, it seems that ICANN only is accountable to AC/SO communities, so it is suggested that a kind of mechanism could be set up for the global public to join in exercising the community power.<br>- The Proposal indicates the SOs and ACs creating an unincorporated association to be the members of ICANN. However, it is not very clear how these association work, especially how to how to ensure various voices be heard and reflect relevant stakeholders' opinion and interests. | **CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised.<br><br>In general, the end user is represented through the NCSG in the GNSO, and through the At Large Advisory Council. Internet users are also the end customers of other participants in the ICANN environment (including registrars), who are aware of their customers' interests. We look forward to your further comments. |

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| **293** | RIR | The creation of a community mechanism to empower the community with regard to certain Board decisions makes sense and would enhance ICANN s accountability. Such a community mechanism should indeed be based on the already existing structure of the chartering organisations SOs and ACs), either as a formalized designator-based model or via a membership model There are no objections to the suggested reference composition of this mechanism being the membership-based model, but observe that significant details regarding the proposed implementation of powers under the membership model have been deferred and may not prove in the end.) It is suggested that sufficient detail on the proposed implementation model by provided in a future plan, so that community assessment of related risks may be performed. | Agreement<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We look forward to your further comments. |
| **294** | DotMusic | DotMusic agrees with the proposal for ICANN to introduce a community mechanism to empower the community over certain Board decisions because it would enhance ICANN's accountability. DotMusic also recommends that ICANN consider additional accountability reforms that would consider how the community can have oversight over ICANN Staff decisions. Furthermore, ICANN must incorporate an external, independent process for reviewing and resolving disputes between ICANN and third-parties. Such a process should include the ability to reverse ICANN Board decisions. | Agreement<br>**CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Mechanism that responds to some of the concerns you and others have raised.<br><br>It has also made progress in dealing with the staff accountability question you raise, though further progress on this will be done in Work Stream 2 of the CCWG's work, following the IANA Stewardship Transition. We look forward to your further comments. |
| **295** | Siva | A general comment is that the overall design has to have sufficient safeguards to ensure that the exercise of balancing the powers of the Board should not result in a situation of constant challenges between the Board and the Community.<br>- Community powers over Board decisions provide a safeguard against the abuse of position and power by an accidental ICANN Board constituted of members with unworthy motives. However, it needs to be emphasized that the communities to be balanced and become accountable within, so as to ensure that the community powers are exercised in a fair and balanced manner. | **CCWG Response:**<br>Thank you for your comment. The CCWG has extensively revised its proposal incorporating the feedback from the public comments and discussion in Buenos Aires, and in its second draft proposal has set out a fresh Community Empowerment mechanism that responds to some of the concerns you and others have raised. We look forward to your further comments. |

**Power: Reconsider/reject budget or strategy/operating plans**
*Question 8: Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

There were **twenty-four** comments in this section.

20 comments suggested **agreement;** 9 comments noted **concerns** .

There were no **confusion** rated comments. There was 1 neutral comment.

There were 4 **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability** , but **significant concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns:**

- Impact on ICANN's operational effectiveness arising from this power
- Desire for more incorporation of all relevant community input in the planning process, so as to make rejection less likely

**Specific** concerns or suggestions for further follow up and WP1/CCWG discussion:

- Greater transparency earlier in the process & more complete reporting (270)
- Planning process must deal with all input on a fair and equal basis (271)
- Better quality staff/board/community interactions before plans are approved (272)
- Limit rejection of a plan to once per cycle (273)
- Limit rejection of a plan to twice per cycle (281)
- Concern for impact of sustained rejection, some limit (275, 277, 283, 286, 289)
- Improved engagement and dialogue to prevent matters coming to the point of rejection (276, 282, 283, 285)
- Need greater IANA budget transparency (288)
- Clarify that aim is not to re-write a budget in the community mechanism, but to return to Board for adjustment (288)

**Divergent comments:**
- Doubtful of value or effectiveness, opposed to strengthening this power (278)

**Proposed CCWG response/approach to resolution**

- WS2 will look at the planning process to improve quality of engagement & inclusion of input between Board, staff and community, and lead to a lower likelihood of plan rejection
- CCWG will consider limit to number of times a plan/budget can be rejected
- CCWG will elaborate on caretaker approach where a plan/budget is rejected to minimise operational impact

| # | Contributor | Comment | CCWG Response/Action |
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| **296** | RH | Question: Yes. Membership should have full powers. | Agreement<br>**Summary / Impression:**<br>Reviewing/revoking budget and strategic / operating plans is desirable.<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **297** | DBA | In particular, we would like to emphasize the following:<br>Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws. | Agreement<br>**Summary / Impression:**<br>Reviewing/revoking budget and strategic / operating plans is emphasized.<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **298** | CRG | -In principle yes, but don t think is efficient with the present structure of the budget presentations.<br>- The Budget Veto mechanism should be developed to make transparent to the community how resources are being assigned not only to programs and priorities, but the different parts of the ORGANISATIONAL STRUCTURE, like the full budget assignments between the major areas of (a) policy development, (b) compliance and (c) operational functions, separate from the corporate overhead which is not the case today. | Agreement - Concerns<br>**Summary / Impression:**<br>More transparency in budget process and earlier and more complete reporting requirements to community.<br><br>**Actions suggested:**<br>See above.<br><br>**CCWG Response** :<br>Thank you for your comments. The CCWG attempted to address your efficiency concerns in three ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. The CCWG agrees with your second point and have specified that a review of the budget development process will be part of WS2. |
| **299** | DCA-T | YES<br>- Moreover, the community should also have the power to veto or approve any plans to scrap an on-going strategic planning process.<br>- The community should be allowed to be fully included in any discussions especially regarding the regions they come from, in the past, ICANN leadership has been seen to side with some stakeholders while alienating others yet they come from the same region and share interests.<br>- ICANN must maintain impartiality and promote inclusivity in all budget or strategy/operating plans proposals | Agreement - Concerns<br>**Summary / Impression:**<br>More inclusivity and impartiality need in budget strat plans. Community should be fully included in the budget development process.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response** :<br>Thank you for your comments. Under the proposed framework, the community can veto any budget or proposed strat plan. The CCWG agrees with your suggestion to improve the process from the start and a review of the budget and strat plan development processes has been recommended for WS2 |
| **300** | Afnic | - Afnic strongly support this proposal. Not only it is necessary for the empowered community to be able to review the IANA functions budget (as clearly stated by the CWG-Stewardship) but also this will allow better quality interactions between staff, board and community on the budget and strategy BEFORE it's approved by the Board.<br>- The limitation of powers such as not rewriting the budget or the super-majority needed to reject the budget twice seems reasonable. | Agreement<br><br>**Summary / Impression:**<br>Better quality interactions between staff, board and community on budget and strategy BEFORE approval by board.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response** :<br>Thanks for your comments. As a part of this proposed framework the community would separate veto budget over the ICANN general and IANA specific budgets. The vetos would, however, only come after a board approval. Your recommendation for greater participation in the budget and strat plan development process are duly noted and proposed to be a part of WS2. |

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| **301** | IA | - Allowing the community to veto the budget or the strategic plan raises questions of efficiency and effectiveness. These are key operational documents, and holding them up for multiple cycles of back-and-forth between the Board and the community could be highly detrimental to ICANN's operational effectiveness.<br>- IA suggests a workable solution may be to allow the SO/AC Members to place a one-time veto per cycle for these two powers, which the Board could override by providing an explanatory statement explaining why rejection of the veto was consistent with ICANN's mission and the public interest. | Concerns<br><br>**Summary / Impression:**<br>Concern for operational efficiency and effectiveness from community veto of budget or strategic plan. Suggest limiting veto to once per cycle.<br><br>**Actions suggested:**<br>Consider limiting veto to once per cycle.<br><br>**CCWG Response** :<br>Thank you for your comments. The CCWG attempted to address your efficiency concerns in four ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. Finally fourth, the organization would be able to continue to operate on the prior year's budget so there would be no paralysis. |
| **302** | RySG | - RySG agrees that enabling the community to reject a budget or strategic plan would help to enhance ICANN's accountability. The ability to control the budget is essential as it would have the most direct impact on Board and management actions and activity.<br>- RySG agrees with the list of requirements for this recommendation | Agreement<br>**Summary / Impression:** Ability to control budget is essential and has most direct impact on board and management.<br><br>**Actions suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **303** | BC | - BC supports the proposed community power to reject ICANN's draft budget and strategic plans. It seems appropriate to require 2/3 majority in the first vote and 3/4 majority in subsequent votes.<br>- BC is concerned that a sustained rejection of ICANN budgets and strategic plans could result in the corporation having to operate under prior approved budgets and strategic plans for multi ple years. This is not an efficient or effective way to operate an organization like ICANN, and the BC believes CCWG should consider at what point the budget and strategic plan vetoes would be truncated after multiple votes to block the Board's proposal.<br>- BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability. | Agreement - Concerns<br>**Summary / Impression:**<br>General support but concern over protracted community veto process. Requests explanation on how Member status can be created and maintained without undue costs, complexity, or liability.<br><br>**Actions suggested:**<br>Expand on how member status can be created and maintained. Consider at what point the budget and strategic plan vetoes would be truncated after multiple votes to block the Board's proposal<br><br>**CCWG Response** :<br>Thank you for your comments. The CCWG attempted to address your efficiency concerns in four ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. Finally, the community would eventually consider the notion of board member removal to break the deadlock. The simplified member structure is explained under the structural proposal. |

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| **304** | .UK | Again this section shows a significant lack of trust in ICANN and its processes. This needs to be addressed. That the complex processes that ICANN goes through in developing strategy, operating plans and budgets, with open consultation, could lead to proposals being rejected by the community suggests something is seriously wrong. Some form of intermediary process – promoting dialogue between the executive and/or Board and the community – is needed to avoid disruptive processes. | Divergence<br><br>**Summary / Impression:** An intermediary process - promoting dialogue between board and ICANN is needed to avoid disruptive [veto] processes.<br><br>**Actions suggested:**<br>Consider intermediary process.<br><br>**CCWG Response** :<br>The CCWG feels this is less a matter of trust and more of addressing a structural deficiency in the budget and strat plan process. The CCWG agrees with your suggestion to improve the process from the start and a review of the budget and strat plan development processes has been recommended for WS2 |
| **305** | USCIB | - Para 199: We strongly support the power for the community to reject a budget or strategic plan. In many instances, the power of the purse provides the ultimate check on an institution's. Further clarification also is needed regarding what constitutes when the Board has "failed to properly consider community input."<br>- However, USCIB shares the concerns of the ICANN's Business Constituency (BC) that a sustained rejection of ICANN budgets could result in the corporation having to operate under prior-approved budgets for multiple years, comparable to the U.S. Government's practice of operating under a "continuing resolution" based on the budgets of prior fiscal years. This is not an efficient or effective way to operate an organization like ICANN, and USCIB concurs with BC recommendation that the CCWG consider at what point the budget veto would be truncated after multiple votes to block the Board's proposal. | Agreement - Concerns<br>**Summary / Impression:**<br>Strongly support power. It provides ultimate check on an institution's. Concerns that sustained rejection could lead to corporation having to operate under prior-approved budgets.<br><br>**Actions suggested:**<br>Clarify what constitutes when the Board has "failed to properly consider community input". Consider at what point the budget veto would be truncated after multiple votes<br><br>**CCWG Response:**<br>Thank you for your comments. The CCWG attempted to address your efficiency concerns in four ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. Finally, the community would eventually consider the notion of board member removal to break the deadlock. The simplified member structure is explained under the structural proposal. |
| **306** | LINX | We are doubtful of the value or effectiveness of the power to reconsider/reject the Budget and Strategic/Operating Plans, but we are not strongly opposed to this power as designed. We would be opposed to greatly strengthening it. | Concerns - Divergence<br>**Summary / Impression:** Doubtful of value of this power and would be opposed to strengthening it.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments. |
| **307** | JPNIC | It is a common practice for stakeholders who appoint Board members within an non-profit organization, to have the powers over key decisions made for the organization. We also recognize this as the power identified as required by the CWG-Stewardship. | Agreement<br>**Summary / Impression:** It is a common practice for stakeholders to make decisions. Th is power is identified as required by CWG-Stewardship.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG thanks you for your comments. |

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| **308** | CWG-St | Including the ability for the community to have more rights regarding the development and consideration of the ICANN budget. | Agreement<br>**Summary / Impression:** Request "more rights" regarding budget (but not necessarily primary authority).<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG agrees with your suggestion to improve the process from the start and a review of the budget and strat plan development processes has been recommended for WS2 |
| **309** | IPC | The IPC generally supports some form of community oversight and "veto" over budgets and strategic plans, beyond the current public comment exercise. The IPC agrees that this power should be relatively narrowly focused and rely on inconsistency with ICANN's mission and role. A horse-trading line-item-veto process would be unwieldy and put too much power in the hands of the members. In that vein, there should not be an endless loop of feedback. The IPC is concerned by the reference to "subsequent rejection/s" and does not believe there should be more than two bites at the apple, at most. Rather there should be an appropriate consultation process to work through any issues that caused rejection in the first place. | Agreement - Concerns<br>**Summary / Impression:**<br>- General support but concern over community veto process resulting in endless feedback loop.<br>- Power should be narrowly focused.<br>- Better approach: appropriate consultation process to work through issues prior to community / board rejection.<br>- Community veto should be limited to two bites at the apple.<br>-<br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>While the CCWG considered and rejected the notion of limiting the number of bites at the apple, it is believed that a kind of continuing resolution based on the prior year's budget would act a disincentive for both the Board and the community to engage in an extended back and forth. Its is also noted that the community has an escalation path at its disposal in the form of board member removal under the proposed framework. |
| **310** | USCC | Allowing the community to reject a budget or strategic plan would enhance ICANN's accountability. The list of requirements for this recommendation is satisfactory. However, the CCWG should create a proposal that guards against a situation where the Board and community could go back and forth submitting and rejecting several iterations of a budget, and avoid stalemate. | Agreement - Concerns<br>**Summary / Impression:** General support but concern over protracted community veto process resulting in stalemate.<br><br>**Actions suggested:**<br>Include safeguards.<br><br>**CCWG Response:**<br>While the CCWG considered and rejected the notion of limiting the number of bites at the apple, it is believed that a kind of continuing resolution based on the prior year's budget would act a disincentive for both the Board and the community to engage in an extended back and forth. Its is also noted that the community has an escalation path at its disposal in the form of board member removal under the proposed framework. |

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| **3 11** | INTA | - Agree that giving the Community the power to reject a budget or strategic plan would enhance ICANN's accountability. However, as presented, we have concerns with the potential for this new power to lead to an impasse or budget crisis. In that regard, it is recommended that the feedback and amendment process not be unlimited.<br>- Rather than the Community having a limited number of opportunities for rejection, the Community and Board could be required to participate in mediation or some other form of consultation to resolve the matter. We believe that this type of dispute resolution should be clearly defined and set forth so that all the Community members understand how dispute resolution related to the budget would be handled. | Agreement - Concerns<br>**Summary / Impression:** General support but concern over potential for impasse or budget crisis. Mediation or other consultative process should be used to resolve disputes between board and community.<br><br>**Actions suggested:**<br>Consider Board-community mediation. Define dispute resolutions<br><br>**CCWG Response:**<br>While the CCWG considered and rejected the notion of limiting the number of bites at the apple, it is believed that a kind of continuing resolution based on the prior year's budget would act a disincentive for both the Board and the community to engage in an extended back and forth. Its is also noted that the community has an escalation path at its disposal in the form of board member removal under the proposed framework. The notion of mediation was addressed and it was determined that it should be included as part of an overall review of the budget development process in WS2. |
| **3 12** | .NZ | - Supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. We note that the annual budgeting process will need to be adjusted to make provision for this power, and consider that that falls naturally into a broader improvement in the budget process that could be part of Work Stream 2. | Agreement<br>**Summary / Impression:** Support this power. Annual budget process' adjustment for this power falls into workstream 2 with broader improvement to budget process.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **3 13** | NCSG | Some NCSG members believe the ability of the community to intervene in the budget process is a mechanism which is extremely important. A strong ability to ensure that the security and stability of the DNS is not impacted by unwise budgeting or financial planning is at the core of the community's responsibility to their stakeholders and the internet as a complete whole.<br>Other NCSG members would like to see internal mechanisms put in place at ICANN to more closely align the board and the community at various stages in the process including the extent to which agreements between the two can be required before such decisions can be finalized. While the board may have the final say, processes can be put in place to direct the board to work more closely with the community in reaching the ultimate decision. For some NCSG members, that requirement would be sufficient on this issue. | Agreement - Concerns - Divergence<br>**Summary / Impression:**<br>Split in view of members:<br>Some believe this power is extremely important and at the core of accountability.<br>Other members prefer internal engagement mechanisms put in place to more closely align the board and the community at earlier and subsequent stages in the process including a requirement for community agreement before budgets can be finalized for approval.<br><br>**Actions suggested:**<br>Include internal mechanisms.<br><br>**CCWG Response:**<br>Thank you for your comments. The CCWG agrees with your suggestion to improve the process from the start and a review of the budget and strat plan development processes has been recommended for WS2. However, there was consensus that putting the final say in the hands of the community in WS1 created the essential leverage to obtain the WS2 reforms. |

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| **314** | GG | The community's power to recall the ICANN Board and veto ICANN's strategic plan and budget should be reasonably limited. We applaud the CCWG-Accountability's efforts to identify potential accountability measures to protect ICANN's key operations in a crisis. However, we believe that one proposed accountability measure – the ability of the community to veto ICANN's strategic plan and budget – should be limited. Put simply, we do not believe that the community mechanism 14 should be able to veto the strategic plan and budget over multiple iterations. We have seen this play out in multiple global governing institutions and while it does provide an opportunity for checks and balances it also can render an organization unable to carry out its mission. We need to make sure we are striking the balance between accountability and organization paralysis. The community should be able to submit an initial veto, but if the ICANN Board chooses to override that veto, it should be able to do so provided it submits a detailed report that summarizes its reasons for doing so. If the community remained unsatisfied with the Board's explanation, it could invoke the Independent Review process or seek to recall individual Board members to change ICANN's direction. A process in which the community and Board could go back and forth for months at a time would unnecessarily and significantly degrade ICANN's operational efficiency. | Divergence<br>**Summary / Impression:**<br><br>Community veto can cause operational crisis. Any veto must be limited to avoid operational paralysis.<br><br>**Actions suggested:**<br>Add limits.<br><br>**CCWG Response:**<br>Thanks for your comment. After much debate the CCWG concluded that it was essential to give the last word to the community. The CCWG attempted to address your efficiency concerns in four ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. Finally, the community would eventually consider the notion of board member removal to break the deadlock. However, improvement to the development process is desired by all and is therefore a critical part of WS2. |
| **315** | Board | We recognize the importance of affording the ICANN community a voice in assuring that the Strategic Plans of ICANN are within ICANN's mission, that budgets support the mission. | Neutral<br><br>**Summary / Impression:** Recognizes importance of affording community a voice in assuring budget's and strat plans are within ICANN's mission.<br><br>**Actions suggested:**<br>None.<br>**CCWG Response:**<br>Thank you for your comment! |
| **316** | CENTR | We support the ability of the community to reject strategic and operating plans/budgets which have already been approved by the Board if they are believed to be inconsistent with the purpose, mission and ICANN's role as set out in the Bylaws. To this respect, we strongly reiterate the request that ICANN should be more transparent in terms of IANA's function costs and their itemisation. We believe that the community power should consist in inviting the Board to review the plans, but not in re-writing them. A better enhancement of ICANN accountability would occur if certain recommendations made unanimously by various stakeholder groups are taken on board at the time of their submission. That would avoid time consuming iterations like the Board approval of a plan and its possible, subsequent rejection by the community membership body. | Agreement<br>**Summary / Impression:**<br>ICANN should be more transparent about IANA function costs and their itemization.<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>The CCWG attempted to address your efficiency concerns in three ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. |

