

**IANA STEWARDSHIP  
TRANSITION  
COORDINATION GROUP**

**CROSS COMMUNITY WORKING  
GROUP ON ENHANCING  
ICANN ACCOUNTABILITY**

**IANA Stewardship Transition Proposal and  
Enhancing ICANN Accountability  
Recommendations**

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10 March 2016

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The Internet Corporation for Assigned Names and Numbers

March 10, 2016

The Honorable Lawrence E. Strickling  
Assistant Secretary for Communication and Information and Administrator,  
National Telecommunications and Information Administration  
United States Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, DC 20230

**Re: IANA Transition and the Affirmation of Commitments**

Dear Assistant Secretary Strickling:

On behalf of the ICANN Board of Directors it gives me great pleasure to transmit to you the IANA Stewardship Transition Proposal, which outlines the transition of NTIA's stewardship of the IANA functions to the global multistakeholder community. I am also pleased to transmit the CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations on Enhancing ICANN Accountability.

In its 14 March 2014 announcement, NTIA asked ICANN to convene an inclusive, global discussion to determine a process for transitioning the stewardship of these functions to the multistakeholder community. It specifically stated that the transition proposal must have broad community support and address the following four principles:

1. Support and enhance the multistakeholder model;
2. Maintain the security, stability, and resiliency of the Internet DNS;
3. Meet the needs and expectations of the global customers and partners of the IANA services;  
and,
4. Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces NTIA's role with a government-led or intergovernmental organization solution.

Thirty individuals, representing the broad range of Internet stakeholder interests, were nominated by their respective communities to become a part of the IANA Stewardship Transition Coordination Group (ICG). The ICG assembled input from three global multistakeholder communities with direct operational relationships with the IANA functions – Domain Names, Numbering Resources, and



Protocol Parameters – to develop one single, cohesive proposal to facilitate the succession of NTIA’s stewardship of the IANA functions.

The Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), made up of members from ICANN’s Supporting Organizations and Advisory Committees, and over 200 participants, developed a separate proposal for enhancing ICANN’s accountability in light of the changing historical relationship with the U.S. Government.

The proposals underwent extensive discussion and enjoy broad global community support. The relevant multistakeholder communities held over 600 calls and meetings with more than 32,000 mailing list exchanges over the past two years . The ICG proposal was finalized after the three operational communities of the IANA functions indicated consensus support for the proposal. The CCWG-Accountability proposal received consensus support from its members and was subsequently approved by the Supporting Organizations and Advisory Committees which chartered the group. The proposals themselves describe at great length how their recommendations meet all of NTIA’s criteria. The ICANN Board agrees with the community that the proposals do in fact meet each of NTIA’s criteria. The ICANN Board resolutions for the package address each of the proposals.

As you conduct your review of the package of proposals, please let us know if you have any questions or concerns. , The ICANN multistakeholder community eagerly awaits the results of your review.

Sincerely,

Enclosures:

Cover Page for IANA Stewardship Transition Package

Cover Note from Dr. Steve Crocker

ICANN Board Resolution on IANA Stewardship Transition Proposal

ICANN Board Resolution on Enhancing ICANN Accountability Recommendations

IANA Stewardship Transition Coordination Group (ICG) Proposal

Cross Community Working Group on Enhancing ICANN Accountability (CCWG- Accountability) Proposal

IANA Stewardship Transition Timeline

Diversity and Statistics on Development of IANA Stewardship Transition Package



## **Item 2.b - IANA Stewardship Transition Proposal from ICG**

Whereas, on 14 March 2014, the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce announced its intention to transition the stewardship of the IANA Functions to the global multistakeholder community.

Whereas, NTIA asked ICANN to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the Internet's domain name system (DNS). NTIA required that the proposal for transition must have broad community support and uphold the following principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

NTIA also stated it would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

Whereas, after public input into the design of the process, the IANA Stewardship Transition Coordination Group (ICG) was formed, with 30 members representing 13 communities of both direct and indirect stakeholders each selected by their respective communities. The communities represented were the At-Large Advisory Committee, Address Supporting Organization, Country-Code Names Supporting Organization, Governmental Advisory Committee, Generic Names Supporting Organization, Generic Top-Level Domain Registries, International Chamber of Commerce/Business Action to Support the Information Society, Internet

Architecture Board, Internet Engineering Task Force, Internet Society, Number Resource Organization, Root Server System Advisory Committee, and the Security and Stability Advisory Committee. A liaison from the ICANN Board, as well as an IANA Staff Liaison Expert were also named. The ICG is supported by an independent Secretariat.

Whereas, in response to its request, each of those operating communities in turn developed their own team to coordinate the development of a plan to submit to the ICG. The ICG received plans from the Domain Names communities (developed in the Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal, or the CWG-Stewardship) in June 2015, the Number Resources community (developed by the Consolidated RIR IANA Stewardship Proposal Team, or CRISP) in January 2015, and the Protocol Parameters community (developed in the IANAPLAN team) in January 2015. The CWG-Stewardship, CRISP and IANAPLAN teams each developed their plans through open consultation processes. The ICG took these three community-developed plans and assessed them individually and collectively in order to determine whether: (1) the community processes were open and inclusive and if consensus was achieved for the plans; (2) the proposals are complete and clear; (3) the three proposals together are compatible and interoperable, provide appropriate accountability mechanisms, and are workable; and (4) the proposals together meet the NTIA criteria.

Whereas, the ICG found that each of its assessment criteria were met, and coordinated the three plans into a single unified Proposal. The Proposal went out for public comment from August-September 2015, and received 157 comments on the combined proposal from a wide variety of stakeholders, including individuals, operational communities, supporting organizations and advisory committees within the ICANN community, businesses and trade associations, civil society groups, governments, and others from all regions of the world.

Whereas, upon deliberation and consideration of public comments, the ICG achieved unanimous support among its members for the Proposal. The ICG completed its work on 29 October 2015 and finalized its proposal, with the exception of one item. The CWG-Stewardship plan identified contingencies on the work of the Cross-Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), and the ICG received confirmation from the CWG-Stewardship on 29 February 2016 that the contingencies had been met.

Whereas, the CCWG-Accountability finalized its report on 10 March 2016, and thus provided the final confirmation to the ICG on the meeting of the interdependencies with the CWG-Stewardship's portion of the Proposal.

Whereas, on 10 March 2016, the ICG formally transmitted its report to the ICANN Board for consideration.

Whereas, during the Proposal development process, the Board engaged in each part of the process. The Board monitored the development of all parts of the proposals and provided public comment as appropriate, including commenting on both the first and second versions of the CWG plan, and on 8 September 2015 providing a comment on the ICG Proposal noting some specific concerns that should be addressed during the implementation phase. The Board's input to the ICG is at <https://comments.ianacg.org/pdf/submission/submission121.pdf>. A comprehensive list of all the ICANN Board's input into the processes are detailed at <https://www.icann.org/resources/pages/board-input-stewardship-accountability-2015-07-10-en>.

Whereas, on 19 February 2016, the Board held an information call wherein it refreshed its review of the ICG Proposal in anticipation that the Proposal would soon be delivered.

Resolved (2016.03.10.12), the ICANN Board accepts the ICG's IANA Stewardship Transition Proposal.

Resolved (2016.03.10.13), the Board approves of the transmittal of the Proposal to the National Telecommunications & Information Administration of the United States Department of Commerce in response to NTIA's 14 March 2014 announcement.

Resolved (2016.03.10.14), the President and CEO, or his designee, is directed to plan for the implementation of the Proposal so that ICANN is operationally ready to implement in the event NTIA approves of the Proposal and the IANA Functions Contract expires.

Resolved (2016.03.10.15), the Board expresses its deep appreciation for the tireless efforts of the ICG chairs and members in developing the Proposal, as well as the chairs, members and participants in the CWG-Stewardship, CRISP and IANAPLAN teams. The development of the coordinated Proposal across these four volunteer teams is a true demonstration of the strength and triumph of the multistakeholder model.

***Rationale for Resolution 2016.03.10.12 – 2016.03.10.15***

The acceptance and transmittal of the ICG's IANA Stewardship Transition Proposal to NTIA is the culmination of a nearly two-year process. NTIA's call for ICANN to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the Internet's unique identifiers has been met. This is the end of the first phase in the path towards the privatization of DNS management, a goal since ICANN's formation.

The global multistakeholder community embraced NTIA's call to action, first developing the plan for how the proposal will be developed, at <https://www.icann.org/resources/pages/process-next-steps-2014-06-06-en> after a call for public input, available at <https://www.icann.org/resources/pages/draft-proposal-2014-04-08-en>. The IANA Stewardship Transition Coordination Team, or ICG, was formed out of

that effort, comprised of individuals selected by each represented community. These 30 individuals represent 13 communities of both direct and indirect stakeholders who together delivered a proposal to recommending a transition plan of NTIA's stewardship of IANA functions to the Internet community, consistent with the key principles outlined in the NTIA March 14 announcement. The ICG membership is identified at <https://www.icann.org/resources/pages/icg-members-2014-07-29-en>. The ICG documented its work at <https://www.ianacg.org/>.

The ICG called upon the operational communities to develop comprehensive plans for transition of NTIA's role as it relates to each of the three functions served under the IANA Functions Contract. The Request for Transition Proposals, at <https://www.icann.org/news/announcement-2014-09-09-en>, specified a comprehensive list of requirements, including: descriptions of how the community uses the IANA functions and existing arrangements; proposed oversight and accountability arrangements post-transition; transition implications; identification of the how the NTIA criteria are met; and description of community process and consensus assessment.

The operating communities each responded through separate teams. The Domain Names communities formed the Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal (CWG-Stewardship), <https://community.icann.org/x/37fhAg>. The Domain Name Community's report was the result of over 100 calls or meetings, 2 public consultations and more than 4,000 email messages. The final proposal received the consensus support of the CWG with no objections or minority statements recorded for Chartering Organization consideration.

The Number Resources community formed the Consolidated RIR IANA Stewardship Proposal Team (CRISP), tracked at <https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team>. Within the Number Resources community, each of the five RIRs also performed work to support the CRISP work, and details on those proceedings can be accessed from



<https://www.icann.org/en/stewardship/community>. Each region contributed to the community consensus via regionally defined processes suitable to their particular local needs and culture.

The Protocol Parameters community established the IANAPLAN working group to elaborate a response, with a mailing list at <http://www.ietf.org/iana-transition.html>. Anyone was welcome to join the conversation and participate in the development. A publicly archived and open mailing list was created to this end and yielded 2,252 emails.

Upon receipt of all three reports, the ICG reviewed each report to consider if: (1) the community processes were open and inclusive and if consensus was achieved for the plans; (2) the proposals are complete and clear; (3) the three proposals together are compatible and interoperable, provide appropriate accountability mechanisms, and are workable; and (4) the proposals together meet the NTIA criteria. The ICG Proposal details the findings on each of these elements and the Board agrees with these findings.

The ICG received 157 comments on its draft combined proposal from a wide variety of stakeholders, including individuals, operational communities, supporting organizations and advisory committees within the ICANN community, businesses and trade associations, civil society groups, governments, and others from all regions of the world. In support of the proposal, the ICG produced a comprehensive summary of public comments (<https://www.ianacg.org/icg-files/documents/Public-Comment-Summary-final.pdf>) to identify the comments received and how they were addressed in the Proposal. The comments, on the whole, also support the ICG's findings.

The ICG's deliberations were extensive. Seven face-to-face meetings, 26 conference calls and the exchange of 5,627 emails were the tools needed to build the report. To maintain and safeguard the inclusiveness of the process, interpretation services were provided for meetings. Translations of working

documents were delivered, and inputs received in languages other than English were also translated. Seven engagement sessions were organized to foster awareness and receive feedback. The ICG called for input to its work at different phases, including a call for comments to validate community support for how ICG was performing its work. ICANN in its facilitation of the process provided all resources and support requested by the community to develop a consensus proposal.

The two most important considerations for the Board are on the compatibility and interoperability of the three plans, and whether the proposals meet NTIA's criteria.

### **Compatibility and interoperability**

The Board has reviewed all three components of the plan. As the Board stated in its 8 September 2015 comments to the ICG, <https://comments.ianacg.org/pdf/submission/submission121.pdf>, "While the ICG has asserted that there are no incompatibilities between the three operational communities' proposals received (also known as the CRISP, CWG-Stewardship, and IANAPLAN responses), there are some implementation details and foreseen complexities that will need further coordination with the communities for clarity. As implementation occurs, ways to address the elements of the proposal may evolve, and in our comments below, we have endeavored to highlight some of these and provide the ICG with implementation suggestions.

We do not believe that any of these issues poses a threat to the viability of the final ICG Proposal. We hope that these implementation issues and details can be resolved in the implementation phase, but we urge the community and where needed the ICG to consider these issues and begin to clarify as soon as practicable in the interests of a smooth IANA Stewardship Transition."

The areas identified by the Board on potential areas of overlap that require further coordination in the implementation phase include: (1) new service levels and operational changes; (2) jointly managed functions; (3) the relationship between the “Post Transition IANA” identified perform the naming-related functions and the other operating communities; and (4) transfer to successor operator requirements. ICANN stands ready to work with the communities to address these issues within the implementation planning phase.

### **NTIA Criteria Appear To Be Met**

The Board agrees with the ICG’s determination that the NTIA criteria have been met through the consensus-supported ICG Proposal.

#### *1. Support and enhance the multistakeholder model.*

The ICG noted, and the Board agrees, that each of the operating communities modeled their post-transition proposal on the existing arrangements and structures. The arrangements between ICANN and the Protocol Parameters and Numbers Resource communities remain largely unchanged, and the multistakeholder nature of oversight in the naming community will likely be enhanced through the development of community-based standing committees and review processes. The existing IANA Functions Contract served as the basis for many of the proposed post-transition plans, with enhanced responsibility placed on the multistakeholder community in overseeing the work.

#### *2. Maintain the security, stability, and resiliency of the Internet DNS.*

The Board agrees with the ICG that the security, stability and resiliency of the Internet DNS are maintained through the combined Proposal. There is no change suggested by the Numbers Resource or Protocol Parameters communities that could impact the security, stability or resiliency of the DNS. These proposals are built upon the existing structure.

Though the Names community is calling for the creation of a subsidiary of ICANN to perform the naming function, ICANN agrees with the ICG that this portion of the proposal also maintains the security, stability and resiliency of the Internet DNS. There is minimal change contemplated for the technical delivery of the naming-related functions, and the role remains unchanged.

ICANN agrees that it is essential to have a contract in place between ICANN and the Root Zone Maintainer prior to any expiration of the IANA Functions Contract, and this is key to security and stability concerns.

*3. Meet the needs and expectation of the global customers and partners of the IANA services.*

The Board agrees with the ICG that this condition has been met. The ICG stated “All three communities determined that the global customers and partners of the IANA services and their communities of stakeholders are presently satisfied with the performance of the IANA functions by the IANA department of ICANN. The combined proposal is not expected to impact that.”

*4. Maintain the openness of the Internet.*

The ICG determined “The combined proposal requires that the IANA services, associated policy development processes, and IANA registries remain fully open and accessible just as they are today.” The Board agrees that the ICG Proposal, though it identifies some organizational changes through which the IANA Functions will be delivered, otherwise has no impact on the variety of open policy development processes or on the databases and IANA registries that are available today.

*5. No replacement of the NTIA role with a government-led or an inter-governmental organization solution.*

NTIA also specified that its role could not be replaced by a government-led or an inter-governmental organization solution. This condition is met. None of the operating communities define a role for a government-led or inter-governmental organization solution, relying instead on the operating communities and other indirect customers of the IANA functions to perform the different oversight and accountability roles. The Proposal affirms the role of the multistakeholder community.

### **Resource Implication**

Accepting the Proposal and transmitting the Proposal to NTIA do not, specifically impose any resource requirements on ICANN. However, the planning for implementation that is necessary to be at a place that ICANN is ready to implement these changes if the IANA Functions Contract expires. That effort requires significant resources, such as systems and reporting updates, funding the development of an affiliate not-for-profit entity, development of changes to ICANN's Bylaws as well as governing documents for the new entity, completing contracts necessary for the performance of the IANA functions, and constituting the new community-based groups involved in oversight in the future. Both the community and ICANN will be called upon to devote time to this effort. Fiscally, the implementation planning must proceed with considerations of fiscal responsibility, and the Board looks forward to working with the community to develop cost management tools that will result in better estimation of costs. The Board will use these estimates to guide future budgeting decisions on the IANA Stewardship Transition work.

During the development of proposal, ICANN provided funding and staff resources for various aspects of the work, including initiating the work of the ICG, travel costs for face-to-face meetings, funding an independent Secretariat to support the ICG, staff support to the CWG-Stewardship, and funding external counsel to advise the CWG in the development of its proposal. The funds expended to date on the collective ICG effort helped provide the multistakeholder community with the opportunity to develop

the proposals with the levels of independence it said were important. Further, the availability of external advice supported the CWG's debate and dialogue that led to its final recommendations. Providing these resources was an important facet of assuring multistakeholder participation in this work.

### **DNS Impact**

The acceptance and transmittal of this Proposal are not expected to have any impact on the security, stability and resiliency of the Internet DNS. Planning for implementation of the Proposal helps assure that ICANN can continue the performance of the required functions, even in a post-transition environment, with no impact on security, stability or resiliency.

### **Conclusion**

Taking this action today is an important affirmation of the multistakeholder model. The global multistakeholder community came together and developed a plan for the transition of the IANA Functions Stewardship. Issues were debated in multiple fora. Public comments were received, analyzed and incorporated. The resulting Proposal has the consensus of the operating communities impacted by the respective portions, as well. The Proposal also received unanimous consensus from across the 13 communities represented in the ICG.

The Board thanks NTIA for giving the multistakeholder community the opportunity to develop this Proposal. Accepting this report and transmitting it to NTIA for consideration is an important step in maintaining accountability to the multistakeholder community, and the Board serves the public interest in taking this decision.

This is an Organizational Administrative Function that has been subject to multiple levels of public comment.



## **Item 2.c - Proposal from CCWG on Enhancing ICANN Accountability**

Whereas, on 14 March 2014, the National Telecommunications and Information Administration of the United States Department of Commerce announced its intention to transition the stewardship of the IANA Functions to the global multistakeholder community.

Whereas, NTIA asked ICANN to convene global stakeholders to develop a proposal to transition the current role performed by NTIA in the coordination of the Internet's domain name system (DNS). NTIA required that the proposal for transition must have broad community support and uphold the following principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

NTIA also stated it would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

Whereas, during initial discussions on how to proceed with the transition process, the ICANN multistakeholder community, raised concerns on the impact of the transition on ICANN's accountability, with the removal of the perceived backstop of NTIA's historical role.

Whereas, ICANN supported the community in the development of the Cross-Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), chartered by the Address Supporting Organization, the At-Large Advisory Committee, the Country Code Names Supporting Organization, the Generic Names Supporting Organization, the

Governmental Advisory Committee and the Security and Stability Advisory Committee. The CCWG-Accountability has 28 members from across the Chartering Organizations, with an additional 175 registered participants.

Whereas, the CCWG-Accountability's work was determined to be interrelated with the work to develop a proposal being developed by the IANA Stewardship Transition Coordination Group (ICG), the proposal called for by NTIA in its announcement. ICANN agreed that after the Board considered the CCWG-Accountability proposal, it would be transmitted to NTIA to support its evaluation of the ICG's proposal.

Whereas, the CCWG-Accountability's work is divided into two phases:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition; and
- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

Whereas, the CCWG-Accountability's deliberations to date have focused on preparing a set of recommendations to fulfill its Work Stream 1 objectives, and defining the topics that will be considered for Work Stream 2. The CCWG-Accountability developed its report in multiple phases and iterations that included participation beyond the CCWG-Accountability, and beyond ICANN as a whole.

Whereas, the CCWG-Accountability requested that counsel external to ICANN be made available to provide advice on the governance issues that the CCWG-Accountability identified as necessary as part of its work. In coordination with ICANN, two sets of legal counsel were engaged and have provided advice and counsel directly to the CCWG-Accountability. ICANN funds the work of these two firms.



Whereas, in October 2014, the Board committed to a process through which it would consider the consensus-based recommendations of the CCWG-Accountability in Resolution 2014.10.16.16 at <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>.

Whereas, the Board has been closely following the work of the CCWG-Accountability, including identifying a liaison to the group, and active participation from across the Board in CCWG-Accountability meetings. The Board has participated in the public comment processes on the iterations of the CCWG-Accountability reports, and has provided interim inputs into the deliberations on an ongoing basis. A comprehensive list of all the ICANN Board's input into the process is detailed at <https://www.icann.org/resources/pages/board-input-stewardship-accountability-2015-07-10-en>.

Whereas, on 10 March 2016, the CCWG-Accountability Co-Chairs transmitted its Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 1 Report (“Report”) to the ICANN Board, confirming that the recommendations achieved consensus in the CCWG-Accountability. The Report was approved by five of the Chartering Organizations, with the sixth, the GAC, submitting a statement of non-objection to transmitting the Report to the Board. The CCWG-Accountability also confirmed the support of the Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal (CWG-Stewardship), the group responsible for developing the Domain Names Community’s input into the IANA Stewardship Transition Coordination Group’s proposal. The CWG-Stewardship had identified certain contingencies on the CCWG-Accountability’s recommendations, which were confirmed as met.

Resolved (2016.03.10.16), the ICANN Board accepts the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 1 Report (“Report”).

Resolved (2016.03.10.17), the Board approves of the transmittal of the Report the National Telecommunications & Information Administration of the United States Department of Commerce to accompany the IANA Stewardship Transition Proposal developed by the IANA Stewardship Transition Coordination Group.

Resolved (2016.03.10.18), the President and CEO, or his designee, is directed to plan for the implementation of the Report so that ICANN is operationally ready to implement in the event NTIA approves of the IANA Stewardship Transition Proposal and the IANA Functions Contract expires. The Board is committed to working with the community to identify the portions of the CCWG-Accountability recommendations that can be implemented in the event that it is determined that ICANN's obligations to perform the IANA Functions will remain under contract with NTIA.

Resolved (2016.03.10.19), the Board expresses its deep appreciation for the tireless efforts of the CCWG-Accountability chairs, rapporteurs, members and participants, as well as the global community that came together in developing the Report. The intensity and level of engagement from across the community, as well as the spirit of cooperation and compromise that led to this Report is a true demonstration of the strength and triumph of the multistakeholder model.

***Rationale for Resolution 2016.03.10.16 – 2016.03.10.19***

The acceptance of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 1 Report ("Report") represents a milestone in the evolution of the multistakeholder model. The CCWG-Accountability was created out of a call from across the ICANN community on a review of the impacts on ICANN's accountability with the removal of the perceived backstop from the historical contract with

NTIA in the event the stewardship of the IANA Functions is transitioned to the multistakeholder community. This Work Stream 1 Report was developed by the 28 members of the CCWG-Accountability, representing six Chartering Organizations, and 175 participants. The development of this Report required over 220 meetings (face-to-face or telephonic), three public comment periods, and more than 13,900 email messages. The dedication of the CCWG-Accountability, including intense debate and resulting compromise from all participants, is an example of what the multistakeholder model can achieve. The CCWG-Accountability work is only part of the coordinated effort to achieve the delivery of a proposal to NTIA on the IANA Stewardship Transition.

The CCWG-Accountability Work Stream 1 recommendations have a few main areas of focus:

- A revised Mission Statement for the ICANN Bylaws that clarifies what ICANN does, while not changing ICANN's historic mission.
- An enhanced Independent Review Process with a broader scope, reaffirming the IRP's power to ensure ICANN stays within its Mission. The IRP will become binding upon ICANN.
- Enhancements to the Reconsideration Request process.
- New specific powers for the ICANN community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus, including the powers to:
  - Reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans.
  - Reject changes to ICANN's Standard Bylaws.
  - Approve changes to new Fundamental Bylaws, Articles of Incorporation and ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  - Remove an individual ICANN Board Director.
  - Recall the entire ICANN Board.
  - Initiate a binding Independent Review Process on behalf of the Community.