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| **317** | NIRA | Yes, however, further safeguard should be provided against abuse, e.g. number of times the budget can be rejected by the community, and what options the Board may have in such situations. | Agreement - Concerns<br>**Summary / Impression:** Concern for abuse and number of times budgets can be rejected.<br><br>**Actions suggested:**<br>Provide safeguards.<br><br>**CCWG Response:**<br>The CCWG attempted to address your abuse concerns in two ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan. The board can initiate an IRP process if they feel strongly the community is in the wrong. |
| **318** | SB | a. My only comment regarding this power is that it must be compatible with the development plan for the budget (or of the strategic and operating plans.) I would prefer a solution where consensus is built during the development of these documents, prior to the discussions and decisions of the Board of Directors.<br>b. We must avoid adding rigidity to the operation of ICANN.<br>c. A solution to improve the involvement of the community in discussions regarding the budget (and accounts) would be, for example, to publish all of the organization's financial data in **open data** . | Concerns - New Idea<br>**Summary / Impression:**<br>- It must be compatible with development plan for budget.<br>- Prefer a solution where consensus in built during development<br>- Avoid rigidity<br>- Publish financial data in open data<br><br>**Actions suggested:**<br>Consider publishing organization's financial data in open data.<br><br>**CCWG Response:**<br>Thanks for your comments. The CCWG agrees with your suggestion to improve the process from the start and a review of the budget and strat plan development processes has been recommended for WS2. |
| **319** | RIR | While the RIR community has expressed interest in fully understanding the costs related to the IANA registry services, there has been no expressing of interest in the RIR community regarding the need to have approval over ICANN s annual budget. The potential of having the annual budget to be delayed as a result of the proposed could prevent necessary and required spending e.g. additional personal, security measures beyond those in the previous year) and thus lead to unforeseen impacts to ICANN s stability. | Concerns<br>**Summary / Impression:**<br>- No expressing of interest in the RIR community regarding the need to have approval over ICANN s annual budget<br>- Potential of having the annual budget to be delayed as a result of the proposed could prevent necessary and required spending and lead to unforeseen impacts to ICANN s stability<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comments. The CCWG attempted to address your efficiency concerns in three ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. |

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| **320** | Siva | - Community could have the powers to reject a budget or strategic plan, but the entire organization could work in such a way that the community would not take recourse to such a course of action as to stall or reject a good budget or a good strategic plan. Such Community powers could remain unused in a system wherein the community participates and offers supportive inputs to the process of formulating a budget or strategic plan with a willingness to accept some differences of opinion that the Board may have.<br>- Such powers become relevant only when there is a misappointed Board superciliously acting in a manner that is harmful to the mission of ICANN, and even in such situations the exercise of such powers by a Community that is not short-sighted, misguided by narrower motives or altogether captured. | Concerns - New Idea<br>**Summary / Impression:**<br>- It must be compatible with development plan for budget.<br>- Prefer a solution where consensus in built during development<br>- Avoid rigidity<br>- Publish financial data in open data<br><br>**Actions suggested:**<br>None.<br><br>**CCWG Response:**<br>Thank you for your comments. The CCWG attempted to address your efficiency concerns in three ways: first there must be consensus concerns to activate this power. Second those concerns must have come up during the public comment period for the budget or strat plan and third there is a time limit to initiate a veto. The CCWG agrees with your second point and have specified that a review of the budget development process will be part of WS2. |

**Power: Reconsider/reject changes to ICANN "standard" Bylaws**
*Question 9: Do you agree that the power for the community to reject a proposed Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

There were **21** comments in this section.
20 comments suggested **agreement**
8 comments noted **concerns** .
There were 1 **confusion** rated comments.
There were no **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability** , but **moderate concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns:**

- More time needed for community review process – 2 weeks seen as too short.
- Impact on ICANN's operational effectiveness arising from this power

**Specific** concerns or suggestions for further follow up and WP1/CCWG discussion:

- Approval of any numerical change to SO/AC structure should require super-majority vote (292)
- Recommends a longer period for community review. Extend from 2 weeks to 30 days. (293)
- Encourages CCWG to further explore and explain member structure. (294)
- Recommends no supermajority but simple majority, to avoid majority of community not approving of a bylaw but being unable to block it (238 bis)
- Recommends a longer period for community review. Extend from 2 weeks to the end of next ICANN meeting beginning no sooner than one month before posts notice of adoption. (296)
- Recommends a 60-day window for community review. (299)
- Recommends a 2/3 majority vote instead of 3/4. (299)
- Concern about a procedural impasse; recommends introducing a consultation stage. (301)
- Recommends a longer time period for community review. Extend from 2 weeks to 30 days. (301)
- Recommends a 2/3 majority vote instead of 3/4 for first rejection. (301)
- Raises concern that a community approval/rejection process could cause ICANN to delay introduction of proposed bylaws changes. (305)
- Recommends creating a limit on the number of times the community can reject changes. (306)
- Recommends a longer period for community review. (307)
- Concern with Govts having too much influence in ccNSO, proposes more votes for other constituencies (Siva)

**Proposed CCWG response/approach to resolution**

- CCWG will consider extending the community review period from 2 weeks to a longer timeframe TBD.
- CCWG will continue to explore and explain member structure
- CCWG will consider lowering the vote threshold from 3/4 to 2/3.
- CCWG will consider mechanisms for limiting procedural impasse and possible delays.
- CCWG will consider a cap on the number of times this power can be utilized. Further clarification needed

| # | Contributor | Comment | CCWG Response/Action |
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| **3 21** | RH | Question: Yes. Membership should have full powers. | Agreement<br>**Summary / Impression:** Agreement - and suggests that only members should be able to amend the bylaws.<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your comment. This power is maintained in the Community Mechanism as Sole Member model the CCWG has set out in its Second Draft Report – see section 7.2. |

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| **322** | auDA | auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals. | Agreement<br>**Summary / Impression:** Agreement<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your comment. This power is maintained in the Community Mechanism as Sole Member model the CCWG has set out in its Second Draft Report – see section 7.2. |
| **323** | Afnic | Afnic supports this proposal. Nevertheless, if the change proposed by the Board can modify the number of SOs/ACs and subsequently their respective weights within the members' assembly, this change should be approved with a supermajority as described below (ref: 5.4). | Agreement - Concerns<br>**Summary / Impression:** Supports proposal<br><br>**Actions suggested:** Approval of any numerical change to SO/AC structure should be by supermajority.<br><br>**CCWG Response:**<br>Thank you for your comment. The participation by SOs and ACs in exercising these accountability powers will be set out in Fundamental Bylaws. Generally, this power is maintained in the Community Mechanism as Sole Member model the CCWG has set out in its Second Draft Report – see section 7.2. |
| **324** | DP-DK | - The CCWG Draft Proposal sets forth five specific powers to be exercised by the corporation's members. While we support this general plan, we do not fully understand the rationale for requiring a supermajority of members to veto any changes in the ICANN Bylaws (other than Fundamental Bylaws). It would allow the Board to amend the (ordinary) Bylaws not merely in the absence of any consensus among the members that it do so, but even if a majority of the members disapproved of the amendment, and we fail to see a good reason why that should be permitted. [comment moved in document] | Agreement - Concerns<br>**Summary / Impression:** Agrees with recommendation, but suggests simple majority to block changes (to avoid majority of community disapproving, but being unable to block).<br><br>**Actions suggested:**<br>Clarify why supermajority is needed.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has maintained the supermajority requirement in its Second Draft Proposal (see section 7.2). The general view of the CCWG is that high thresholds are required for exercising any of these community powers, which it sees largely as "reserve" powers. There was not support to lower the threshold for this power. |
| **325** | RySG | - RySG agrees that an enforceable community power to reject a proposed Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community. We agree with the list of requirements for this recommendation, including the proposed 2/3 majority for a first member vote and 3/4 majority in any subsequent member votes.<br>- RySG notes the following recommendation: *"The time required for this power to be exercised would be included in the Bylaws adoption process (probably a two-week window following Board approval)."* We understand the desire to put a time limit, but two weeks is a terribly short deadline for a multi-stakeholder process, so we would instead suggest at least 30 days. | Agreement - Concerns<br>**Summary / Impression:** Agrees with recommendation, but has concerns with short timeline.<br><br>**Actions suggested:** Recommends a longer window of 30 days instead of 2 weeks.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power. |

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| **326** | BC | - BC supports the proposal to allow the community to block a Bylaws change sought by ICANN's Board. It seems appropriate to require 2/3 majority in the first vote and 3/4 majority in subsequent votes.<br>- BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability. | Agreement<br>**Summary / Impression:** Agreement<br><br>**Actions suggested:** Encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has maintained this power in its Second Draft Proposal (see section 7.2). It has also further developed the membership model, with the Community Mechanism as Sole Member allowing for legal enforceability of all the community powers (see section 6). |
| **327** | .UK | We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG's proposals. | Agreement - Confusion<br>**Summary / Impression:** Support for proposed power, but concern that mission, commitments and core values are not fundamental.<br><br>**Actions suggested:** None required - change examples in para 201 to avoid causing confusion.<br><br>**CCWG Response:**<br>Thanks for your input - the CCWG proposal does in fact suggest these should be fundamental bylaws, as set out in para 127. We apologise that the examples cited at the beginning of para 210 were poorly chosen and caused a mistaken impression that the CCWG did not believe the bylaws you cite in this part of your comment should be fundamental.<br>We have maintained this in our Second Draft Proposal – see section 3 for further details. |
| **328** | LINX | We strongly support the existence of this power. A time limit of two weeks to coordinate all the necessary parties to exercise the power to reconsider/reject changes to ICANN Bylaws is much too short. We suggest instead that the deadline should be the end of the next ICANN meeting that begins no sooner than one month after the Board posts notice of adoption. A bylaws provision could allow the Board to treat a Bylaws change as presumptively effective from the moment it posts notice of adoption, even though time window for the community to reject it remains open. | Agreement - Concerns<br>**Summary / Impression:** Strong support, but concern that 2 week period is too short.<br><br>**Actions suggested:** Suggests instead that the deadline should be the end of the next ICANN meeting that begins no sooner than one month after the Board posts notice of adoption.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power. |
| **329** | JPNIC | Yes. Bylaws include Core Values, Mission and the clearly defines the scope of ICANN's activities. The community should have the ability to request for reconsideration or reject changes to the document which is such core to the organization. | Agreement<br>**Summary / Impression:** Supports<br><br>**Actions suggested:** No action necessary<br><br>**CCWG Response:** Thank you for your comment. |

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| **330** | CWG-St | We understand that in Section 1.4, on page 12 of the CCWG Accountability interim proposals, you do acknowledge the intention of the CWG Stewardship to create a Customer Standing Committee. Moreover that you have not yet considered specific bylaw changes related to the CSC. However, we are encouraged by your view that such an addition would not, in your view, contradict any of the CCWG Accountability proposals. We will look further into this and may indeed, as suggested by your chairs' submission to the CWG-Stewardship public comment, draft and specify this directly as one of the CWG Stewardship recommendations. | Agreement<br>**Summary / Impression:** CWG Stewardship Transition sees that CCWG proposal would not contradict or prevent the addition of a bylaw change related to a Customer Standing Committee.<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>The CCWG thanks the CWG for this comment. Our Second Draft Proposal includes a specific matching of our proposals against your requirements – please see paras 90-112 for further details. |
| **331** | IPC | - The IPC commends the CCWG for recognizing that SO/ACs (with input from the larger community) should have the right to reject Board approved Bylaw changes prior to such changes becoming effective. Allowing SOs/ACs the right to reject Board approved Bylaws is in keeping with ICANN's multi-stakeholder model.<br>- The IPC disagrees with the short time period to object to a proposed Bylaw change: recommends a 60 day window to decide whether or not to reject a proposed Bylaw changes.<br>- The IPC is unclear why the CCWG recommended a 34 threshold for the community to reject a change to a "standard" bylaw or the introduction of a proposed standard bylaw. The IPC notes that the Board is required to approve any such new or changed bylaw by a 2/3 majority. Perhaps it would make sense for the "community veto" to be subject to a 2/3 majority as well | Agreement - Concerns<br>**Summary / Impression:** Support proposed power but 2-week period is too short. Also questions ¾ threshold.<br><br>**Actions suggested:** Recommends a 60-day window and a ¾ majority vote.<br><br>**CCWG Response:**<br>Thank you for your comment.<br><br>In its Second Draft Proposal the CCWG has simply provided for a flat 2/3 majority in the Community Mechanism as Sole Member to exercise this power – see para 398.<br><br>In respect of timelines - t he CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power. |
| **332** | USCC | The ability of the community to reject a proposed bylaw change would enhance ICANN's accountability. The list of requirements for this recommendation is satisfactory. | Agreement<br>**Summary / Impression:** Supports proposal and list of requirements.<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you for your comment. This power is maintained in the Second Draft Proposal – see section 7.2. |

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| **33** | INTA | - supports empowering the Community, through Member SOs and ACs, to reject amendments to the standard Bylaws proposed by the Board.<br>- recognizes that 3/4 support is required to reject a Bylaw amendment, however, are concerned that the exercise of this power could result in an impasse. It is recommended that mediation, arbitration, or some form of consultation process be imposed at some stage. Further, with respect to any mediation or arbitration, this process should be clearly defined at the present time.<br>- also suggest that the time period (one month for example) for objecting to a Bylaw amendment be extended in order to allow organizations to consult properly with their members.<br>- questions whether 3/4 is the appropriate threshold for a first time rejection of a Bylaw amendment, noting that only 2/3 of the Community mechanism is required for a first rejection of a proposed budget or strategic plan. | Agreement<br>**Summary / Impression:** Supports proposal and list of requirements.<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you for your comment. This power is maintained in the Second Draft Proposal – see section 7.2. The threshold proposed in the Second Draft proposal is lower (2/3 rather than ¾). In respect of timelines - t he CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power. |
| **34** | .NZ | - Supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out – this will be a straightforward change to the bylaws adoption /amendment process. | Agreement<br>**Summary / Impression:**<br>Supports recommendation<br><br>**Actions suggested:** None<br><br>**CCWG Response:** Thank you for your comment. |
| **35** | HR2251 | - The term "supermajority" is defined for purposes of the bylaws of ICANN to mean, with respect to a vote of the board of directors, an affirmative vote by at least four-fifths of all directors.<br>- A change in the bylaws of ICANN requires a vote of a supermajority of the board of directors. | Agreement<br>**Summary / Impression:**<br>The term supermajority is defined for purposes of Bylaws. A change in Bylaws requires a vote of supermajority of Board of Directors.<br><br>**CCWG Response:** Thank you for your comment.<br>This power is maintained in the Second Draft Proposal – see section 7.2. The threshold proposed in the Second Draft proposal is lower (2/3 rather than ¾). This power would be exercised by the Community Mechanism as Sole Member – see section 6 of our Second Draft Proposal. |
| **36** | NCSG | Yes, we agree. | Agreement<br>**Summary / Impression:**<br>Supports recommendation<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you for your comment. |

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| **337** | CENTR | We support the possibility for a new body to reject proposed Bylaw changes after their approval by the ICANN Board, but only before they come into effect. At the same time, we believe this power may slightly improve ICANN's accountability, but it may also impact the Bylaws amendment process and make the ICANN Board/staff in charge of it more defensive when coping with Bylaw changes. Over the past decade, we have witnessed a slow approach of ICANN staff and Board to certain Bylaws changes. The introduction of a community power even to reject Bylaws changes after their approval might push the ICANN staff (in charge of all the various preparatory, consultative, editorial and administrative steps to introduce the amendments) and the Board to delay possible change processes until there is certainty that they will not be questioned by the community at a later stage. | Agreement - Concerns<br>**Summary / Impression:**<br>Supports community ability to reject proposed bylaws changes after Board approval but before they go into effect. Concerned that this power may cause ICANN to delay bylaw changes if there is concern the community might object or raise questions.<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you for your comment. To the extent that introducing this community power makes the ICANN Board and staff more careful to work with the community in ensuring there is consensus about bylaws changes, we regard that as a good thing. |
| **338** | NIRA | Yes, however, NIRA is of the opinion that a limit should be provided on number of times the community can reject changes. | Agreement<br>**Summary / Impression:**<br>Supports recommendation, but suggests a limit on the number of times the community can reject changes.<br><br>**Actions suggested:**<br>Create a cap on the number of times the community can reject changes.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG considered this but did not propose any changes to the unlimited number of vetoes available through this community power – see para 401 of our Second Draft Proposal. |
| **339** | LAB | - para 212, a two-week window is indicated for exercising the proposed power to reject Board approval of changes to Bylaws. I query whether this is a sufficiently long time frame. | Agreement - Concerns<br>**Summary / Impression:**<br>Suggests the time period of two weeks is too short<br><br>**Actions suggested:**<br>Suggests a longer time period.<br><br>**CCWG Response:**<br>Thank you for your comment. In respect of timelines - t he CCWG considered the time periods for the use of all the community powers in preparing its Second Draft Proposal. We have clarified the three stages of petitioning, discussion and decision for the powers, and believe the timeframes are workable. This is detailed in section 7 of the Second Draft Proposal – see paras 363-376 for the general approach, and para 396 for its particular application to this power. |
| **340** | SB | No comments on this section | |

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| **341** | RIR | This power would enhance ICANN s accountability, and there is support for the requirements for this recommendation. | Agreement<br>**Summary / Impression:**<br>Supports: it would enhance ICANN's accountability<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you for your comment. |
| **342** | Siva | - The Community needs to be empowered to reconsider/reject changes to the standard ICANN bylaws. In the proposal as presented, there is an imbalance in the manner in which the 29 Community votes are distributed. ccNSO predominantly comprises Government participants, or at least comprises participants more prone to be influenced by Governments and by this subjective observation, ccNSO votes could be counted as quasi-governmental votes. The 5 ccNSO votes added to the 5 GAC votes makes a total of 10 out of 29 votes, which could skew the multi-stakeholder process, considering the fact that the presence of Governments in the multi-stakeholder process is not restricted to the visible roles and positions.<br>- This imbalance is amended in the short term by increasing votes for other stakeholder groups. Long term amendments are outlined as part of the comments in the section on WorkStream2. | Concerns<br>**Summary / Impression:**<br>- Imbalance in the manner in which the 29 Community votes are distributed: ccNSO votes could be counted as quasi-governmental votes.<br><br>**Actions suggested:**<br>Increase votes for other stakeholder groups to amend imbalance.<br><br>**CCWG Response:**<br>Thank you for your comment. The final proposed distribution of votes, now within the Community Mechanism as Sole Member, is set out in section 6 of our Second Draft Proposal. |

**Power: Approve changes to "Fundamental Bylaws"**
*Question 10: Do you agree that the power for the community to approve any fundamental Bylaw change would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

There were **23** comments in this section.
23 comments suggested **agreement;** 10 comments noted **concerns** .
There were 1 **confusion** rated comments.
There were no **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability** , but **moderate concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns:**

- More time needed for community review process – 2 weeks seen as too short.
- Impact on ICANN's operational effectiveness arising from this power

**Specific** concerns or suggestions for further follow up and WP1/CCWG discussion:

- Approval of any numerical change to SO/AC structure should require super-majority vote (292)
- Recommends a longer period for community review. Extend from 2 weeks to 30 days. (293)
- Encourages CCWG to further explore and explain member structure. (294)
- Recommends no supermajority but simple majority, to avoid majority of community not approving of a bylaw but being unable to block it (238 bis)
- Recommends a longer period for community review. Extend from 2 weeks to the end of next ICANN meeting beginning no sooner than one month before posts notice of adoption. (296)
- Recommends a 60-day window for community review. (299)
- Recommends a 2/3 majority vote instead of 3/4. (299)
- Concern about a procedural impasse; recommends introducing a consultation stage. (301)
- Recommends a longer time period for community review. Extend from 2 weeks to 30 days. (301)
- Recommends a 2/3 majority vote instead of 3/4 for first rejection. (301)
- Raises concern that a community approval/rejection process could cause ICANN to delay introduction of proposed bylaws changes. (305)
- Recommends creating a limit on the number of times the community can reject changes. (306)
- Recommends a longer period for community review. (307)
- Concern with Govts having too much influence in ccNSO, proposes more votes for other constituencies (Siva)

**Proposed CCWG response/approach to resolution**

- CCWG will consider extending the community review period from 2 weeks to a longer timeframe TBD.
- CCWG will continue to explore and explain member structure
- CCWG will consider lowering the vote threshold from 3/4 to 2/3.
- CCWG will consider mechanisms for limiting procedural impasse and possible delays.
- CCWG will consider a cap on the number of times this power can be utilized. Further clarification needed

| # | Contributor | Comment | CCWG Response/Action |
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| **343** | RH | Question: Yes. Membership should have full powers. | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal. |
| **344** | auDA | auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals. | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal. |

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| **345** | DBA | In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board, reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws . | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal. |
| **346** | Afnic | Afnic supports this proposal. | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal. |
| **347** | RySG | - RySG agrees that an enforceable community power to approve any Fundamental Bylaw change would help to enhance ICANN's accountability to the global multi-stakeholder community.<br>- RySG agrees with the list of requirements for this recommendation, with the addition of ICANN's existing Bylaw XVIII Section 1 current bylaw establishing ICANN's principle office location . | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>The CCWG has not agreed with the notion of entrenching Article XVIII in the same way as fundamental bylaws – see section 4.4 of the Second Draft Proposal for the explanation. |
| **348** | BC | - BC supports the approval mechanism for Fundamental Bylaws.<br>- BC notes the recommendation to include ICANN primary office location as a fundamental bylaw<br>- BC notes that Article 18 should be a Fundamental Bylaw<br>- BC hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law.<br>- BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability. | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>The CCWG has not agreed with the notion of entrenching Article XVIII in the same way as fundamental bylaws – see section 4.4 of the Second Draft Proposal for the explanation.<br><br>The CCWG's Second Draft Proposal also sets out the Community Mechanism as Sole Member which provides the legal enforceability needed in a simpler and more pragmatic manner than the previous model. See section 6 of the Second Draft Proposal for details. |

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| **349** | .UK | (part b) We have some concern that bylaws as fundamental as the mission, commitments and core values are not included as fundamental bylaws and treated as such (paragraphs 210-1), given that these are at the heart of the CCWG's proposals. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The approach to membership proposed by the CCWG has changed – see section 6 of the Second Draft Proposal.<br><br>We note that the mission and commitments and core values are in fact proposed to become fundamental – see section 4.4 of the Second Draft Proposal. This is consistent with the First Draft Proposal, which cited some examples that confused the issue. We apologise for that confusion. |
| **350** | USCIB | Para 199: We strongly support the requirement that the community ratify new "Fundamental" by-laws by giving positive assent. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The "positive assent" remains in place. |
| **351** | LINX | We strongly support the existence of this power. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). |
| **352** | ISPCP | - agrees that the introduction of Fundamental Bylaws in principle would enhance ICANN's accountability. However by introducing specific Fundamental Bylaws a trade-off between the potential accountability enhancement and ICANN (board) limitation to accomplish the mission seems to be needed. This should be discussed in particular under Work Stream 2.<br>- As part of Work Stream 1 we do not see the necessity to add further Fundamental Bylaws. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). The list of proposed fundamental bylaws remains largely the same. We do not see the tradeoff you identify, and would welcome further comments on our Second Draft Proposal if you see this as an ongoing problem. |

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| **353** | JPNIC | - This is a common mechanism for non-profit organization. It is good to have checks and balances on the Board decisions. We recognize this is again listed as a requirement by the CWG-Stewardship.<br>- We do not see a need, as part of Work Stream 1 (pre-Transition), to provide for any other means for other parts of the ICANN system to be able to proposal new Fundamental Bylaws or changes to existing ones. It is not clear how this enhances accountability and implications of adopting such system. This may be something for consideration in the long term, as a part of Work Steam 2, if such needs are identified. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>The Second Draft proposal does not suggest any additional ways to propose changes to Fundamental Bylaws – they would continue to come through staff or the community to the ICANN Board as is the case today.<br><br>While the Community Mechanism as Sole Member would have rights under law to propose such fundamental bylaws, its ability to exercise this or any other right not already dealt with as a Community Power will be limited – see paras 317-318 of the Second Draft Proposal. |
| **354** | IPC | The IPC agrees that empowering the community to approve any change to a Fundamental Bylaw will enhance ICANN's accountability to the community. However, at this time, there does not appear to be a well-defined list of requirements for this recommendation, either in Section 5.4 or in Section 3.2.3. It is critical that these requirements be expressed with clarity, and the IPC urges the CCWG to revisit these sections for purposes of clarification. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). We hope that the level of clarity you seek has now been achieved, but welcome any further comments on how we can improve the proposal. |
| **355** | Board | We recognize that the Board does not have unilateral ability to change the Bylaws, particularly those parts of the Bylaws that are fundamental to maintaining the Board's accountability to the community. | **CCWG Response:**<br>Thank you for your comment. |
| **356** | USCC | Yes, the community approval of any fundamental bylaws would enhance ICANN's accountability and we believe is the list of requirements for this recommendation is sufficient. | **CCWG Response:**<br>Thank you for your comment. |
| **357** | INTA | - generally supports the idea of requiring some form of assent or involvement of SO/ACs as outlined in §5.4. However, INTA may later object to this requirement depending upon the details of the assent process and we respectfully note that there are flaws in the current proposal since the SO/AC structure is not truly representative of the entire Community and its various constituencies.<br>- supports mechanisms to make it more difficult to change ICANN's purpose and core values and processes and powers critical to its accountability. However, the process for distinguishing between standard and fundamental Bylaws and for objecting to each, will have to be very clear and this standard is not clear enough in its proposed form. For example, at the present time, there is not a list of requirements for this recommendation either in Section 5.4 or Section 3.2.3. We recommend that ICANN develop a list of recommendations and submit them to the Community for public comment.<br>- supports the concept that changes to such Bylaws should require Community consent before changes are implemented, rather than the rejection mechanism available for standard bylaws. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>We would welcome your feedback as to whether the clarity regarding requirements and process you seek has been achieved in this revised proposal; and any specific suggestions as to how it could be further improved are also very welcome. |

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| **358** | .NZ | - supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out: we support the "co- decision" model that this represents, with the Board and the community mechanism together having to approve changes to Fundamental Bylaws. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular). |
| **359** | NCSG | Yes, we agree. | **CCWG Response:**<br>Thank you for your comment. |
| **360** | CENTR | We believe that the power of the membership body to reject proposed Bylaw changes after their approval by the ICANN Board before they come into effect and to give positive assent to any change to the Fundamental Bylaws before completion might seriously hamper the process flow and therefore, introduce unnecessary approval layers. Accountability mechanism refinements might be better introduced at the Board representativeness level rather than via new approval layers. The fact the Board does not represent the community that elects it indicates one of the intrinsic accountability issues discernible in the current ICANN structure. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>The CCWG does not agree with CENTR's argument that the incorporation of this power will seriously hamper the process of bylaws adoption. The requirement for co-decision on changing such important and critical aspects of ICANN's bylaws framework will in our view help to improve ICANN's accountability. This is not to suggest that further improvements to accountability cannot be made at the Board level – and we welcome further feedback from CENTR as to whether our Second Draft Proposal includes more improvements in this regard. |
| **361** | NIRA | NIRA agrees. | **CCWG Response:**<br>Thank you for your comment. |
| **362** | SB | a. The sections composing ICANN's bylaws should be divided into 3<br>categories:<br>i. The fundamental bylaws;<br>ii. The basic bylaws;<br>iii. The sections that should belong in an operating document.<br>b. Should we follow the distinctions made by the International Olympic<br>Committee:<br>i. The fundamental principles;<br>ii. The bylaws;<br>iii. The rules.<br>c. The means of validation would be:<br>i. For the fundamental principles: a priori by the community;<br>ii. For the bylaws: a posteriori by the community;<br>iii. For the rules: direct agreement between the Board of Directors, staff and the AC or SO concerned. | **CCWG Response:**<br>Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>The CCWG is not proposing to significantly change the general order of priority in ICANN' s constitutional documents – the Articles will maintain their current status, then Fundamental Bylaws, then the general bylaws (which will maintain their current status). Operating policies and procedures subordinate to all these rules will remain as they are today.<br><br>We welcome your feedback on the Second Draft Proposal and the extent to which it meets what you suggest. We believe that in spirit, if not precisely in words, it does so. |
| **363** | RIR | There are no objections to the introduction of this power, nor to the requirements of this recommendation. | **CCWG Response:**<br>Thank you for your comment. |

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| **364** | DotMusic | DotMusic agrees that empowering the community to approve any change to a Fundamental Bylaw will enhance ICANN's accountability to the community. However, more clarity is required on how the community will be empowered to do so. | **CCWG Response:**<br>Thank you for your comment. |
| **365** | Siva | The community needs to have the powers to propose / approve / reject a change to the fundamental bylaws. Subject to the cautions and observations expressed as above. | **CCWG Response:** Thank you for your comment. This power is included in our Second Draft Proposal (integrated with other Fundamental Bylaws matters in section 4 – see section 4.5 in particular).<br><br>The Second Draft proposal does not suggest any additional ways to propose changes to Fundamental Bylaws – they would continue to come through staff or the community to the ICANN Board as is the case today.<br><br>While the Community Mechanism as Sole Member would have rights under law to propose such fundamental bylaws, its ability to exercise this or any other right not already dealt with as a Community Power will be limited – see paras 317-318 of the Second Draft Proposal. |

**Power: Removing individual ICANN Directors**

*Question 11: Do you agree that the power for the community to remove individual Board Directors would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

There were **twenty-five** comments in this section.
23 comments suggested **agreement;** 2 do not agree and 7 comments noted **concerns** .
There was no **confusion** rated comment.
There were 2 **divergent** rated comments.
There was **broad agreement** that this power would enhance ICANN accountability.
The **main issue/s or concerns:**

- The NomCom process/ procedure for removing a board member
- There is concern on having a similar transparent process across various SO/ACs vs allowing each SO/AC to have its own procedures

**Specific** concerns or suggestions for further follow up and WP1/CCWG discussion:

- Decision needs to be made on how the procedure will best work to enhance transparency and accountability and equal treatment of board members between various SOs and ACs and the NomCom

**Proposed CCWG response/approach to resolution**

| # | Contributor | Comment | CCWG Response/Action |
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| **366** | RH | Question: Yes. Membership should have full powers. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. |
| **367** | auDA | auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals. | Agreement<br>**Summary / Impression:** Agreement with CCWG Proposal to empower the community by allowing the removal of individual directors<br><br>**Actions suggested:** No Action Needed<br><br>**CCWG Response:** Thank you |

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| **368** | CRG | Removing an individual Director: again this makes the difference between NomCom and SO/ AC directors so obvious, that I m afraid it will necessarily put the present operating procedures of the Board under review. | Divergence<br>**Summary / Impression:** The details of the proposed mechanism require a review of current board operating procedures and an effort not to make very obvious a distinction between SO/AC appointed and NomCom appointed directors<br><br>**Actions suggested:** Consider how to develop an appropriate mechanism<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has clarified in its Second Draft Proposal that any individual director can be removed, and specified the process for this to happen for directors nominated by the SOs or ACs, or by the NomCom. Please see section 7.3 of the second draft proposal. |
| **369** | DCA-T | - Recommendation: Add a clause to allow individuals to be able to lodge valid complaints about a particular board member (s), then this can be viewed by the petition of at least two of the SOs or ACs (or an SG from the GNSO).<br>- The creation of a separate special committee of the NomCom to deal with removal petitions when they arise will be a viable proposition since it allows each special committee to be appointed on case by case then disbanded when a closure of a removal petition is finalized<br>- There should also be a provision that enables a Standing Community Group to investigate any Conflict of Interest allegations against Board members, and the Standing Community Group to determine whether or not such alleged Conflicted Board members should be made to recuse themselves on a pertinent (or particular) Board issue. Conflicted Board members who fail to recuse themselves should be voted out from the ICANN Board. | Agreement<br>**Summary / Impression:** Adds recommendation to the process that allows individual members of the community to lodge valid complaints about a particular board member which can be viewed by the petition of at least 2 SOs/ACs.<br><br>Recommends the establishment of a Standing Committee to investigate Conflict of interest allegations against board members.<br>- Support the establishment of a special committee of the nomcom to deal with removal petitions<br><br>**Actions suggested:** Consider recommendations<br><br>**CCWG Response:**<br>Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has developed a fresh proposal for how to deal with the removal of directors appointed by the Nominating Committee. We look forward to your further feedback on the updated proposal. We have made no specific suggestions regarding how to deal with complaints by the public about a director, or about dealing with conflict of interest allegations. |

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| **370** | AFRALO | Recalling one or more board members without reason is an aberration in itself; Its impact would be that the Board directors will act in the interest of the SOs or ACs that appointed them rather than acting in the interest of the entire community ( ICANN as an organization). The AFRALO members believe that such a power shouldn't exist in the CCWG recommendations. It shouldn' t exist also because the Board directors appointed by the NomCom would have a different recalling procedure that makes the whole members of ICANN board not having an equal treatment. | Divergence<br>**Summary / Impression:** Highlights the risk of the impact of recalling a board on the actions of board members being in the interest of the appointing SO/AC as opposed to the interests of the entire community. The Nomcom appointed members would have a different procedure leaving the impression of different treatment to different board members.<br><br>**Actions suggested:** Consider divergent view and evaluate possibilities of a proposal that would achieve a balanced approach.<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG does not agree with the argument that this power should not exist, based on the strong public feedback in support of it in the public comments and on the CCWG's own analysis.<br>The Second Draft Proposal introduces several changes to this power which help respond to the concerns you identify, including that no director could be removed without a public discussion in the ICANN community forum. See section 7.3 of the Second Draft Proposal for further details. We look forward to your comments. |
| **371** | Afnic | Afnic supports this proposal. Furthermore, Afnic wants to recall that mechanisms set by ACs and SOs for the removal of the board member they appointed should be transparent and aligned between constituencies.<br>- As for the nominating committee, the rationale behind point 234 seems contradictory.<br>- "The advantage of such a separate committee is that it avoids burdening the ordinary NomCom with such matters [removing a NomCom appointed board member]. The disadvantage is that it would require a new set of volunteers to populate it, as it would be preferable for the personnel of the two groups to be separate."<br>- Afnic is of the opinion that it's not a burden but a duty of the NomCom to nominate and, therefore, to remove. | Agreement - Concerns<br>**Summary / Impression:** Supports the proposal Raises the concern of a need of transparency and alignment of the procedure of removal of a board member across different constituencies.<br><br>**Actions suggested:** Consider the concerns raised and re-edit the phrase on the nomcom.<br><br>**CCWG Response:**<br>Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has made substantial changes to this power, including using the new Community Mechanism as Sole Member to deal with the removal of individual directors appointed by the NomCom. We look forward to your comments on the revised proposal. |

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| **372** | RySG | RySG Agrees that an enforceable power to remove individual Board Directors, under special circumstances, would help to enhance ICANN's accountability to the community. The RySG supports the CCWG proposal to enable the respective appointing organization (SO, AC, SG, NomCom or community members) to recall and replace their associated Board member. We also support allowing each appointing group to determine its own voting threshold for recall and replacement of the associated individual Board member. | Agreement<br>**Summary / Impression:** Supports the CCWG proposal to enable the respective appointing organization (SO, AC, SG, NomCom or community members) to recall and replace their associated Board member. We also support allowing each appointing group to determine its own voting threshold for recall and replacement of the associated individual Board member<br><br>**Actions suggested:** Consider divergent view and evaluate possibilities of a proposal that would achieve a balanced approach.<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal. We look forward to your further comments. |
| **373** | BC | - BC supports the CCWG proposal to allow the appointing organization to vote to recall individual directors. This is far more effective accountability mechanism than simply waiting for the next election cycle.<br>- BC supports the proposal to allow each SO/AC to determine its own voting threshold for removing its designated director(s) and appointing replacement(s). | Agreement<br>**Summary / Impression:** Comments in agreement with proposal<br><br>**Actions suggested:** Consider input and evaluate possibilities of a proposal that would achieve a balanced approach for all board members that enhances transparency and accountability.<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). We look forward to your further comments. |
| **374** | USCIB | 99: We support the ability of the community to recall board members. However, because "spilling the board" should be considered a measure of last resort, we support an 80 percent threshold for this action. | Agreement<br>**Summary / Impression:** In support of the proposal<br>Added recommendation of higher threshold for spilling the board<br><br>**Actions suggested:** Consider input on whether there is sufficient support for a higher threshold.<br><br>**CCWG Response:**<br>Thank you for your input. In its Second Draft Proposal, the CCWG has proposed a threshold vote of 75% for the removal of an individual director (see section 7.3). The same vote threshold would apply to recalling the entire ICANN Board (see section 7.4). |
| **375** | LINX | We strongly support the existence of this power. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |

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| **376** | ISPCP | Removal of Directors by the Nominating Committee. ISPCP do not see any justification to use a different NomCom or a different balance within the NomCom, than the NomCom seated at the time of a petition is made to remove Directors selected through this mean. ISPCP believes that using the NomCom is a more consistent and simple way to proceed. The potential "burden" over the NomCom is not seen as a valid argument as such petitions would only happen in exceptional occasions and the level of work required would not destabilize the functioning of the NomCom. | Agreement - Concerns<br><br>**Summary / Impression:** ISPCP believes that using the NomCom is a more consistent and simple way to proceed<br>.<br>**Actions suggested:** Consider concern and clarify why additional appointees need to be added to the nomcom to consider board member removals<br><br>**CCWG Response:**<br>Thank you for your input. In its Second Draft Proposal (section 7.3) the CCWG has proposed using the new Community Mechanism as Sole Member to decide on the removal of directors appointed by the NomCom. We look forward to your further comments. |
| **377** | JPNIC | Yes. While it should not be abused, and discourage a Board member to act according to its fiduciary duties to please a particular stakeholder, it would be reasonable for the community to have this ability. | Agreement - Concerns<br>**Summary / Impression:** In support of proposal Concerned about the potential abuse of the power and risk of appointed board members working to please particular stakeholder groups<br><br>**CCWG Response:**<br>Thank you for your input. |
| **378** | Govt-IT | Considering Paragraph 5.5 "Power: Removing individual ICANN Directors"<br>It's our opinion that, taking into account the horizontal role of the GAC, it might be important that the GAC can propose the removal of a member of the Board. In that case, all the SO/ACs and the NomCom could participate in the voting process. | Agreement - Concerns<br>**Summary / Impression:** In support of the proposal but also provides and additional recommendation that would provide an equal footing of all board members with regard to the removal of a board member.<br><br>**Actions suggested:** Consider recommendation in developing a balance approach to handling board member removal<br><br>**CCWG Response:**<br>Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. We look forward to your further comments. |
| **379** | CWG-St | We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>The CCWG thanks the CWG for its comment. |

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| **380** | IPC | Agree: yes.<br>When considering the removal of a director appointed by the NomCom, the IPC believes a special committee of the NomCom should be established to deal with removal petitions when they arise. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. In its Second Draft Proposal (see section 7.3) the CCWG has proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. We look forward to your further comments. |
| **381** | USCC | The Chamber supports the proposal to enable the appointing organization to recall and replace their Board member as a means to improve accountability. Each respective organization should be given the power to set their own voting threshold. | Agreement<br>**Summary / Impression:** In support of the proposal<br>In support of a mechanism that leaves each SO /AC to develop their own mechanism<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). We look forward to your further comments. |
| **382** | INTA | strongly supports the ability for the removal of individual Board of Directors and believes that such a measure would certainly increase ICANN's overall accountability. The current threshold proposed by the CCWG appears to be sufficient as well. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). We look forward to your further comments. |

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| **383** | .NZ | - supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out.<br>- We suggest that there be common requirements on all appointing bodies as to the thresholds that must be met (75% in the proposal) to remove a director.<br>- We do not take a stance in this comment regarding the best method of allowing the Nominating Committee to remove directors it has appointed, but we do support such directors being able to be removed when the community petitions for this to occur. | Agreement<br>**Summary / Impression:** In support of the proposal<br>Do not take a stance in this comment regarding the best method of allowing the Nominating Committee to remove directors it has appointed, but we do support such directors being able to be removed when the community petitions for this to occur.<br><br>**Actions suggested:** Review the Nomcom mechanism in view of all other comments on a need for a balanced approach.<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). The CCWG has also proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. We look forward to your further comments. |
| **384** | NCSG | Yes, we agree. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. |
| **385** | Board | We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.<br>- With regards to removing an individual board director, what is the threshold that triggers this? How will the process not be capturable? What will be the basis for removing a board member? Is it worth considering a threshold that requires more than one SO or AC to support the removal of a board member – thus ensuring that individual Board members are accountable to the whole community for their performance as a director, not just the SO or AC that originally selected them. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). A common threshold of voting support is required in any SO or AC to allow for director removal (75%). The CCWG has also proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom.<br><br>Objective standards are not proposed for the removal of a director, but the CCWG has suggested that the community elaborate standards that would help set clear expectations for Board members (see para 413).<br><br>We look forward to your further comments. |