- Reject ICANN Board decisions relating to reviews of the IANA functions, including the triggering of Post-Transition IANA separation.
- Inspect ICANN's books and records, and initiate investigatory audits.

The CCWG-Accountability recommendations also describe how the community will come together to exercise their new powers, including paths of escalation and community dialogue. The community will ultimately have the power and standing, through the development of a “designator” structure under California law, to enforce these powers in court, though the escalation paths are designed to reduce the need to ever resort to court for resolution. The Board is supportive of the CCWG-Accountability's focus on internal resolution and the Independent Review Process, as opposed to encouraging the ICANN community to rely upon the judicial system as a regular tool in holding ICANN accountable.

Other areas of the CCWG-Accountability recommendations include the insertion of a commitment to recognition of human rights, incorporating the reviews called for under the Affirmation of Commitments into the ICANN Bylaws, modifying the structural reviews to include considerations of SO/AC Accountability, and affirming the GAC's current advisory role and the deference given by the Board, while refining the threshold needed for the Board to not act consistently with GAC consensus advice. The CCWG-Accountability also specified some elements of accountability that relate to the CWG-Stewardship's portion of the IANA Stewardship Transition Proposal.

Finally, the CCWG-Accountability recommendations scope the topics that will be considered within its Work Stream 2, and identify that the Board will consider those continuous improvement recommendations with the same process the Board identified for the Work Stream 1 recommendations.

The CCWG-Accountability produced three drafts of recommendations to reach this final Report. The first draft was out for public comment from 4 May 2015 through 12 June 2015 and received 31 comment submissions. The second draft was out for public comment from 3 August 2015 through 12 September 2015 and received 93 comment submissions. The third draft was out for public comment from 30 November 2015 through 21 December 2015 and received 89 comment submissions. For each of these public comment periods and document releases, the CCWG-Accountability held multiple webinars to describe the mechanisms in the proposal and answer any questions. The CCWG-Accountability also held engagement sessions at each of the ICANN meetings and individual members conducted their own outreach around the globe at regional and national events and conferences.

The CCWG-Accountability relied upon advice provided by two external law firms, Sidley Austin LLP and Adler & Colvin, which were retained after the need for external inputs was determined by the CCWG-Accountability to be essential to its review of ICANN's governance structure, and to test the legal inputs provided by ICANN. ICANN facilitated the engagement process in collaboration with the CCWG-Accountability, and pays the legal fees. When addressing such important and broad issues, the availability of these legal inputs provided the CCWG-Accountability with the tools to perform their work and have full deliberations. ICANN in its facilitation of the process provided all resources and support requested by the community to develop a consensus report.

#### *Meeting the NTIA Criteria*

The Board agrees that it is important for the CCWG-Accountability recommendations that modify ICANN's governance structure to uphold the same criteria that NTIA defined for the transition of the stewardship of the technical IANA functions. ICANN, as the organization that will remain responsible for the performance of the IANA functions, must have the same safeguards. The Board agrees with the CCWG's assessment that NTIA's criteria are met.

### *1. Support and Enhance the Multistakeholder Model*

At Annex 14 of its Report, the CCWG-Accountability identifies the ways in which its recommendations support and enhance the multistakeholder model. The Board agrees that the specific items enumerated in the Report support this criterion. More fundamentally, however, the recommendations as a whole demonstrate more reliance upon the multistakeholder community coming together to influence not just policy, but also ICANN's governing documents and some of ICANN's key operational decisions as well, such as planning for budgets and operating plans. The multistakeholder community is given more individual and collective access to paths of redress, and assurances of the binding nature of those tools. The spirit of this Report is for a community that has more determination over ICANN. It will be important that those taking on greater responsibilities continue to consider how to evolve their own accountability efforts, as will be considered in Work Stream 2.

### *2. Maintain the Security, Stability and Resiliency of the Internet DNS*

Along with the items identified by the CCWG-Accountability in Annex 14 of its Report, the Board notes that the security, stability and resiliency of the Internet DNS are maintained through the CCWG-Accountability recommendations first and foremost through the affirmation that ICANN's mission, while clarified, remains unchanged, and any future attempt to change that mission will require both Board and community consent. The CCWG-Accountability has identified that there are core components of ICANN's budget that will remain operational even if there is a dispute between the community and ICANN on the budget, and those core components include operations that relate to the security and stability of the Internet DNS.

### *3. Meet the needs and expectations of the partners of the IANA Functions*

Along with the items identified by the CCWG-Accountability in Annex 14 of its report, the Board notes that this criterion is met by the consideration of the needs of the customers of the IANA Functions and the coordination of recommendations that complement the IANA Stewardship Transition Proposal. The needs identified by the CWG-Stewardship have been incorporated into the recommendations, and the CWG-Stewardship has affirmed that its contingencies were met. The CCWG-Accountability also coordinated with the other operating communities to confirm that their concerns on clarification on mission and applicability of independent review processes were addressed.

#### *4. Maintain the Openness of the Internet*

In addition to the items identified by the CCWG-Accountability in Annex 14 of its Report, the Board agrees that this criterion is met through the development of open processes where community members might wish to engage. Maintaining open processes where community members have not only a voice, but also an opportunity to impact, is expected to enhance ICANN's accountability and the multistakeholder model itself. Strengthening ICANN through the strengthening of the multistakeholder model is the key way to maintain the openness of the Internet and continued participation in ICANN's processes. The recognition of the roles of all stakeholders at ICANN is another important aspect of meeting this criterion.

The Board also agrees that the future work scheduled for Work Stream 2, focusing on issues such as enhancing transparency, diversity, community accountability, and defining how staff can be more accountable to the community also are geared towards continued enhancement of engagement in ICANN and maintaining the model.

#### *5. No replacement of the NTIA role with a government-led or an inter-governmental organization solution*

In addition to the CCWG-Accountability's discussion of how this criteria is met, the Board agrees that this criteria is met, again, through a strong grounding in the multistakeholder community. The recommendations reaffirm the role of each of the structures within ICANN, and do not create inequalities in how each of the groups participate, even as the ICANN community moves beyond policy development work and into new operational activities. The role of governments in ICANN is affirmed, as well as the Governmental Advisory Committee's autonomy over its own operating procedures, while at the same time creating more predictability in the Board providing special consideration only to GAC advice that is within ICANN's mission and provided with defined consensus.

### ***Minority and Voting Statements***

The Board notes that there were five minority statements provided to the CCWG-Accountability on its final Report. Appendix A of the report details both the process that the CCWG-Accountability followed to reach consensus. The Appendix also includes the minority statements in full.

In the 10 March 2016 letter transmitting the Report to the Board, the Board has been informed by the CCWG-Accountability co-chairs that consensus was reached on the recommendations. Further, the Chartering Organizations have each approved (with one non-objection) to the forwarding of the final Report to the Board for consideration, though the minority statements were provided by those associated with various Chartering Organizations. There were also voting statements provided within the GNSO on parts of the recommendations, at times mirroring the issues previously raised in the minority statements. The GAC, in providing its non-objection, noted the support for a large majority of the recommendations and lack of consensus over others.

Given the full process for the development of the Report, the numerous concessions made by all in reaching the consensus recommendations, and the approval (or non-objection) of all of the Chartering Organizations, the



Board considers that the existence of these voting and minority statements does not create a barrier to the acceptance of the Report. The Board encourages the CCWG-Accountability to consider if any of the concerns raised in the minority or voting statements can appropriately be addressed within the topics defined for Work Stream 2 or used as guidance in implementation.

### ***Resource Implication***

Accepting the Report and transmitting it to NTIA does not specifically impose any resource requirements on ICANN. However, the planning for implementation that is necessary to be in place for ICANN is ready to implement these changes when appropriate. That effort requires significant resources, including amending ICANN's Bylaws, supporting the revisions to the Independent Review Process, confirming that processes are in place for the community escalation processes, and other planning as required. The implementation planning for the entirety of the IANA Stewardship Transition Process is a coordinated effort, with the interrelated operational and accountability requirements within the ICG's Proposal and the CCWG-Accountability's Report considered together. Given that there is the possibility that NTIA may not be able to approve ICG's Proposal, if that determination is made, the Board is committed to work with the community to implement those parts of the CCWG-Accountability Report that do not interfere with the obligations ICANN would maintain under an IANA Functions Contract with NTIA.

Both the community and ICANN will be called upon to devote time to this effort. The implementation planning must proceed with considerations of fiscal responsibility, and the Board looks forward to working with the community to develop cost management tools that will result in better estimation of costs. The Board will use these estimates to guide future budgeting decisions on the CCWG-Accountability work, including implementation and Work Stream 2. As Work Stream 2 proceeds, the Board urges close consideration of the types of legal support needed now that the

broad governance changes developed in Work Stream 1 are accepted and on path for implementation, and the issues reserved for Work Stream 2 may not be as legal in nature.

During the development of the Report, ICANN provided funding and staff resources for all aspects of the work, including things such as travel support and coordination of face-to-face meetings, secretariat support, external counsel, report drafting and graphics, and translations. The funds expended to date on the CCWG-Accountability helped provide the multistakeholder community with the opportunity to develop the Report with the levels of independence it said were important. Further, the availability of external advice supported the CCWG-Accountability's debate and dialogue that led to its final recommendations. Providing these resources was an important facet of assuring multistakeholder participation in this work.

### ***DNS Impact***

The acceptance and transmittal of this Report are not expected to have any impact on the security, stability and resiliency of the Internet DNS.

### ***Conclusion***

Taking this action today is an important affirmation of the multistakeholder model. The global multistakeholder community came together and developed a plan to enhance the accountability of ICANN to help support the transition of the IANA Functions Stewardship. Issues were debated in multiple fora. Public comments were received, analyzed and incorporated. Many difficult issues were resolved, with compromises across the community. In the end, the multistakeholder community developed recommendations that reserve to it unprecedented power in ICANN, with meaningful and binding escalation paths to enforce these new rights. The CCWG-Accountability also has considered how to make sure the key commitments from the existing Affirmation of Commitments remain in place through incorporation into the Bylaws, and other enhancements to

enhance accountability and transparency in ICANN's operations. The Report is supported by a consensus of the CCWG-Accountability, and approved by all but one Chartering Organization, which has noted its non-objection to submitting the Report to ICANN. Accepting this Report is an important step in maintaining accountability to the multistakeholder community, and the Board serves the public interest in taking this decision.

This is an Organizational Administrative Function that has been subject to multiple levels of public comment.

**Proposal to Transition the Stewardship of the  
Internet Assigned Numbers Authority (IANA) Functions  
from the U.S. Commerce Department's National  
Telecommunications and Information Administration (NTIA)  
to the Global Multistakeholder Community**

**IANA Stewardship Transition Coordination Group (ICG)**

**March 2016**

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## Executive Summary

- X001 On March 14, 2014, the U.S. Commerce Department's National Telecommunications and Information Administration (NTIA) announced its intent to transition the stewardship of key Internet functions to the global multistakeholder community.<sup>1</sup> NTIA asked the Internet Corporation for Assigned Names and Numbers (ICANN) to convene global stakeholders to develop a proposal to replace NTIA's current stewardship role over the Internet Assigned Numbers Authority (IANA) functions. A brief history of IANA is provided in Part 0, Section II below.
- X002 As a result of community discussions, the IANA Stewardship Transition Coordination Group (ICG)<sup>2</sup> was formed in July 2014 to coordinate the transition planning process. The ICG is composed of 30 individuals representing 13 communities, and includes direct and indirect stakeholders. These representatives were selected by their respective communities.<sup>3</sup>
- X003 The ICG took note of guidance from the Internet Architecture Board (IAB)<sup>4</sup> pointing out the existing division of IANA functions and customer communities into three categories related to domain names, number resources, and protocol parameters. The ICG therefore chose to ground the proposal development process in those communities given their direct operational or service relationships with the IANA Functions Operator (IFO). This also reflects the fact that the policy and oversight responsibilities for the three functions resides in these three separate communities (and have for decades). The three "operational communities" (OCs) are: the Domain Names community (organized around ICANN's supporting organizations and advisory committees); the Number Resources community (organized around the Regional Internet Registries, or RIRs); and the Protocol Parameters community (organized around the Internet Engineering Task Force, or IETF).
- X004 The ICG was tasked to confirm that the proposals met the articulated NTIA requirements and were supported by broad community consensus. The ICG developed a request for proposals (RFP)<sup>5</sup> that was provided to each of the communities, setting forth these conditions and the need to have open, inclusive processes. Each of the communities then used its own processes to develop a response to the RFP for transitioning its respective part of the IANA functions, and submitted its response to the ICG. This document contains the RFP responses from each of the three operational communities.
- X005 The ICG sought public comment on the combined proposal and the final version presented here reflects comments received. The ICG received 157 comments on the combined proposal from a wide variety of stakeholders, including individuals, operational communities, supporting organizations and advisory committees within the ICANN community, businesses and trade associations, civil society groups, governments, and others from all regions of the world.

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<sup>1</sup> <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>

<sup>2</sup> <http://www.ianacg.org/>

<sup>3</sup> <https://www.ianacg.org/coordination-group/icg-members/>

<sup>4</sup> <https://www.iab.org/wp-content/IAB-uploads/2014/04/iab-response-to-20140408-20140428a.pdf>

<sup>5</sup> <https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf>

## Proposal Summary

x006 The Names proposal was developed in the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG). The Names community proposed to:

- Form a new, separate legal entity, Post-Transition IANA (PTI), as an affiliate (subsidiary) of ICANN that would become the IANA Functions Operator for names, in contract with ICANN. The legal jurisdiction in which ICANN resides is to remain unchanged.
- Create a Customer Standing Committee (CSC) responsible for monitoring the operator's performance according to the contractual requirements and service level expectations.
- Establish a multistakeholder IANA Function Review process (IFR) to conduct reviews of the performance of the naming functions.

x007 The Numbers community proposed that:

- ICANN continue to serve as the IANA Functions Operator for number resources and perform those services under a contract with the five Regional Internet Registries (RIRs).
- A contractual Service Level Agreement (SLA) be established between the Regional Internet Registries and the IANA Numbering Services Operator.
- A Review Committee (RC) be established comprising community representatives from each region to advise the RIRs on the IANA Functions Operator's performance and adherence to identified service levels.

x008 For the protocol parameters, ICANN currently serves as the IANA registries operator. The IETF community expressed satisfaction with the current arrangements and proposed:

- That the IANA protocol parameters registry updates continue to function day-to-day, as they have been doing for the last decade or more.
- To continue to rely on the system of agreements, policies, and oversight mechanisms created by the IETF, ICANN, and IAB for the provision of the protocols parameters-related IANA functions.

x009 The Numbers and Protocol Parameters communities have confirmed that they have no objection to ICANN subcontracting their parts of the IANA functions to PTI. Accordingly, under the combined proposal, PTI would perform all of the IANA functions currently covered by the NTIA contract, with the necessary staffing and resources to do so. ICANN would contract with the PTI for the performance of the naming functions. The IETF would maintain its existing Memorandum of Understanding with ICANN for the performance of the protocol parameters functions. The RIRs would establish a Service Level Agreement with ICANN for the performance of the numbering functions. ICANN would sub-contract the performance of the protocol parameters and numbering functions to PTI. Each of the three operational communities would maintain independent authority over its own processes for performance

review and for considering a change of IANA Functions Operator for the functions within their purview. All three communities have explicitly committed to coordinate with each other and ICANN to ensure the stability and smooth operation of the IANA functions in the event of such a change.

- x010 The ICG assessed the proposals individually and collectively to determine whether:
- the community processes used to develop the proposals were open and inclusive, and whether they achieved consensus;
  - the proposals are complete and clear;
  - the three proposals together are compatible and interoperable, provide appropriate and properly supported accountability mechanisms, and are workable; and
  - the proposals together meet the NTIA criteria.

## Community Processes

- x011 The ICG has concluded that each of the individual proposals was developed in an open and inclusive manner and that each proposal achieved consensus as defined by each community.

## Completeness and Clarity

- x012 The ICG discussed the content of each proposal in depth and has published a matrix of topics discussed.<sup>6</sup> The ICG is satisfied that the proposals are complete and clear.

## Compatibility and Interoperability

- x013 The ICG believes the proposals are compatible and interoperable. In early 2015 the ICG identified a potential compatibility issue regarding the IANA trademarks and the iana.org domain name. The Numbers proposal requires that the IANA intellectual property and domain names be transferred to an entity independent of the IANA Functions Operator, while the other two proposals are effectively silent on this issue. The ICG has confirmed that the other two communities have no objection to this requirement from the Numbers community.
- x014 Coordination across the operational communities is clearly an essential component of the Internet's successful development to date and collaboration is an integral part of the communities' operational and policy development processes. In the specific case of the IANA functions, each community has clearly confirmed to the ICG its ongoing commitment to cooperation.<sup>7</sup>

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<sup>6</sup> [http://www.ianacg.org/icg-files/documents/questions-and-answers-matrix\\_v4.xlsx](http://www.ianacg.org/icg-files/documents/questions-and-answers-matrix_v4.xlsx)

<sup>7</sup> See CWG response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/attachments/20151007/6b83630d/attachment.doc](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/attachments/20151007/6b83630d/attachment.doc)>, IETF response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001812.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001812.html)>, IAB response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001825.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001825.html)>, CRISP response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001810.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001810.html)>, joint statement provided at



## Accountability

- X015 The three proposals together include appropriate and properly supported independent accountability mechanisms for running the IANA functions, relying mostly on the right of each operational community to change operators for the performance of the IANA functions within their purview.
- X016 Many commenters in the public comment period noted the CWG dependency on ICANN-level accountability mechanisms that were, at the time of the public comment period, under development in the CCWG and noted the associated difficulty in judging the overall accountability provided by the Names proposal. The ICG has secured confirmation from the CWG that the CWG's requirements have been met by the CCWG.

## Workability

- X017 Having been developed by the three operational communities, the three proposals are naturally different in many respects, reflecting different subject matter, priorities, challenges and processes involved in their production. However, the ICG regards the three proposals as individually and collectively workable.
- X018 Verisign currently serves as the Root Zone Maintainer and performs the Root Zone Management functions pursuant to a cooperative agreement with NTIA. Since there is currently no agreement between the Root Zone Maintainer and the IANA Functions Operator for the Root Zone Management process, some form of agreement between these organizations will be essential when NTIA withdraws from the Root Zone Management process.

## NTIA Criteria

### 1. Broad community support

- X019 The ICG has concluded that each of the individual proposals has broad community support. Each community ran an open and inclusive process in which any interested individual was able to participate. Each community produced a consensus proposal.
- X020 A significant majority of those who submitted comments during the ICG public comment period supported the combined proposal. These commenters included individuals, operational communities, supporting organizations and advisory committees within the ICANN community, businesses and trade associations, civil society organizations, governments, and others from across all regions of the world. Thus community support for the combined proposal is broad both in diversity of interests and geography of origin. Furthermore, the consensus of the ICG in support of the proposal provides a powerful demonstration of the breadth of community support.

### 2. Support and enhance the multistakeholder model

- X021 The ICG has concluded that the combined proposal supports and enhances the multistakeholder model because it leverages existing multistakeholder arrangements, processes, and paradigms in defining the post-transition IANA oversight and accountability mechanisms. Each component of the proposal has this feature.

### 3. Maintain the security, stability, and resiliency of the Internet DNS

- X022 Neither the Numbers proposal nor the Protocol Parameters proposal suggest changes that could affect the security, stability, or resiliency of the DNS.
- X023 While the Names proposal calls for the IANA Functions Operator to be transferred to the PTI, the PTI will be an affiliate (subsidiary) of ICANN and ICANN will be responsible for the stewardship of the PTI. Hence operational roles are maintained. The proposal envisages the names aspect of the current NTIA oversight and contracting authority is transferred to ICANN. The separation of PTI as a subsidiary will ensure the independence of that oversight role from the contractor providing the service.
- X024 This arrangement introduces minimum change and keeps the current IANA functions operation team intact and carrying out the same role as it has today.
- X025 The ICG notes that, under the current IANA Functions Contract, the DNS Root Zone Management process currently has three functional roles: the IANA Functions Operator (IFO), the Root Zone Maintainer (RZM), and the Root Zone Administrator (RZA). A complete and finalized transition requires revising the relationship between the current IANA Functions Operator (ICANN), the current RZM (Verisign) and the current Root Zone Administrator (NTIA). While the Names proposal contemplates an arrangement between the IFO and the RZM, the CWG has confirmed to the ICG that such an arrangement has not been specified in the Names proposal or elsewhere. ICANN and NTIA have made it known<sup>8</sup> that prior to the expiry of the NTIA contract those relationships will be specified in a written agreement between ICANN and Verisign. The ICG reiterates that a written agreement

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<sup>8</sup> See the transcript of the ICANN 54 Public Forum, October 23, 2015:  
<https://meetings.icann.org/en/dublin54/schedule/thu-public-forum>.

between the IFO and RZM establishing each party's role needs to be in place by the time of the expiry of the NTIA contract. For transparency reasons, that agreement should be made available for public review prior to execution. In order to be consistent with the Names proposal, any post-transition structural changes to that agreement, including any structural change to the roles of the parties, should be subject to community review, input and consensus-based approval.

#### **4. Meet the needs and expectations of the global customers and partners of the IANA services**

X026 All three communities determined that the global customers and partners of the IANA services and their communities of stakeholders are presently satisfied with the performance of the IANA functions by the IANA department of ICANN. The combined proposal is not expected to impact that.

#### **5. Maintain the openness of the Internet**

X027 The combined proposal requires that the IANA services, associated policy development processes, and IANA registries remain fully open and accessible just as they are today.

#### **6. Does not replace NTIA role with a government or inter-governmental organization**

X028 The combined proposal does not replace NTIA's role with a government or inter-governmental organization.

### **ICG Recommendation**

X029 The ICG unanimously supports this proposal and recommends that all affected parties implement it. The ICG affirms that this proposal and all the related processes have met the criteria laid out in our charter and mandate, including the NTIA criteria, and on this basis we transmit this proposal to NTIA via the ICANN Board.

## Part 0. Report from the IANA Stewardship Transition Coordination Group

### I. Introduction

01 On March 14, 2014, the U.S. Commerce Department's National Telecommunications and Information Administration (NTIA) announced its intent to transfer the stewardship of key Internet functions to the global multistakeholder community.<sup>9</sup> NTIA asked the Internet Corporation for Assigned Names and Numbers (ICANN) to convene global stakeholders to develop a proposal to replace NTIA's current stewardship role over the Internet Assigned Numbers Authority (IANA) functions. This document is the mentioned proposal.

### II. History of IANA

02 The Internet's growth has been due in large part to its shared global ownership, use of open standards, and freely accessible processes for technology and policy development. The smooth operation of the Internet depends upon a global, collaborative and community-driven approach to managing key registries of globally unique identifiers.

03 Some of the most important registries are Internet Protocol addresses, Domain Names/Domain Name System (DNS) Root Zone Management, and Protocol Parameters. The IANA Functions Operator (IFO) performs a set of administrative coordinating functions for these registries and others. Each registry is operated under a policy defined by a specific community, including the communities described below as "operational communities" (OCs). These functions are referred to as the IANA functions.

04 IANA started as a service to the community provided by one individual, Dr. Jonathan B. Postel, although at that time (1972) it was not yet called IANA. Later, the service was housed at the University of Southern California Information Sciences Institute (ISI) where Dr. Postel started working in 1977. In 1995, the IANA functions were included as part of a research contract between the US Government and ISI. In 1996, a process was started via a number of proposals, including various proposals from the global community and the US Government's so-called green<sup>10</sup> and white<sup>11</sup> papers, which eventually resulted in the research contract being replaced in 2000 by an explicit agreement between NTIA and ICANN. NTIA's current stewardship responsibilities under a successor contract are the subject of this transition. Today, in addition to the NTIA contract, IANA functions are performed under a number of independent operational agreements between the communities and ICANN as the current IANA Functions Operator.