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| **386** | CENTR | We support the introduction of mechanisms that would allow the community – not necessarily the "membership body" – to eventually remove individual directors. We would recommend a cautious approach when expanding the role of the NomCom be followed (which should undergo a major review process to refine certain procedures, like the Board members selection and interview phases). We are against asking each Director to sign a resignation letter when accepting their appointment as it could trigger any Board member's accountability profile. A Board member cannot be held legally/administratively accountable with a dated and signed resignation letter because they can always say that the letter was signed and filed before the wrong action they might be held liable. | Agreement - Concerns<br>**Summary / Impression:** In support of the mechanism<br>Recommend a cautious approach when expanding the role of the NomCom be followed after the proposal comes into place . The Nomcom will need to undergo a major review process to refine certain procedures, like the Board members selection and interview phases). Are against asking each Director to sign a resignation letter when accepting their appointment as it could trigger any Board member's accountability profile<br><br>**Actions suggested:** Consider recommendation and concern<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has updated this power in its Second Draft Proposal (see section 7.3). In it, the CCWG has proposed that all the SOs or ACs participating in the Community Mechanism as Sole Member would have the right to petition for the removal of a director appointed by the NomCom. Those SOs and ACs that appoint an individual director would be able to remove them. The threshold is the same – 75%. With the new Community Mechanism as Sole Member model (see section 6 of the Second Draft Proposal), there is no need for the concept of signed & dated resignation letters.<br><br>We look forward to your further comments. |
| **387** | NIRA | Yes. NIRA seeks clarification as to the standing of direction. Would they all become voting members of the Board? | Agreement - Concerns<br>**Summary / Impression:** In agreement<br>Second part of input not clear<br><br>**Actions suggested:** Consider clarification on what was being communicated<br><br>**CCWG Response:**<br>Thank you for your input – but we are not clear on the point made. We suggest you review our Second Draft Proposal on this power (section 7.3) and offer any other comments you may have. |
| | | - If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants<br>- if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235). | |

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| 388 | ALAC | - Some members of At-Large believe that AC/SO-appointed Directors should not be removable: by the community in general; or solely by the AC/SO that appointed them; or under any circumstances. However, many believe that if a group has the ability to appoint a Director, they should also be able to withdraw that appointment. Specifically, a Director is appointed not to "represent" the appointing group, but because the members of the group believe that the person shares common values with the group. If that belief ceases to be correct, then it is reasonable to no longer support that person as a Director.<br>- The ability to remove individual Board members, either by the appointing AC/SO or by a supermajority of the community, is viewed as crucial by most ALAC Members. Without it, the only alternative is to remove the entire Board and this is a cataclysmic alternative as described under the comment to section 5.6.<br>- Regarding removal by the AC/SO that made the appointment, it has been argued that being able to withdraw such an appointment will "politicize" the appointment, that the Director will alter their behaviour because of it, or that the group might withdraw the appointment as punishment for not voting the way they would have wished on a specific issue. The ALAC believes that all of these reasons have little merit.<br>- Politicizing : This a curious comment given the fact that the selection of Board Members by some AC/SOs is already an extremely political process.<br>- Altered behavior : Although the Director does not "represent" the group, surely the Director should remain in regular contact with the group and understand where the group stands on specific issues. When a vote is approaching that may go against the group, it is reasonable for the Director to approach the group and explain why there are other considerations. Such a dialogue should allow the occasional divergence of opinion. If this becomes a regular occurrence, perhaps the person DOES need to be replaced. Moreover, it has been said that some Directors already vote differently near the end of their term, hoping to encourage renewal – a characteristic which one would hopefully encourage non-renewal.<br>- Punishment : This rationale is interesting. We endow a group with the very serious responsibility of appointing Directors to ICANN's Board, and we trust them to do it with care and consideration of the needs of the organization. But we then presume that they may act capriciously if they don't get their way in a particular vote. If we really believe that an AC or SO would act in that way, then ICANN needs to rethink whether constituent bodies should be allowed to appoint Directors at all. Either we have some level of trust that the groups will behave in a serious and thoughtful way on behalf of the organization as a whole, or we don't. We cannot have it both ways.<br>- The process used by an AC/SO to approve removals of one or more Board members must be formally documented in that entity' s operating procedures and approved by that AC/SO. | Agreement " " Concerns "<br>**Summary / Impression:** In support of the power to remove a board member<br>Prefer:<br>- SO/ACs must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants<br>- Mechanism to be enshrined in bylaws<br>- The ability to remove individual Board members, either by the appointing AC/SO or by a supermajority of the community, is viewed as crucial by most ALAC Members<br>- Each group in ICANN is tasked with the very serious responsibility of appointing Directors to ICANN's Board, and we trust them to do it with care and consideration of the needs of the organization. But we then presume that they may act capriciously if they don't get their way in a particular vote. If we really believe that an AC or SO would act in that way, then ICANN needs to rethink whether constituent bodies should be allowed to appoint Directors at all. Either we have some level of trust that the groups will behave in a serious and thoughtful way on behalf of the organization as a whole, or we don't. We cannot have it both ways.<br>- The Bylaws restricting who can sit on a NomCom or what NomCom members can do after their term may need to be reviewed for the members of this sub-committee, particularly in the expected typical case where the sub-committee may technically exist in a given year, but may never actually be convened to take any action.<br><br>**Actions suggested:** Consider concerns raised vis a vis why do we need to have the power to remove the individual board member and the need for a transparent and accountable mechanism across all AC/SOs<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG's Second Draft Proposal has revised and changed this proposed Power (see section 7.3) so that it clearly specifies the different processes for dealing with removal of directors appointed by the NomCom or by an SO or AC. It makes use of the Community Mechanism as Sole Member (see section 6 of the Second Draft Proposal) to deal with NomCom directors. We believe that the changes in the Second Draft Proposal deal with the concerns you have raised, but welcome further comments and suggestions. |

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| | | On the issue of removing NomCom appointees to the Board, the ALAC believes that this should be a community decision, just as it is to remove the entire Board. The ALAC does not support having the regular NomCom remove Directors (and specifically those appointed by previous NomComs). The work of the NomCom is sufficiently difficult that this additional task would either come at a time when they are already overwhelmed with the task of identifying and narrowing down new potential appointees, or could come at a time when the NomCom is not even fully organized. Moreover this responsibility would taint what should be a group that is focussing purely on finding the best candidates for the Board as well as other ICANN bodies. Lastly, since the NomCom must operate in complete secrecy (regarding candidates), it would be a bad plan to alter that rule for this particular task allowing full consultation with the community. It would be equally bad to shroud the removal process in secrecy and NOT allow consultation.<br>- The original intent of the CCWG was that the community (ie the Members or Designators) would remove NomCom appointees. Legal advice indicated that since these people were appointed by the NomCom, they must be removed by the NomCom. There is a simple way to effect this. There should be a sub-committee of the NomCom appointed to carry out NomCom-appointed Director removals. This committee should be composed of the representatives of the SO/AC (or their Unincorporated Associations) empowered to act on behalf of the SO/ACs for all of the other empowerment mechanisms (ie the Members or Designators). We therefore have the removal of NomCom appointees carried out by the very community that desires these removals, without having to create an artificial and perhaps distorting intermediary mechanism. The Bylaws restricting who can sit on a NomCom or what NomCom members can do after their term may need to be reviewed for the members of this sub-committee, particularly in the expected typical case where the sub-committee may technically exist in a given year, but may never actually be convened to take any action. | |
| **389** | SB | a. Five members of the Board of Directors are elected annually for 3 years. I honestly fail to understand why they would be replaced before the end of this term of 3 years. This would allow the seizure of power by a small group.<br>i. So before seeking a solution to replace members of the Board of Directors before the regular elections, might it not be possible to establish an open, transparent framework which is understandable to all... for all elections to the Board of Directors?<br>ii. The establishment of an elections office (for all ICANN elections) would be a first step.<br>b. I therefore oppose to the current proposals regarding the possibility of recalling members of the Board of Directors.<br>i. The recalling of a member of the Board of directors by his or her electoral constituency due to a disagreement is contradictory to his or her independence. | Divergence<br>**Summary / Impression:**<br>Establish open, transparent framework which is understandable to all or all elections to the Board of Directors. Elections office would be first step. Recalling a member of Board due to disagreement is contradictory to independence.<br><br>**Actions suggested:**<br>Reconsider this power.<br><br>**CCWG Response:**<br>Thank you for your comment. While the CCWG has revised and changed its proposal for this power (see section 7.3 of the Second Draft Proposal), it has respected the strong support this power received in the first public comment period. As such it remains an integral part of the proposed accountability improvements the CCWG is proposing. |
| **390** | RIR | There are no objections to the formalization of this power which may already exist for organizations which designate directors to the Board), nor to the requirements of this recommendation. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |

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| **391** | Siva | It is good to empower the Community with these powers. Subject to the cautions and observations expressed as above. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |

**Power: Recalling the entire ICANN Board**

*Question 12: Do you agree that the power for the community to recall the entire Board would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

There were **28** comments in this section.
25 comments suggested **agreement** ; 3 **divergent** comments and 6 comments noted **concerns.**
There was no **confusion** rated comment.
There was **broad agreement** that this power would enhance ICANN accountability.

**The main issue/s or concerns:**

- The threshold for removing the entire board with recommendations for a higher option of 80%

**Specific concerns or suggestions for further follow up and WP1/CCWG discussion:**

- Spilling the board should be a last resort after all else has failed
- Need to clarify the circumstances that would lead to a Board spill
- Clarify details of continuity measures

**Proposed CCWG response/approach to resolution**

| # | Contributor | Comment | CCWG Response/Action |
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| **392** | RH | Question: Yes. Membership should have full powers. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **393** | auDA | auDA agrees that empowerment of the community is a critical and appropriate goal. The CCWG proposes implementing this by endowing the SOs and ACs with the ability to veto changes to ICANN's Bylaws, prevent the Board from straying outside of ICANN's Mission and Core Values and, if necessary, remove Directors or spill the entire Board. auDA supports those proposals. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **394** | DBA | In particular, we would like to emphasize the following: Empowering the community with regard to i.e., spilling the Board , reviewing/revoking the budget and strategic/operating plans and amending the Fundamental Bylaws. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **395** | CRG | I agree that removing the Board as a whole would increase Accountability. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **396** | AFRALO | While giving the community the power of recalling the whole board is an appropriate accountability mechanism, it should be the very extreme step to be taken. AFRALO members wish this would never happen. The majority of 75% proposed in the report for such decision looks acceptable. | Agreement - Concerns<br>**Summary / Impression:** Support the power of recalling the whole board is an appropriate accountability mechanism but it should be the very extreme step to be taken. AFRALO members wish this would never happen.<br><br>**Actions suggested:** Consider concern<br><br>**CCWG Response:**<br>Thank you for your input. The question of the threshold is a matter that has been carefully considered by the CCWG, and we agree that the plan is for this power to be a “last resort”. |

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| **397** | Afnic | Afnic supports this proposal and the limitation of powers it includes. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **398** | IA | Recalling the entire Board should be considered a measure of last resort, we propose an 80% threshold for this action. | Agreement - Concerns<br>**Summary / Impression:** In support of the proposal<br>Recommend a higher threshold<br><br>**Actions suggested:** Consider concern for a higher threshold to remove entire board<br><br>**CCWG Response:**<br>Thank you for your input. The final threshold proposed in our Second Draft Proposal is 75% of votes in the Community Mechanism as Sole Member. Please see section 7.4 of the proposal for further information. |
| **399** | eco | Recalling the entire board is the most important power to ensure that the community can step in in cases where the board is not willing to act in accordance with ICANN's bylaws. Hence, this very community power should be made the most robust one, even in case the CCWG or the community wishes to compromise on other community powers and the associated escalation paths described in the report. | Agreement<br>**Summary / Impression:** In support of proposal<br>Suggest that this very community power should be made the most robust one as it is the most important in ensuring the community can step in when the Board is not willing to act in accordance with ICANN's bylaws.<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG shares the view that this power, along with the others, must be enforceable. This has been achieved through development of the Community Mechanism as Sole Member model detailed in our Second Draft Proposal (section 6). |
| **400** | RySG | RySG agrees that an enforceable power to recall the entire ICANN Board would help to enhance ICANN's accountability to the global multi-stakeholder community. We support the 75% member voting threshold for recalling the entire Board. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **401** | BC | - BC supports the CCWG proposal to allow community Members to vote for removing the entire ICANN Board. Some in the BC support a 75% Member voting threshold to recall the entire Board. Some in the BC support an 80% threshold. (p.50)<br>- BC notes that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability.<br>- BC appreciates that CCWG anticipates the need for operational continuity measures in the event the entire ICANN Board is recalled (p.50), and will comment on the details when they are developed. | Agreement<br>**Summary / Impression: B** C supports the CCWG proposal to allow community Members to vote for removing the entire ICANN Board<br>Observes: that enforcing this power may require SO/ACs to adopt Member status under California Law, and encourages the CCWG to explain how Member status can be created and maintained without undue costs, complexity, or liability<br>Expresses interest in details of continuity measures<br><br>**Actions suggested:** Consider concern and recommendation<br><br>**CCWG Response:**<br>Thank you for your input. The enforceability of this power with a 75% threshold has been achieved through development of the Community Mechanism as Sole Member model, detailed in our Second Draft Proposal (see section 6). |

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| **402** | .UK | *We are concerned that many of the mechanisms identified in the proposal will be massively disruptive – nuclear options. One result of sanctions of such consequence is that they are considered unusable.* Sacking the Board – a Board that has been selected by the community and where many of the members can be held directly to account by their own community – seems to be a case in point. This is particularly so in that there is a small pool of community candidates willing to take on the role. (One could question whether there should be more rotation of community-appointed members on the Board to develop a wider pool of experienced and knowledgeable candidates.)<br>However, at a time of crisis in the organisation, it is hard to see who could step forward to populate a new Board at short notice and who will be able to command the trust needed to rebuild the organisation's confidence. The steps following sacking the Board or individual Board members need to be considered carefully, as do scenarios for rebuilding the organisation once the ultimate mechanisms have been triggered. | Concerns<br>**Summary / Impression:** concerned that many of the mechanisms identified in the proposal will be massively disruptive<br>One could question whether there should be more rotation of community-appointed members on the Board to develop a wider pool of experienced and knowledgeable candidates who can be able to command the trust needed to rebuild the organization's confidence. In the event of a board spill.<br><br>**Actions suggested:** Consider concern<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG has taken your comments on board in preparing its Second Draft Proposal. The updated approach to recalling the Board is set out in section 7.4. We encourage you to review this and provide further comments. Our hope is that the overall package of measures does indeed mean recalling the ICANN Board as a whole will remain a power 'of final resort'. |

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| **403** | LINX | We strongly support the existence of this power. The threshold to spill the entire ICANN Board is too high:<br>a. ICANN interacts with the different communities (Numbers, Country-Code Domains, Generic Domains, IETF) in different ways; b. Some of those communities (Numbers, IETF) have additional accountability mechanisms already to preserve their independence from ICANN. The ccTLD community is likely to acquire new such mechanisms as a result of Transition; c. We do not question, and indeed support, these distinctions. Nonetheless, it does mean that the gTLD community is the one that is most likely to ever need to exercise the extraordinary power to spill the ICANN Board; d. We do not think the power to spill the Board should be exercised lightly, and support the requirement for a high threshold within a given community; e. However, in the event that the unanimous decision of the gTLD community were to ask for a Board spill, we think it untenable and highly destabilising to ICANN that the Board remain in place merely because the ccTLD community and the numbers community were not affected by the cause of the gTLD community's complaint; f. To be clear, a choice must be made: either it must be possible for one or more of the SOs to be forced to accept the continuation in office of a Board in which it has utterly lost confidence, or it must be possible for one or more SOs to be forced to accept that a new Board will be required, even though it was content with the existing one. Neither situation is desirable, the only question is which would be worse; g. In our judgement, it is far worse to impose on an entire community a Board that is unacceptable to it, than to require a community to select alternative nominees from the huge range available to it. The continuation in office of a Board that was unacceptable to gNSO would pose grave existential risk to the future of ICANN; h. Accordingly, we recommend that any single SO should be able to dismiss the entire ICANN Board if it passes a vote of 'No Confidence' by a high threshold within itself (e.g. 75% or 80%). | Agreement - Concerns<br>**Summary / Impression:**<br>- Strongly support the existence of this power. The threshold to spill the entire ICANN Board is too high and support the requirement for a high threshold within a given community<br>- ICANN interacts with the different communities (Numbers, Country-Code Domains, Generic Domains, IETF) in different ways;<br>- Some of those communities (Numbers, IETF) have additional accountability mechanisms already to preserve their independence from ICANN. The ccTLD community is likely to acquire new such mechanisms as a result of Transition;<br>- Do not question, and indeed support, these distinctions. Nonetheless, it does mean that the gTLD community is the one that is most likely to ever need to exercise the extraordinary power to spill the ICANN Board;<br>- Recommend that any single SO should be able to dismiss the entire ICANN Board if it passes a vote of 'No Confidence' by a high threshold within itself (e.g. 75% or 80%)<br><br>**Actions suggested** : Consider concern and review the mechanism so that one constituency is not seen as the only one in need of the power.<br><br>**CCWG Response:**<br>Thank you for your comment. This suggestion was carefully and thoroughly considered by the CCWG, but the considered view of the group, consistent with the public feedback overall, does not support your proposal. As such, the Second Draft Proposal at section 7.4 retains a high threshold for the exercise of this power. We encourage you to consider the revised proposal and welcome your further comments. We also note that the section contains this suggestion in condensed form, from a participant affiliated with you. |
| **404** | USCIB | However, because "spilling the board" should be considered a measure of last resort, we support an 80 percent threshold for this action. | Agreement<br>**Summary / Impression:**<br>Suggest 80% threshold<br><br>**Actions suggested:** Consider suggestion<br><br>**CCWG Response:**<br>Thank you for your input. We have considered the matter carefully but in the end retained the 75% threshold. The CCWG emphasises that this is of all the votes that could be cast in the Community Mechanism as Sole Member. See our Second Draft Proposal section 7.4 for further details on this power, or section 6 for more about the model. |

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| **405** | JPNIC | - We would like to understand, what the specific circumstances are, to require the recall of the entire Board, and why this is needed in addition to have the ability to recall individual Board members. Until they are clear, we are not sure at this stage whether this further enhances ICANN's accountability, in balance with the risk of destabilizing the organization and the overhead of preparation needed to prepare for such situation.<br>- In case there are specific circumstances for this need, out of the options provided in paragraph 246, we do not think option 1) makes sense, if we are overthrowing the entire Board due to its lack of accountability, to ask this board to act as "caretaker", as there must be very serious reasons to overthrow the entire existing Board. | Divergence<br>**Summary / Impression:**<br>Seeks grounds for recall of the entire Board and why this is necessary beyond removal of individual directors<br>Do not support outgoing Board being caretakers (sub-para 1 of Para 246 in the proposal)<br><br>**Actions suggested:** Need to specify clearly circumstances that would lead to recall of the entire board<br><br>**CCWG Response:**<br>Thank you for your response.<br><br>As this is the ultimate recourse, it is not intended to specify criteria - but to set the high threshold so that it requires a very strong community view to exercise this power.<br><br>Will provide more detail on caretaker role in next version of proposal.<br><br>The Second Draft Proposal does provide more detail on a different caretaker mechanism, by requiring the SOs and ACs participating in a vote to recall the Board to propose alternate directors to serve if required. Please review section 7.4 of the Second Draft Proposal and we welcome any further comments you may have. |
| **406** | CWG-St | We understand that the CCWG Accountability proposals introduce new powers for the community, which include the ability to remove individual Directors (section 5.5) or recall the entire Board (section 5.6). Broadly, we believe that these proposals will address the CWG Stewardship requirement and look forward to working with you as further details of such proposed processes are developed. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>The CCWG thanks the CWG for your input. Our Second Draft Proposal retains this power, albeit with some modifications. See section 7.4. |
| **407** | IPC | Agree: yes, and Yes, the requirement threshold is sufficient. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **408** | USCC | Yes, but believe there should be a high threshold as this should be an option of last resort. We strongly support the CCWG goal of binding accountability, which may only be achieved through legal mechanisms is necessary as merely providing power to spill the board is in itself not enough. | Agreement - Concerns<br>**Summary / Impression:** In support of proposal Recommend a higher threshold as this should be an option of last resort.<br><br>**Actions suggested:** Consider concern<br><br>**CCWG Response:** Thank you for your input. |
| **409** | INTA | supports granting the Community the power to recall the entire Board of Directors. The proposed processes and threshold appear appropriate. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input |