05 Policy development and many of the oversight responsibilities related to the IANA functions lie within the communities and not the IANA Functions Operator. Global policy development and oversight processes defined by and specific to each community exist in the communities as part of their responsibilities for ensuring the continued smooth operation of

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<sup>9</sup> <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>

<sup>10</sup> <http://www.ntia.doc.gov/files/ntia/publications/dnsdrft.txt>

<sup>11</sup> [http://www.ntia.doc.gov/files/ntia/publications/6\\_5\\_98dns.pdf](http://www.ntia.doc.gov/files/ntia/publications/6_5_98dns.pdf)

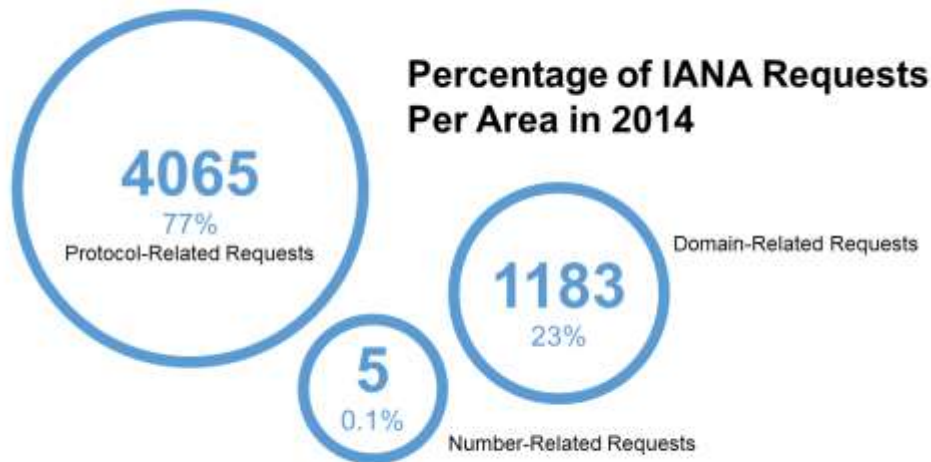
the global Internet. Cooperative relationships and ad-hoc coordination have evolved between these communities to facilitate coordination on IANA function matters when needed.

06 It is on this history and operating reality that the proposal documented here has been built.

### III. Process Summary

07 As a result of community discussions, the IANA Stewardship Transition Coordination Group (ICG)<sup>12</sup> was formed in July 2014 to coordinate the transition planning process. The ICG is composed of 30 individuals representing 13 communities, and includes direct and indirect stakeholders. These representatives were selected by their respective communities.<sup>13</sup>

The ICG took note of guidance from the Internet Architecture Board (IAB)<sup>14</sup> pointing out the existing division of IANA functions and customer communities into three categories related to domain names, number resources, and protocol parameters. The ICG therefore chose to ground the proposal development process in those communities given their direct operational or service relationships with the IANA Functions Operator. This also reflects the fact that the policy and oversight responsibilities for the three functions reside in the three separate communities (and have for decades). The three “operational communities” (OCs) are: the Domain Names community (organized around ICANN’s supporting organizations and advisory committees); the Number Resources community (organized around the Regional Internet Registries, or RIRs); and the Protocol Parameters community (organized around the Internet Engineering Task Force, or IETF).



08 **Figure 1. Percentage of the total number of IANA requests attributable to each category of IANA functions in 2014.**

<sup>12</sup> <http://www.ianacg.org/>

<sup>13</sup> <https://www.ianacg.org/coordination-group/icg-members/>

<sup>14</sup> <https://www.iab.org/wp-content/IAB-uploads/2014/04/iab-response-to-20140408-20140428a.pdf>

- 09 On September 8, 2014, the ICG issued a Request for Proposals (RFP)<sup>15</sup> which provided a template to be used by each community. Each of the communities then used its own processes to develop a response to the RFP for transitioning its respective part of the IANA functions, and submitted its response to the ICG. The ICG then assessed the proposals, individually and collectively, against a number of criteria,<sup>16</sup> including those that NTIA established for the transition. The ICG assembled the proposals into one document containing the RFP responses from each of the three operational communities. Part 1 is the proposal for domain names, Part 2 is the proposal for numbers, and Part 3 is the proposal for protocol parameters.
- 10 More information about the community processes is available in Section VI of each Part.
- 11 On July 31, 2015, the ICG issued a call for public comments on the combined transition proposal.<sup>17</sup> The call for public comments concluded on September 8, 2015. The ICG then reviewed and discussed the comments received and sent questions for clarification to the operational communities. The final text in this document contains updated text in Part 0 resulting from the public comment analysis and responses received to the ICG's questions, as well as textual edits to Part 1 that have been agreed by the Names community.

## IV. Proposal Summary

- 12 This document includes the three final community proposals received by the ICG. These proposals are provided verbatim, without changes by the ICG (aside from formatting changes and textual changes agreed by the Names community after the ICG's public comment analysis). The three proposals are summarized in this section. However, the proposals themselves are authoritative and should be referenced for further details.

### A. Operational Community Proposals

- 13 Part 1 contains the Domain Names proposal. The Names proposal was developed in the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG). The Names community proposed to form a new, separate legal entity, Post-Transition IANA (PTI), as an affiliate (subsidiary) of ICANN. They proposed that the existing IANA functions administrative staff and related resources, processes, data, and know-how be legally transferred to PTI and that ICANN enter into a contract with PTI to serve as the IANA Functions Operator (IFO) for the naming functions, including service level agreements for those functions. The legal jurisdiction in which ICANN resides is to remain unchanged. The proposal includes the creation of a Customer Standing Committee (CSC) responsible for monitoring IFO performance according to the contractual requirements and service level expectations. The proposal establishes a multistakeholder IANA Function Review process (IFR) to conduct periodic and special reviews of PTI. The IFR would have the ability to recommend a separation process that could result in

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<sup>15</sup> <https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf>

<sup>16</sup> <https://www.icann.org/en/system/files/files/iana-transition-assembly-finalization-24dec14-en.pdf>

<sup>17</sup> <https://www.ianacg.org/calls-for-input/combined-proposal-public-comment-period/>

termination or non-renewal of ICANN's contract with PTI, among other actions. The CSC and IFR apply to the names functions only.

- 14 The Names community proposed to discontinue the authorization of root zone changes that is currently performed by NTIA. They also proposed to give to the ICANN Board the authority to approve any major architectural and operational changes in the management of the root zone. This approval is to be based on the recommendations of a standing committee of stakeholders and experts (which is different from the CSC).
- 15 The Names proposal relies on ICANN-level accountability mechanisms that were developed in the Cross Community Working Group on Enhancing ICANN Accountability (CCWG). The ICG has secured confirmation from the CWG that the CWG's requirements have been met by the CCWG.
- 16 Part 2 contains the Number resources proposal. The Numbers community proposed that ICANN continue to serve as the IANA Functions Operator for numbering functions and perform those services under a contract with the five Regional Internet Registries (RIRs).
- 17 The Numbers community proposed a contractual Service Level Agreement (SLA) between the Regional Internet Registries and the IANA Numbering Services Operator and a Review Committee (RC) comprising community representatives from each region to advise the RIRs on the IANA Functions Operator's performance and adherence to agreed service levels. The implementation of these components of the proposal has commenced, with the draft SLA<sup>18</sup> and RC Charter<sup>19</sup> being under continuing development within the RIR communities.
- 18 The Numbers community further proposed that the trademarks and domain names associated with the provision of the IANA services be held by an entity that is not the provider of the IANA numbering services.
- 19 Part 3 contains the Protocol Parameters proposal. ICANN currently serves as the IANA protocol parameters registries operator. The IETF community expressed satisfaction with the current arrangements and proposed that the IANA protocol parameters registry updates continue to function day-to-day, as they have been doing for the last decade or more. The Protocol Parameters community proposed to continue to rely on the system of agreements, policies, and oversight mechanisms created by the IETF, ICANN, and IAB for the provision of the protocols parameters-related IANA functions; specifically, RFC 2860,<sup>20</sup> RFC 6220,<sup>21</sup> and an annually updated service level agreement.<sup>22</sup> The IETF asked for three acknowledgements to be made as part of the transition: 1) That the protocol parameters registries are in the public domain; 2) That ICANN carries out the obligations established under C.7.3 and I.61 of the ICANN-NTIA IANA Functions Contract<sup>23</sup> and 3) that ICANN, the IETF, and subsequent IANA Functions Operator(s) work together to minimize disruption in the use of the protocol parameters registries or other resources currently located at iana.org.

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<sup>18</sup> <https://www.nro.net/nro-and-internet-governance/iana-oversight/sla-developments>

<sup>19</sup> <https://www.nro.net/news/call-for-comments-for-a-draft-internet-number-community-review-committee-charter>

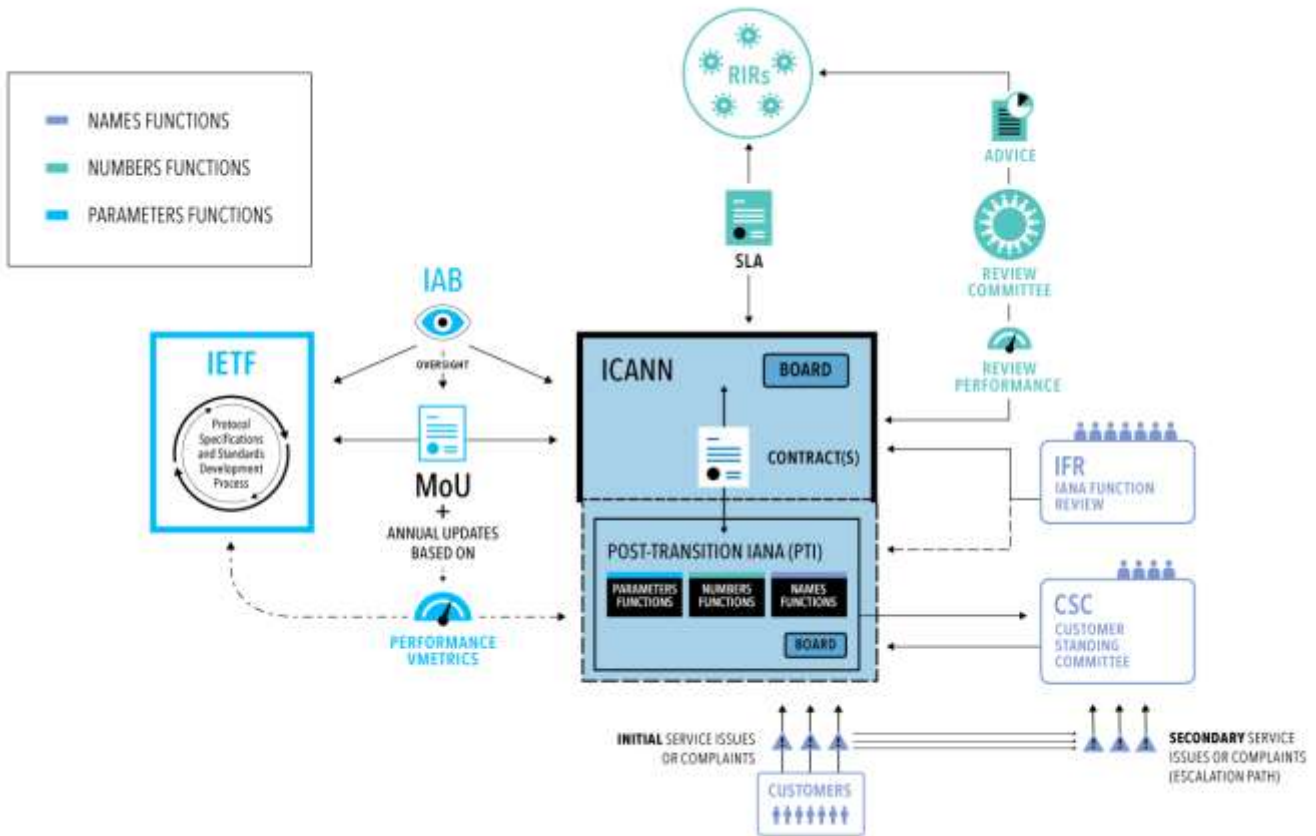
<sup>20</sup> <https://tools.ietf.org/html/rfc2860>

<sup>21</sup> <https://tools.ietf.org/html/rfc6220>

<sup>22</sup> <http://iaoc.ietf.org/contracts.html>

<sup>23</sup> [http://www.ntia.doc.gov/files/ntia/publications/sf\\_26\\_pg\\_1-2-final\\_award\\_and\\_sacs.pdf](http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf)

20 A visual summary of the oversight components of the combined proposal appears below. The operational interactions between the communities and the IANA Functions Operator are not pictured.



21 **Figure 2. Visual summary of the combined proposal.**

## B. Post-Transition IANA

22 There are a number of notable features of the combined proposal that are worth highlighting given that the PTI is a construct that was proposed by the Names community after the Numbers and Protocol Parameters communities completed their proposals.

23 The Numbers and Protocol Parameters communities have confirmed that they have no objection to ICANN subcontracting their parts of the IANA functions to PTI. Accordingly, under the combined proposal, PTI would perform all of the IANA functions currently covered by the NTIA contract, with the necessary staffing and resources to do so. ICANN would contract with the PTI for the performance of the naming functions. The IETF would maintain its existing Memorandum of Understanding with ICANN for the performance of the protocol parameters functions. The RIRs would establish a Service Level Agreement with ICANN for the performance of the numbering functions. ICANN would subcontract the performance of



the protocol parameters and numbering functions to PTI. The existing MoU between the IETF and ICANN is silent about sub-contracting, and therefore implicitly allows it. The RIRs intend to allow sub-contracting with permission.<sup>24</sup>

- 24 Each community would maintain independent authority over its own processes for performance review. The Names community would use the CSC and IFR to review the performance of the naming functions and handle complaints. Neither the Numbers community nor the Protocol Parameters community sees a need to participate in these performance review processes for the naming functions.<sup>25</sup> The Numbers community would use its Review Committee to review the performance of the numbering functions. The Protocol Parameters community would continue to review the performance of the protocol parameters functions via existing mechanisms established by the IETF and IAB.
- 25 The combined proposal provides for each community to follow its own processes for considering a change of IANA Functions Operator for the functions within their purview. For the Names community this process can be triggered by the IFR, which would have the ability to recommend a separation process that could result in termination or non-renewal of ICANN's contract with PTI. The Numbers community proposal includes SLA principles allowing for the termination of the SLA between the RIRs and ICANN and resolution of disputes between the parties via arbitration. For the Protocol Parameters, the existing IETF/ICANN MoU specifies that either party may cancel the MoU with six months' notice.
- 26 Critically, while each community would maintain its independence of process for considering or enacting a change of IFO, all three communities have explicitly committed to coordinate with each other and ICANN to ensure the stability and smooth operation of the IANA functions in the event of such a change.<sup>26</sup>

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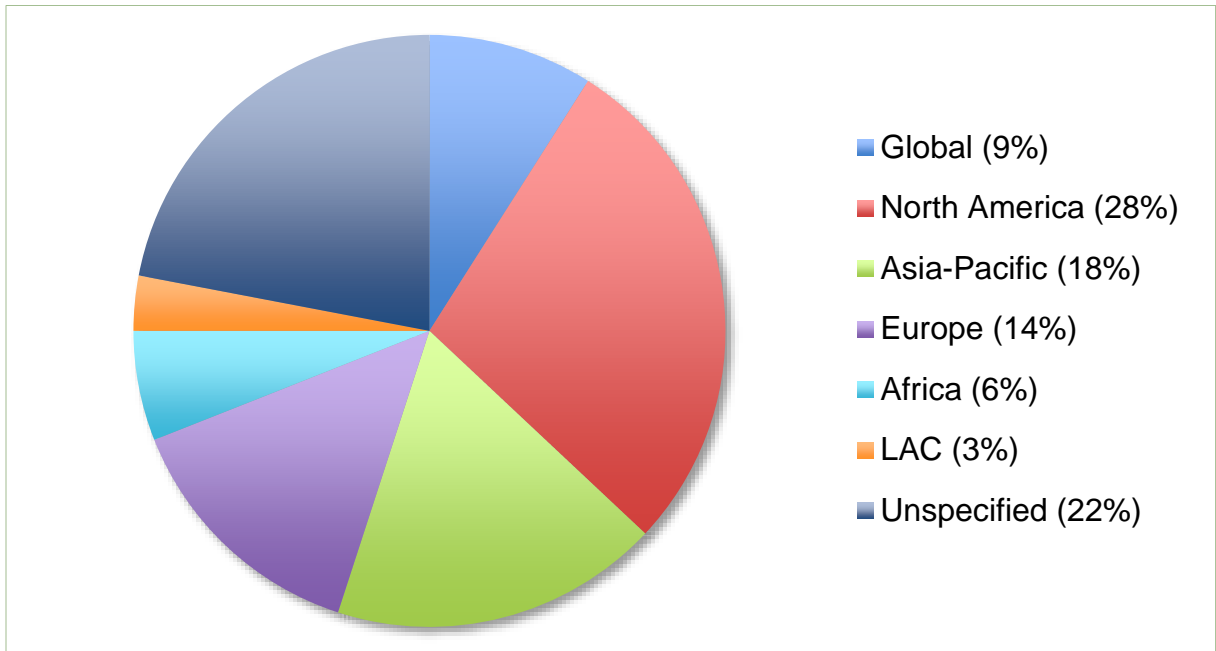
<sup>24</sup> <https://www.nro.net/wp-content/uploads/Numbers-SLA-2.0.pdf>

<sup>25</sup> See Consolidated RIR IANA Stewardship Proposal (CRISP) response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001810.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001810.html)>, IAB comments to the ICG <https://comments.ianacg.org/pdf/submission/submission72.pdf>.

<sup>26</sup> See P2.III.A, P3.III, CWG response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/attachments/20151007/6b83630d/attachment.doc](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/attachments/20151007/6b83630d/attachment.doc)>, IETF response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001812.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001812.html)>, IAB response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001825.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001825.html)>, CRISP response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001810.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001810.html)>., joint statement provided at ICANN54 Public Forum <<https://meetings.icann.org/en/dublin54/schedule/thu-public-forum/transcript-public-forum-22oct15-en>> (pages 38-39).

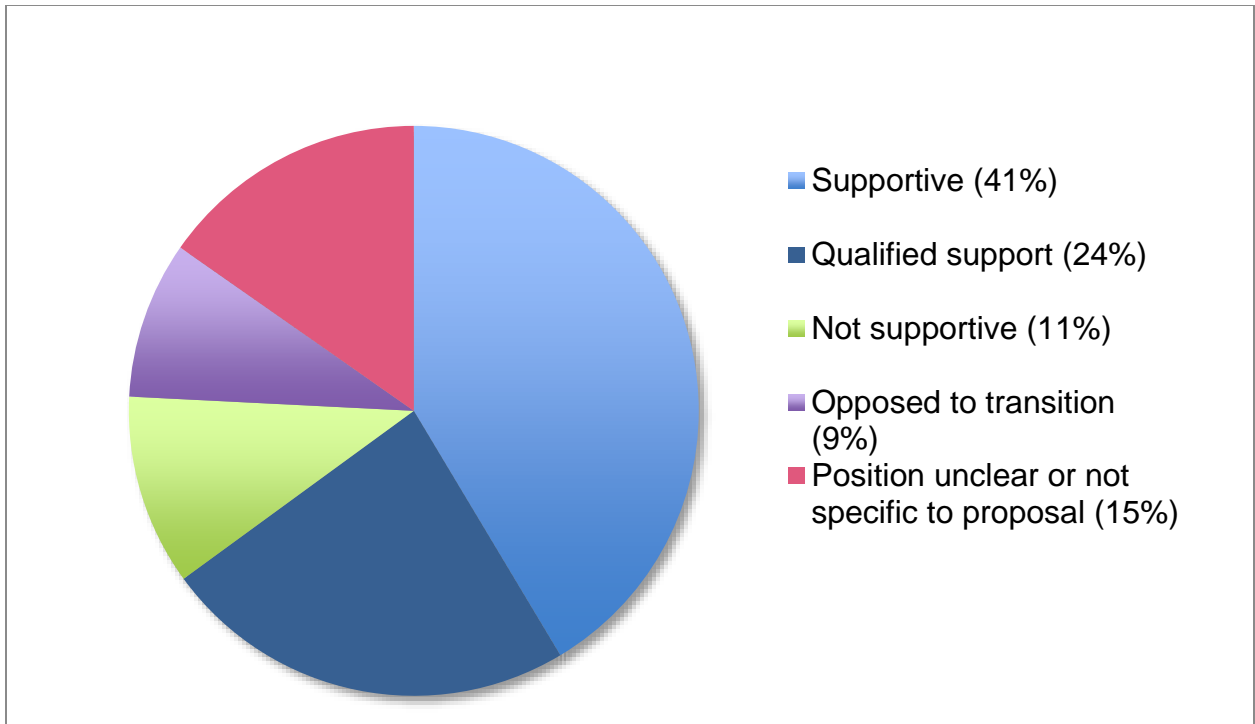
## V. Summary of Public Comments

27 During its public comment period the ICG received 157 comments on the combined proposal from a wide variety of stakeholders, including individuals, operational communities, supporting organizations and advisory committees within the ICANN community, businesses and trade associations, civil society groups, governments, and others. The ICG received comments in Chinese, Spanish, and French as well as English. Comments came from national, regional, and global stakeholders as well as stakeholders who did not identify a location of origin, as shown in Figure 3.



28 **Figure 3. Geographic distribution of commenters in the public comment period.**

29 A significant majority of the comments (65%) were generally supportive of the proposal or expressed qualified support accompanied by questions, requests for clarification, or criticism. Small minorities of comments opposed the proposal (11%) or the IANA stewardship transition overall (9%). The remainder made no clear indication of either support or opposition or made comments that were not specific to the proposal (15%). This breakdown is shown in Figure 4 below.



30 **Figure 4. Summary of support for the transition proposal as reflected in public comments received by the ICG.**

## VI. ICG Assessment

- 31 The ICG has assessed the proposals individually and collectively to determine whether:
- the community processes used to develop the proposals were open and inclusive, and whether they achieved consensus;
  - the proposals are complete and clear;
  - the three proposals together are compatible and interoperable, provide appropriate and properly supported accountability mechanisms, and are workable; and
  - the proposals together meet the NTIA criteria.

### A. Community Processes: Openness, Inclusiveness, and Consensus

- 32 The ICG has concluded that each of the individual proposals was developed in an open and inclusive manner and that each proposal achieved consensus as defined by each community. When the ICG received comments indicating process concerns via the ICG forum,<sup>27</sup> those comments were shared with the relevant operational communities and considered by the communities in depth.

<sup>27</sup> [http://mm.ianacg.org/pipermail/icg-forum\\_ianacg.org/](http://mm.ianacg.org/pipermail/icg-forum_ianacg.org/)

- 33 While the majority of the public comments affirmed that the openness and inclusiveness of the processes were demonstrated and continue to exist, some broader concerns related to inclusion, relative roles and definition of “multistakeholder” were also raised by commenters.
- 34 One concern was that the NTIA’s transition requirements<sup>28</sup> (see sub-section D below) used a narrower definition of “multistakeholder” than the definition in the Tunis Agenda. A couple of comments raised the concern of formal inclusion in community processes. These concerns were previously raised with the communities and the processes were found to be sufficiently open to those who wanted to participate. Likewise there were concerns raised in a few comments that the existing operational communities and those that were directly involved in the IANA functions had too much relative power. These commenters stated a preference for membership or multistakeholder participation in the direct governance of the IANA functions. Some of these issues such as the definition of “multistakeholder” that was used by NTIA are not within the scope of the ICG’s inquiry. Other issues such as the use of the PTI as opposed to a direct governance structure were the subject of long and detailed discussions in the Names community. They were not adopted by the Names community in the final consensus. A couple of comments raised issues of concern related to global participation based on issues of culture, linguistics and travel costs. The ICG has noted those concerns but refers to its prior conclusion that the community processes were broadly accepted as having been sufficiently open and inclusive.

## 1. Names

- 35 The Names proposal was developed in the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG). The CWG had participation from 152 members and participants from across geographies and stakeholder groups. The CWG was open to participation from any interested person and conducted its work – over 100 calls and meetings and over 4,000 mailing list messages – in an open manner. The Names proposal included attention to the input of 115 comments received through two public comment proceedings. The proposal received the consensus support of the CWG, with no objections or minority statements recorded. All five CWG chartering organizations – the At-Large Advisory Committee (ALAC), the Country Codes Names Supporting Organization (ccNSO), the Governmental Advisory Committee (GAC), the Generic Names Supporting Organization (GNSO), and the Security and Stability Advisory Committee (SSAC) – approved the proposal at ICANN 53 in June 2015.
- 36 The CWG considered a wide variety of accountability models before settling on its final proposal. Those are summarized here to illustrate why the PTI-based model was chosen over the other models and to demonstrate the rigor of the CWG’s process in identifying a model that obtained consensus.
- 37 The CWG’s first draft proposal that was published for public comment was designed around the idea of an independent and separate contracting entity (“Contract Co.”) to replace NTIA’s stewardship role and contract with the IANA Functions Operator. Responses to the consultation showed that there were significant parts of this model that would not command community consensus.

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<sup>28</sup> <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>

- 38 Subsequently the CWG identified seven potential models for the IANA stewardship transition. These models were discussed at a face-to-face meeting of the working group with supporting advice from legal counsel.
- 39 The move from seven potential models down to two variants of an internal accountability/hybrid model was iterative over a series of sessions. In one session, after explanation of legal counsel’s findings, two models – the internal trust and the external trust – were deemed unsuitable to meet the CWG’s requirements because the structures were not necessarily recognized legally outside of the U.S. Upon conclusion of these sessions, the CWG also agreed to defer further consideration of the “Contract Co.” model (in part, because it did not receive sufficient support after the first public comment period), until the viability of the remaining models could be further considered. In addition, the CWG agreed to defer further consideration of the fully internal model and the standalone IANA hybrid model. The CWG agreed that the remaining models – two variants of an internal accountability/hybrid model (the legal separation model and the functional separation model) – required further research on the part of legal counsel before the CWG could make a determination.
- 40 Following the face-to-face meetings, the CWG, in consultation with its independent legal counsel, held extensive discussions to determine which of the two variants of the internal accountability/hybrid model would be recommended. The CWG determined that the legal separation model was preferred because it would establish PTI as a separate legal entity at the outset, allowing for possible separation from ICANN in the future, if necessary. In addition, the legal separation model allowed for a contract between ICANN and PTI. With that decision reached, the CWG turned its focus to developing an accountability framework to support this model, while legal counsel assisted in addressing governance issues related to the model.

## 2. Numbers

- 41 The Numbers proposal was prepared by the Consolidated RIR IANA Stewardship Proposal (CRISP) Team,<sup>29</sup> which was established by the Numbers community through the Regional Internet Registries (RIRs) specifically for the purpose of producing the proposal. A running checklist concerning the Numbers community process is being maintained by the Number Resource Organisation (NRO).<sup>30</sup>
- 42 Between August and November 2014, initial discussions were conducted on a regional basis during the regular open meetings of each of the RIRs. During these discussions proposal elements were developed and agreed, often building on prior discussions of other RIR communities. After the fifth of this cycle of RIR meetings (AFRINIC-21<sup>31</sup>), the CRISP team consolidated the results of the discussions in a single global proposal on behalf of the Numbers community. The first draft<sup>32</sup> of the proposal was released for public comment on

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<sup>29</sup> <https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team>

<sup>30</sup> <https://www.nro.net/nro-and-internet-governance/iana-oversight/checklist>

<sup>31</sup> <https://meeting.afrinic.net/>

<sup>32</sup> <https://www.nro.net/news/first-draft-proposal-of-the-internet-number-community-for-the-iana-stewardship-coordination-group>

December 19, 2014, and a second draft<sup>33</sup> on January 8, 2015, before a final Proposal<sup>34</sup> was published and submitted to the ICG on January 15, 2015.

- 43 The CRISP team conducted its work on an open mailing list<sup>35</sup> with over a hundred subscribers and in open conference calls<sup>36</sup> which allowed the participation of any interested parties and were publicly minuted. The first CRISP teleconference call was held on December 9, 2014.
- 44 The CRISP team working methods are defined in its charter, and further as a result of agreements among the team. In particular, during these meetings and in online discussions, consensus was determined when, following discussions within the CRISP team, no further comments, concerns, or objections were observed.

### 3. Protocol Parameters

- 45 The Protocol Parameters proposal was developed in the IANAPLAN working group at the Internet Engineering Task Force (IETF). Anyone was welcome to join the discussion on the open mailing list and participate in the development of this response.
- 46 The discussion converged early on a model based on further evolution of the current arrangements, given that it is working well and there already were agreements, role definitions, and processes in place between the IETF and ICANN. Further discussion concentrated mainly on which specific further enhancements would be necessary before or as part of the transition.
- 47 Normal IETF procedures were used to determine rough consensus of the IETF community. The chairs of the working group reviewed open issues and, after an internal working group last call, determined that all had been satisfactorily addressed, and subsequently the Internet Engineering Steering Group (IESG) did a formal IETF-wide Last Call followed by a formal review and determined that the document had rough consensus.

### B. Completeness and Clarity

- 48 The ICG discussed the content of each proposal in depth and has published a matrix of topics discussed.<sup>37</sup> The ICG is satisfied that the proposals are complete and clear.
- 49 The ICG has noted that the Names proposal relies on ICANN-level accountability mechanisms that were developed by the CCWG. The dependencies are described in detail in P1.III.A.i and are listed here in abbreviated fashion:
1. ICANN Budget and IANA Budget. The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect.

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<sup>33</sup> <https://www.nro.net/news/internet-number-community-iana-stewardship-proposal-final-call-for-comments>

<sup>34</sup> <https://www.nro.net/wp-content/uploads/ICG-RFP-Number-Resource-Proposal.pdf>

<sup>35</sup> <https://www.nro.net/pipermail/crisp/>

<sup>36</sup> <https://www.nro.net/nro-and-internet-governance/iana-oversight/crisp-team-process-and-archive>

<sup>37</sup> [http://www.ianacg.org/icg-files/documents/questions-and-answers-matrix\\_v4.xlsx](http://www.ianacg.org/icg-files/documents/questions-and-answers-matrix_v4.xlsx)

2. Community Empowerment Mechanisms. The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board:
  - a. The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;
  - b. The ability to exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (i) ICANN Board decisions with respect to recommendations resulting from an IFR or Special IFR and (ii) the ICANN budget; and
  - c. The ability to approve amendments to ICANN's "fundamental bylaws," as described below.
3. IANA Functions Review. The creation of an IFR which is empowered to conduct periodic and special reviews of the IANA functions relating to names. IFRs and Special IFRs will be incorporated into the Affirmation of Commitments mandated reviews set forth in the ICANN Bylaws.
4. Customer Standing Committee. The creation of a CSC which is empowered to monitor the performance of the IANA functions relating to names and escalate non-remediated issues to the ccNSO and GNSO.
5. Separation Process. The empowerment of the Special IFR to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group (SCWG) be established to review the identified issues and make recommendations.
6. Appeal mechanism. An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions relating to names.
7. Fundamental bylaws. All of the foregoing mechanisms are to be provided for in the ICANN bylaws as "fundamental bylaws". A "fundamental bylaw" may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote).

50 The ICG has secured confirmation from the CWG that the CWG's requirements have been met by the CCWG.

51 The Numbers and Protocol Parameters portions of the proposal are complete and have no dependencies on the work of the CCWG or other remaining processes. Indeed, implementation of the Numbers and Protocol Parameters proposals is underway and can continue without waiting for the CCWG to complete its work.

## C. Combined Proposal Assessment

52 In conducting its assessment of the combined proposal,<sup>38</sup> the ICG considered the following questions:

1. Compatibility and interoperability: Do the proposals work together in a single proposal? Do they suggest any incompatible arrangements where compatibility appears to be required? Is the handling of any conflicting overlaps between the functions resolved in a workable manner?
2. Accountability: Do the proposals together include appropriate and properly supported independent accountability mechanisms for running the IANA function? Are there any gaps in overall accountability under the single proposal?
3. Workability: Do the results of any tests or evaluations of workability that were included in the component proposals conflict with each other or raise possible concerns when considered in combination?

### 1. Compatibility and Interoperability

53 The ICG believes the proposals are compatible and interoperable.

54 In early 2015 the ICG identified a potential compatibility issue regarding the IANA trademarks and the iana.org domain name. The Numbers community expects that both are associated with the IANA functions and not with a particular IANA Functions Operator. The Numbers community prefers that they be transferred to an entity independent of the IANA Functions Operator in order to ensure that these assets are used in a non-discriminatory manner for the benefit of the entire community.

55 Although the Protocol Parameters proposal did not speak to this issue, in response to an ICG inquiry the Protocol Parameters community indicated that it had no objection and was willing to help contribute to that arrangement.<sup>39</sup>

56 The Names proposal contains text that refers to the trademark in Annex S. In response to an ICG inquiry about the text, the CWG indicated that the text is clearly defined as placeholder text (in square brackets) within an initial draft proposed term sheet that does not have the consensus support of the CWG.<sup>40</sup> In effect, the Names proposal did not make a specific proposal with regard to the IANA trademarks (and it is completely silent as regards the domain name). Since then, the CWG has confirmed that its position is consistent with that of the other two communities in that it has no objection to the IANA trademarks and the IANA domain names being transferred to an entity independent of the IANA Functions Operator.<sup>41</sup> These community positions are also consistent with the ICANN statement on the same topic.<sup>42</sup>

57 As a result, the ICG considers the three proposals to be compatible. While the requirements in the transition plan are therefore clear, work remains to actually implement the

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<sup>38</sup> <https://www.icann.org/en/system/files/files/iana-transition-assembly-finalization-24dec14-en.pdf>

<sup>39</sup> <http://mm.icann.org/pipermail/internal-cg/2015-February/003103.html>

<sup>40</sup> [http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-July/000829.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-July/000829.html)

<sup>41</sup> [http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-September/001500.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-September/001500.html)

<sup>42</sup> <https://www.icann.org/news/announcement-2015-08-15-en>



requirements. Detailed implementation requirements for the entity holding the IPR will be agreed and specified and an appropriate entity will then be created or selected such that it can meet the detailed requirements. The ICG notes that the operational communities are coordinating these details, and the ICG expects this coordination to continue during the implementation phase to ensure that the requirements are met. Some of the questions that the ICG received during the public comment period relate to the implementation details. These details will become clear as the communities proceed to plan the implementation.

- 58 Some of the public comments reflected a more general concern about whether the three operational communities would continue to coordinate and collaborate going forward, given the interdependencies between the communities as reflected in the proposal. Coordination across the operational communities is clearly an essential component of the Internet's successful development and collaboration is an integral part of the communities' operational and policy development processes. In the specific case of the IANA functions, each community has clearly confirmed to the ICG its ongoing commitment to cooperation.<sup>43</sup> That commitment to cooperate has led to the situation we have today, where registries from the three communities are administered by the IANA Functions Operator (at ICANN) even though the operational and policy decisions for where these registries will be located, and how they will be run, are decentralized.
- 59 Cooperation between the communities has always existed. Prior to ICANN's formation, IANA supported multiple policy development processes and each operational community decided on registry policy and place of implementation for each of the registries it was responsible for defining.
- 60 A web of relationships exists between the operational communities allowing the relationships and collaboration mechanisms to evolve as needed. The most obvious mechanism is that participants in each community also participate in the activities of others, with the degree of formality decided by the communities involved. Examples include RIR participants who participate in IETF working groups; IETF participants who participate in activities related to top-level domains at ICANN; IETF appointees to the ICANN Technical Liaison Group (TLG) as well as a liaison to the ICANN Board; and ICANN staff and participants who participate in IETF working groups.
- 61 The IP address registries provide another good example of how collaboration and coordination works today. The IETF sets the overall policy for IP addresses, while the RIRs set the detailed policy for subsets of the addresses. Some blocks are to be used for routing on the Internet, and IANA registers this over-arching allocation. When RIRs later request addresses from IANA, IN-ADDR.ARPA and IP6.ARPA zones (and whois) are updated accordingly, through IANA, although the ARPA TLD is managed by IAB.<sup>44</sup> In brief, the IETF sets the over-arching policy, RIRs set the detailed policy, and IANA registers and coordinates those allocations. The individual operational community proposals go into detail

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<sup>43</sup> See CWG response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/attachments/20151007/6b83630d/attachment.doc](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/attachments/20151007/6b83630d/attachment.doc)>, IETF response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001812.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001812.html)>, IAB response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001825.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001825.html)>, CRISP response to ICG <[http://mm.ianacg.org/pipermail/internal-cg\\_ianacg.org/2015-October/001810.html](http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-October/001810.html)>.

<sup>44</sup> See <https://tools.ietf.org/html/rfc3172> and <https://www.iab.org/documents/correspondence-reports-documents/docs2000/iab-statement-on-infrastructure-domain-and-subdomains-may-2000/> for more information about .ARPA.

about the overlaps between the registries (see paragraphs 2016-2019, 3027, and P1.Annex A).

## 2. Accountability

- 62 The three proposals together include appropriate and properly supported independent accountability mechanisms for running the IANA functions, relying mostly on the right of each operational community to change operators for the performance of the IANA functions within their purview.
- 63 The Numbers and Protocol Parameters proposals both build on accountability functions that have long been in place and operate under mostly existing and independent mechanisms which are well documented and operationally effective.
- 64 The Names proposal relies on ICANN-level accountability mechanisms that were developed in the CCWG. Many commenters in the public comment period noted this dependency and the associated difficulty in judging the overall accountability provided by the Names proposal because CCWG Work Stream 1 was not complete at the time of the public comment period. The ICG has secured confirmation from the CWG that the CWG's requirements have been met by the CCWG.
- 65 A number of comments highlighted the issue of jurisdiction as important. A minority of commenters objected to any transition at all because they perceived that the US was relinquishing jurisdiction. Another minority point of view raised concerns that the jurisdiction was not international or outside of the US. A number of comments also suggested that CCWG Work Stream 2 might be a place to address some of the continued concerns about jurisdiction. The majority of comments did not find jurisdiction to be a factor limiting their support for the proposal.
- 66 The ICG recognizes that there is no clear consensus in the comments for opposition to the proposal on the grounds of jurisdiction. Input reflected the discussion in the CWG, which identified that significant and detailed analysis would be needed to assess objectively the implications and benefits of a transfer of jurisdiction. The ICG also notes that a change in jurisdiction at the time of transition of stewardship – given the implications on ICANN and PTI accountability – would increase the complexity of the proposal and increase the level of risk in the transition.
- 67 The ICG recognizes that jurisdiction remains an important issue that needs to be addressed based on a clear assessment of the implications of different options. The ICG agrees that the approach identified by CCWG to address jurisdiction in Work Stream 2 seems to be an appropriate way of continuing this work.

## 3. Workability

- 68 The ICG regards the three proposals as individually and collectively workable.
- 69 Dependency on the successful establishment of the PTI and the implementation of the CWG accountability requirements exist. The proposals have indicated future ability to change the

IANA Functions Operator, but have established requirements to help ensure that any such future changes will not result in operational disruptions.

- 70 Verisign currently serves as the Root Zone Maintainer and performs the Root Zone Management functions pursuant to a cooperative agreement with NTIA. Since there is currently no written agreement between the Root Zone Maintainer and the IANA Functions Operator for the Root Zone Management process, some form of agreement between these organizations will be essential when NTIA withdraws from the Root Zone Management process.
- 71 More generally, having been developed by the three operational communities, the three proposals are naturally different in many respects, reflecting different subject matter, priorities, challenges and processes involved in their production. Some comments received during the public comment period suggested that the ICG proposal is unexpectedly or overly complex, and in some cases implied that this perceived complexity represents a threat to the workability of the proposal. It is true that the ICG proposal is a lengthy document. It contains three substantial components which are very detailed and also different in content, making it difficult for any one observer to fully absorb. However this structure is a direct result of the ICG's chosen approach to the transition planning process, namely to recognize that the IANA serves three distinct operational communities and to allow them to devise their respective plans independently, according to their own needs, priorities, and processes.
- 72 The ICG's chosen approach could be regarded as an application of the subsidiarity principle, whereby the solution to any given problem should be located as close as possible to those who are affected by it. In a bottom-up process this inevitably results in a variety of independent outcomes which are naturally diverse. The ICG believes that this variety of approaches, which is clearly apparent in the transition proposal, does not in itself represent complexity. Rather it represents a large body of work, but a body which is cleanly divided amongst the separate proposals, and which features, as expected, few interactions or dependencies among those three components.
- 73 At the outset of its work the ICG considered a different process with an aim to produce a more uniform singular solution. However, the ICG felt that such an approach would have been extremely challenging, and less likely to produce a single plan with the full support of the entire community. It is possible in fact that such a singular solution would turn out to be more complex than the plan which has been produced.
- 74 One further consideration, related again to the volume of work rather than to complexity, is that the implementation of each of the three proposals will impose substantial workload on the IANA. This needs to be managed carefully during the implementation period, in consultation with the communities regarding respective requirements and priorities, in order to ensure that the transition takes place within the required timeframe.

#### **D. NTIA Criteria**

- 75 When NTIA announced its intent to transition its stewardship, NTIA established that the transition proposal must have broad community support and address the following four principles:
- Support and enhance the multistakeholder model;

- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectations of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

76 NTIA also explained that it would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

77 As explained in detail in the sub-sections below, the ICG has concluded that the combined proposal meets all of NTIA's criteria. The record as reflected by public comments received supports this finding. At the overall level a significant majority of the comments supported the finding that the proposal meets the transition requirements.

78 Furthermore, the ICG agrees with commenters who noted that vesting the IANA stewardship responsibility in the operational communities and using existing multistakeholder structures both help to ensure that the NTIA criteria will continue to be met over time. The communities have been working in support of the multistakeholder model, Internet openness, and DNS security, stability, and resiliency for years if not decades. Their structures provide the appropriate checks and balances to ensure that the stewardship of IANA will continue in this vein and will be protected against capture by any single interest.

## **1. Broad community support**

79 The ICG has concluded that the community support for the proposal has breadth along many dimensions.

80 When considering each of the three proposal components separately, each of the individual proposals has broad community support. As explained in sub-section V.A above, each community ran an open and inclusive process in which any interested individual was able to participate. These proposals were made available for public comment multiple times and received wide community review. Each community produced a consensus proposal and no community felt the need to invoke voting procedures because each arrived at consensus without them. All of the chartering organizations of the CWG approved the Names proposal. Together, the openness and inclusiveness of the processes and the consensus results indicate broad community support.

81 When considering the combined proposal as a whole, community support has been demonstrated in a number of different ways. As discussed in Section V above, a significant majority of commenters who submitted comments during the public comment period support the proposal. These commenters included individuals, operational communities, supporting organizations and advisory committees within the ICANN community, businesses and trade associations, civil society organizations, governments, and others from across all regions of the world. Thus community support for the combined proposal is broad both in diversity of interests and geography of origin.

82 Furthermore, the consensus of the ICG in support of the proposal provides a powerful demonstration of the breadth of community support. ICG members serve on behalf of 13 constituencies that are all intimately concerned with the outcome of the IANA stewardship transition and that each encompass a wide swath of the community. That ICG members

have full consensus in support of the proposal is a testament to the support in each constituency.

## 2. Support and enhance the multistakeholder model

- 83 The ICG has concluded that the combined proposal supports and enhances the multistakeholder model because it leverages existing multistakeholder arrangements, processes, and paradigms in defining the post-transition IANA oversight and accountability mechanisms. Each component of the proposal has this feature.
- 84 The Names proposal maintains the existing framework of ICANN for continued multistakeholder oversight of the IANA functions operation. The proposal reinforces the multistakeholder model by retaining the functional separation between policy development processes and IANA. The ICANN policy development process remains bottom-up, transparent, and inclusive of all stakeholders. IANA remains focused on the needs of the operational communities, with transparent oversight by the CSC and IFR, both of which include non-ICANN participants and the latter of which is explicitly constituted as a multistakeholder entity.
- 85 The Numbers proposal is based in the existing, long-established RIR structure.<sup>45</sup> The RIRs are widely regarded as healthy examples of Internet technical organizations operating within the multistakeholder model of Internet governance. Structurally they are open, transparent and accountable not-for-profit organizations, with well-established governance mechanisms<sup>46</sup> and open participatory processes for policy development in their respective regions.<sup>47</sup> In addition, they and their communities are active participants in and supporters of multistakeholder processes of ICANN, IGF, and others. Accordingly, the Numbers proposal supports the existing multistakeholder mechanisms of the RIR system, and enhances them (and hence the overall multistakeholder model) by introducing improvements in transparency and accountability related to the performance of the IANA numbering functions.
- 86 The Protocol Parameters proposal is based in the IETF structure. Participation in the IETF is open to all individuals regardless of which stakeholder group or sector they may be from. The proposal supports and enhances the multistakeholder model by relying on IETF processes and voluntary agreements between the IETF and ICANN for the performance of the IANA functions related to protocol parameters. IETF processes could be used to amend governance of the protocol parameters function in the future. Anyone may propose amendments to those processes, and anyone may take part in the decision processes.

## 3. Maintain the security, stability, and resiliency of the Internet DNS

- 87 Neither the Numbers proposal nor the Protocol Parameters proposal suggest changes that could affect the security, stability, or resiliency of the DNS.
- 88 While the Names proposal calls for the IANA Functions Operator to be transferred to the PTI, the PTI will be an affiliate (subsidiary) of ICANN and ICANN will be responsible for the

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<sup>45</sup> <https://www.nro.net/about-the-nro/regional-internet-registries>

<sup>46</sup> <https://www.nro.net/about-the-nro/rir-governance-matrix>

<sup>47</sup> <https://www.nro.net/policies>

stewardship of the PTI. Hence operational roles are maintained. The proposal envisages the names aspect of the current NTIA oversight and contracting authority is transferred to ICANN. The separation of PTI as a subsidiary will ensure the independence of that oversight role from the contractor providing the service.

- 89 This arrangement introduces minimum change and keeps the current IANA functions operation team intact and carrying out the same role as it has today. Only an organizational change is proposed to ensure that the independence of oversight is maintained.
- 90 Much of this approach is based on the principle of addressing and responding to issues affecting the provision of the IANA functions operation. The ICG believes that this – a shared commitment to remedy shortfalls in performance – is inherently supportive of the security, stability and resilience of the provision of the IANA functions operation.
- 91 The ICG notes that there is ongoing work on developing Service Level Expectations for Names, and that current and proposed expectations already exist for Numbers and Protocol Parameters. The ongoing work must be completed. Obviously, a failure to develop the expectations or inability to meet them could be a threat to the security, stability and resilience of the operation of the DNS. However, we expect the ongoing work to lead to clear recommendations regarding the names functions. Clear expectations are also fundamental to ensuring the healthy operation of the DNS.
- 92 The ICG notes that, under the current IANA Functions Contract, the DNS Root Zone Management process currently has three functional roles: the IANA Functions Operator (IFO), the Root Zone Maintainer (RZM), and the Root Zone Administrator (RZA). A complete and finalized transition requires revising the relationship between the current IANA Functions Operator (ICANN), the current RZM (Verisign) and the current Root Zone Administrator (NTIA). Insofar as those revisions require amendments to (or elimination of) the cooperative agreement between the NTIA and Verisign, the process will be controlled by the NTIA, not the ICG. This “related and parallel transition,” as the NTIA described it as part of its March 2014 transition announcement,<sup>48</sup> involves interactions between NTIA, ICANN and Verisign that are outside of the ICG process. Nevertheless, the NTIA itself has recognized that “aspects of the IANA Functions Contract are inextricably intertwined with the Verisign cooperative agreement,”<sup>49</sup> and thus the results of that process must be consistent with the ICG proposal’s approach to the IANA functions.
- 93 The Names proposal (paragraph 1150) states: “Post-transition, no authorization for Root Zone change requests will be needed.” Thus, the RZA role need not be continued. However, since the RZA (NTIA) has served as the linkage between the IFO and the RZM and there is currently no direct agreement between the RZM and the IFO for the Root Zone Management process, the ICG notes that some form of written agreement between the IANA Functions Operator and RZM that clearly defines the roles and responsibilities of both parties is essential for the secure, stable and resilient operation of the Root Zone of the DNS when the NTIA withdraws from the Root Zone Management process.
- 94 So far NTIA’s process for transition of the Root Zone Management functions seems to have built upon the output of the Names proposal. The CWG proposed elimination of the NTIA’s

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<sup>48</sup> <http://www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ>

<sup>49</sup> <http://www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ>

root zone change authorization function and described a set of guidelines and principles regarding post-transition root zone administration. To the ICG, the post-transition RZM architecture proposed in an NTIA-solicited document by ICANN and Verisign<sup>50</sup> seems to be consistent with those guidelines and principles.