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| **410** | .NZ | - supports this power as an enhancement to ICANN's accountability. We are in support of the requirements set out. The CCWG must carefully consider the threshold – 75% is the highest that is viable otherwise the power will become only theoretical. | Agreement<br>**Summary / Impression:** In support of proposal and the requirements set out. The CCWG must carefully consider the threshold – 75% is the highest that is viable otherwise the power will become only theoretical.<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **411** | NCSG | Yes, we agree. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **412** | Board | - We understand the community's need to have a tool to deter the Board (as a whole or as individuals) from neglecting ICANN's mission, and how a powerful tool may allow for appropriate action to deter such behavior.<br>- With regards to removal of the entire board, what actions trigger this? What mechanisms will be in place to ensure continued stability and security of ICANN's mission and responsibilities, while a new Board is appointed? | Agreement "<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:**<br>Thank you for your input. Our Second Draft Proposal deals with the caretaker question you raise in more detail – please see section 7.4. It also sets out some more detail about the requirements to trigger a recall. We welcome any further comments. |
| **413** | CENTR | We support the introduction of mechanisms that would allow the ICANN community to eventually recall the entire ICANN Board. We believe that both this community power, the steps to implement it and the causes to enforce this ultimate power must be extremely well designed and transparently described. | Agreement<br>**Summary / Impression:** In support of proposal Suggest that the steps to implement it and the causes to enforce this ultimate power must be extremely well designed and transparently described<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **414** | NIRA | NIRA agrees. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |
| **415** | GG | For similar reasons, we are concerned that the power to remove the ICANN Board as a whole could have a potentially destabilizing effect on the Internet ecosystem. While we believe that the Proposal's suggestion that the community have the power, in exceptional circumstances, to remove individual Board members is a prudent way to enhance the organization's overall accountability, we believe that the decision to remove the entire Board should still happen on the basis of particular, serious concerns with each individual Board member, not a generalized objection to the Board as a whole. For this reason, we would favor the community only having the power to remove individual Board members. | Divergence<br>**Summary / Impression:**<br>It could have a destabilizing effect on ecosystem. Decision should happen on basis of serious concerns with each Board member, not a generalized objection as a whole.<br><br>**Actions suggested:**<br>Focus on community only having power to remove individual Directors.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG does not share your judgement about the impact of this power on the Internet ecosystem. The Second Draft Proposal does however require some different steps in using this power that may allay some of your concerns. We recommend you consider section 7.4 of the updated proposal and offer further comments if you wish. |

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| **416** | ALAC | - If we ultimately decide that legal status for AC/SOs is required to allow removal of Board members (or for any other reason), the following MUST be mandatory: ACs, SOs, their Unincorporated Associates (UA) and the individuals empowered to act on behalf of the UA, SO or AC must be fully indemnified by ICANN against any action that might be taken against them in their capacity as ICANN participants.<br>- if there is a mechanism to ensure that Board member removal can be enshrined in the Bylaws without either a designator or membership model, the ALAC would far prefer that route. It has been suggested that agreements pre-signed by Board members prior to taking their seats agreeing to resign at the request of the community could accomplish that (similar to the mechanism described in Paragraph 235).<br>- The ALAC has reservations about this mechanism. Exercising it could potentially be catastrophic for ICANN, all the more so given that to date there has not been a viable proposal on how to govern ICANN in the interim until a new Board is selected. The potential for any interim Board being subject to capture or being unresponsive to community input is high, as is the danger of not having an effective Board in place to address any unforeseen circumstances that might arise. It is because of these difficulties that the ALAC would far prefer the "surgical" approach of carefully removing the Directors that the community believes are the source of ICANN's problems while leaving a core Board in which it has confidence. | Concerns<br>**Summary / Impression:** The ALAC has reservations about this mechanism. Exercising it could potentially be catastrophic for ICANN, all the more so given that to date there has not been a viable proposal on how to govern ICANN in the interim until a new Board is selected. The potential for any interim Board being subject to capture or being unresponsive to community input is high, as is the danger of not having an effective Board in place to address any unforeseen circumstances that might arise. It is because of these difficulties that the ALAC would far prefer the "surgical" approach of carefully removing the Directors that the community believes are the source of ICANN's problems while leaving a core Board in which it has confidence.<br><br>**Actions suggested:** Consider concerns and review the proposed mechanism<br><br>**CCWG Response:**<br>Thank you for your input. The CCWG remains of the view that this power should remain part of the proposal, based on its own analysis and work and on the strong public comments in favour of it offered in response to our first proposal. The Second Draft Proposal addresses many of the concerns you raise – we welcome your comments on the updated proposal (see section 7.4). |
| **417** | SB | ii. Recalling the whole Board of Directors<br>1. It is possible that the process will be too complex and will never go beyond distracting the participants and the staff, not making any progress related to ICANN's functions.<br>2. It is also possible that it will be so painful for ICANN (as an organization) that it will lead to its end and its subsequent transfer to an intergovernmental structure (which we do not want.)<br>**c. Alternative proposal**<br>i. In a given year the community will have the possibility of recalling up to **7 members of the Board of Directors** .<br>ii. This proposed limit of 7 members allows the retention of 9 members who will undertake everyday operations until the 7 new members are elected.<br>iii. With the proposed annual election of 5 members, it would be possible to change up to 12 members each year. | Concerns - New Idea<br>**Summary / Impression:**<br>- Complex process that will might lead to a subsequent transfer to an intergovernmental structure.<br>- Alternative proposal: limit to recall up to 7 members of the Board of Directors. It allows retention of 9 members who will undertake operations until 7 new members are elected. It would allow possibility to change up to 12 members a year.<br><br>**Actions suggested:**<br>Consider proposed alternative.<br><br>**CCWG Response:**<br>Thank you for your comment. The CCWG has revised and changed the way this proposed power would operate. The detailed explanation is in section 7.4 of our Second Draft Proposal. We have not adopted your proposed approach, but we would welcome your comments on our second proposal. |

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| **418** | RIR | In principle there are no objections to the introduction of this power, assuming that this power can only be exercised with the proposed threshold (75%). However, concerns were expressed as to whether such a threshold can be readily achieved by a membership-based organization under Californian law. It was appreciated that under Californian law the entire board could be dismissed, if requested by a simple majority of the members. If this understanding is correct, the introduction of this power would put at risk ICANN s stability and have a negative impact on the organization's accountability. Therefore, it is recommended that the CCWG ensure that a higher threshold than simple majority can be required for the exercise of this power under Californian law, and that the proposed structure for accomplished this be detailed in the proposal | Agreement - Concerns<br>**Summary / Impression:**<br>• No objection<br>• Can such a threshold be readily achieved by a membership-based organization under Californian law? Introduction of power would put at risk stability.<br>• Ensure a higher threshold than simple majority<br><br>**Actions suggested:**<br>Consider higher threshold than simple majority.<br><br>**CCWG Response:**<br>Thank you for your comment. The Second Draft Proposal from the CCWG addresses your concern. The new Community Mechanism as Sole Member model (see section 6) avoids the problem of the proposed threshold (still 75% - see section 7.4 for the details) being overridden by statutory rights of members. We welcome your review of the updated proposal and any further comments you have. |
| **419** | DotMusic | DotMusic agrees that the community should have the power to remove Board members or the entire Board. A special committee may be considered to handle these petitions for any Board member removal. | Agreement<br>**Summary / Impression:**<br>In support of proposal but consider a special committee to handle petitions.<br><br>**Actions suggested:** Consider special Committee.<br><br>**CCWG Response:**<br>Thank you for your input. The Second Draft Proposal includes more details for how to deal with the problem of an interim board – please review section 7.4 and offer us any further comments you have. |
| **420** | Siva | So long as an eco-system prevails within ICANN wherein the Community is not “captured”, the provision of powers to recall the entire ICANN Board is notionally appropriate if acknowledged as Titular powers to be invoked during an unlikely disaster. | Agreement<br>**Summary / Impression:**<br>Appropriate as long as prevails ecosystem where there is no capture.<br><br>**Actions suggested:** No action needed<br><br>**CCWG Response:** Thank you for your input. |

**Incorporating the Affirmation of Commitments into the ICANN Bylaws**

*Question 13: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments principles would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

*Question 14: Do you agree that the incorporation into ICANN's Bylaws of the Affirmation of Commitments reviews would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

This brief summary (draft 2) analyses the 45 comments in response to questions on the Mechanism to Empower the Community. It offers some high level observations from the Rapporteur; looks at the key issues and the community's view on these as evidenced in the comments; sets out some broader or more general themes that came through in the comments; and summarises the tags applied to the comments.

30 comments were submitted
29 comments **agreement**
9 comments noted
2 **concerns**
1 **confusion**
1 **divergent**

There was **broad agreement** that the incorporation of AOC principles and reviews into the bylaws would enhance ICANN accountability.

The **main issue/s or concerns:**

- Inclusion of location of incorporation in the fundamental bylaws (as part of the review text). As argued there is neither a consensus on this nor is it fundamental to the global community.
- What happens to the AOC following incorporation into the bylaws
- Composition of the various groups. How is full diversity of the community handled?

**Specific** concerns or suggestions for further follow up and WP1/CCWG discussion:

- Manner in which reviews can be sunset. While there seem to be general acceptance of reviews being sunset, there is concern with ATRT being responsible for doing so.
- Manner in which reviews are done; i.e. decision procedures, transparency and their responsiveness to comment
- Is every 5 years frequent enough for all reviews, especially for the first few cycles after the transition.
- Concerns about requirement for full transparency for review teams, yet a continued need for some issues to remain confidential with regard to full open disclosure.
- Degree to which ATRT is responsible for reviewing ICANN accountability in response to other reviews.
- Whether to require ICANN to implement review team recommendations, or rely upon community powers to challenge a board decision not to implement a recommendation (CCWG proposal)

**Proposed CCWG response/approach to resolution**

- Create an explicit proposal for how the AOC might be mutually cancelled as part of the transition.
- Add detail about the composition of the various review groups
- If all of the information does not need to be included in the ByLaws, create side document taking elements of the ICANN implementation of the AOC review as draft operating procedures for [these] reviews. Completing that document can be a WS2 task
- Continue discussion on whether it is appropriate to designate Bylaws Article XVIII (location of incorporation) as a Fundamental bylaw.

| # | Contributor | Comment | CCWG Response/Action |
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| **421** | RH | Question 13: Disagrees. ICANN should not be incorporated in the USA | Agreement - Concerns<br><br>**Summary / CCWG Response:**<br>RH acknowledges that jurisdiction is distinct from where ICANN is organized and located. " ICANN will be subject to the laws of the countries in which it operates". No disagreement there.<br><br>RH says ICANN would "primarily be subject to the laws of the country in which it is incorporated. If California law does not allow the membership to exercise full powers, then it might be better to incorporate ICANN elsewhere" Legal advice provided to the CCWG indicates that CA law allows membership to exercise (and enforce) full powers, so there is no disagreement here. Though full powers in RH's definition goes beyond the set of powers enumerated in the proposal.<br>RH says, " ICANN should not be incorporated in the USA, or in any other powerful state that might be tempted to interfere with ICANN for political or economic reasons. It should be incorporated in a neutral state that is unlikely to interfere, for example Switzerland."<br><br>On this point, ICANN's Articles of Incorporation and Bylaws Article XVIII require California incorporation and location. The CCWG is not proposing a change in ICANN's state of incorporation.<br><br>As to the question of whether Bylaws Article XVIII should be a Fundamental Bylaw, RH would likely say, No. However, RH seems to imply that all bylaws should be fundamental, with this comment: " the membership, and only the membership, should have the power to change the bylaws."<br><br>Note that RH suggests that individuals should be the Members, not the ACs and SOs themselves. There was no support for this in the CCWG or other public comments.<br><br>**Actions suggested:**<br>Make sure jurisdiction and state of incorporation are serious topics for WS2. |
| **422** | DBA | Question 14: important that governments are given appropriate weight in the proposed multi-stakeholder reviews, including the ATRT Reviews. | Agreement<br>**Summary / Impression:**<br>DBA supports import of AoC Reviews into ICANN bylaws. DBA notes that "it is important that governments are given appropriate weight in the proposed multi-stakeholder reviews, including the ATRT Reviews"<br><br>**CCWG Response:**<br>In CCWG's 2 nd draft, the precise makeup of the AoC review teams is specified in para 514, and includes governments along with all AC /SOs. |

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| **423** | WC comment 1 | The inclusion of the Affirmation of Commitments into the ICANN Bylaws strengthens community review of ICANN's activities. | Agreement<br>**Summary / Impression:**<br>It strengthens community review of ICANN activities |
| **424** | CRG | Not if transferred as they are today. Based on my limited experience in ATRT2 I think the structure of the 4 reviews is outdated, cumbersome, and too slow for an ICANN directly accountable to the community. In itself there is a potential conflict of interest there in the community reviewing and organisation led by the community. This is a very serious task for WS2 to define how reviews have to be changed so they enhance accountability under the new stewardship! | Divergence<br><br>**Summary / Impression:**<br>CRG might mistakenly believe that CCWG proposed importing the AoC reviews "as they are today". In fact, CCWG proposed many changes to the existing AoC reviews.<br>As to whether the AoC reviews are "too slow", the CCWG did not propose more frequent reviews. Instead, we assume that enhanced IRP and other enforceable community powers will provide quick remedies to decisions or inactions by ICANN.<br><br>**Actions suggested:**<br>No action needed.<br><br>**CCWG Response:**<br>CCWG does not see the suggested conflict of interest, since the community is distinct from the ICANN board and management that handles implementation and operations.<br>Folding these reviews into the bylaws now is important, since either ICANN or NTIA could terminate the AoC at any time.<br>Para 551 suggests that ATRT should complete its review within one year of convening its first meeting. |
| **425** | Afnic | Incorporating the AoC into the ICANN Bylaws is a coherent step toward the termination of the unique US oversight role for ICANN. Therefore, Afnic supports this proposal, along with the revised version of the Bylaws proposed at 3.1and including the IANA function review. | Agreement<br><br>**Summary / Impression:** In support of proposal<br><br>**Actions suggested:** No action needed |
| **426** | IA | - IA agrees this is a necessary step in the transition, and must be completed prior to the transition.<br>- The various review mechanisms provided by the AOC have historically been helpful tools for addressing concerns with ICANN' s accountability.<br>- IA strongly supports the proposed Bylaw changes regarding the new gTLD program, particularly the requirement that recommendations from the previous review be implemented before rounds of new gTLDs can be opened. | Agreement<br><br>**Summary / Impression:** In support of proposal<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **427** | Govt-ES | - Key elements of the AoC addressing ICANN's commitments to the Community are proposed to be reflected in ICANN's Bylaws and Articles of Incorporation (page 20). [ Note: request paragraph number ]<br>We ask for a detailed timescale, requirements and processes that would lead to the termination of the AoC, including steps to be taken by the USG and ICANN. Full privatization of ICANN requires all contractual links with the USG to be finished.<br>- While the AoC actually states that ICANN should be headquartered in the USA, and the Articles of Incorporation set forth that ICANN is a non-profit public benefit corporation under the California law, we do not believe this should be incorporated into a core or fundamental value of ICANN (page 21), for the reason that the remaining of ICANN subject to Californian Law is not fundamental to the global Internet community.<br>- Regarding periodic reviews, provisions are insufficient to ensure that the community input is duly and fairly taken into account. Some language regarding the decision making procedures that the review team should follow and how their deliberations are reflected in their final recommendation report.<br>- Recommendations issued by the review team should explicitly indicate whether they were reached at by consensus, qualified majority or simple majority in the team. For the sake of transparency, the review teams should describe how they have considered community inputs explaining why they embraced the ones that made their way to the final report and why they rejected the other ones. In addition, a table displaying the suggestions received and their authors ranked by their level of support among community members contributing to the comment periods should be publicly available, as a reflection of the community's preferences. | Agreement with suggestions and Concerns<br><br>**Summary / Impression:**<br>• Wants to terminate the AoC after transition.<br>• Article 18 should not be a Fundamental Bylaw.<br>Several ideas about transparency and process for the periodic reviews imported from the AoC.<br><br>**Actions suggested:**<br>Consider proposed process improvements.<br>**CCWG Response:**<br>On terminating the AoC: The CCWG 2 nd draft proposal (para 507) now reads, "After these aspects of the AoC are adopted in the ICANN Bylaws, ICANN and the NTIA should mutually agree to terminate the AoC."<br><br>Regarding the periodic reviews imported from the AoC: CCWG 2 nd draft proposes details for how review teams reach decisions (para 517). Para 529 requires publication by Review teams of the degree of consensus for their conclusions. Para 533 requires review team to consider public comments on draft reports. |
| **428** | RySG | - Q13 - agrees to incorporating key principles and elements of the Affirmation of Commitments (AoC) into the ICANN Bylaws<br>- It further enshrines key accountability and transparency review commitments and helps to eliminate a remaining vestige of the United States government's unique role with regard to ensuring ICANN's accountability. Transitioning key components of the AoC would, in effect, transition that oversight from the USG to the global multi-stakeholder community.<br>- RySG supports the list of requirements for this recommendation<br>- RySG note that there are some conflicting revisions proposed in Sections 3 and Section 6. Generally, we support the more active language used Section 3. We trust that the CCWG-Accountability will reconcile these discrepancies in its final proposal. In the final proposal, we recommend that a single and complete redline of the ICANN Bylaws be included reflecting both the proposed changs to the Mission and Core Values as well as the incorporation of the Affirmation of Commitments into the Bylaws.<br>- RySG has one point of concern with respect to the following text: *ICANN will ensure that as it expands the top-level domain space, will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.* We agree that the above issues are important topics, but wish to underscore that these topics must be addressed through the multi-stakeholder model and not unilaterally by ICANN as an organization. We urge that this be clarified in the final proposal.<br>Q14. agrees to incorporating the Affirmation of Commitments (AoC) reviews into the ICANN Bylaws<br>- RySG believes the Accountability and Transparency Reviews must be incorporated.<br>- RySG other reviews, such as the Whois review, could be sunset. The RySG believes that the community should have the power to designate participants on future reviews (unlike today, where the Chairs of the ICANN Board and GAC have that unique power.) | Agreement - Concerns<br>**Summary / CCWG Response:**<br>1. Regarding conflicting terms, the CCWG 2 nd draft places commitments to perform AoC Reviews in the Reviews section of bylaws, and not as part of Core Values.<br><br>2. RySG prefers a bottom-up multistakeholder process to interpret new gTLD review criteria. CCWG proposed Core Values require a bottom-up ulti-stakeholder process, which applies to recommendations coming from AoC review teams as well.<br><br>3. RySG supports ATRT having role to amend or sunset periodic reviews, and believes the WHOIS review is a good candidate for sunset. CCWG notes that the first ATRT could recommend changes or sunset of the WHOIS review. |

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| **429** | JH | - It ‘s not reasonable to fully incorporation all the principles of AOC into Bylaws. It’s a possible option to abolish AOC and put some appropriate principles of AOC into ICANN Bylaws. Because on the one hand, some principle in AOC could regulate ICANN, such as “Require the ICANN Board to consider approval and begin implementation of review tam recommendations, including from previous reviews.” But the word “Consider” is too weak. Language should be changed in this principle and ICANN Board "must" implement in time. On the other hand, AOC also some terms are questionable by communities, such as ICANN commit to always headquartered in LA, California, USA. Those questionable terms should not be incorporated into Bylaws before communities consensus.<br>- Put some appropriate principles of AOC into ICANN Bylaws would enhance ICANN's accountability. Actually, this is to solve the problem of effectively implementation of ICANN Board. Without strict regulations in Bylaws, even if the IRP determined that ICANN is wrong and there are specific penalties or solutions, It is still possible for ICANN board to delay the process of implementation or do nothing. So the “appropriate” principles should be the principles that could regulate ICANN board to some extent. Additionally, ICANN should be accountable for all the stakeholders, not only for US government. According to the AOC contract relation between US government and ICANN, ICANN is only accountable for US government. Well, after abolishing AOC and partly incorporation some appropriate principles into Bylaws, ICANN will be more accountable for multi-stakeholders. Moreover, some principles from AOC are not enough to make ICANN accountable for community. There should be more regulations in Bylaws. Currently, regulation to be binding upon ICANN Board is too vague, should be more clear and powerful. For example, if removal of a director is determined, then ICANN does not implementation, automatic removal after 10 days; if a policy made by ICANN Board is determined to be rejected by ICANN communities, the policy will be automatically stopped to implementation. | Concerns<br>**Summary /CCWG Response:**<br>JH indicates ICANN should be required to implement review team recommendations. Th e CCWG concluded that some review team recommendations could be rejected or modified by ICANN, for reasons such as implementability or cost (para 508). If the community disagreed with the Board’s decision, it could invoke the Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP. Moreover, CCWG Legal Counsel say that ICANN Bylaws could not require the board to implement review team recommendations.<br><br>It is likely that JH would not want Bylaws Article XVIII to be a fundamental bylaw. JH supports having enforceable IRP decisions. CCWG agrees.<br><br>JH does not want ICANN to be accountable to US Government via a bilateral agreement such as the AoC. The CCWG 2 nd draft proposal (para 507) reads, “After these aspects of the AoC are adopted in the ICANN Bylaws, ICANN and the NTIA should mutually agree to terminate the AoC.“ |
| **430** | BC | - BC supports having key commitments from the Affirmation incorporated in ICANN Bylaws according to CCWG proposal (p. 55).<br>- BC believes that *Affirmation of Commitments* paragraph 8b should also become a Fundamental Bylaw" “ICANN affirms its commitments to: 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”<br>- BC believes that Article XVIII should be designated a Fundamental Bylaw, so that it would require 75% community voting approval for any change. BC Members presently rely upon contract enforcement and legal action based upon the US court system and do not want that to be changed without broad community approval.<br>- Moreover, hopes to rely upon statutory powers to recall the Board and other actions, as necessary, to ensure that the ICANN Board and staff remain accountable to the community. The legal analysis indicating that these powers are available to Members of the organization was predicated on the understanding that ICANN would remain a non-profit organization organized under California Law. | Agreement<br>**Summary / Impression:**<br>BC believes Article XVIII should be a Fundamental Bylaw.<br><br>**CCWG Response:**<br>CCWG 2 nd Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255. |

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| **431** | .UK | We welcome the approach of embodying the Affirmation of Commitments into ICANN's DNA and of building on the AoC reviews. This process has been criticised in the past as another layer of review ("ICANN reviewing itself to death") and has also excited little interest in the community. Yet as part of enabling the community, the mechanism provides a way of ensuring concerns are being heard and addressed. We believe that this process is fundamental as a way of building trust in ICANN and it could usefully be included earlier in the report: it is based on improving the organisation, rather than sanctioning it.<br>However, the processes are slow, greedy on volunteers' time and cumbersome (a year to review and even longer to implement: given the frequency of the reviews, one can be started before all the recommendations from the previous review have been fully considered).<br>Hence we welcome the proposals to increase the time cycle of the review process and of focussing reviews on areas of greatest concern.<br><br>The requirement for an annual report on the state of improvements to accountability and transparency is a good idea: we think it should be a clear part of the CEO's report. | Agreement with suggestion<br>**Summary / Impression:**<br>UK believes that periodic reviews imported from AoC are slow and consume valuable volunteer time. UK recommends increasing the cycle time of periodic reviews.<br><br>**CCWG Response:**<br>AoC requires reviews every 3 years. CCWG proposes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years.<br><br>CCWG recommends that ATRT "should complete its review within one year of convening its first meeting" (para 551).<br><br>In para 512, CCWG proposes "ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the Review Teams defined in this section." |
| **432** | USCIB | The AoC currently calls for several reviews that have served as effective tools for reviewing and strengthening ICANN's accountability. USCIB therefore strongly supports the inclusion of the Accountability and Transparency Review (ATRT), the Security, Stability, & Resiliency of the DNS Review, the Competition, Consumer Trust, & Consumer Choice Review, and the WHOIS Policy Review into Article IV of the ICANN Bylaws so that ICANN will be legally bound to continue them on a regular and permanent basis. In sum, we regard incorporation of the AoC into the ICANN Bylaws as a fundament requirement of the transition. This will provide the Internet user community with greater confidence that the safety, security, and resiliency of the DNS will continue uninterrupted as NTIA's stewardship of the IANA functions is transitioned.<br>- para 345: We support the bylaw changes on the new gTLD program generally and specifically: "Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous review required by this section have been implemented." | Agreement<br>**Summary / Impression:**<br>- USCIB believes Article XVIII should be a Fundamental Bylaw.<br>- Regarding periodic review of new gTLD expansion, USCIB supports CCWG proposal to require implementation of prior review recommendations.<br><br>**CCWG Response:**<br>CCWG 2 nd Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255. |
| **433** | LINX | We support the CCWG's proposed changes to the Core Values. We have no other comments regarding the incorporation of items from the Affirmation of Commitments. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **434** | JPNIC | Binding the AoC related to Accountability into the Bylaws would ensure that ICANN will be committed to them. However, instead of writing what is in the AoC in the Bylaws and producing duplicate description in two different documents, we suggest to reference relevant sections of the AoC in the Bylaws and bind referred sections by the Bylaws. This would avoid a situation in the future where the Bylaws or AoC was changed but the other document remains unchanged. | Agreement - Concerns<br>**Summary / Impression:**<br>JPNIC might mistakenly believe that CCWG proposes "binding" the AoC into the bylaws. I n fact, CCWG proposed many changes to the existing AoC reviews as part of bringing them into the bylaws.<br><br>**CCWG Response:** The CCWG is proposing several enhancements to the AOC reviews. Incorporating AOC by reference would lose these improvements. Because the AOC is a bilateral agreement between the USG and ICANN, it is not appropriate for it to be referred to in the bylaws after the transition. That is why the CCWG has taken the approach of including the commitments direct into the bylaws, proposing that the AOC be terminated at a later point. |
| **435** | CWG-St | We understand that the CCWG Accountability proposes to incorporate the review system defined in the Affirmation of Commitments into ICANN's Bylaws, including the ability to start new reviews (section 6.2, page 60). Moreover, that based on the CWG-Stewardship proposal, the CCWG introduced a recommendation to create a new review, based on the requirements we had provided to you. | Agreement<br>**Summary / Impression:** In support of proposal<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **4**<br>**36** | IPC | - The IPC supports having key commitments from the Affirmation incorporated in ICANN bylaws according to CCWG proposal (p. 55). IPC suggests that Affirmation of Commitments paragraph 8b should also become a Fundamental Bylaw.<br>- The IPC supports the notion of enshrining the key reviews in the ICANN bylaws to enhance ICANN accountability. The IPC also supports the CCWG proposal to empower the Accountability and Transparency Review Team (ATRT) to create new reviews and reschedule reviews as community priorities demand. However, empowering the ATRT to completely eliminate any of the reviews now provided for in the AoC raises concerns. Rather than the expedited six-month review Board review process applicable to ATRT recommendations generally, the elimination of any current AOC-mandated review should be undertaken only through amendment of the relevant new Bylaws through the amendment process ordinarily provided.<br>- Paragraph 305 should be modified to provide that Review Teams include representatives of all "constituencies" as well as the other entities listed.<br>- The reference in paragraph 338 to a Board-initiated review of "any batched round of new gTLDs" is somewhat confusing as to whether it refers to the review required by the AoC (as proposed to be incorporated in the bylaws) or something else. Furthermore, experience with the current new gTLD round (and the pending reviews) suggests that one year after the first new gTLD in the round becomes operational may not be long enough if other new gTLDs are still being rolled out at that time. It's also possible that there will not be further "batched rounds" of new gTLDs. We support having bylaws requirements for periodic community-wide reviews of whether ICANN's new gTLD activities are promoting competition, consumer trust and consumer choice, and the proposal in paragraph 347 that such reviews occur at least once every five years.<br>- Paragraph 351 is a sentence fragment referencing the OECD Guidelines as playing some role in future Whois Policy reviews. It is not clear what role is contemplated. The reference to "legal constraints" is also ambiguous since the OECD Guidelines do not have the force of law. | Agreement with suggestions Concerns<br><br>**Summary / CCWG Response:**<br>IPC believes that Bylaws Article XVIII should be a Fundamental Bylaw. CCWG 2 nd Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255.<br><br>IPC has concerns about allowing the ATRT to recommend sunset of other AoC reviews. CCWG notes that such a recommendation would be created by community members and would be subject to public comment. If the board approved a recommendation to sunset a review, this decision could be challenged by Reconsideration and IRP.<br><br>And, as IPC points out, sunsetting a review that is in the bylaws is itself a bylaws revision that is subject to veto by supermajority of Members.<br><br>IPC believes that each GNSO Constituency be represented in periodic review teams. Para 514 describes review team composition, to include 3 members from the GNSO.<br><br>IPC suggests CCWG consider adding various subdivision of the various AC/SO such as SGs, RALOs "and constituencies" in the next version of the proposal. This idea was not supported by other public comments, and would require normalized voting in the review team since not every AC/SO contains as many chartered constituencies as the GNSO.<br><br>IPC asks for clarification on "batched round of new gTLDs" in para 338. The original AoC review of new gTLDs was required 1 year after new gTLDs had been operation. The CCWG preserved that requirement -- if ICANN has any more batched rounds of gTLD expansion. If, however, ICANN moved to continuous gTLD applications, this 1-year trigger would not apply, and ICANN would be required to perform this review no less frequently than every 5 years.<br><br>IPC indicates ambiguities with respect to OECD guidelines, which do not have the force of law. CCWG re-worded para 583 to: "This Review will consider the OECD guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013." |

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| **437** | Govt-BR | - The AoC was created in the context of the US Government's oversight of ICANN. Once that relation is ended, due consideration should be given as to whether commitments established in the past should remain valid within the new oversight structure. In other words, the incorporation of the provisions contained in the AoC should reflect the agreement of the global multistakeholder community, including governments, and not be automatically transcribed from the AoC.<br>- In this regard, Brazil considers inappropriate that Section 8(b) of the AoC be incorporated to the bylaws without further reflection, as ICANN should not be constrained to be legally established in a specific country if, in the future, its stakeholders decide that it would be more convenient for the corporation to change its main office to another location.<br>- CCWG should consider reviewing Article XVIII, Section 1, of ICANN's bylaws. Brazil supports the elimination of that specific requirement, which should by no means be granted the status of a "fundamental bylaw". | Agreement - Confusion - Concerns<br>**Summary / CCWG Response:**<br>Brazil might mistakenly believe that CCWG proposed importing the AoC commitments and reviews verbatim. In fact, CCWG proposed changes to the existing AoC reviews. CCWG 2 nd Draft reflects public comment on these proposed changes received from the global multistakeholder community, including governments.<br><br>Brazil might mistakenly believe that AoC 8b is driving requirement to locate ICANN in Los Angeles. As noted in CCWG report (page 36), ICANN's current Articles and Bylaws require the California incorporation and location. The CCWG is not proposing changes to those requirements.<br><br>Brazil suggests elimination of Bylaws Article XVIII. Presumably, Brazil would suggest amending ICANN articles of Incorporation as well, since that also describes a CA corporation. Brazil does not support having bylaws article XVIII become a Fundamental bylaw. CCWG 2 nd Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255. |
| **438** | CDT | - Supports the inclusion of key Affirmation of Commitments (AoC) principles and reviews. The AoC is an important document that has significantly improved ICANN's accountability and transparency. Importantly, the AoC also outlines criteria and characteristics of the organization's relationship with its community including, among others, the importance of the multistakeholder, bottom-up policy development model. The proposal does a thorough job of bringing these key elements into the bylaws. | Agreement<br>**Summary / Impression:**<br>Supports inclusion. AoC is important. |
| **439** | USCC | - Incorporating keys aspects of the AoC into the bylaws is critical to enhancing ICANN's accountability. Even though ICANN has said is has no plans to terminate the AoC, incorporating key provision into the bylaws makes this and the unique bilateral relationship with the USG a non-issue going forward.<br>- Making the reviews permanent would enhance ICANN's accountability. | Agreement<br>**Summary / Impression:**<br>Supports inclusion. It is critical to accountability. Make the reviews permanent.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **440** | INTA | - It is important to preserve the critical role of the AoC in reviewing and enforcing accountability principles by incorporating its principles within ICANN's Bylaws.<br>- Generally agrees with the list of requirements for this recommendation as they appear to incorporate and enhance all of the commitments made by ICANN when it signed the AoC.<br>- agrees that it is very important to give force to the incorporation of the AoC within the Bylaws by amending them as proposed. This will ensure periodic reviews relevant to assuring accountability and transparency; preserving security, stability, and resiliency; promoting competition, consumer trust, and consumer choice; and reviewing effectiveness of the WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.<br>- further agrees that all reviews should be conducted by volunteer community review teams comprised of representatives of the relevant Advisory Committees, Supporting Organizations, Stakeholder Groups, and the chair of the ICANN Board; and that the review group should be as diverse as possible.<br>- concurs that review teams should be empowered to solicit and select independent experts to render advice, and should have access to ICANN internal documents.<br>- have some significant concerns regarding the recommendation that the separate periodic reviews should be carried out at least every five years, whereas the current AoC requires them to be performed every three years (or two years after the receipt of the initial one-year review required for new gTLD rounds). Given the uncertainty of the post-transition situation, we believe that the requirements for reviews to be held every three years should be maintained for at least two full cycles after the transition takes place, with a review mandated after the first six years to decide if less frequent reviews (but no less frequent than every five years) would be adequate to ensure continued adherence to AoC principles.<br>- in regard to any possible future rounds of the new gTLD program, we believe that reviews of its promotion of competition and consumer trust and choice should take place at least every three years -- even if the Board should adopt an open-ended version of the program that does not have discrete rounds with set application deadlines. | Agreement - Concerns with suggestions<br><br>**Summary / Impression:**<br>INTA believes bylaws should require periodic reviews more frequently than every 5 years. Specifically, INTA recommends a 3-year cycle and another 3-year cycle after transition, with 5-years cycles thereafter. The AoC requires reviews every 3 years. CCWG proposes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years. This would accommodate the review frequency preferred by INTA, if that was broadly supported by the community.<br><br>INTA recommends that the new gTLD reviews occur no less frequently than every 3 years. CCWG proposes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years. This would accommodate the review frequency preferred by INTA, if that was broadly supported by the community. |
| **441** | .NZ | - supports the incorporation of the AOC principles and reviews in the bylaws as an enhancement to ICANN's accountability. We are in support of the requirements set out. | Agreement<br>**Summary / Impression:**<br>Supports inclusion and requirements.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **442** | NCSG | Yes, we agree and find this an essential component of the proposal. | Agreement<br>**Summary / Impression:**<br>Supports inclusion. It is important.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **43** | GG | GG supports incorporating the Affirmation of Commitments into ICANN's bylaws. | Agreement<br>**Summary / Impression:**<br>Supports inclusion.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **44** | Board | - With regards to the inclusion of the Affirmation of Commitments reviews into the bylaws: Are there sufficient mechanisms in place to assure diversity of the review teams (geographic, gender, etc.)? What are the mechanisms to adjust the review processes as needed by the community? What are the mechanisms for ensuring costing and subsequent prioritization of recommendations, and determination if recommendations are feasible? What limitations on review team access to documents will be identified to address issues such as restricting access to employee records, trade secrets provided to ICANN by others, and assuring that competitors do not gain access to others' sensitive documentation that ICANN has within its files?<br>- We recommend that language that is incorporated into the Bylaws on WHOIS be updated to reflect the potential for future modification and overhaul of the registration directory system, and not hardcode the legacy "WHOIS" requirements into the Bylaws. | Agreement - Concerns<br>**Summary / Actions / CCWG Response:**<br>Board suggests mechanisms to assure diversity of review teams. In Para 514, CCWG proposes that each SO and AC suggest up to 7 prospective members for a Review Team. The group of chairs of the participating SOs and ACs will select a group of up to 21 Review Team members, balanced for diversity and skills, to include up to 3 members from each participating SO and AC . In addition, the ICANN Board may designate one director as a member of the Review Team.<br><br>Board asks about mechanisms to prioritize recommendations. In para 531, CCWG proposes "The Review Team should attempt to assign priorities to its recommendations."<br><br>Board asks about costs and feasibility of recommendations. In para 508, CCWG "concluded that some review team recommendations could be rejected or modified by ICANN, for reasons such as feasibility, time, or cost."<br><br>Board is concerned about disclosure of sensitive or confidential information provided to review teams under proposal to give review teams "access to ICANN internal documents". In response, CCWG added an extensive policy for disclosure of confidential information to review teams (page 75).<br><br>Board recommends bylaws language reflecting potential for change to WHOIS. CCWG used the expression "WHOIS/Directory Services". CCWG retained the requirements for the AoC WHOIS review, which continues to generate concern from Board chair Steve Crocker. In the 2 nd round of public comments, CCWG will consider any suggested changes proposed by the Board. |
| **45** | CENTR | - We agree that the incorporation of the Affirmation of Commitment principles into the ICANN Bylaws might enhance certain accountability aspects. At the same time, we believe that adding a new Bylaws section for Periodic Review of ICANN Execution of Key Commitments will certainly serve to better assess ICANN's high-level performances.<br>- Concerning the proposed IANA Function Review – IFR – we are supportive of a review to take place no more than two years after the transition is completed, but we believe that subsequent reviews should occur more regularly and not every five years. | Agreement and suggestion.<br><br>**Summary / Actions Suggested/CCWG Response:**<br>CENTR believes subsequent IFR cycle should be more frequent than every 5 years (para 360). For AoC periodic reviews, the CCWG used the phrase "no less frequently than every five years" which allows for more frequent reviews. And in para 593, CCWG indicates that Special IFR may be initiated at any time. |

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| **446** | NIRA | NIRA agrees. | Agreement<br>**Summary / Impression:**<br>Supports inclusion.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **447** | ALAC | Accountability and Transparency (A&T) Review - Paragraphs 310-317: The wording of this section should be altered to indicate that the a-e list is not prescriptive. Each review team should be given the authority to decide exactly what A&T issues it will address. Based on the experiences of the ATRT1 and ATRT2, the current formulation implies:<br>• A narrow focus of A&T as understood by particular individuals in 2009. The very existence of this CCWG illustrates the "straitjacket" that the A&T review teams were controlled by forcing concentration on issues that may have been of lesser importance and restricting what they could look at in addition to or instead of the prescribed list.<br>• The requirement to review in depth the previous work and to explore new areas creates an ever increasing workload that will make it very difficult for an ATRT to effectively tackle real issues that are relevant at the time of its formation. | Agreement with suggestion. Concerns<br>**Summary / Actions /CCWG Response:**<br>ALAC notes that imported items from AoC ATRT review are over 6 years old and more flexibility is needed for future ATRT reviews. In response, CCWG modified para 539 to read "issues that may merit attention include".<br><br>ALAC is concerned about workload in requiring ATRT to assess the extent to which prior ATRT recommendations were implemented. CCWG notes that requirement was imported from the AoC. In CCWG 2 nd dra ft, each of the 4 Review teams is responsible to "assess the extent to which prior Review recommendations have been implemented." |
| **448** | LAB | Regarding the various periodic reviews, these are stipulated to occur "no less frequently than every five years" (see, e.g., paragraph 322 regarding accountability and transparency reviews), yet no explanation is given as to why a five-year cycle is chosen as opposed to, say, a three-year cycle as per the AOC. Perhaps an explanation is in order. | Agreement and request an explanation.<br>**Summary /Actions /CCWG Response:**<br>LAB asks for rationale for period reviews "no less frequently than every five years". The CCWG suggested longer review cycles based on experience with AoC reviews over last 6 years. That experience indicates that ATRT, WHOIS, and SSR reviews are triggered before the prior review has completed implementation. Moreover, the CCWG noted that AoC reviews involve intense volunteer work for up to a year, and are aware that volunteer fatigue is a significant problem today. CCWG notes that reviews may be conducted more frequently, while requiring reviews no less frequently than every 5 years. This would accommodate more frequent reviews, if that was broadly supported by the community. |
| **449** | RIR | There are no objections to the incorporation of the Affirmation of Commitments into the ICANN Bylaws, nor to the requirements of this recommendation. | Agreement<br>**Summary / Impression:**<br>Supports inclusion and requirements.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |
| **450** | DotMusic | DotMusic supports having key commitments from the Affirmation of Commitments incorporated in the ICANN Bylaws according to CCWG proposal. | Agreement<br>**Summary / Impression:**<br>Supports inclusion.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

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| **451** | Siva | The incorporation into ICANN's Bylaws of the Affirmation of Commitments principles and reviews would enhance ICANN's accountability. | Agreement<br>**Summary / Impression:**<br>Supports inclusion. It would enhance accountability.<br><br>**Actions Suggested:**<br>None<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment. |

**Bylaws changes suggested by Stress Tests**

*Question 15: Do you agree that the incorporation into ICANN's Bylaws of the above changes, as suggested by stress tests, would enhance ICANN's accountability? Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*