- 95 In the public comment period, however, a wide range of stakeholders expressed concern about the transparency of the parallel process and the uncertainty created by its status as a private negotiation among NTIA, Verisign and ICANN. Commenters seemed especially concerned about whether the global multistakeholder community would be consulted about the new arrangements before they are finalized, and whether the changes might permit significant changes in roles, such as ICANN taking over the RZM function. While the CWG proposal contemplates an arrangement between the IFO and the RZM, the CWG has confirmed to the ICG that such an arrangement has not been specified in the Names proposal or elsewhere. ICANN and NTIA have made it known<sup>51</sup> that prior to the expiry of the NTIA contract those relationships will be specified in a written agreement between ICANN and Verisign. The ICG reiterates that a written agreement between the IFO and RZM establishing each party's role needs to be in place by the time of the expiry of the NTIA contract. For transparency reasons, that agreement should be made available for public review prior to execution. In order to be consistent with the Names proposal, any post-transition structural changes to that agreement, including any structural change to the roles of the parties, should be subject to community review, input and consensus-based approval.
- 96 A few public comments raised questions on other topics that might impact the stability and security of the Internet. A couple of commenters hypothesized that dissatisfaction with certain elements of the proposal, jurisdiction among them, might lead to the creation of a parallel DNS that could lead to fragmentation. This was not a shared concern across the vast majority of commenters. Some concerns were predicated on the ability to achieve some of the proposal elements in contracts and to appropriately enforce them. This is a matter that the communities are addressing in their implementation work. A concern that was raised, again as a potential problem across a few comments, was the impact that separation from PTI or multiple IANA Functions Operators might have on the security and stability of the Internet. We have noted the operational community responses to this concern in subsection VI.C.1 above and believe these concerns have been adequately addressed. Finally, a number of commenters suggested that security and stability might be impacted, but provided little to no context to further evaluate their concerns. We note that in their workability reviews included in the proposals the operational communities addressed many of these general parameters.

#### **4. Meet the needs and expectations of the global customers and partners of the IANA services**

- 97 All three communities determined that the global customers and partners of the IANA services, including the gTLD and ccTLD registries and their communities of stakeholders; the RIRs; and the IETF are presently satisfied with the performance of the IANA functions by the IANA department of ICANN. The combined proposal is structured such that the PTI will

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<sup>50</sup> [http://www.ntia.doc.gov/files/ntia/publications/root\\_zone\\_administrator\\_proposal-relatedtoiana\\_functionsste-final.pdf](http://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf)

<sup>51</sup> See the transcript of the ICANN 54 Public Forum, October 23, 2015: <https://meetings.icann.org/en/dublin54/schedule/thu-public-forum>.

continue to provide the IANA functions to its global customers and partners post-transition in essentially the same manner as ICANN's IANA department does today. In the Names community, IANA customers expressed support for a clearer separation between ICANN as policy developer and IANA as implementer, and the PTI separation accomplishes this. Also, the proposal makes it possible for each operational community to choose a different IFO should the need arise, a capability which does not currently exist for numbers and names. Thus the needs and expectations of the global customers and partners should continue to be satisfied after the transition just as they are currently.

## **5. Maintain the openness of the Internet**

- 98 The combined proposal requires that the IANA services, associated policy development processes, and IANA registries remain fully open and accessible just as they are today.

## **6. Does not replace NTIA role with a government or inter-governmental organization**

- 99 The combined proposal does not replace NTIA's role with a government or inter-governmental organization.
- 100 The Names proposal replaces NTIA's various roles as they relate to the naming functions with the combination of ICANN, the CSC, and the IFR, none of which are governments or inter-governmental organizations. Establishing the PTI as an affiliate of ICANN allows the community to rely on ICANN's accountability mechanisms and safeguards to prevent capture, including by governments.
- 101 Although a government that operates a ccTLD may become a member of the CSC, governments are expected to comprise at most a minority of the CSC. The IFR is a multistakeholder entity with limited membership seats for governmental entities.
- 102 The Numbers proposal essentially places the RIRs in the role currently occupied by the NTIA. The RIRs are independent, non-governmental, self-funded not-for-profit organizations, accountable to their regional memberships and communities through well-developed mechanisms.<sup>52</sup> On behalf of their communities they will contract with ICANN, through the proposed SLA, to provide the required number resource services.
- 103 The Protocol Parameters proposal relies on voluntary agreements between the IETF, ICANN, implementers and their users for the stewardship of the protocol parameters function. ICANN's structural safeguards are noted above; the IETF likewise has significant structural safeguards in place that prevent it from capture or take-over by a government or inter-governmental entity. Every decision made in the IETF is done in full public view. Appointments to the IETF's leadership committees are time-limited and are made by a randomly selected group of volunteers. Any decision can be appealed by any IETF participant, and anyone in a leadership position can be recalled for their actions. All decisions are made by the consensus of the participants – there is no voting or campaigning. Collectively, these measures defend the IETF and the protocol parameters registries from capture by any particular entity, governmental or otherwise.

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<sup>52</sup> <https://www.nro.net/about-the-nro/regional-internet-registries>



- 104 The overwhelming majority of comments received in the public comment period agreed that the proposal does not replace NTIA stewardship with a government-led or intergovernmental solution. Some commenters felt that governmental roles would be too constrained; others felt that the role of the US government was still too strong due to the retention of US jurisdiction. A few other commenters expressed concerns about the role of government-controlled ccTLDs in the CSC. The ICG notes the concerns raised, but believes that the proposal has relied on the community processes to find the right balance across the stakeholder equities and operational requirements, and thus sees no further action as needed.
- 105 A small number of comments expressed concern about a strengthening of the GAC in the new accountability arrangements. These comments are best addressed by the CCWG.

## VII. Implementation Items to be Completed

- 106 The operational communities have indicated that a number of items will need to be implemented prior to the expiry of the NTIA contract. A current non-exhaustive list of such items appear below.<sup>53</sup> Items that may arise from the proposals that do not need to be completed prior to the expiry of the contract (establishment of the IFR, for example) are not listed. The operational communities, ICANN, and other stakeholders that have been involved in the transition process have responsibility for ensuring that implementation is completed in accordance with the proposal.
- 107 Items required by the combination of the three proposals:
- Identification of an entity to hold the IANA-related intellectual property and domain names.
  - Transfer of the IANA-related intellectual property and domain names to the entity.
  - Execution of necessary agreements between the holder of the IANA intellectual property, the operational communities, and the IFO, as determined by those parties.
- 108 Items required by the Names proposal:
- Establishment of the PTI
  - Appointment of PTI board of directors
  - Development and execution of ICANN-PTI contract
  - Staffing of PTI
  - Transfer of resources to PTI

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<sup>53</sup> An implementation action item inventory is available at <https://www.ianacg.org/icg-files/documents/implementation-action-item-inventory.pdf>. It was developed through submissions from the three operational communities and was used in the ICG's assessment of achievability and completeness for the transition proposal. It represents a snapshot in time and will not be further updated.

- Development and approval of PTI operating plan and budget
- Development of a work plan for testing and implementing SLEs
- Finalization and implementation of SLEs
- Establishment of mechanisms to resolve complaints and problems related to actions pertaining to the operation of the naming functions
- Determination if any statutory waivers are needed from the US Government (if so, obtain them)
- Establishment of the architectural standing committee
- Establishment of the CSC
- Development and approval of all necessary changes to ICANN by-laws
- Update to Root Zone Maintainer relationship to remove NTIA role
- Execution of agreement between the IFO and the RZM
- Implementation of any ICANN accountability mechanisms identified by the CWG as required to be in place before the expiry of the NTIA contract

109 Items required by the Numbers proposal:

- Execution of SLA between the RIRs and ICANN
- Finalization of charter and membership of Review Committee for IANA numbering functions (committee must be active no later than 6 months after the transition)

110 Items desired (although not strictly required) by the Protocol Parameters proposal:

- Acknowledgment from ICANN that it will carry out the obligations established under C.7.3 and I.61 of the current IANA Functions Contract between ICANN and the NTIA to achieve a smooth transition to subsequent operator(s).
- Acknowledgment from all relevant parties that the protocol parameters are in the public domain.

## VIII. ICG Recommendation

111 The ICG unanimously supports this proposal and recommends that all affected parties implement it. The ICG affirms that this proposal and all the related processes have met the criteria laid out in our charter and mandate, including the NTIA criteria, and on this basis we transmit this proposal to NTIA via the ICANN Board.

## **Part 1. Response from the Domain Names Community**

# Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship)

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## P1. GLOSSARY

Below are acronyms used throughout the document. Additional useful acronyms have been provided as they may be referenced in related CWG-Stewardship documents.

- **AC:** Advisory Committee
- **ALAC:** At-Large Advisory Committee
- **AOC:** Affirmation of Commitments
- **ASO:** Address Supporting Organization
- **ccNSO:** Country Code Names Supporting Organization
- **ccTLD:** Country Code Top-Level Domain
- **CCWG-Accountability:** Cross Community Working Group on Enhancing ICANN Accountability
- **CO:** Contracting Officer
- **COR:** Contracting Officer's Representative
- **CRISP Team:** Consolidated RIR IANA Stewardship Transition Proposal Team
- **CSC:** Customer Standing Committee
- **CSCRIP:** Customer Service Complaint Resolution Process
- **CWG-Stewardship:** Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions
- **DNS:** Domain Name System
- **DNSSEC:** Domain Name System Security Extensions
- **DRDWG:** Delegation and Re-delegation Working Group
- **DT:** Design Team
- **FOIWG:** Framework of Interpretation Working Group
- **GAC:** Governmental Advisory Committee
- **GNSO:** Generic Names Supporting Organization
- **gTLD:** Generic Top-Level Domain
- **IANA:** Internet Assigned Numbers Authority
- **ICANN:** Internet Corporation for Assigned Names and Numbers
- **ICC:** International Chamber of Commerce
- **ICG:** IANA Stewardship Transition Coordination Group
- **ICP:** Internet Coordination Policy
- **IDN:** Internationalized Domain Name
- **IETF:** Internet Engineering Task Force
- **IFO:** IANA Functions Operator
- **IFR:** IANA Function Review

- **IFRT:** IANA Function Review Team
- **NIST:** National Institute of Standards and Technologies
- **NTIA:** National Telecommunications and Information Administration (U.S. Department of Commerce)
- **OFAC:** U.S. Department of the Treasury's Office of Foreign Assets Control
- **PDP:** Policy Development Process
- **PTI:** Post-Transition IANA
- **RFC:** Request for Comments
- **RFP:** Request for Proposals
- **RrSG:** Registrar Stakeholder Group
- **RIR:** Regional Internet Registry
- **RSSAC:** Root Server System Advisory Committee
- **RySG:** Registry Stakeholder Group
- **SCWG:** Separation Cross-Community Working Group
- **SLA/SLEs:** Service Level Agreement/Service Level Expectations
- **SO:** Supporting Organization
- **SOW:** Statement of Work
- **SSAC:** Security and Stability Advisory Committee
- **TLD:** Top-Level Domain

# Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship)

1001 **P1. Abstract**

1002 This document is a response from the Internet Names Community to the IANA Stewardship Transition Coordination Group (ICG) Request for Proposals (RFP) made on September 8, 2014.

1003 Please note that annexes are included at the end of this document.

1004 **P1. Proposal type**

1005 Identify which category of the IANA Functions this submission proposes to address:

Names       Numbers       Protocol Parameters

## P1.I The Community's Use of the IANA

1006 *This section should list the specific, distinct IANA services or activities your community relies on. For each IANA service or activity on which your community relies, please provide the following:*

- *A description of the service or activity.*
- *A description of the customer of the service or activity.*
- *What registries are involved in providing the service or activity.*
- *A description of any overlaps or interdependencies between your IANA requirements and the functions required by other customer communities*

1007 **P1.I.A. The service or activity**

1008 The IANA activities, as described in the current IANA Functions Contract, relevant to the Internet Naming Community are:

- 1) Root Zone Change Request Management – not including delegation and redelegation (NTIA IANA Functions Contract: C.2.9.2.a).
- 2) Root Zone “WHOIS” Change Request and Database Management (NTIA IANA Functions Contract: C.2.9.2.b).
- 3) Delegation and Redelegation of a Country Code Top-Level Domain (ccTLD) (NTIA IANA Functions Contract: C.2.9.2.c).



- 4) Delegation and Redefinition of a Generic Top-Level Domain (gTLD) (NTIA IANA Functions Contract: C.2.9.2.d).
- 5) Redefinition and Operation of the .INT Top-Level Domain (NTIA IANA Functions Contract: C.2.9.4).
- 6) Root Domain Name System Security Extensions (DNSSEC) Key Management (NTIA IANA Functions Contract: C.2.9.2.f).
- 7) Root Zone Automation (NTIA IANA Functions Contract: C.2.9.2.e).
- 8) Customer Service Complaint Resolution Process (CSCR) (NTIA IANA Functions Contract: C.2.9.2.g).

1009 Services provided by ICANN's IANA department that are not part of the contractually defined IANA Functions, but which are relevant to the Internet Naming Community are:

- 9) Management of the Repository of IDN Practices (IANA service or activity beyond the scope of the IANA Functions Contract).
- 10) Retirement of the Delegation of TLDs (IANA service or activity beyond the scope of the IANA functions contract).
- 11) For further details concerning each of these IANA activities, please see Annex A.

1010 **P1.I.B. The customer of the service or activity**

1011 The primary customers of these IANA activities are TLD registry managers, .INT registrants, Domain Name System (DNS) validating resolver operators. For further details on the customer(s) for each activity, please see Annex A.

1012 **P1.I.C. Registries involved in providing the service or activity**

1013 TLD registries (including ccTLD and gTLD) are involved in providing the service. For further details on which TLD registry (ccTLD or gTLD) is involved in each activity, please see Annex A.

1014 **P1.I.D. Overlap or interdependencies between your IANA requirements and the functions required by other customer communities**

1015 The IETF, through its responsibilities for developing the underlying DNS protocol and its extensions, could designate parts of the domain name space for particular protocol-related purposes that may overlap with usages assigned through ICANN policies. It may also designate portions of the namespace as invalid, illegal, or reserved based on the evolution of the underlying DNS protocol and its extensions. It may also expand the scope of namespace to be managed through such changes. Additional overlap and/or interdependencies have been identified for each activity in Annex A.

## P1.II Existing Pre-Transition Arrangements

1016 *This section should describe how existing IANA-related arrangements work, prior to the transition.*

### 1017 **P1.II.A Policy Sources**

1018 *This section should identify the specific source(s) of policy that must be followed by the IANA functions operator in its conduct of the services or activities described above. If there are distinct sources of policy or policy development for different IANA activities, then please describe these separately. For each source of policy or policy development, please provide the following:*

- *Which IANA service or activity (identified in Section I) is affected.*
- *A description of how policy is developed and established and who is involved in policy development and establishment.*
- *A description of how disputes about policy are resolved.*
- *References to documentation of policy development and dispute resolution processes.*

### 1019 **P1.II.A.i. Affected IANA Service (ccTLDs<sup>54</sup>)**

1020 All functions that apply to Country Code Top-Level Domains (ccTLDs) and modify the Root Zone database or its WHOIS database are affected.

### 1021 **How policy is developed and established by whom (ccTLDs)**

1022 RFC1591 was written in 1994 as a Request For Comments (RFC) by the original IANA Functions Operator, Jon Postel. It is a short document intended to outline how the Domain Name System (DNS) was structured at that time and what rules were in place to decide on its expansion. The longest part of it outlines selection criteria for the manager of a new Top Level Domain (TLD) and what was expected of such a manager.

1023 Like all RFCs, this is a static document (RFCs are updated by the issuance of a new RFC). There have been two significant attempts to revise it so it can be more easily applied to the current context:

- **Internet Coordination Policy 1 (ICP-1).**

1024 This document from the Internet Coordination Policy group of ICANN was one of three such documents created by ICANN staff shortly after its creation. It attempted to update operational details over how the DNS was structured and should be run.

1025 The ICP-1 document was a source of significant friction between ICANN and the ccTLD community and the Country Code Names Supporting Organization (ccNSO) formally rejected the ICP-1 document (final report of the ccNSO's Delegation and Redefinition Working Group or DRDWG) arguing that it modified policy but did not meet the

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<sup>54</sup> According to the Fast Track Methodology the rules for delegation and redelegation for ccTLD apply to delegation and redelegation of IDN ccTLD.

requirements for doing so at the time of its introduction in 1999.

● **Framework of Interpretation Working Group (FOIWG) Recommendations.**

- 1026 A follow-on to the ccNSO's DRDWG, the FOIWG was a joint effort between the ccNSO and the Governmental Advisory Committee (GAC) that also involved representatives from a number of ICANN communities to interpret RFC1591 in light of the Internet of today. In its final report it made a number of recommendations that clarify the application of RFC1591 within the current context.
- 1027 The ccNSO formally endorsed the FOIWG's Final Report in February 2015 and transmitted it to the ICANN Board of Directors. The ICANN Board adopted the FOIWG recommendations in June 2015

● **GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains 2005.**

- 1028 This document, also known as the 2005 GAC Principles, which the GAC regards as formal "Advice" to the ICANN Board, and as such is subject to the Bylaws provisions regarding such Advice at the time of submission<sup>55</sup>. This Advice was developed by the GAC and the first version of these principles was published in 2000 and later revised to produce the 2005 version.
- 1029 Section 1.2 of this document highlights one of the key principles for governments with respect to the management of the ccTLDs associated with their country or territory code:

*1.2. The main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law.*

- 1030 Also section 7.1 of this document can be directly relevant to delegation and redelegation of a ccTLD:

*7.1. Principle*

*Delegation and redelegation is a national issue and should be resolved nationally and in accordance with national laws, taking into account the views of all local stakeholders and the rights of the existing ccTLD Registry. Once a final formal decision has been reached, ICANN should act promptly to initiate the process of delegation or redelegation in line with authoritative instructions showing the basis for the decision.*

● **Local laws applicable to ccTLDs, or Internationalized Domain Names (IDNs) ccTLDs, associated with a specific country or territory are developed by the governments of those countries or territories.**

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<sup>55</sup> Details at <https://www.icann.org/resources/pages/bylaws-2012-02-25-en#XI>

1031 **How disputes about policy are resolved (ccTLDs)**

1032 Section 3.4 of RFC1591 provided for a dispute resolution mechanism. However, the body listed in the document does not currently exist. Most ccTLDs do not have any contracts that specify a dispute resolution mechanism with ICANN.

1033 For those ccTLDs that do not have a contract with ICANN that specifies dispute resolution mechanisms, the ICANN-provided escalation paths available to them are the ICANN Ombudsman and the ICANN Bylaws relating to the Independent Review of ICANN Board Actions (which would only apply to the relevant Board action (i.e., delegations and redelegations in this case). Given that these mechanisms are non-binding on the Board or ICANN, they are perceived by many ccTLDs as being of limited value.

1034 There are additional sources of accountability for the limited number of ccTLDs that have formal Sponsorship Agreements or Frameworks of Accountability with ICANN. These types of agreements have dispute resolution clauses to settle disagreements between the parties that are relevant to all actions and activities by the Operator for ccTLDs. These typically use the International Chamber of Commerce (ICC).

1035 It is also important to note that local laws applicable to ccTLDs, or IDN ccTLDs, associated with a specific country or territory are developed by the governments of those countries or territories and that disputes with respect to such laws can be handled in courts of competent jurisdiction.

1036 **References to documentation of policy development and dispute resolution processes (ccTLDs)<sup>56</sup>**

- RFC1591: <https://www.ietf.org/rfc/rfc1591.txt>.
- FOIWG Final Report: <http://ccnso.icann.org/workinggroups/foi-final-resolutions-11feb15-en.pdf>.
- Independent Review Panel (IRP): <https://www.icann.org/resources/pages/irp-2012-02-25-en>.
- ICANN Ombudsman: <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexB>.
- GAC Principles 2005: [https://gacweb.icann.org/download/attachments/28278844/ccTLD\\_Principles\\_0.pdf?version=1&modificationDate=1312385141000&api=v2](https://gacweb.icann.org/download/attachments/28278844/ccTLD_Principles_0.pdf?version=1&modificationDate=1312385141000&api=v2).

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<sup>56</sup> ICANN staff drafted two documents entitled "ICP-1" (May 1999) and "CCTLD News Memo #1" (23 October 1997) which were the source of significant friction between ICANN and the ccTLD community and the Country Code Names Supporting Organization (ccNSO). The ccNSO formally rejected the ICP-1 document (final report of the ccNSO's Delegation and Redelegation Working Group or DRDWG) arguing that it modified policy but did not meet the requirements for doing so at the time of its introduction in 1999. ICANN has accepted that ICP-1 and CCTLD News Memo #1 were not fit for purpose and have archived the documents.

1037 **P1.II.A.ii. Affected IANA Service (gTLDs)**

1038 Delegation and redelegation of Generic Top-Level Domains (gTLDs).

1039 **How policy is developed and established by whom (gTLDs)**

1040 The Generic Names Supporting Organization (GNSO) is responsible for developing and recommending to the ICANN Board substantive policies relating to gTLDs. The GNSO policy development process is a complex and well-described process that would dwarf this document and as such will not be included. Details can be found at: <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexA>.

1041 **How disputes about policy are resolved (gTLDs)**

1042 This is a complex and well-described process that would dwarf this document and as such will not be included. Further details can be found at: <http://newgtlds.icann.org/EN/APPLICANTS/AGB>, which outlines the procedures that were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the Dispute Resolution Service Providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings. Furthermore, other ICANN-provided escalation paths such as the ICANN Ombudsman and the ICANN Bylaws relating to the Independent Review of ICANN Board Actions (which would only apply to the relevant Board action) are available.

1043 **References to documentation of policy development and dispute resolution processes (gTLDs)**

- GNSO PDP: <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexA>.
- New gTLD Applicant Guidebook: <http://newgtlds.icann.org/EN/APPLICANTS/AGB>.
- Independent Review Panel (IRP): <https://www.icann.org/resources/pages/irp-2012-02-25-en>.
- ICANN Ombudsman: <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexB>.

1044 **P1.II.B. Oversight and Accountability**

1045 *This section should describe all the ways in which oversight is conducted over IANA's provision of the services and activities listed in Section I and all the ways in which IANA is currently held accountable for the provision of those services. For each oversight or accountability mechanism, please provide as many of the following as are applicable:*

- *Which IANA service or activity (identified in Section I) is affected.*
- *If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way.*
- *A description of the entity or entities that provide oversight or perform accountability functions, including how individuals are selected or removed from participation in those entities.*
- *A description of the mechanism (e.g., contract, reporting scheme, auditing scheme, etc.). This should include a description of the consequences of the IANA functions operator not meeting the standards established by the mechanism, the extent to which the output of the mechanism is transparent and the terms under which the mechanism may change.*
- *Jurisdiction(s) in which the mechanism applies and the legal basis on which the mechanism rests.*

1046 **P1.II.B.i Which IANA service or activity is affected (NTIA IANA Functions Contract)**

1047 For the purposes of this section, oversight and accountability of the IANA Functions Operator (IFO) refers to independent oversight and accountability. Specifically, oversight and accountability are defined as:

- Oversight (of the IFO performing Root Zone-related actions and activities): Oversight is performed by an entity that is independent of the Operator (as defined in the NTIA IANA Functions Contract) and has access to all relevant information to monitor or approve the actions and activities that are being overseen.
- Accountability: Accountability provides the ability for an independent entity to impose binding consequences to ensure the IFO meets its formally documented and accepted agreements, standards, and expectations.