**Agreement 17**
**Divergence 1**
**Concerns 5**
**Neutral 1**

| # | Contributor | Comment | CCWG Response/Action |
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| **452** | CRG | YES! | Agreement<br>**Summary / Impression:**<br>Supports proposal. |
| **453** | Afnic | - Afnic strongly supports the implementation of ATRT2 recommendation 9, which modifies the Bylaws in order to mandate Board response to AC formal advice.<br>- As far as stress test 18 is concerned (GAC advice by majority within the GAC and not by consensus), Afnic is of the opinion that every constituency has the right to set its own decision making process, as long as this is done in a transparent manner. | Agreement - Concerns<br>**Summary / Impression:**<br>Supports implementation of ATRT2 recommendation 9 but concerned with respect to stress test 18. Every constituency has right to set own decision-making process as long as transparent.<br><br>**CCWG Response:**<br>As described in para 621-623 of 2 nd Draft, the proposed Bylaws change for Stress Test 18 does not interfere with the GAC's method of decision-making. If the GAC decided to adopt advice by majority voting or methods other than today's consensus process, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."<br>Moreover, ICANN would still have to explain why GAC advice was not followed: "In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice."<br>The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to "try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution". That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus. |

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| **454** | IA | IA supports the proposed Bylaw change recommendations arising from stress tests. IA believes that a requirement for the ICANN principal office or headquarters to be located in Los Angeles should be included as a Fundamental Bylaw. | Agreement<br>**Summary / Impression:**<br>Supports proposal. ICANN HQs in Los Angeles should be a Fundamental Bylaw.<br><br>**Actions suggested:**<br>Make HQs in Los Angeles as a Fundamental Bylaw.<br><br>**CCWG Response:**<br>CCWG 2 nd Draft report discusses Article XVIII on page 36, concluding not to propose Article XVIII be designated as a Fundamental Bylaw, for reasons cited in para 253-255. |

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| **455** | Govt-FR | Are we correct in understanding that the "SO/AC Membership Model" would nonetheless give members of other SOs and ACs the opportunity to vote and defeat an empowered GAC, in spite of governments' "rights and responsibilities for international Internet-related public policy issues" (etc.) If so, additional mechanisms specifically designed to mitigate the risk of capture of ICANN by governments, such as the proposed changes to Bylaws art. I.2 (Core value 11) and XI.2.1.j deriving from stress test #18, are redundant and just cause confusion.<br>Stress test#18 suggests that majority voting in the GAC could lead to a threatening situation where ICANN would have to consider and respond to GAC advice restricting free online expression (Draft prop., section 8.6, §629). This is why it is suggested that Bylaws art. XI.2.j be modified in order to "duly take into account" only GAC advice that is supported by strict consensus (Draft prop., section 8.6, §633). In our opinion, such propositions reflect a tendency among ICANN stakeholders to question the responsibility of governments and public authorities with regard to public policy. What it says: "only when governments reach consensus can we duly take into account GAC advice as public policy advice", actually translates: "governments are not responsible for public policy for so long as they cannot reach strict consensus on GAC advice", which is obviously a false statement. Governments are always responsible for public policy (hence paragraph 35 of the Tunis Agenda, section 2.I.1 of the NETmundial Multi-Stakeholder Statement, or the current Core Value 11 of ICANN). Remote as this possibility may seem, we agree that majority voting in the GAC could lead to a situation where ICANN would have to consider and respond to GAC advice restricting free online expression. With strict consensus within the GAC, however, much less remote seems the possibility that one single government deprives ICANN from GAC advice on privacy protection, for example. We do believe that ICANN would be placed in a far more threatening situation if it could not consider the second type of GAC (would-be) advice, than if it just had to respond to the first type of GAC advice. | Concerns<br>**Summary / Impression:**<br>- Proposed changes to Bylaws deriving from stress test #18 are redundant and confusing.<br>- Suggested Bylaw amendment reflects tendency to question responsibility of governments and pub lic authorities with regard to public policy. Governments are always responsible for public policy.<br>- Remote as this possibility may seem, we agree that majority voting in the GAC could lead to a situation where ICANN would have to consider and respond to GAC advice restricting free online expression.<br>- With strict consensus within the GAC, however, much less remote seems the possibility that one single government deprives ICANN from GAC advice on privacy protection, for example. ICANN would be placed in a far more threatening situation if it could not consider the second type of GAC (would-be) advice, than if it just had to respond to the first type of GAC advice.<br><br>**CCWG Response:**<br>Pages 84-86 of the 2 nd Draft proposal attempt to be clear about the bylaws change required by Stress Test 18. The CCWG team believes there is no redundancy in this change, and is available to clear-up any remaining confusion.<br><br>As described in para 621-623 of 2 nd Draft, the proposed Bylaws change for Stress Test 18 does not interfere with the GAC's method of decision-making. If the GAC decided to adopt advice by majority voting or methods other than today's consensus process, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."<br>Moreover, ICANN would still have to explain why GAC advice was not followed: "In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice."<br>The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to "try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution". That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus. |

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| **456** | CCG | Stress Test 18 proposes that the ICANN Board reply in a timely manner and find "mutually agreeable solutions" to only that GAC advice where there is consensus involved. How is this different from the existing scenario, and how does this measure enhance the Board's accountability to GAC? | Agreement - Concerns<br>**Summary / Impression:**<br>How is stress test 18 different from existing scenario and how does this measure enhance the Board's accountability to GAC?<br><br>**Actions suggested:**<br>Clarify above.<br><br>**CCWG Response:**<br>The Bylaws change suggested by Stress Test 18 is not designed to enhance ICANN's accountability to GAC. Rather, it is designed to ensure that governments do not use their unique role in ICANN to replace the influence previously held by NTIA.<br><br>As described in para 621-623 of 2 nd Draft, the proposed Bylaws change for Stress Test 18 does not interfere with the GAC's method of decision-making. If the GAC decided to adopt advice by majority voting or methods other than today's consensus process, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."<br>Moreover, ICANN would still have to explain why GAC advice was not followed: "In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice."<br>The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to "try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution". That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus. |

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| **457** | BC | - BC is pleased that these improvements to the Reviews were embraced by the CCWG and supports the proposal as a way to enhance ICANN accountability. (p.55)<br>- BC supports the proposed Bylaw changes regarding the new gTLD program, specifically that recommendations from the previous review to be implemented before rounds of new gTLDs can be opened.<br>- In prior comments, the BC has supported recommendations from the Affirmation review teams, including ATRT2 recommendation 9.1<br>- 9.1. ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice: *The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.* And continues to believe this change should be made to ICANN Bylaws in order to enhance ICANN accountability. Moreover, several stress tests indicate this change would be needed to give the community adequate measures to hold ICANN accountable for its decision not to implement formal advice from an Advisory Committee.<br>- BC supports the proposal for a small change to ICANN's Bylaws, so that ICANN's obligation to "try and find a mutually acceptable solution" only applies where the GAC advice was supported by consensus. (p.64)<br>- On this particular Bylaws provision, the BC suggests that ICANN's obligation to "try and find a mutually acceptable solution" on GAC advice should not result in a decision that conflicts with ICANN Bylaws. | Agreement - Concerns<br>**Summary / Impression:**<br>Supports the proposed improvements to reviews, proposed Bylaw changes regarding new gTLD program, ATRT2 recommendation 9.1. This change would be needed to give the community adequate measures to hold ICANN accountability for its decision not to implement formal advice from an AC.<br>- ICANN's obligation to "try and find a mutually acceptable solution" on GAC advice should not result in a decision that conflicts with ICANN Bylaws.<br><br>**Actions suggested:**<br>Clarify which entity will have Root Zone Maintainer role and to establish the process that would be used for consultation with the global multi-stakeholder community.<br><br>**CCWG Response** :<br>ICANN and NTIA are considering the Root Zone Maintainer role in parallel with IANA stewardship transition. At this time there is no information available. |

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| **458** | USCIB | Overall, we agree with the changes suggested by Stress Tests.<br>Specific comments:<br>- para 377: The consultation notes that where the Board has not taken a formal decision (such as not following AC advice), the community might not have a mechanism to challenge the Boards action (or inaction) to act. USCIB would support a mechanism that allows for a "response" to trigger the review mechanisms.<br>- We note that Stress Test #18 considers a potentially concerning scenario in which Governments in ICANN's Government Advisory Committee amend their operating procedures to change from consensus decisions to majority voting for advice to the Board. para 387: Thus, we strongly support the proposed language in paragraph 387 that limits imposing the obligation on the Board to find a mutually acceptable solution between the GAC and Board to only GAC advice that was developed by consensus.<br>- Moreover, we have seen little discussion about how the proposed accountability measures would address instances where the Board accepts GAC advice without consideration by or in contradiction to the wishes of the community. We thus recommend creating a separate stress test for the situation where the Board and GAC find a mutually acceptable solution that the community believes is outside the scope of GAC Advice or Board mandate, or otherwise disagreeable to the community and considering a community review mechanism over such Board actions if the stress test indicates that the community cannot sufficiently hold the Board accountable for such action.<br>- para 636: As mentioned above concerning the proposed response presented in paragraph 387 for Stress Test #18, USCIB supports amending the Bylaws such that only GAC consensus advice would trigger the obligation for the Board to find a mutual acceptable solution. However, we disagree with the paragraph 636, which states that the threat posed by Stress Test #18 "is not directly related to the transition of IANA stewardship. To the contrary, USCIB regards this issue, as captured in Stress Test #18, as directly related to the transition. | Agreement – Concerns – Disagreement<br>**Summary / CCWG Response:**<br>- Agree with suggested changes.<br>- USCIB would support a mechanism that allows for a "response" to trigger the review mechanisms.<br>- Support the proposed language in paragraph 387 that limits imposing the obligation on the Board to find a mutually acceptable solution between the GAC and Board to only GAC advice that was developed by consensus.<br><br>- Little discussion about how the proposed accountability measures would address instances where the Board accepts GAC advice without consideration by or in contradiction to the wishes of the community. Create a separate stress test for the situation where the Board and GAC find a mutually acceptable solution.<br>**CCWG** : even where the GAC and Board reached a "mutually acceptable solution", any action or inaction by ICANN could still be challenged with an IRP based on whether ICANN bylaws were properly followed.<br><br>- Support amending the Bylaws such that only GAC consensus advice would trigger the obligation for the Board to find a mutual acceptable solution.<br><br>- Disagree with paragraph 636. USCIB regards this issue as directly related to the transition.<br>**CCWG:** The ST team made this designation on the narrow criteria of whether the IANA transition provoked the stress test scenario. The "related to IANA" designation was for informational purposes only, and did not determine whether a change is part of WS1 or WS2. To avoid confusion, this designation was removed from 2 nd draft proposal. |
| **459** | LINX | We support the proposal that special Board procedures for GAC advice should only apply in respect of advice support by a consensus in GAC. We understand this to be the intent of the current provisions and current practice, and so we regard this as simply a useful clarification. | Agreement<br>**Summary / Impression:**<br>Support proposal that special Board procedures for GAC advice should only apply in respect of advice support by a consensus in GAC. |
| **460** | JPNIC | We would like to defer the comments to those who will be directly affected. i.e., SSAC, ALAC, GAC, RSSAC for "Forcing the Board to respond to Advisory Committee formal advice" and GAC for "Require consultation and mutually acceptable solution for GAC avice that is backed by consensus". | Agreement<br>**Summary / Impression:**<br>Defer comments to those who will be directly affected. |
| **461** | IPC | -The IPC strongly recommends the inclusion of the ATRT2 recommendation 9.1<br>*T he ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.*<br>The IPC believes that the bylaws should be amended to include this language to empower the community to spur the board to action on advice given by ACs. | Agreement<br>**Summary / Impression:**<br>- Strongly supports amending Bylaws to include 9.1. |

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| **462** | Govt-BR | Stress Test 18 – "Require consultation and mutually acceptable solution for GAC advice that is backed by consensus" (Chapter 7.2, p.63) – describes a situation which represents a very improbable risk of capture. That being said, Brazil considers that any decisions that should result from the assessment of ST18 be considered as a Work Stream 2 item. | Agreement<br>**Summary / Impression:**<br>Stress test 18 describes a situation which represents a very improbable risk of capture. It should be WS2.<br><br>**Actions suggested:**<br>Move Stress Test 18 to WS2.<br><br>**CCWG Response:**<br>The probability that GAC might change its decision-making methods is not a factor in determining whether ST18 is placed in WS1 or WS2. Rather, the designation of WS1 is given to any bylaws change that must be implemented as part of the IANA transition, which provides leverage to obtain changes that ICANN might not otherwise accept.<br><br>Moreover, NTIA has stated on multiple occasions that the bylaws change suggested by Stress Test 18 is required as a WS1 item to meet NTIA's criteria for the IANA transition. |
| **463** | USCC | - Support the results of Stress Test 18 and agree with the proposed bylaw amendment. ICANN bylaws should stipulate that GAC advices must be issued by consensus in order to compel the ICANN Board to find a mutually acceptable solution when it does not follow GAC advice. | Agreement<br>**Summary / Impression:**<br>Supports results of Stress Test 18 and proposed Bylaw amendment.<br><br>. |
| **464** | INTA | - agrees that the incorporation of changes as suggested by stress tests should help to enhance ICANN's accountability. The twenty-six separate stress tests outlined in the Proposal appear broad enough to cover all major contingencies.<br>- agrees that a mechanism should be established by which the Community can compel the Board to make a decision in response to advisory committee ("AC") advice, but it must be carefully crafted to facilitate the focused goal of triggering the ability for the Community to challenge the decision via Reconsideration or IRP processes. Advisory committees give advice, not direction, and this mechanism must recognize that the Board should respond to but is not obligated to accept AC advice.<br>- In regard to the Governmental Advisory Committee ("GAC") advice, we generally support amendment of the Bylaws to require the Board to try to find a mutually agreeable solution only where GAC advice was supported by GAC consensus. | Agreement<br>**Summary / Impression:**<br>- Agree that a mechanism should be established by which Community can compel Board to make a decision in response to advice.<br>- Mechanism must recognize that advice the Board should respond to but is not obligated to accept.<br>- Support amendment of the Bylaws to require the Board to try to find a mutually agreeable solution only where GAC advice was supported by GAC consensus. |
| **465** | .NZ | - Supports these changes – in particular the one relating to ICANN' s response to GAC advice. It is important that unilateral action by an SO or AC not lead to a change in the balance of influence in the ICANN system. The proposed change as set out in para 387 achieves this in a way that does not constrain GAC's ability to organise itself. | Agreement<br>**Summary / Impression:**<br>Supports change. It is important unilateral advice not lead to change in balance of influence in ICANN system. |
| **466** | HR2251 | - The board of directors of ICANN is prohibited from voting on advice or a policy proposal offered by the Governmental Advisory Committee unless such Committee reaches consensus regarding such advice or proposal. For purposes of the preceding sentence, the term "consensus" means general agreement in the absence of any formal objection. | Agreement<br>**Summary / Impression:**<br>Board prohibited to vote on advice offered by GAC unless consensus reached regarding proposal. |

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| **467** | CENTR | We recommend that the proposed change to ICANN Bylaws regarding the Board response to Governmental Advisory Committee Formal Advice be made more stringent as "will respond in a timely manner" is too vague and does not commit the Board to respond within any specific timeframe. | Agreement<br>**Summary / Impression:**<br>"Respond in a timely manner" is too vague. It does not commit the Board to response within timeframe.<br><br>**Actions suggested:**<br>Make proposal more stringent. |
| **468** | I2Coalition | We support the proposed Bylaw change recommendations arising from stress tests. In particular, we strongly support the results of stress test 18 regarding the Board's response to GAC advice. ICANN Bylaws should stipulate that GAC advice must be issued by consensus in order to compel the ICANN Board to find a mutually acceptable solution when it does not follow GAC advice | Agreement<br>**Summary / Impression:**<br>Strongly support results of Stress Test 18. |
| **469** | NIRA | NIRA agrees. | Agreement<br>**Summary / Impression:**<br>Supports. |
| **470** | RIR | No position is taken with respect to incorporation into ICANN s Bylaws of the changes suggested by stress tests, nor to the requirements of this recommendation. | Neutral<br>**Summary / Impression:**<br>No position taken. |

**Items for consideration in Work Stream 2**

**Summary for WS2:**

Number of comments: 22
Number of agreements: 14
Number of concerns: 8
Number of confusion: 0
Number of divergence: 5
Number of new ideas: 0
NB: some comments are classified in two or more categories

**Abstract:**

Comments are generally supportive of the approach for work stream 2. One commenter (CENTR) suggests including a clearer timeframe in the transitional article, and several call for stronger language on the dedication of the CCWG to continuing its work beyond the transition.
The importance of addressing the jurisdiction issue is stressed by several contributors (India, Germany, France, Spain, Danish Business Authority, Brazil).
One commenter (Roberto Bissio, Advisor) expresses disagreement on the overall approach and calls for incorporating ICANN under International law.
Regarding the list of WS2 items, two commenters suggest addressing the Ombudsman as part of WS1 (CENTR, INTA), two recommend addressing DIDP as part of WS1 (CENTR, CCG) and one would like security audits to be WS1 (CENTR).
Two commenters (CDT, NCSG) suggested including provisions for assessing efficiency of WS1 proposals as part of WS2.
Two commenters (BC, USCIB) suggest adding a Bylaw to require ICANN to disclose government contacts.

**Action items for CCWG:**

- Clarify language on commitment for WS2
- Provide more details on jurisdiction, including a clearer timeline to address it
- Review list of WS2 items to confirm / amend based on suggestions
- Consider whether and how to address suggestion to monitor and assess efficiency of WS1 proposals

| # | Contributor | Comment | CCWG Response/Action |
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| **471** | JS | Excellent that the document puts a spotlight on Work Stream 2 issues. Moreover, it is implied on page 87 that the CCWG will continue to exist after the IANA transition in order to work on these issues. The intention to sustain the CCWG over a longer term could be affirmed more strongly and unambiguously. Some indication could be given of an initial timeline for progress on WS2 issues? Progress on WS2 could be one of the topics for the first IANA Functions Review two years after the transition and then also a core evaluation concern for the next Accountability and Transparency Review? | Agreement<br>**Summary / Impression:**<br>Intention to sustain the CCWG over a longer term could be affirmed more strongly and unambiguously. Suggestions to affirm WS2 more strongly, include timeline, include progress on WS2 as part of IFR1 and/or ATRT<br><br>**Actions suggested:**<br>Suggestions to affirm WS2 more strongly, include timeline, include progress on WS2 as part of IFR1 and/or ATRT<br><br>**CCWG response:**<br>The CCWG will clarify the need for WS2 beyond the transition and consider how to include reporting on WS2 progress in subsequent accountability efforts within ICANN. |
| **472** | DBA | We also note that the CCWG Accountability have decided to fully address the issue of jurisdiction in Work Stream 2, which according to the timeline is to begin this fall. This is a very important outstanding issue, which has to be dealt with adequately. It must also be assured that the global public interest is taken into account with an appropriate role for all relevant stakeholders, including governments. | Agreement<br>**Summary / Impression:**<br>Importance of jurisdiction issue and global public interest<br><br>**Actions suggested:** Take global public interest into account.<br><br>**CCWG Response:** The CCWG takes note and confirms the importance of these issues. |
| **473** | JS comment 2 | A third headline point - which follows from the first two - is that CCWG's work is clearly not finished when the IANA transition is completed. A continuation of the CCWG or some successor body is needed to address Work Stream 2 matters post-transition. The CCWG report could commit more strongly than it currently does on page 87 to continued existence and work beyond the transition. | Agreement<br>**Summary / Impression:**<br>Commit more strongly to continued existence and work beyond transition<br><br>**Actions suggested:**<br>Reinforce language on page 87.<br><br>**CCWG Response:**<br>The CCWG will clarify the language on page 87. |
| **474** | CRG | Leaving it to Work Stream 2 to focus on internal organisational and structural accountability issues like Board-Staff, and Staff-Staff is risky. The announced change of the CEO makes this point only more relevant, as ICANN has been under a tremendous internal growth of staff and functions over the last few years under the present management. The stability of the present internal organisation may be as well come under close scrutiny to a wider set of stakeholders to the transition, and the CCWG should take the present structure into account. | Concerns<br>**Summary / Impression:**<br>Leaving internal organizational and structural accountability for WS2 is risky. Stability of the present organization may come under scrutiny to wider set of stakeholders.<br><br>**Actions suggested:** Take organizational and structural accountability issues into account.<br><br>**CCWG Response:**<br>The CCWG takes note of the concern and will consider how to best address it. |
| **475** | Afnic | The work plan established by the CCWG-accountability is coherent with the necessity to propose accountability improvements together with the IANA stewardship transition proposal. This may not divert the ICANN community from the necessary work of enhancing further the ICANN accountability. Therefore, each accountability mechanism proposed in the current draft (including the list of the items to be considered as part of work stream 2) should be included in the Bylaws prior to the transition. It doesn't prevent of course CCWG-Accountability to come back to the community with a final proposal that includes improvements related to the current work stream 2 list, if feasible. | Agreement<br>**Summary / Impression:** The work plan is coherent with the necessity to propose improvements. This may not divert ICANN from necessary work. Each mechanism should be included in Bylaws prior to transition.<br><br>**Actions suggested:**<br>Include each accountability mechanism and list of WS2 items in the Bylaws as part of WS1.<br><br>**CCWG Response:**<br>The CCWG will consider the suggestion made. |