1048 All IANA Functions described in Section I of this document are affected. Annex B provides an overview of oversight mechanisms that are found in the NTIA IANA Functions Contract.

1049 **If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (NTIA IANA Functions Contract)**

1050 These oversight and accountability mechanisms in the NTIA IANA Functions Contract do not affect the policies listed in Section II.A.

1051 **The entity or entities that provide oversight or perform accountability functions (NTIA IANA Functions Contract)**

1052 The NTIA is currently responsible for providing this oversight. There is no description regarding how the individuals who perform these functions are selected, removed, or replaced.

1053 **A description of the mechanism (NTIA IANA Functions Contract)**

1054 One of the official accountability mechanisms included in the NTIA IANA Functions Contract is the ability to cancel or not renew the contract. In addition, there is also a customer complaint mechanism built into the contract.

1055 **Jurisdiction and legal basis of the mechanism NTIA IANA Functions Contract**

1056 The jurisdiction of the mechanism is the United States of America.

1057 **Which IANA service or activity is affected (NTIA acting as Root Zone Management Process Administrator)**

1058 NTIA exercises oversight by reviewing all requests and documentation provided by the IANA Contractor for changes to the Root Zone or its WHOIS database to validate that IANA has met its obligations in recommending a change. NTIA can refuse to authorize the request. It affects all IANA Functions that modify the Root Zone and database or its WHOIS database.

1059 **If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (NTIA acting as Root Zone Management Process Administrator)**

1060 This does not affect the policies listed in Section II.A.

1061 **The entity or entities that provide oversight or perform accountability functions (NTIA acting as Root Zone Management Process Administrator)**

1062 The NTIA is currently responsible for providing this oversight. There is no description regarding how the individuals who perform these functions are selected, removed, or replaced.

1063 **A description of the mechanism (NTIA acting as Root Zone Management Process Administrator)**

1064 The accountability is exercised by the NTIA by not approving a change request by IANA for the Root Zone or its WHOIS database.

1065 **Jurisdiction and legal basis of the mechanism (NTIA acting as Root Zone Management Process Administrator)**

1066 The jurisdiction of the mechanism is the United States of America.

1067 **Which IANA service or activity is affected (binding arbitration included in TLD contracts)**

1068 Most gTLD registries as well as a few ccTLD registries have contracts (for ccTLDs also called Sponsorship Agreements or Frameworks of Accountability) with ICANN. All of these contracts provide for binding arbitration of disputes. (The standard gTLD contract language begins with: "*Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce.*") All IANA Functions which modify the Root Zone file or database are affected.

1069 **If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (binding arbitration included in TLD contracts)**

1070 This does not affect the policies listed in Section II.A.

1071 **The entity or entities that provide oversight or perform accountability functions (binding arbitration included in TLD contracts)**

1072 For most gTLDs the language is:

1073 Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or 7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator.

1074 For the few ccTLDs with a contract, the language relating to this is usually a version of the following:

1075 Each party shall nominate one arbitrator, and the two arbitrators so nominated shall, within 30 days of the confirmation of their appointment, nominate the third arbitrator, who will act as Chairman of the Arbitral Tribunal.

1076 **A description of the mechanism (binding arbitration included in TLD contracts)**

1077 The results of the arbitration are binding on both parties.



1078 **Jurisdiction and legal basis of the mechanism (binding arbitration included in TLD contracts)**

1079 For gTLDs the arbitration will be conducted in the English language and will occur in Los Angeles County, California, USA.

1080 For ccTLDs that have dispute resolution clauses with ICANN, the place of arbitration needs to be agreed to by both parties. Typically there is language inserted that identifies the law that will be relevant in evaluating each party's actions, such as the law of the country in which the ccTLD is operated for ccTLDs, and the laws of California for ICANN's actions.

1081 **Which IANA service or activity is affected (applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

1082 The NTIA IANA Functions Contract clearly establishes the importance of the GAC Principles 2005 in the delegation and redelegation of ccTLDs.

1083 As such, Section 1.7 of the GAC Principles 2005 clearly sets the stage for such oversight by governments:

1.7. It is recalled that the WSIS Plan of action of December 2003 invites "Governments to manage or supervise, as appropriate, their respective country code top-level domain name." Any such involvement should be based on appropriate national laws and policies. It is recommended that governments should work with their local Internet community in deciding on how to work with the ccTLD Registry.

1084 Within the context provided by Section 1.2 of the same document:

1.2. The main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law.

1085 The IFO currently seeks government approval for all ccTLD delegations and redelegations.

1086 ccTLD delegations and redelegations are affected.

1087 **If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

1088 This does not affect the policies listed in Section II.A.

1089 **The entity or entities that provide oversight or perform accountability functions (applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

1090 Local law should prevail unless the decision has a global impact.

1091 **A description of the mechanism (applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

1092 Variable depending on the specific government.

1093 **Jurisdiction and legal basis of the mechanism (applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

1094 Jurisdiction lies in that of the country or territory concerned.

## P1.III Proposed Post-Transition Oversight and Accountability

1095 *This section should describe what changes your community is proposing to the arrangements listed in Section II.B in light of the transition. If your community is proposing to replace one or more existing arrangements with new arrangements that replacement should be explained and all of the elements listed in Section II.B should be described for the new arrangements. Your community should provide its rationale and justification for the new arrangements. If your community's proposal carries any implications for existing policy arrangements described in Section II.A, those implications should be described here. If your community is not proposing changes to arrangements listed in Section II.B, the rationale and justification for that choice should be provided here.*

### 1096 **P1.III.A The Elements of This Proposal**

1097 The sections below describe how the transition will affect each of the naming functions identified and what changes, if any, the CWG-Stewardship recommends addressing these effects. In summary, the CWG-Stewardship recommends:

- A new, separate legal entity, Post-Transition IANA (PTI), will be formed as an affiliate of ICANN. The existing IANA functions, administrative staff, and related resources, processes, data, and know-how will be legally transferred to PTI.
- ICANN will enter into a contract with PTI, granting PTI the rights and obligations to serve as the IANA Functions Operator (IFO) for the naming functions, and setting forth the rights and obligations of ICANN and PTI. This contract will also include service level agreements for the naming functions.
- Changes proposed to Root Zone environment and relationship with Root Zone Maintainer.

1098 In developing this response, the CWG-Stewardship has been mindful of the “Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Naming Related Functions” as developed and agreed to by the CWG-Stewardship and included in Annex C.

1099 Note: this Section III provides the high-level recommendations that should be read in conjunction with the relevant annexes, which provide additional details.

#### 1100 **P1.III.A.i. Proposed Post-Transition Structure**

1101 The objective of Section III is to present the changes required to replace the oversight and accountability performed by the NTIA via the NTIA IANA Functions Contract and NTIA's role as Root Zone Management Process Administrator for the naming functions.

1102 Specifically, the oversight and accountability roles of the NTIA include the following:

- In relation to the IANA Functions Contract:
  - Contract process including selection of operator and cancellation of the contract (accountability).
  - Formal definition of the requirements and expectations of IANA by the NTIA –

statement of work (oversight).

- Establishment and external monitoring of quality control and performance evaluation mechanisms (oversight and transparency).
- Issue resolution (accountability).
- In relation to NTIA's role as Root Zone Management Process Administrator:
  - Approval of all changes to the content of the Root Zone (oversight and accountability).
  - Approval of all changes to the Root Zone environment, such as the implementation of DNSSEC (oversight and accountability).
  - Approval of all external communications and reporting by IANA to external parties (oversight and accountability).

1103 The public consultation on the CWG-Stewardship's initial transition proposal of 1 December 2014 confirmed that the respondents were satisfied with the current performance of ICANN as the IFO. Therefore, any new arrangements should maintain ICANN as the IFO at the time of transition and seek to implement mechanisms designed to provide similarly effective oversight and accountability (as those currently in place), minimize complexity and costs and maintain the security, stability, and resiliency of the DNS and the Internet. The public consultation on the CWG-Stewardship's [second draft proposal](#) in April-May 2015 confirmed broad support for PTI and related structures, such as the IANA Function Review (IFR) and Customer Standing Committee (CSC). The CWG-Stewardship reviewed all input received and has updated the proposal accordingly.<sup>57</sup>

1104 In order to meet community expectations for the stewardship of the IANA Functions related to naming, the CWG-Stewardship, working on the premise that there is current satisfaction with ICANN's IANA department performance and that ICANN should remain the IANA Functions Operator, agreed that a satisfactory transition proposal for the names community requires the following elements:

- A contract similar to the current NTIA IANA Functions Contract to perform the IANA names functions post-transition;
- The ability for the multistakeholder community to ensure that ICANN acts according to community requests with respect to IANA names operations;
- Additional insulation, as needed, between operational and policymaking responsibilities and protections for the IFO;
- A mechanism to approve changes to the Root Zone environment (with NTIA no longer providing an approval process);
- The ability to ensure that the IANA Functions are adequately funded by ICANN;
- The ability for the multistakeholder community to require, and if necessary after substantial opportunities for remediation, the selection of a new operator for the IANA Functions as they relate to names.

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<sup>57</sup> See public comment review tool (<https://community.icann.org/x/x5o0Aw>), which categorizes all the input received according the sections of the proposal and responses to each of these comments from the CWG-Stewardship.

1105 While this proposal originates from within the names community, it anticipates that, for reasons of coherence of the IANA function and overall operational logistics, all of the IANA functions will be transferred to PTI. However, it is not clear at the time of writing whether the other operational communities will undertake to contract directly with PTI (similar to the manner in which this response envisages ICANN will do), or whether those communities will have a contract with ICANN. If the other operational communities contract directly with PTI, then those communities will need to determine the terms of their contract with PTI for the support of their respective functions. On the other hand, if the other operational communities enter into a contract with ICANN, then ICANN will need to subcontract the performance of the functions to PTI. Which of these approaches is followed by the other operational communities is not relevant for the purposes of the present proposal, so long as those details are not inconsistent with this proposal. In any case, the arrangements for the non-names IANA functions are out of scope for this document except to the extent they impinge directly on the names functions. The CWG-Stewardship has also agreed that approval of all changes to the content of the Root Zone will no longer need authorization (as is currently the case) and that external communications and reporting will no longer need external approval post-transition. This final proposal attempts to meet all of the above requirements by:

- Creating PTI, a separate legal entity that will be an affiliate<sup>58</sup> controlled by ICANN<sup>59</sup>. The creation of PTI ensures both functional and legal separation within the ICANN organization.
- Establishing a contract between PTI and ICANN that will grant PTI the rights to act as the IFO, and set out the rights and obligations of PTI and ICANN.
- Establishing the CSC that is responsible for monitoring IFO performance according to contractual requirements and service level expectations, resolving issues directly with the IFO or escalating them if they cannot be resolved.<sup>60</sup>
- Establishing a series of issue resolution mechanisms to ensure that problems are resolved effectively.
- Ensuring ICANN accepts input from the multistakeholder community with respect to the annual IANA operations budget.
- Establishing a framework to approve changes to the Root Zone environment (with NTIA no longer providing oversight).
- Establishing a multistakeholder IANA Function Review (IFR) to conduct periodic and special reviews of PTI.<sup>61</sup> The results of the IFR will not be prescribed or restricted and could include recommendations to initiate a separation process (as described below), which could result in termination or non-renewal of the ICANN-PTI IANA functions contract among other actions.

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<sup>58</sup> An affiliate of an entity means another entity that directly or indirectly controls, is controlled by, or is under common control with the first entity. For example, a parent and its subsidiaries are affiliates because the parent controls the subsidiaries; and two subsidiaries with a common parent are affiliates because the two subsidiaries are under common control by the parent.

<sup>59</sup> Based on independent legal advice received, the CWG-Stewardship proposes that PTI will be an affiliate in the form of a California public benefit corporation with a single member and that member will be ICANN, with a Board comprising a majority of PTI Board members appointed by ICANN.

<sup>60</sup> The CSC is not a separate legal entity. The CSC would be authorized by the ICANN governance documents (including the ICANN Bylaws) and the ICANN-PTI Contract.

<sup>61</sup> The IANA Function Review (IFR) would be convened periodically (first review two years after the transition is complete, and thereafter at intervals of no more than five years). It could also be convened for a special review under certain circumstances further described in the escalation mechanisms section below. The review would be authorized by ICANN's governance documents (including the ICANN Bylaws) and referenced in the ICANN-PTI Contract.

1106 The CWG-Stewardship proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) as described below. The co-chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations, if implemented as envisaged, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG. If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this CWG-Stewardship proposal will require revision. Specifically, the proposed legal structure and overall CWG-Stewardship proposal requires ICANN accountability in the following respects:

1. **ICANN Budget and IANA Budget.** The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The CWG-Stewardship recommends that the IFO's comprehensive costs should be transparent and ICANN's operating plans and budget should include itemization of all IANA operations costs to the project level and below as needed. An itemization of IANA costs would include "Direct Costs for the IANA department", "Direct Costs for Shared resources" and "Support functions allocation". Furthermore, these costs should be itemized into more specific costs related to each specific function to the project level and below as needed. PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis. PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget. The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.
2. **Community Empowerment Mechanisms.** The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:
  - (a) The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;
  - (b) The ability to exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (i) ICANN Board decisions with respect to recommendations resulting from an IFR or Special IFR and (ii) the ICANN budget; and
  - (c) The ability to approve amendments to ICANN's "fundamental bylaws," as described below.
3. **IFR.** The creation of an IFR which is empowered to conduct periodic and special reviews of the IANA functions (see Annex F). IFRs and Special IFRs will be

incorporated into the Affirmation of Commitments mandated reviews set forth in the ICANN Bylaws.

4. **CSC.** The creation of a CSC which is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the ccNSO and GNSO. The ccNSO and GNSO should be empowered to address matters escalated by the CSC.
5. **Separation Process.** The empowerment of the Special IFR to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group (SCWG) be established to review the identified issues and make recommendations. See Annex L for more detailed information as to approval requirements with respect to the formation of a SCWG and approval of SCWG recommendations.
6. **Appeal mechanism.** An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.
7. **Fundamental bylaws.** All of the foregoing mechanisms are to be provided for in the ICANN bylaws as “fundamental bylaws.” A “fundamental bylaw” may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote).

#### 1107 **Post-Transition IANA (PTI)**

1108 In order to identify and isolate the IANA naming functions, both functionally and legally, from the ICANN entity, the CWG-Stewardship recommends the creation of a Post-Transition IANA (PTI). PTI will be a new legal entity in the form of a non-profit corporation (i.e., a California public benefit corporation). The existing IANA functions department, administrative staff, and related resources, processes, data, and know-how will be legally transferred to PTI.<sup>62</sup> No further transfer of assets from PTI to another entity will be allowed unless specifically approved by ICANN.

1109 At the outset, PTI will have ICANN as its sole member and PTI will therefore be a controlled affiliate of ICANN. ICANN will provide funding and administrative resources to PTI through an agreed-upon budget.

1110 A contract will be entered into between PTI and ICANN, which will grant PTI the rights to act as the IFO and set out rights and obligations of PTI and ICANN. The contract will provide for automatic renewal, subject to potential non-renewal by ICANN if recommended by the IANA Function Review (see further details below).

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<sup>62</sup> In the case of any existing ICANN contracts, MoUs or other arrangements that relate to the IANA functions, these could be assigned to and assumed by PTI, replaced by new arrangements at the PTI level or remain at ICANN with a subcontract to PTI.

1111 **PTI Board**

1112 As a separate legal entity, PTI will have a board of directors who have the minimum statutorily required responsibilities and powers. The construct of the PTI Board will be a range of 3-5 people to be appointed by ICANN as the sole member of PTI. The PTI Board could be comprised of three directors who are employed by ICANN or PTI (for example, the ICANN Executive responsible for PTI, the ICANN CTO and the IANA Managing Director), and two additional independent directors. The two additional directors must be nominated using an appropriately rigorous nomination mechanism (e.g. through the use of the ICANN Nominating Committee). The CWG-Stewardship expects that this will avoid the need to replicate the complexity of the multistakeholder ICANN Board at the PTI level and maintain primary accountability at the ICANN level. Any issues that arise concerning the PTI and the PTI Board will therefore be able to be ultimately addressed through the overarching ICANN accountability mechanisms.<sup>63</sup>

1113 The function of the PTI Board is to provide oversight of the operations of PTI in order to ensure that PTI meets, at a minimum, applicable statutory requirements under California public benefit corporation laws and, importantly, fulfills its responsibilities under the IANA functions contract with ICANN. If the PTI Board does not fulfill its oversight responsibilities with respect to the operations of PTI, the ICANN Board will hold the PTI Board accountable by exercising the rights ICANN has as the member of PTI and as the counterparty to the IANA functions contract with PTI.

1114 The CWG-Stewardship recommends that the PTI Board skill set be evaluated as a whole and not on a per member basis, while also ensuring that each individual member is suitable and appropriately qualified to serve as a director of PTI in his or her own right. Accordingly, the PTI Board's complete skill set should be balanced and cover an appropriate and complete composite of executive management, operational, technical, financial and corporate governance experience.

1115 **IANA Contract and Statement of Work**

1116 The issues currently addressed in the NTIA ICANN Functions Contract and related documents will be addressed in the ICANN-PTI IANA functions contract. Furthermore, the CWG-Stewardship expects that a number of existing provisions of the NTIA IANA Functions Contract will be carried over to the PTI Contract in the form of a Statement of Work (SOW), taking into account updates that will need to be made as a result of the changing relationship between IANA and ICANN as well as other recommendations outlined in Section III. In order for the community to have confidence in the robust and complete nature of the ICANN-PTI IANA Functions Contract, it is recommended that PTI have independent legal counsel to advise on the contract. The ICANN bylaws will reference the need for periodic and special review of the IANA Statement of Work through the IFR. An overview of provisions expected to be carried over into the ICANN-PTI IANA functions contract can be found in Annex E as well as Annex S which includes a draft proposed term sheet.

1117 **IANA Function Review**

1118 The CWG-Stewardship recommends an IANA Function Review (IFR), which will review PTI's performance against the ICANN-PTI Contract and the SOW. The IFR will be obliged to take into account multiple input sources including community comments, CSC evaluations,

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<sup>63</sup> CCWG-Accountability Dependency – see <https://community.icann.org/x/TSYnAw>



reports submitted by PTI, and recommendations for technical or process improvements (see Customer Standing Committee section below). The outcomes of reports submitted to the CSC, and reviews and comments received on these reports during the relevant time period will be included as input to the IFR. The IFR will also review the SOW to determine if any amendments should be recommended. The IFR mandate is strictly limited to evaluation of PTI performance against the SOW and does not include any evaluation relating to policy or contracting issues that are not part of the ICANN-PTI IANA functions contract or the SOW. In particular it does not include issues related to policy development and adoption processes, or contract enforcement measures between contracted registries and ICANN.

1119 The first IFR is recommended to take place no more than two years after the transition is complete. After the initial review, the periodic IFR should occur at intervals of no more than five years. The IFR should be set out in the ICANN Bylaws and included as a “fundamental bylaw” resulting from the work of the CCWG-Accountability and will operate in a manner analogous to an Affirmation of Commitments (AoC) review. The “fundamental bylaws” will be ICANN bylaws that will require the prior approval of the multistakeholder community to adopt or amend. The approval of an ICANN fundamental bylaw could also require a higher threshold than typical bylaw amendments, for example, a supermajority. The members of the IANA Function Review Team (IFRT) will be selected by the Supporting Organizations and Advisory Committees and will include several liaisons from other communities. While the IFRT is intended to be a smaller group, it will be open to non-member “participants” in much the same way as the CWG-Stewardship is.

1120 While the IFR will normally be scheduled based on a regular cycle of no more than five years<sup>64</sup> in line with other ICANN reviews, a Special IANA Function Review (Special IFR) may also be initiated under certain circumstances, as discussed in the following section.

1121 For further details, please see Annex F.

## 1122 **Special IANA Function Review**

1123 As mentioned above, IFRs will occur periodically or, in special circumstances, may be initiated outside of the normal periodic schedule. A non-periodic or “Special” IANA Function Review (Special IFR) could only be initiated when the following escalation mechanisms and methods have been exhausted:

- CSC Remedial Action Procedures are followed and fail to correct the identified deficiency (see Annex G); and
- The IANA Problem Resolution Process is followed and fails to correct the identified deficiency (see Annex J).

1124 For further details, please see Annex F.

1125 Following the exhaustion of the above escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process (as defined in Annex G), and the IANA Problem Resolution Process (as defined in Annex J) and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SO/ACs, the Special IFR could be triggered. In order to trigger a Special IFR, it would

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<sup>64</sup> If a Special IFR is initiated, some flexibility with regard to the pragmatic use of community resources should be allowed with regards to the timing of the next IFR.

require a vote of both of the ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority). The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IANA Function Review. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of the IANA Functions operation, including the CSC, but should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs.

1126 There is no prescribed outcome for an IFR, whether special or periodic. Recommendations could span from “no action required” to the introduction of operational remediation requirements, to the initiation of a separation process, described below. In the case of a Special IFR, it is expected that the recommendations of the IFRT will describe how the proposed remedial procedures are expected to address the identified deficiency.

1127 As described in Annex L, an IFR may determine that a separation process is necessary. In making this determination, the IFR is not responsible for recommending a type of separation. If the IFR determines that a separation process is necessary, it will recommend the creation of the Separation Cross-Community Working Group (SCWG). This recommendation will need to be approved by both of the ccNSO and GNSO Councils (each by a supermajority vote, according to their normal procedures for determining supermajority), and will need to be approved by the ICANN Board after a public comment period, as well as a community mechanism derived from the CCWG-Accountability process.<sup>65</sup> A determination by the ICANN Board to not approve an SCWG that had been supported by a supermajority of the ccNSO and GNSO Councils will need to follow the same supermajority thresholds and consultation procedures as ICANN Board rejection (by a supermajority vote) of a PDP recommendation that is supported by a GNSO supermajority.

1128 **P1.III.A.ii. Proposed Oversight & Accountability Replacement**

1129 **Customer Standing Committee (CSC) - Overseeing performance of IANA Functions as they relate to naming services**

1130 The CWG-Stewardship recommends the creation of a CSC to monitor the performance of PTI with the following mission:

“The Customer Standing Committee (CSC) has been established to perform the operational oversight previously performed by the U.S. Department of Commerce’s National Telecommunications and Information Administration as it relates to the monitoring of performance of the IANA naming function. This transfer of responsibilities took effect on [date].

The mission of the CSC is to ensure continued satisfactory performance of the IANA function for the direct customers of the naming services. The primary customers of the naming services are TLD registry operators, but also include root server operators and other non-root zone functions.

The mission will be achieved through regular monitoring by the CSC of the performance of the IANA naming function against agreed service level targets and through

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<sup>65</sup> This community mechanism could include ICANN membership, if ICANN were to become a membership organization per the CCWG-Accountability work efforts.

mechanisms to engage with the IANA Functions Operator to remedy identified areas of concern.”

1131 The CSC is not mandated to initiate a change in the IANA Functions Operator via a Special IANA Function Review, but could escalate to the ccNSO and GNSO Councils or either body in the specific case where the issue in question applies only to ccTLDs or gTLDs respectively, which might then decide to take further action using agreed consultation and escalation processes (see Annex J).

1132 The complete proposed charter of the CSC can be found in Annex G.

### 1133 **Service Level Expectations (SLEs)**

1134 The CWG-Stewardship reviewed the performance standards established under the IANA contract between NTIA and ICANN and considered these inadequate for a registry service of such global importance. In light of the cessation of NTIA’s independent stewardship and authorization role, it is an appropriate time for customers to re-evaluate the current minimum acceptable service levels, reporting requirements and breach levels.

1135 The CWG-Stewardship is not proposing any changes to the current work flow process.

1136 The CWG-Stewardship is suggesting that there is a requirement placed on IANA staff, (as part of the implementation phase) to measure, record and report additional details of transaction times for each Root Zone Management process. Such transparency will provide factual information to assist the CSC, IFRT and the Community to determine and confirm that IANA Functions Operator is continuing to provide non-discriminatory service to the naming community.

1137 The CWG-Stewardship also proposes a set of guiding principles that will help define the expectation for the monitoring and reporting environment, and guide the definition of the individual criteria used for reporting and assessment of the naming-related portions of the IANA Functions. Work to define the final SLEs will be on-going in order to be included with the proposal submitted to the NTIA and will be run in parallel with the ICG process to review the CWG-Stewardship proposal. The objective is to ensure that the naming proposal is not delayed by work to define the SLEs and so to optimize use of the time prior to the final submission of a proposal to the NTIA.

1138 For further details, please see Annex H.

### 1139 **Escalation Mechanisms**

1140 The CWG-Stewardship recommends requiring the continuation, with minor modifications, of a progressive set of escalation steps that can be performed for emergency situations as well as customer service complaints and a new problem resolution process, as applicable, for individual TLD registry operators, or others with relevant IANA Functions operational issues. Three processes are recommended.<sup>66</sup>

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<sup>66</sup> Note, nothing in these processes prevents a TLD operator to pursue other applicable legal recourses that may be available.

**1) Customer Service Complaint Resolution Process**

This process is for anyone who has a complaint about IANA services.<sup>67</sup> The CWG-Stewardship has modified the current process used by ICANN by adding some steps at the end. For further details, please see Annex I.

**2) IANA Problem Resolution Process (for IANA naming services only)**

This is a new process created for persistent performance issues or systemic problems associated with the provision of IANA naming services.<sup>68</sup> For further details, please see Annex J.

**3) Root Zone Emergency Process**

This process is for TLD managers in cases where expedited handling is required and is the same as the process currently used by ICANN, but reflects the post-transition environment.

1141 The details of these processes, including proposed modifications to the existing processes to reflect the transition, can be found in Annexes I (IANA Customer Service Complaint Resolution Process), J (Problem Resolution Process (for IANA naming services only)) and K (Root Zone Emergency Process). Furthermore a flow chart outlining the different steps and relationship between the Customer Service Complaint Resolution Process and the IANA Problem Resolution Process can be found in Annex J-1.

1142 **Separation Process**

The CWG-Stewardship recommends that an ICANN fundamental bylaw be created to define a separation process that can be triggered by a Special IFR if needed. The Special IFR will only occur if other escalation mechanisms and methods have been exhausted. If the Special IFR recommends a separation process, a Separation Cross Community Working Group (SCWG) which will be formed to review the issues and make recommendations. The recommendations of a Special IFR will need to be approved by a supermajority vote of each of the ccNSO and GNSO Councils, the ICANN Board, and a community mechanism derived from the CCWG-Accountability process before they can be moved to implementation.<sup>69</sup> Any new IFO (or other separation process) will be subject to the approval of the ICANN Board, and a community mechanism derived from the CCWG-Accountability process.<sup>70</sup>

There will be no prescribed result arising from the separation process. The SCWG will be empowered to make a recommendation ranging from “no action required” to the initiation of an RFP and the recommendation for a new IFO, or the divestiture or reorganization of PTI. In the case of a recommendation for any action, ICANN is expected to cover all costs i.e. costs related to the then transition, costs related to the possible selection of a new IFO and the ongoing operating costs of the successor operator. Moreover, in bearing such costs, it is to be required of ICANN that it does not raise fees from TLD operators (registries, registrars and, indirectly, for registrants) in order to do so.

1143 For further details please see Annex L.

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<sup>67</sup> This process exists today for all IANA services, but the CWG-Stewardship changes intend to apply only to the IANA naming services.

<sup>68</sup> It is beyond the scope of the CWG-Stewardship to propose processes that affect other IANA services customers (protocol parameters and numbers). However, should there be an interest in expanding this process to include those customers, those discussions could be held at a later date.

<sup>69</sup> This community mechanism could include ICANN membership, if ICANN were to become a membership organization per the CCWG-Accountability work efforts.

<sup>70</sup> This community mechanism could include ICANN membership, if ICANN were to become a membership organization per the CCWG-Accountability work efforts.

1144 **Framework for Transition to Successor IANA Functions Operator**

1145 The CWG-Stewardship recommends the continuation of the current transition framework for the IANA Functions, with relevant modifications, should it be, for whatever reason, necessary for the IANA Functions to be transitioned from the incumbent IFO to a successor IFO. This framework will be set forth in the ICANN-PTI Contract and will be based upon the current NTIA-ICANN contract clause C.7.3, “Plan for Transition to Successor Contractor.” The transition framework should be part of the operations and management of the IANA Functions going forward and be considered part of the operator’s business contingency and continuity of operations planning.<sup>71</sup> This is a framework only and it is expected – as per the following recommendations – that a full plan will be developed post-IANA Stewardship Transition. The principles and recommendations for the future evolution of the Framework for Transition to Successor IANA Functions Operator include:

- 1) The integrity, stability, and availability of the IANA Functions must be the core concern during any transition of the IANA Functions.
- 2) The transition framework must be further developed and maintained by PTI, with ICANN input, into a detailed, fully functional, transition plan within 18 months from the completion of the IANA Stewardship Transition.
- 3) The budget for IANA operations should be augmented with specific funding for the detailed transition plan development referred to in 2 (above).
- 4) The process established for the potential transitioning of the IANA Functions to an operator other than the incumbent should specifically recognize that the detailed transition plan referred to in 2 (above) must be in place before the commencement of the transitioning process.
- 5) Both the incumbent and the successor IANA Functions Operators will be required to fully engage in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable transition of the IANA Functions.
- 6) Once developed, the full Transition to Successor IANA Functions Operator Plan should be reviewed every year by IANA staff, in conjunction with the CSC/Community as necessary, to ensure that it remains up to date, and reviewed every five years to ensure that it remains fit for purpose.

1146 For further information, see Annex M.

1147 **P1.III.A.iii Proposed changes to Root Zone environment and relationship with Root Zone Maintainer**

1148 In relation to the Root Zone Management Process Administrator role that is currently performed by NTIA, the CWG-Stewardship recommends that this role be discontinued post-transition. As a result of this discontinuation the CWG-Stewardship recommends:

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<sup>71</sup> The CWG-Stewardship notes that the ICANN Contingency and Continuity of Operations Plan (CCOP) was not able to be released as requested through the DIDP process due to security and stability related concerns.

1149 **Recommendations related to the elimination of NTIA Authorization of changes to the Root Zone content and the associated WHOIS database**

1150 Currently, changes to the Root Zone File, as well as changes to the Root Zone WHOIS Database, are transmitted to the NTIA for authorization. Such changes cannot be enacted without explicit positive authorization from the NTIA. Post-transition, no authorization for Root Zone change requests will be needed.

- 1) Changes will be required to the IFO and Root Zone Maintainer software to remove this requirement. In the very short term, if making the software changes cannot be completed before the transition and/or to avoid multiple coincident changes, the existing software could be used and IANA staff could authorize the changes (effectively fulfilling the current role of the NTIA at this point in the process).
- 2) Currently there is a Cooperative Agreement between the NTIA and the Root Zone Maintainer. The NTIA has said that there will be a parallel but separate transition to disengage the NTIA from the Root Zone Maintainer. The exact form of this transition is not currently known, nor what, if anything, will replace the current Cooperative Agreement and the parties involved in providing the services currently covered under the Cooperative Agreement.
  - a) If that transition is not completed prior to the IANA Stewardship Transition, the Cooperative Agreement will likely have to be amended by the NTIA to allow Verisign, acting as the Root Zone Maintainer, to implement changes to the Root Zone requested by the IFO without requiring approval from NTIA.
  - b) If the Root Zone Maintainer transition is completed prior to, or in conjunction with, the IANA Stewardship Transition, the new arrangements must provide a clear and effective mechanism to ensure that PTI can have its change requests for the Root Zone implemented in a timely manner by the Root Zone Maintainer (possibly via an agreement between the Root Zone Maintainer and the IFO).
- 3) It should be determined whether or not additional checks/balances/verifications are required post transition. The CWG-Stewardship recommends that a formal study be undertaken post transition to investigate whether there is a need to increase (and if so, how) the robustness of the operational arrangements for making changes to the Root Zone content to reduce or eliminate single points of failure.<sup>72</sup> This study should include a risk analysis and cost/benefit analysis factoring in the history and possibility of such problems. Any new procedures/processes should be designed to minimize:
  - a) The potential for accidental or malicious changes or omissions by the IFO or Root Zone Maintainer.
  - b) The potential for out-of-policy changes by the IFO. The term “policy” is used in its most general sense, representing formal Policy adopted by ICANN as well as established standards, practices, and processes.
  - c) The potential for accidental or malicious errors in the communications path from the IFO to the Root Zone Maintainer.

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<sup>72</sup> If this recommendation is approved, the estimated costs for the study should be added to the PTI budget for the period(s) in which it will be performed.

- d) The potential for accidental outages or malicious actions related to the telecommunications infrastructure serving the IFO and the Root Zone Maintainer. Such outages or actions could be related to the infrastructure shared with ICANN.

1151 Any changes to procedures or processes should be based on a cost/benefit and risk analysis factoring in the history and possibility of such problems. The review should involve all parties that may be affected or impacted by any changes to be implemented.

## 1152 **Changes to the Root Zone Management Architecture and Operation**

1153 Per the NTIA IANA Functions Contract, NTIA approval was required for the implementation of all changes to the Root Zone environment such as DNSSEC as well as many classes of changes to IANA Functions Operator processes (including what may be published). The NTIA has contributed and opened avenues to resources (such as those from NIST – the National Institute of Standards and Technologies, a part of the U.S. Department of Commerce in efforts surrounding DNSSEC). Moreover as the Root Zone Administrator, they have been the entity to ultimately approve the changes going forward.

## 1154 **Post-Transition**

1155 The CWG-Stewardship recommends that a replacement of this approval function be put in place for significant architectural and operational changes. Although it is clear that the DNS-related technical and operational communities have both the technology skills and appropriate incentives to make prudent and cautious changes, the critical nature of the Root Zone makes it necessary to formalize approval of major architectural and operational changes.

- 1) Formal approval to proceed with a change shall be granted by the ICANN Board.
- 2) The Board shall grant approval on the recommendation of a standing committee with a proposed membership of: an ICANN Board member (possibly as Chair), a senior IANA Functions Operator administrator or delegate, and Chairs or delegates of the SSAC, RSSAC, ASO and IETF,<sup>73</sup> a representative of the GNSO RySG, a representative of the ccNSO and a representative of the Root Zone Maintainer. The standing committee will select its chair. The RySG and ccNSO representatives will ensure appropriate communications with the CSC.
- 3) The standing committee will not necessarily be the group that considers the details of the issue under consideration, but it will be responsible for ensuring that those involved in the decision include all relevant bodies and have access to necessary expertise.
- 4) Issues may be brought to the standing committee's attention by any of its members, by PTI staff, or by the CSC.
- 5) For architectural changes that impose potential risk to the security, stability, or resiliency of the Root system (as identified by at least one standing committee member and agreed by a simple majority of members), there should be public consultation through the standard ICANN public comment process.

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<sup>73</sup> The CWG-Stewardship has not consulted with the IETF and other named parties as to whether or not they would be willing to serve on such a committee, but sought to provide that option should these parties be interested and available.

- 6) To the extent allowed based on the need for security and contractually required confidentiality, the proceedings of the standing committee should be open and transparent.
- 7) Since it is not possible to formally define “significant”, all parties should err on the side of prudence and raise issues for the consideration of the standing committee when there is any question of it being required. The standing committee may decide that it does not need to consider the issue.
- 8) The standing committee should coordinate with the NTIA at the time of transition to transfer relevant information about any ongoing major architectural and operational changes so that any such ongoing activities are not delayed or lost due to the transition.

1156 The CWG-Stewardship further recommends that for changes internal to the IANA Functions Operator and for those related to reports and communications, no external approval shall be needed. Such decision should be made, where appropriate, in consultation with the community, or the standing committee.

1157 The CWG-Stewardship recommends that post-transition IFO budgets must support the operator’s capability to investigate, develop and deploy Root Zone enhancements required to keep the Root Zone and its management evolving.

## 1158 Principles

- 1) **Transparency:** To the extent allowed by external agreements and as necessitated by security and privacy issues, the IFO should operate in a transparent manner. Reports on the IFO operations should not be withheld unless there are explicit and defensible needs for confidentiality.
- 2) **Control of Root Zone Management:** Currently, updating the Root Zone requires the active participation of three parties: the IFO, the Root Zone Maintainer and the NTIA. The IFO receives change requests from various sources, validates them, and sends them to the Root Zone Maintainer who, once they are authorized by the NTIA, updates the Root Zone File, DNSSEC signs it and distributes it to the Root operators.

Post transition there will only be the IFO and the Root Zone Maintainer. The CWG-Stewardship is not recommending any change in the functions performed by these two roles at this time. The CWG-Stewardship is recommending that should there be proposals to make changes in the roles associated with Root Zone modification, that such proposals should be subject to wide community consultation.

- 3) **Future changes to the Root Zone Management process** must be made with due consideration to the IANA Functions Operator’s and Root Zone Maintainer’s abilities to process change requests expeditiously.



1159 **P1.III.A.iv. Other**

1160 **ccTLD Delegation Appeals**

The CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and redelegations in the IANA Stewardship Transition proposal. For further information, see Annex O.

1161 **IANA Budget<sup>74</sup>**

1162 In order for the multistakeholder community to steward the IANA Functions, the CWG-Stewardship recommends that:<sup>75</sup>

- 1) The IFO's comprehensive costs should be transparent for any future state of the IANA Function.
- 2) Future Fiscal Year (FY) ICANN Operating Plans & Budgets, and if possible even the FY16 ICANN Operating Plan & Budget, include at a minimum itemization of all IANA operations costs in the FY ICANN Operating Plan & Budget to the project level and below as needed.

1163 Further details on the expected detail, based on the information provided in relation to the FY15 budget, can be found in Annex P. Furthermore, the CWG-Stewardship has identified a number of items for future work that can be found in Annex Q. In relation to PTI, the CWG-Stewardship recommends that PTI should develop and annually update a four-year strategic plan, which should outline strategic priorities, while PTI should also have a yearly budget that is reviewed by the ICANN community. A fully approved budget should be developed on an annual basis. PTI should submit a budget<sup>76</sup> to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN Budget. PTI's actual financial performance should be measured monthly against the PTI budget, and should be reported to the PTI Board. In addition to any statutory requirements, it is the view of the CWG that an independent financial audit of PTI's financial statements must also be required.

1164 **Regulatory and Legal Obligations**

1165 The handling of requests for statutory waivers or licenses relating to its IFO's legal obligations in its legal domicile (e.g., from the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC)) is a generally-applicable legal obligation regardless of who is serving as the IANA Functions Operator. ICANN already has a process in place for seeking any necessary licenses, and will continue to work with contacts at relevant authorities to identify ways to streamline those requests. A statutory waiver of OFAC requirements may be possible if a new statute authorizes the transition. Such a statutory waiver could provide that the President of the United States may not use trade sanctions

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<sup>74</sup> CCWG-Accountability Dependency – see <http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00033.html>

<sup>75</sup> The names registries have long requested budget transparency and detail. See for example the work of the ccNSO Statement of Policy.

<sup>76</sup> In developing its budget, the CWG-Stewardship recommends that PTI review best practices of other similar organizations.

with respect to the IANA Functions Operator. For licenses or waivers that relate to the IANA Function, ICANN must commit that any licenses or waivers it seeks will also be sought for the IANA Functions Operator and for the Root Zone Maintainer as well, so that a single request for any applicable entity is required.

1166 **P1.III.B. Implications for the interface between the IANA Functions and existing policy arrangements**

1167 For the IANA naming services, the proposal seeks to retain the functional separation between the policy development processes and the IANA Functions.

## P1.IV Transition Implications

1168 *This section should describe what your community views as the implications of the changes it proposed in Section III. These implications may include some or all of the following, or other implications specific to your community:*

- *Description of operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*
- *Description of any legal framework requirements in the absence of the NTIA contract.*
- *Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.*
- *Description of how long the proposals in Section III are expected to take to complete, and any intermediate milestones that may occur before they are completed.*

1169 **P1.IV.A. Operational requirements to achieve continuity of service and possible new service integration throughout the transition**

1170 This section should describe what your community views as the implications of the changes it proposed in Section III.

- *Description of operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*

1171 Continuity of service issues associated with the transition should be minimized given that the CWG Stewardship transition proposal recommends the continuation of using ICANN as the IFO.

1172 Although the CWG-Stewardship proposes a structural change with the legal separation of the IFO from ICANN (with the IANA functions to be transferred to PTI, an ICANN affiliate), for practical and administrative reasons it is expected that this change will have little or no impact on any of the IFO customer operations throughout the transition, given that the IFO systems, processes, procedures and personnel for these activities will remain exactly the same.

- 1173 For the naming community the services it requires from the IFO are:
- Operating the public interface to the top level WHOIS database.
  - Operating the .INT TLD.<sup>77</sup>
  - Implementing, or participating in, the implementation of changes to the Root Zone environment.
  - Validation processes for adding, modifying or removing TLDs to the Root Zone and the associated WHOIS database (and associated systems for supporting this).
  - Requesting changes to the Root Zone upon validation of a request by the IFO (and associated systems for supporting this).
- 1174 **Operating the TLD WHOIS and the .INT TLD** - The CWG-Stewardship does not propose any material changes with respect to the IFO operating the top level WHOIS database.
- 1175 **Implementing changes to the Root Zone environment** - The implementation of changes to the process to approve changes to the Root Zone environment are required with the NTIA removing itself from the final approval of all such changes. The CWG-Stewardship transition proposal recommends that the ICANN Board take over the responsibility of approving all substantive (architectural) changes to the Root Zone environment (such changes being rare events). In line with the NTIA process, the ICANN Board would only approve any such changes if these maintained the security, stability, and resiliency of the Internet (ICANN's first core value as per its Bylaws) and would be supported by a majority of the concerned and affected parties. ICANN will coordinate with the NTIA for any ongoing approval processes for significant changes to the Root Zone environment to ensure continuity of these. As such it is expected that the transition should not generate any issues with continuity of service associated with this for the IFO naming customers.
- 1176 **Validation processes of customer requests for changes to the Root Zone** – The CWG-Stewardship recommends removing the authorization requirement currently performed by the NTIA for all change requests to the Root Zone or its associated WHOIS database because it does not contribute in a significant fashion to the security, stability, and resiliency of the Internet DNS. This approval function is currently underpinned by a secure computer based system between IFO, NTIA, and Verisign acting as the Root Zone Maintainer. Until such time as this system can be modified IANA has confirmed it could simply act as NTIA in this system allowing it to approve its own requests for changes to the Root Zone, thus removing the requirement for NTIA authorization. As such it is expected that this element of the transition should not generate any issues with continuity of service for the IFO naming customers.
- 1177 **Requesting changes to the Root Zone** - Requesting changes to the Root Zone and its associated WHOIS database upon validation of a request. The Root Zone maintainer is responsible for implementing change requests from the IFO. Given the NTIA has stated that the transition of the Root Zone Maintainer function will be a separate process (which is not the responsibility of the CWG-Stewardship and has yet to be initiated),<sup>78</sup> this element is beyond the scope of the CWG-Stewardship. The CWG-Stewardship assumes that the NTIA

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<sup>77</sup> The CWG-Stewardship has considered the .INT domain, and concluded that provided there is no policy change under .INT done by ICANN/IANA the CWG-Stewardship does not see any need for changes in the management of the .INT domain in conjunction with the transition. Future administration of the .INT domain should be subject to review post transition.

<sup>78</sup> The NTIA addressed this in its "IANA Functions and Related Root Zone Management Transition Questions and Answers" on 18 March 2014. See <http://www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ> for further details.

will ensure that there is a suitable Root Zone Maintainer service available to the IFO that can function using current systems.

1178 As described above, continuity of service is assured: there are no material changes to the operation of the WHOIS database or the .INT TLD; and changes have been accounted for in the Root Zone environment, to the extent of the CWG-Stewardship's scope of work. The CWG-Stewardship further ensures continuity of oversight of service by establishing the CSC. The CSC would oversee operations for IANA naming services, replacing NTIA oversight. The CSC is envisioned as customer-based, and inclusive of other operational communities – should these communities wish to liaise expertise regarding naming services operations. In the CSC, the CWG-Stewardship strengthens a customer-based stewardship of the IANA functions.

1179 **P1.IV.B. Description of any legal framework requirements in the absence of the NTIA contract**

1180 *This section should describe what your community views as the implications of the changes it proposed in Section III.*

● *Description of any legal framework requirements in the absence of the NTIA contract.*

1181 To provide IANA services to the naming community, the CWG-Stewardship recommends that a new separate legal entity, PTI, be formed as an affiliate of ICANN. In this structure, the existing IANA functions, administrative staff, and related resources, processes, data, and know-how will be legally transferred into PTI. There will be a new ICANN-PTI contract established as a replacement to the current NTIA IANA Functions Contract. The terms of the ICANN-PTI contract will reflect the CWG-Stewardship proposed structure, including escalation and review mechanisms.<sup>79</sup> The CWG-Stewardship views the ICANN-PTI contract as a legal framework requirement in the absence of the NTIA IANA Functions Contract: however, given the implications of the proposed PTI structure are more importantly anchored in its associated accountability mechanisms, this section will focus on PTI rather than the contract to which it will be party.

1182 As stated above, the CWG-Stewardship proposal foresees moving all IANA functions to PTI. If they decide to do so, the number and protocol communities can continue their agreements with ICANN, which the CWG envisages will then subcontract all the IANA Functions related work to PTI.

1183 The CWG-Stewardship proposal surrounds PTI with an accountability framework that strengthens the fulfillment of the NTIA requirements (see Section V). This framework includes the CSC, the IFR, the Special IFR, and the enhanced customer complaint and escalation mechanisms.

1184 The establishment of the CSC and the IFR (periodic and special) should be ensured by ICANN Bylaw changes. Since the CSC and IFRs are not separate legal entities, they can be created within the ICANN community structure, similar to working groups, and formalized through the related enhancements proposed in the CCWG-Accountability Work Stream 1 Proposal.

1185 The escalation mechanisms and customer service complaint procedures are described in Annexes I and J; a flowchart of the escalation processes is provided in Annex J-1. These

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<sup>79</sup> A draft proposed term sheet for the ICANN-PTI Contract is available in Annex S.

mechanisms are not by default legal recourse and therefore do not imply changes to be further developed in this section. These mechanisms and procedures, however, are part of the accountability framework that will replace NTIA's oversight and contract.

1186 In the proposed accountability structure, the CWG-Stewardship has focused exclusively on the needs of the naming community. However, the CWG-Stewardship acknowledges that there are elements of the proposed accountability structure that may be of interest to the other operational communities, including, but not limited to, options for existing or new arrangements in contracting services to IFO.

1187 **P1.IV.C. Workability of any new technical or operational methods**

1188 *This section should describe what your community views as the implications of the changes it proposed in Section III.*

- *Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.*

1189 No new technical or operational methods are being proposed beyond those necessary for replacing the NTIA acting as the IANA Functions Contract Administrator and the Root Zone Management Process Administrator. The necessary changes include the accountability mechanisms associated with the creation of PTI as an affiliate of ICANN and the Root Zone environment. Implications of the changes to the Root Zone environment are described in Section IV. A, and implications of the proposed accountability framework, including the PTI, the ICANN-PTI Contract, the IFR, the CSC, and the customer complaint and escalation procedures are described in Section IV. B.