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| **476** | Govt-IN | - ICANN must have fair, strong and easily accessible freedom of information standards and mechanisms, to enable stakeholders to request and avail adequate and timely information without incurring undue expense.<br>- ICANN should have simplified and user-friendly information platforms.<br>- There is currently a lack of clarity on the effect of ICANN's jurisdiction of incorporation on ICANN Accountability, and this is an issue that requires further discussion. | Concerns<br>**Summary / Impression:**<br>ICANN requires strong and easily accessible freedom of information standards as well as user-friendly information platforms. The effect of jurisdiction on ICANN accountability is unclear.<br><br>**Actions suggested:**<br>Clarify and further discuss effect of ICANN's jurisdiction on ICANN Accountability. Consider freedom of information standards.<br><br>**CCWG Response:** The CCWG will attempt to clarify jurisdiction implications in the next version of its report. |
| **477** | Govt-DE | Germany would like to recall the importance of examining ICANN's jurisdiction as part of Work Stream 2. | Agreement<br>**Summary / Impression:**<br>Support examining jurisdiction.<br><br>**Actions suggested:**<br>Examine jurisdiction as part of Work Stream 2.<br><br>**CCWG Response:**<br>The CCWG takes good note of the importance of the issue. |
| **478** | RB | The current accountability of a global governance body to the law and institutions of just one country is the major issue to correct. This can be corrected only by incorporating ICANN under international law - arrived at by an international treaty - and giving ICANN jurisdictional immunity in the country of its physical location. | Divergence<br>**Summary / Impression:**<br>Need to incorporate ICANN under International law arrived at by international treaty and giving ICANN jurisdictional immunity in country of physical location.<br><br>**Actions suggested:**<br>None at the moment. However, the question of jurisdiction will further be worked on.<br><br>**CCWG Response:**<br>The CCWG discussed this approach but did not find that it got sufficient support to achieve consensus. More details about the rationale will be provided in the next version of the report. |
| **479** | RySG | - RySG supports the proposed work plan for Work Stream 2.<br>- The key requirement of Work Stream 1 has been to secure key community powers so we can trust the subsequent development, approval and implementation of other less critical or urgent reforms. | Agreement<br>**Summary / Impression:**<br>Supports proposed work plan.<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>The CCWG takes note of the support. |
| **480** | CCG | The Documentary Information Disclosure Policy will be enhanced only after Work Stream 2 proposals come into place. Perhaps it would be worth including this aspect within work stream 1, since it bears on the IANA transition or PTI. | Divergence<br>**Summary / Impression:**<br>Put DIDP in WS1.<br><br>**Actions suggested:**<br>Consider examining DIDP as part of Work Stream 1.<br><br>**CCWG Response:**<br>The CCWG notes that the suggestion to reconsider the allocation of certain items to WS1 was already discussed as part of its deliberations. The group felt that this item did not meet all criteria set for Work stream 1 and that better results would be achieved under WS2 providing more time for a deliberate and efficient assessment.<br>The group was also concerned of the impact of adding more items to the list of WS1 proposals on its ability to deliver the proposals in a timeframe consistent with the IANA Stewardship transition timeline. |

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| **481** | BC | As a general concern about Work Stream 2 improvements, the BC notes that the community must first show consensus support for these changes to Bylaws. This is true whether the recommendations arise from a PDP or from an *Affirmation* Review Team. For recommendations that have community support, the community needs the power to force ICANN to take a decision on the recommendations. Then, if ICANN decides not to implement community recommendations, the enhanced IRP process give the community standing and a low-cost way to challenge and potentially overturn that decision.<br>An additional Work Stream 2 improvement would help to prevent government capture of ICANN and reveal ICANN attempts to influence public policies unrelated to ICANN's core mission.<br>Governments could seek to control ICANN decision-making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use it tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.<br>Therefore, the BC suggests that an additional Bylaw be added to require ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their contacts with any government official, as well as activities, receipts, and disbursements in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN. | Agreement - Concerns<br>**Summary / Impression:** Community must first show consensus support for these changes to Bylaws. An additional Work Stream 2 improvement would help to prevent government capture of ICANN and reveal ICANN attempts to influence public policies unrelated to ICANN's core mission. ICANN could use it tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.<br><br>**Actions suggested:**<br>Add additional Bylaw be added to require ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their contacts with any government official .<br><br>**CCWG Response:**<br>The CCWG will consider the suggestion made in its deliberations. |
| **482** | USCIB | I. Prevention of government capture or undue ICANN influence on public policies unrelated to ICANN's core mission.<br>Governments could seek to control ICANN decision-making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use it tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.<br>Therefore, USCIB suggests that an additional bylaw be added that requires ICANN or any individual acting on ICANN's behalf 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. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN. | Agreement - Concerns<br>**Summary / Impression:** support with one suggestion<br><br>**Actions suggested** :<br>The USCIB suggests that an additional Bylaw be added to require ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their contacts with any government official<br><br>**CCWG Response:** The CCWG will consider the suggestion made in its deliberations. |

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| **483** | IPC | The IPC supports the candidate measures outline as part of Work Stream 2.<br>As stated above, the IPC remains concerned about the ICANN community maintaining sufficient impetus to address WS2 reforms but is anxious that we all do so.<br>The IPC is concerned that the proposed accountability reforms focus too much on the ICANN Board and not enough on actions taken by ICANN senior management. The CCWG, in Work Stream 2, should consider how the community can have oversight of senior management decisions without resorting to using the Board as a tool. | Agreement - Concerns<br>**Summary / Impression:**<br>Support but concerns about “impetus” and oversight of senior management by community. Reforms focus too much on ICANN Board and not enough on ICANN senior management.<br><br>**Actions suggested:**<br>Reinforce language for WS2. Consider whether oversight of senior management should be a WS2 issue<br><br>**CCWG Response:**<br>The CCWG takes note of the concern and will consider stronger language to demonstrate commitment to WS2 enhancements. The group will consider the issue of oversight of senior management as part of its deliberations. |
| **484** | Govt-BR | - The assessment of ST18 be considered as a Work Stream 2 item.<br>- The issue regarding legal status/jurisdiction should be part of the initial transition proposal, we would strongly support that the evaluation of alternative jurisdictions for ICANN should, at least, be clearly set as "unfinished business" to be necessarily addressed in the context of Work Stream 2, with a clear and predetermined timeline.<br>- We are concerned about the influence that ICANN s existing jurisdiction may have on the actual operation of policies and accountability mechanisms being proposed and therefore consider it is extremely important that the CCWG- Accountability evaluates other places of legal establishment which could potentially offer effective conditions to deploy the accountability requirements defined by the community. Brazil is willing to collaborate with other members and participants of the CCWG-Accountability in order to perform a comprehensive and impartial assessment of different jurisdictional options for ICANN.<br>- Brazil's concern does not reside in considerations on the physical location of ICANN's headquarters. Brazil's preoccupation lies rather in the fact that corporation s existing "legal status" reflects a unilateral, pre-determined solution, and not a comprehensive agreement addressing all stakeholders s interest and concerns, independently of where it is physically situated. | Concerns<br>**Summary / Impression:**<br>Assessment of ST 18 should be Work Stream 2. Concern about jurisdiction: it should be reconsidered as part of Work Stream 2 with a clear timeline. Concerned about the information ICANN’s jurisdiction may have on operations. The CCWG should evaluate other places of establishment. T he corporation s existing "legal status" reflects a unilateral, pre-determined solution, and not a comprehensive agreement addressing all stakeholders s interest.<br><br>**Actions suggested:**<br>Move ST18 to WS2 Clarify timeline for jurisdiction issue<br><br>**CCWG Response:**<br>The CCWG takes note of the concern, and will consider providing clarifications on the jurisdiction issues, as well as their timeline.<br>The CCWG also notes that stress tests assessments are expected both from WS1 proposals as well as WS2 proposals. Assessment of ST18 should, as a consequence, be conducted at both stages of the deliberations of the group. |
| **485** | CDT | - CDT supports the proposed Work Stream 2 items.<br>- It is important that the CCWG ensure that Work Stream 2 items will be addressed as this process moves forward.<br>- CDT believes that the CCWG also needs to discuss and develop an appropriate mechanism, possibly as a part of the Work Stream 2, which assesses, evaluates and if necessary proposes changes to the Work Stream 1 accountability enhancements if those enhancements are not meeting the expectations of the community and/or are not fulfilling their intended purpose. Implementation of the proposed accountability enhancements should be monitored – the continued assessment of those measures will be an important part of ensuring that the work of this CCWG comes to fruition and that the ICANN community truly benefits from it. | Agreement<br><br>**Summary / Impression:**<br>Supports WS2 items. It is important to address WS2. The CCWG needs to discuss and develop appropriate mechanism, which evaluates proposed changes to Work Stream 1 enhancements. Implementation should be monitored.<br><br>**Actions suggested:**<br>Include assessment and monitoring of WS1 mechanisms<br><br>**CCWG Response:**<br>The CCWG will consider how to clarify the commitment to WS2 enhancements.<br>The suggestion to include mechanisms to assess, monitor and suggest changes to WS1 mechanisms will be discussed by the CCWG |

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| **486** | USCC | We would like to see greater development of these points with a clear timeline in place prior to the finalization of any plan as these issues should be prepped for rapid completion at the time of the transition. Finally, we want to emphasize that the CCWG's final proposal be implemented before the transition is completed. | Agreement<br>**Summary / Impression:**<br>Clear timeline in place prior to finalization of any plan is needed. The final proposal should be implemented before transition.<br><br>**Actions suggested:**<br>Provide clear timeline<br><br>**CCWG Response:**<br>The CCWG will consider how to provide a clear timeline for WS2 items. |
| **487** | INTA | - In general agreement with deferring the items listed for consideration within the post- transition Work Stream 2, so long as there is adequate assurance that ICANN will, indeed, address these items through the adoption of a transitional article in its Bylaws committing ICANN to implement the CCWG-Accountability recommendations, and task the group with creating further enhancements to ICANN's accountability including, but not limited to, the listed items.<br>- INTA agree this transitional article must be incorporated in the Bylaws as part of Work Stream 1 prior to the IANA stewardship transition taking place.<br>- INTA question the fact that one of the items listed for Work Stream 2 is "Enhancements to the Ombudsman's role and function." There is general dissatisfaction within the Community regarding the effectiveness of the Ombudsman in its current iteration, even though it is one of the few accountability measures currently available to ICANN stakeholders. Therefore, we believe that review and enhancement of the Ombudsman function should be addressed to at least some extent in Work Stream 1. | Agreement - Divergence<br>**Summary / Impression:**<br>Supports deferring to Work Stream 2 as long as adequate assurance ICANN will address items through adoption of transitional article in Bylaws. Disagrees with Ombudsman in WS2.<br><br>**Actions suggested:** Adopt transitional article in Bylaws. Ombudsman should be moved to WS1.<br><br>**CCWG Response:**<br>The CCWG notes that the suggestion to consider the Ombudsman role and function to at least some extent in WS1 was already discussed as part of its deliberations. The group felt that this item did not meet all criteria set for Work stream 1 and that better results would be achieved under WS2 providing more time for a deliberate and efficient assessment. |
| **488** | HR2251 | ICANN has adopted policies and procedures for disclosing to the public records and other information that are at least as protective of public access as the policies and procedures required by section 552 of title 5, United States Code (commonly known as the Freedom of Information Act). The policies and procedures adopted include a means by which the denial of a request for access to records or other information may be appealed through the independent dispute resolution process described in paragraph (2)(F). | Agreement<br>**Summary / Impression:**<br>Summary of the bill<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>The CCWG notes that the proposed Bill includes a reference to the policies and procedures for disclosure to the public |
| **489** | NCSG | There is a key element missing from Work Stream 2 and that is the monitoring and evaluation (and possible changes) to Work Stream 1 accountability enhancements as they are being implemented and as they are used/exercised. If the community finds that certain Work Stream 1 (and 2) measures outlined in this proposal do not meet expectations and/or do not meet their intended purpose then there should be a mechanism for those measures to be reviewed and possibly amended. | Concerns<br>**Summary / Impression:**<br>Add monitoring and evaluation of WS1. If community finds measures do not meet expectations, there should be mechanism for measures to be reviewed and possibly amended.<br><br>**Actions suggested:** None.<br><br>**CCWG Response:**<br>The suggestion to include mechanisms to assess, monitor and suggest changes to WS1 mechanisms will be discussed by the CCWG **.** |

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| **490** | CENTR | The transitional article in ICANN Bylaws to be adopted by the Board to commit ICANN to implement the CCWG-Accountability recommendations must include a timeframe for it to happen. We urge the CCWG to reconsider the allocation of certain items to Work Stream 2 (addressing accountability topics for which a timeline for developing solutions and full implementation might extend beyond the IANA Stewardship Transition) to Work Stream 1 as refinements to certain procedures might be able to enhance ICANN accountability in the short term, including enhancements to the Ombudsman's role and function, the introduction of limits to ICANN's ability to deny transparency/disclosure requests, the definition of security audits and certification requirements for ICANN's IT system. | Divergence<br>**Summary / Impression:**<br>Transitional article in Bylaws must include timeframe. Reconsider allocation of Work Stream 2 items. Include Ombudsman in WS1 as well as DIDP, security audits might be able to enhance accountability in short term.<br><br>**Actions suggested:**<br>Add timeframe to transitional article.<br><br>**CCWG Response:**<br>The CCWG notes that the suggestion to reconsider the allocation of certain items to WS1 was already discussed as part of its deliberations. The group felt that this item did not meet all criteria set for Work stream 1 and that better results would be achieved under WS2 providing more time for a deliberate and efficient assessment.<br>The group was also concerned of the impact of adding more items to the list of WS1 proposals on its ability to deliver the proposals in a timeframe consistent with the IANA Stewardship transition timeline. |
| **491** | SB | It is essential to continue providing an opportunity for all to find their place in the ICANN multistakeholder system in order to allow both a transfer of the IANA function to the multistakeholder community and the accountability of current and future ICANN structures. To this end, a certain flexibility must be allowed so that the current structure may be escalated by modifying or creating SOs, ACs, SGs, Constituencies, or any other grouping of natural and/or legal persons. This is not a point discussed in this report but it should be a point taken into consideration in the future work streams (workstream 2).<br>• Who can create a new structure?<br>• How?<br>• With whose permission?<br>• …<br>At the same time, ICANN's structure by type of actors should not be the only form of organization, the only possibility of exchanging, or of building positions. From this point of view, AFRALO has been an example to the other regions by organizing and coordinating a meeting of all African participants (AFRICANN) at each global ICANN meeting. DNS women does the same, with a different criterion of selection.<br>The expression by type of actors, regions, language... should all be encouraged. This depends on (and will allow) a better consideration of diversity or **diversities** .<br>**Diversity is an absolute need.** Enhancing diversity in all its aspects and at all levels must be a constant goal of ICANN.<br>This must be taken into account, not only in the proposals of the current areas of work of the working group on accountability (workstream 1) but also in the proposals of the working group on the transition of the IANA stewardship by the NTIA.<br>Both proposals require a minimum of one representative per region and, should there be more than 5 members, the remaining seats should be distributed equally among a part of the regions. However, that is not enough.<br>**The consideration of diversities must be multidimensional** | Concerns<br>**Summary / Impression:**<br>Allow flexibility so that the current structure may be escalated by modifying or creating SOs, ACs, SGs, Constituencies, or any other grouping of natural and/or legal persons. Discuss in WS2 who can create a new structure, how, with whose permission. ICANN's structure should not be only form of organization. Diversity should be a constant goal. Consideration of diversity must be multidimensional.<br><br>**Actions suggested:** Allow flexibility to the current structure.<br><br>**CCWG Response:**<br>The CCWG thanks you for your comment and will consider your suggestion. |

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| | | • Region;<br>• Culture;<br>• Sex;<br>• Age;<br>• …<br>• And of course by type of actors.<br>To enhance diversity, ICANN could draw inspiration from the example of Amadeus (Global Distribution System of bookings GDS). It was created by 4 airlines (Air France, Lufthansa, Iberia, SAS) that divided amongst themselves the most important functions. It is headquartered in Spain, its chair is Finnish, its development center is in France, and its data processing center is in Germany.<br>For ICANN, we could imagine (dream of ;) ):<br>• Headquarters in the USA;<br>• A European* Chair CEO (if both functions are kept together);<br>• A Latin American* Chair of the Board of Directors;<br>• An African* Vice Chair of the Board of Directors;<br>• The Chair of the BoD of the PTI would be from Asia Pacific*.<br>• …<br>(* These regions are, of course, interchangeable) | |
| **492** | RIR | There are no objections to the list of items to be considered in Work Stream 2. | Agreement<br>**Summary / Impression:** Agreement<br><br>**Actions suggested:** None<br><br>**CCWG Response:**<br>Thank you. |

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| **493** | Siva | If a framework is laid down for fundamental bylaws during work stream 1, the same could be more thoroughly examined and a firm foundation established during Work Stream 2. Such an exercise could begin with a question on whether ICANN's core mission is as narrow as it is confined to be in the present thinking. Work Stream 2 could examine if ICANN's core mission could be more appropriately articulated.<br>Work Stream 2 could be an unlimited exercise, exploring such possibilities as a Structural separation of the business functions from the organization's broa der policy roles. Affirmation of Commitments Section 8(b), says "ICANN commits to remain a not for profit corporation" The shape of a Not for profit corporation is not large enough for the mission of ICANN. "Some felt that the concept of private sector leadership is inconsistent with the multistakeholder model."<br>The not for profit corporation model needs to be reexamined in detail during Work Stream 2. A solution to a seemingly impossible problem could arise by exploring a structural separation of ICANN business affairs from the ICANN Community, Policy and Oversight. The non-profit corporation under California laws could be home to the Registries and Registrars and structurally separate and elevate policy and oversight to a higher governance framework of relative legal immunity, holding and directing IANA, as well as owning and overseeing the Names Corporation as part of its broader responsibilities. Workstream2 could so explore an organizational framework suitable for Internet Policy particularly related to DNS, independent of commercial uncertainties, somewhat in a manner that would annul criticism about the DNS policy under a California Corporation.<br>Work Stream 1 proposals provide fixes and corrections to the existing Accountability framework. This stream of improvements are more guided by the notion of accountability as some sort of a legally binding affirmations with corresponding proposals somewhat punitive measures for accountability lapses. Work Stream 2 could strip the Accountability framework of legally binding codes of behavior and take such clauses elsewhere. The broader accountability framework for an organization of this magnitude of purpose and responsibility could have to be disconnected from notions of legal enforceability and penal community processes.<br>While rules and procedures provide a legally enforceable framework for administrative practices, the Accountability framework is one that is above the legal notions. Such a framework would **articulate values and ethical standards** that would exalt the organization to such a high level that the penalty for deviation from the obligations would effectively be that of being named as an organization void of standards and jurisprudence. Accountability framework is not to be visualized as a document with clauses for individuals, applicants, contracted parties or governments to take ICANN to a Court of Law, but more as a framework of values that ICANN (and its Board Members, Executive Staff, Community leaders) would be very, very careful not to slip down from. | Divergence<br>**Summary / Impression:**<br>- WS2 could examine if ICANN's core mission should be more articulated.<br>- Shape of a Not for profit corporation is not large enough for the mission of ICANN<br>- Rules and procedures would articulate values and ethical standards<br><br>**Actions suggested:**<br><br>Articulate ICANN's core mission in WS2. Re-examine the not for profit corporation model, split business affairs from Policy<br><br>**CCWG Response:**<br>The CCWG will consider the input while it develops the next version of its report. |

[1] The public comment period ran from 4 May 2015 to 3 June 2015. Due to the late availability of the translated versions of the proposal, those who were reliant on these translated versions to provide input will have the ability to submit their comments until 12 June at 23:59 UTC.versions to provide input will have the ability to submit their comments until 12 June at 23:59 UTC.