1190 The CWG-Stewardship has evaluated these elements and determined that all are workable. A summary of the evaluations is provided below. The scores reflect a qualitative assessment by the CWG-Stewardship of whether the specific element was workable on a scale of 0-3, with 0 indicating a significant requirement or negative impact and 3 indicating no requirement or impact. For details of the methodology, please refer to Annex R.

<b>Element Being Analyzed</b>	<b>Score</b>	<b>Evaluation</b>
PTI as an affiliate of ICANN	score = 8/15 = 53%	workable
Contract between ICANN and PTI	score = 12/15 = 80%	workable
IFR	score = 9/15 = 60%	workable
CSC	score = 11/15 = 73%	workable
Customer complaint and escalation procedures	score = 11/15 = 73%	workable
Approving changes to the Root Zone environment	score = 8/15 = 53%	workable
Replacing NTIA as the Root Zone Management Process administrator	score = 13/15 = 87%	workable

1191 In addition to the CWG-Stewardship evaluation, the CCWG-Accountability Work Stream 1 Proposal further addresses "Stress Tests" that test the proposed structure against various scenarios. Since the CCWG-Accountability document is currently in draft form, this section

only refers to the relevant Stress Tests, and directs the reader directly to the CCWG-Accountability document for further detail. Relevant CCWG-Accountability Stress Tests:<sup>80</sup>

- Failure to Meet Operational Expectations
  - Stress Test #1: Change authority for the Root Zone ceases to function, in part or in whole.<sup>81</sup>
  - Stress Test #2: Authority for delegations from the Root Zone ceases to function, in part or in whole.<sup>82</sup>
  - Stress Test #11: Compromise of credentials.<sup>83</sup>
  - Stress Test #17: ICANN attempts to add a new TLD in spite of security and stability concerns expressed by technical community or other stakeholder groups.<sup>84</sup>
  - Stress Test #21: A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD Manager.<sup>85</sup>
- Legal/Legislative Action
  - Stress Test #19: ICANN attempts to redelegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.<sup>86</sup>
  - Stress Test #20: A court order is issued to block ICANN's delegation of a new TLD because of a complaint by an existing TLD operator or other aggrieved parties.<sup>87</sup>
- Failure of Accountability to External Stakeholders
  - Stress Test #25: ICANN delegates or subcontracts its obligations under a future IFO agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.<sup>88</sup>

1192 **P1.IV.D. Length the proposals in Section III are expected to take to complete, and any intermediate milestones that may occur before they are completed**

1193 *This section should describe what your community views as the implications of the changes it proposed in Section III.*

- *Description of how long the proposals in Section III are expected to take to complete, and any intermediate milestones that may occur before they are completed.*

1194 The CWG-Stewardship's proposed changes are to be implemented after NTIA approval of the IANA Stewardship Transition plan. Some changes are ready to be implemented, and

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<sup>80</sup> To access the CCWG-Accountability Work Stream 1 Proposal, please see:

<https://www.icann.org/en/system/files/files/cwg-accountability-draft-proposal-without-annexes-04may15-en.pdf>.

<sup>81</sup> See page 71 of CCWG-Accountability Proposal for further detail.

<sup>82</sup> See page 71 of CCWG-Accountability Proposal for further detail.

<sup>83</sup> See page 72 of CCWG-Accountability Proposal for further detail.

<sup>84</sup> See page 73 of CCWG-Accountability Proposal for further detail.

<sup>85</sup> See page 74 of CCWG-Accountability Proposal for further detail.

<sup>86</sup> See page 77 of CCWG-Accountability Proposal for further detail.

<sup>87</sup> See page 78 of CCWG-Accountability Proposal for further detail.

<sup>88</sup> See page 88 of CCWG-Accountability Proposal for further detail.

others may require further assessment by the ICG as they may affect and be of interest to other communities involved in the IANA Stewardship Transition. For all changes, including changes that do not require further assessment by the ICG, the community will work with ICANN in implementation. The CWG-Stewardship expects that the following implementation items could be completed in approximately three to four months, in accordance with the advice of independent legal counsel: (1) identifying the ICANN assets that relate to the IANA functions to be assigned to PTI and assigning those assets to PTI pursuant to an assignment agreement to be entered into between ICANN and PTI, (2) incorporating PTI and drafting the PTI governance documents (i.e., articles of incorporation and bylaws) and (3) drafting, negotiating and finalizing the ICANN-PTI Contract.<sup>89</sup> The CWG-Stewardship has attempted an initial list of elements for implementation as follows:

- **Service Levels:** A set of guiding principles for the review of the current SLEs used by the IFO have been produced and accepted by the IFO. The sub-group of the CWG-Stewardship responsible for this work (DT-A) will continue its work, using these principles, after the CWG has transmitted its proposal to the ICG, and prior to the ICG submitting its proposal to the NTIA. The objective of this work is to produce a complete and detailed set of recommendations in conjunction with the IFO for the updating of SLEs used by the IFO (this pre-transition work requires approval by the NTIA before the IFO can proceed). These recommendations would be provided to the CSC, post-transition, for its consideration, approval and implementation according to a schedule developed jointly with the IFO.
- **IANA Budget:** The CWG-Stewardship worked closely with ICANN Finance in developing recommendations for transparent budget processes and itemizations regarding IANA operations costs. Recommendations on ICANN's budgeting process can be implemented as further details of the CWG Accountability proposal are defined and approved.<sup>90</sup> Developing a PTI budget is part of, and dependent on, the establishment of PTI. There are other recommendations (in particular, the ability of the community to approve/veto the ICANN budget) that have been requested of the CCWG-Accountability as part of a key dependency with the CCWG-Accountability as soon as their work is finalized.
- **PTI:** The CWG-Stewardship worked closely with legal counsel in the reasoning and development of the PTI concept. Much research and many memoranda were provided to the CWG-Stewardship that may be useful for consideration in implementation.<sup>91</sup> At this stage, considering possible interest and modifications pending from the other operational communities, the ICG may propose modifications to PTI.
- **ICANN-PTI Contract:** The CWG-Stewardship, with assistance from its legal counsel, developed a draft proposed term sheet, which can be used as a basis to develop the ICANN-PTI term sheet and ultimately the future contract with ICANN. PTI will need to be established, and have the benefit of advice from independent legal counsel, before it can enter into this contract.
- **CSC:** The CWG-Stewardship has developed a charter for the CSC, which is usually the first step in chartering a working group with ICANN. In this sense, the CSC is ready for implementation. However, the CSC construct will need to be incorporated into the ICANN Bylaws as a fundamental bylaw as part of a key dependency with the CCWG-

<sup>89</sup> ICANN has not yet assessed the CWG-Stewardship's proposal for an implementation timeline, and there are other factors to consider, such as maintaining ICANN's tax-exempt status, for which the CWG-Stewardship's independent legal counsel could not estimate.

<sup>90</sup> Documentations and details related to the IANA operations budget are available in Annex P, Q and T

<sup>91</sup> All documents from legal counsel are available on the CWG-Stewardship Wiki at <https://community.icann.org/display/gnsocwgdstwrshp/Client+Committee>.

Accountability as soon as their work is finalized. A few elements to consider upon implementation of the CSC, once established:

- What form of consultation is envisioned to take place between ccNSO and GNSO Councils in relation to approving the membership of the CSC?
  - Are candidates who have been proposed to act as temporary replacements to the CSC required to provide an Expression of Interest?
  - Determine how CSC will decide on who will be liaison to the SCWG.
  - What process should the CSC follow in the event it identifies a persistent performance issue or systemic problem that is not serious? Is it still required to follow a Remedial Action?
  - The CWG-Stewardship recommends that a series of best practice governance guidelines be established as part of the implementation process for the purpose of ensuring that the CSC manages issues such as potential or perceived conflicts of interest.
- **IFR (Periodic and Special):** Although the first periodic IFR will not commence until two years after the IANA Stewardship Transition, it is possible that a Special IFR could be triggered prior to that time. As with the CSC, the IFR will need to be incorporated into the ICANN Bylaws as a fundamental bylaw as part of a key dependency with the CCWG-Accountability as soon as their work is finalized.
  - **Changes to customer complaints and escalation mechanisms:** The CWG-Stewardship consulted ICANN's IANA department in developing these mechanisms, and believes that these modifications are ready for implementation.
  - **Implementing changes to the Root Zone environment:** The CWG-Stewardship transition proposal recommends that the ICANN Board take over the responsibility of approving all substantive (architectural) changes to the Root Zone environment (such changes being rare events). ICANN will coordinate with the NTIA for any ongoing approval processes for significant changes to the Root Zone environment to ensure continuity of these. Note that changes to the Root Zone environment may be contingent on what happens with the parallel Root Zone Maintainer Cooperative Agreement, which is not in the scope of the CWG-Stewardship's work.
  - **Community empowerment mechanisms:** These have been requested of the CCWG-Accountability as part of a key dependency with the CCWG-Accountability as soon as their work is finalized.<sup>92</sup>
  - **Appeal mechanism:** This have been requested of the CCWG-Accountability as part of a key dependency with the CCWG-Accountability as soon as their work is finalized.

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<sup>92</sup> In particular, mechanisms such as: the ability to recall the ICANN Board, the ability to exercise oversight with respect to key ICANN Board decisions including decisions relating to periodic or special reviews of the IANA functions undertaken through the IFR and approval of the ICANN budget, the ability to approve changes to ICANN's fundamental bylaws as well as the related creation of a stakeholder community / member group in order ensure the ability to exercise these kinds of rights.



## P1.V NTIA Requirements

1195 *Additionally, NTIA has established that the transition proposal must meet the following five requirements:*

- *Support and enhance the multistakeholder model;*
- *Maintain the security, stability, and resiliency of the Internet DNS;*
- *Meet the needs and expectation of the global customers and partners of the IANA services;*
- *Maintain the openness of the Internet.*
- *The proposal must not replace the NTIA role with a government-led or an inter-governmental organization solution.*

1196 *This section should explain how your community's proposal meets these requirements and how it responds to the global interest in the IANA functions.*

1197 This proposal addresses each of the NTIA's requirements as follows:

### 1198 **P1.V.A. Support and enhance the multistakeholder model**

1199 The naming community depends upon ICANN's multistakeholder policymaking structure to develop its processes and policies. While the direct policymaking groups are the GNSO and the ccNSO, the Advisory Committees – ALAC, GAC, RSSAC, and SSAC – are essential parts of the multistakeholder model. Processes in the ICANN multistakeholder model are bottom-up, transparent, and inclusive of all stakeholders. The CWG-Stewardship reinforces and enhances the multistakeholder model by keeping policy development separate from the IANA operations and focusing on the needs of the operational community by establishing transparent and direct control over PTI, specifically by:

- Replacing NTIA oversight of IANA with ICANN oversight of PTI ensured by the CSC and IFR Team, the latter being a multistakeholder entity. Both include non-ICANN participants, thus maintaining and enhancing the multistakeholder model.
- CSC and IFR Team escalation mechanisms (developed in CWG-Stewardship and CCWG-Accountability proposals) are based on open and transparent processes, and multistakeholder decisions (which include non-ICANN naming related participants), thus enhancing multistakeholder implication.

### 1200 **P1.V.B. Maintain the security, stability, and resiliency of the Internet DNS**

1201 The security, stability and resiliency of the Internet DNS are core values for ICANN as attested by the first item of Section 2 of the ICANN Bylaws which states:

1202 'In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.'

1203 This core value has been part of the ICANN Bylaws for well over a decade and there are no plans to modify it.

1204 Additionally, the security, stability, and resiliency of the Internet DNS was also assured by the NTIA's oversight of the IANA function which was carried out by the mechanisms documented in Section II of this proposal. The CWG-Stewardship transition seeks to maintain or improve on all of these as follows:

- Root Zone Management Process Administrator for changes to the Root Zone: The CWG-Stewardship has recommended that the approval function of the NTIA for changes to the Root Zone and its WHOIS database should not be replaced post-transition because it does not contribute in a significant fashion to the security, stability, and resiliency of the Internet DNS.
- Root Zone Management Process Administrator for changes to the Root Zone environment (such as the introduction of DNSSEC): This CWG-Stewardship recommends that this approval function be maintained via a standing committee (see Section III.A.iii) because it is critical to maintaining the security, stability and resiliency of the Internet DNS.
- IANA Functions Contract Administrator: The IANA Functions Contract and its oversight by the NTIA are considered key elements for the security, stability, and resiliency of the Internet DNS. As such, the CWG-Stewardship recommends the creation of the PTI as an affiliate of ICANN and as the counterparty to a contract with ICANN, thus benefiting from the existing and strengthened accountability mechanisms and protections against capture.
- Contract Oversight: As to the oversight of the contract, the NTIA's role will be replaced and augmented by the CSC and the IFR oversight mechanisms thus improving the security, stability, and resiliency of the Internet DNS.

1205 **P1.V.C. Meet the needs and expectation of the global customers and partners of the IANA services**

1206 The CWG-Stewardship's 1 December public comment on its first transition proposal confirmed the overwhelming satisfaction of the global customers and partners of ICANN's IANA department.

1207 As such, the CWG-Stewardship's proposal ensures that PTI will continue to provide the IANA Function to its global customers and partners post-transition in essentially the same manner as ICANN's IANA department does today.

1208 The CWG-Stewardship proposal is the result of extensive community dialogue and input. Additionally, the CWG-Stewardship's transition proposal has been approved by the multi-stakeholder community, which participated in its development as well as by the CWG-Stewardship's designated chartering organizations.

1209 **P1.V.D. Maintain the openness of the Internet**

1210 The CWG-Stewardship's transition proposal does not contemplate any changes which would in any way affect the openness of the Internet. This includes continued support for IANA customers on the Office of Foreign Assets Control (OFAC) list of the U.S. Government.

1211 **P1.V.E. The proposal must not replace the NTIA role with a government-led or an intergovernmental organization solution**

NTIA's oversight of the IANA function is documented in Section II of this proposal and includes the following roles:

- **Establishment of PTI:** Post-transition establishment of PTI as an affiliate of ICANN, thus benefiting from the existing accountability mechanisms and prevention of capture, including by governments.
- **Root Zone Management Process Administrator for changes to the Root Zone:** The CWG-Stewardship recommends that the approval function of the NTIA for changes to the Root Zone and its WHOIS database should not be replaced post-transition.
- **Root Zone Management Process Administrator for changes to the Root Zone environment (such as the introduction of DNSSEC):** The CWG-Stewardship recommends that this approval function be maintained via a multi-stakeholder process, which will not be government-led or an inter-governmental organization solution.
  - **IANA Functions Contract Administrator:** This was the NTIA's oversight of the IANA Functions Contract, which will be replaced and augmented by the CSC and the IFR, which will not be government-led or an inter-governmental organization solution.

## P1.VI Community Process

1212 *This section should describe the process your community used for developing this proposal, including:*

- *The steps that were taken to develop the proposal and to determine consensus.*
- *Links to announcements, agendas, mailing lists, consultations and meeting proceedings.*
- *An assessment of the level of consensus behind your community's proposal, including a description of areas of contention or disagreement.*

1213 **P1.VI.A. Steps taken to develop the proposal and to determine consensus.**

### 1214 **Establishing the CWG-Stewardship**

1215 In March 2014 the National Telecommunications and Information Administration (NTIA) has requested that ICANN “convene a multi-stakeholder process to develop a plan to transition the U.S. government stewardship role” with regard to the IANA Functions and related root zone management. In making its announcement<sup>93</sup>, the NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multi-stakeholder model
- Maintain the security, stability, and resiliency of the Internet DNS
- Meet the needs and expectation of the global customers and partners of the IANA services
- Maintain the openness of the Internet.

1216 NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

1217 On June 6, 2014 ICANN proposed the creation of an IANA Stewardship Transition Coordination Group (ICG) “responsible for preparing a transition proposal reflecting the differing needs of the various affected parties of the IANA functions.” In July 2014 the ICG was established, comprising of 30 members representing 13 communities.

1218 According to this charter,<sup>94</sup> the ICG has one deliverable: a proposal to the NTIA regarding the transition of NTIA’s stewardship of the IANA functions to the global multi-stakeholder community. For that matter the ICG’s mission is to coordinate the development of a proposal among the communities affected by the IANA Functions, which are divided into three main categories: domain names, number resources, and other protocol parameters. The ICG noted that the domain name category divides further into the country code and generic domain sub-categories. In the ICG charter, it also noted that “while there is some overlap among all categories, each poses distinct organizational, operational and technical issues, and each tends to have distinct communities of interest and expertise.”

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<sup>93</sup> <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>

<sup>94</sup> <https://www.icann.org/en/system/files/files/charter-icg-27aug14-en.pdf>

- 1219 To achieve its deliverable the ICG identified four main tasks, which include among others, the task to solicit proposals from the three operational communities, and solicit the input of the broad group of communities affected by the IANA functions. In order to address this task, the ICG seeks complete formal responses to its Request For Proposal (RFP)<sup>95</sup>, through processes that are convened by each of the “operational communities” of IANA (i.e. those with direct operational or service relationships with the IANA functions operator, in connection with names, numbers or protocol parameters).
- 1220 In anticipation of the charter of the ICG, the operational community in connection with the IANA names function, the ccNSO and GNSO, took the initiative to create a cross-community working group to develop a proposal for the transition of NTIA’s stewardship in relation to the naming related functions. At the ICANN 50 meeting in London, June 2014, the GNSO, ccNSO, ALAC and the SSAC established a drafting team to prepare a charter for such a Cross Community Working Group, which was finalized by mid August 2014. The charter was approved by the GNSO, ccNSO, ALAC and SSAC, each according to their own rules and procedures. The charter of the CWG-Stewardship as approved is available at <https://community.icann.org/display/gnsocwgdstwrshp/Charter>.
- 1221 **Members and participants**
- 1222 Page referenced: <https://community.icann.org/pages/viewpage.action?pageId=49351381>
- 1223 Following the approval of the CWG-Stewardship charter, the chartering organizations, selected members for the CWG-Stewardship, again in accordance with their own rules of procedure. Besides actively participating in the work of the CWG-Stewardship, members of the CWG-Stewardship are expected to solicit, and communicate the views and concerns of individuals in the organization that appoints them. The list of the 19 members, their affiliation, originating organizations and geographic regions is included on the page referenced above.
- 1224 Separately, and in accordance with the charter of the CWG-Stewardship, a call for participants was sent out to invite all those who are interested in the work of the CWG-Stewardship. The list of names of participants from the community, their affiliation, if any, and originating Geographic Region can also be found on the relevant Wiki page. Further, and in accordance with the charter, the CWG-Stewardship members and participants have submitted Statements of Interest(s).<sup>96</sup>
- 1225 **Working methods of the CWG-Stewardship**
- 1226 Initial working method: developing the first CWG-Stewardship proposal (October 2014 through February 2015): Sub-teams addressing ICG Request for Proposal
- 1227 At its start the CWG-Stewardship agreed to divide its work into the following items, which are derived from and in accordance with the RFP from the ICG:
- 3) Description of Community’s Use of IANA Functions (RFP 1)
  - 4) Existing, Pre-Transition Arrangements

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<sup>95</sup> <https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf>

<sup>96</sup> <https://community.icann.org/display/gnsocwgdstwrshp/SOIs+Created+for+CWG>

- a) Policy Sources
  - b) Oversight and Accountability
- 5) Proposed Post-Transition Oversight and Accountability Arrangements
  - 6) Transition Implications
  - 7) NTIA Requirements (RFP 5)
  - 8) Community Process (RFP 6)

1228 In addition the CWG-Stewardship agreed to work on two additional items:

- Existing, Pre-Transition Arrangements, NTIA IANA Functions Contract Triage: The goal is to inform the CWG-Stewardship itself in its work and create a better understanding of the elements in the IANA Functions Contract for the work of the CWG-Stewardship.
- Principles: For internal purposes the CWG-Stewardship agreed to develop a set of principles and criteria on which the CWG-Stewardship itself could base its (draft) proposals and against which these could be tested.

1229 For each of the work items identified above sub-groups were formed, with volunteer rapporteurs and internal coordinators, with the exception for Section VI. These sub-groups were created to focus the work of the group on the requirements of the ICG and develop initial drafts. The sub-groups reported back to the full CWG-Stewardship, both online and during the CWG-Stewardship meetings, and their output was discussed, edited and ultimately accepted by the CWG-Stewardship as a whole, in accordance with the decision-making rules defined in the charter of the CWG-Stewardship.<sup>97</sup>

1230 The progress and intermediate results from the sub-teams can be viewed at:  
<https://community.icann.org/display/gnsocwgdstwrdsHP/%5BArchive%5D+Work+Item+Sub+Groups>

1231 On 1 December 2014, the CWG-Stewardship published its first draft proposal for public comment. This first draft had been designed around the idea of an independent and separate contracting entity, known as “Contract Co.”, to replace NTIA’s stewardship role and contract with the IANA Functions Operator. The comments at the conclusion of the first public comment outlined three key takeaways:

- Customers are currently satisfied with ICANN’s IANA department.
- There was concern over what was viewed as an overly complex structure that lacked details and assurances on accountability.
- Professional and independent legal advice was required to make a determination on post-transition structure

1232 The CWG-Stewardship further discussed the different aspects, taking into the community input. In part, this involved considering many more structural models (in addition to “Contract Co.”). By February 2015, prior to the ICANN 52 meeting in Singapore this resulted in an additional set of questions for the community, to inform the discussions of the CWG-Stewardship.

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<sup>97</sup> CWG Charter, Section V: Rules of Engagement (<https://community.icann.org/display/gnsocwgdstwrdsHP/Charter>)  
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- 1233 Going into ICANN 52, the CWG-Stewardship presented the community with an overview of four structural models: two were “internal” and two were “external” (including “Contract Co.”). This discussion document is available here: <https://www.icann.org/news/announcement-2015-02-06-en.99>. During ICANN52, three additional models were presented; each was a variation of a “hybrid” model. The discussion document for these three models is available here: <https://community.icann.org/download/attachments/49351404/IntegratedIANA1.2.pdf?version=1&modificationDate=1427102306000&api=v2>. With the addition of these three models, the CWG-Stewardship effectively left the ICANN 52 meeting with seven potential models to evaluate and consider.
- 1234 **Method used to develop second and final proposal (February 2015 through June 2015): Design Teams**
- 1235 In February 2015, after the Singapore face-to-face meetings, the CWG-Stewardship discussed and agreed in March 2015 on an alternative, focused, and agile method which was to work on the remaining open issues through a so called Design Team method. Each Design Team was established to focus on a specific, pre-defined work item and delivers its output in a short timeframe.
- 1236 The list of work items was approved by the CWG-Stewardship and maintained by the CWG-Stewardship. Results of each Design Team were discussed and approved by the full CWG-Stewardship prior to integration into the evolving CWG-Stewardship Proposal. The results of the prioritized Design Teams were discussed by the CWG-Stewardship at its face-to-face meetings that occurred in March 2015 in Istanbul, Turkey. At those meetings the initial list of work items was reviewed and work items were re-prioritized.
- 1237 The Co-Chairs managed creation of the Design Teams, prioritization of work items, and progress of the teams, with input from the CWG-Stewardship. Members and participants from the CWG-Stewardship composed the Design Teams, and in some cases external observers with specific expertise were included.
- 1238 The register/list of work items, their priority, membership of Design Teams, meetings, agendas, and mail archives are publicly available at: <https://community.icann.org/display/gnsocwgdstwrshp/Design+Teams+List>
- 1239 The CWG-Stewardship entered its Istanbul meetings with seven potential models for the IANA Stewardship transition. These models had been studied and researched by newly engaged independent legal counsel, Sidley Austin LLP. After a thorough discussion of these potential models with legal counsel and in a spirit of compromise, the CWG-Stewardship narrowed down its list of structural models to two variants of an internal accountability/hybrid model: the legal separation mode and the functional separation model.
- 1240 The move from seven potential models to two variants of an internal accountability/hybrid model was iterative over a series of sessions. In one session, after explanation of legal counsel’s findings, two models: the internal trust and the external trust, were deemed unsuitable to meet the CWG-Stewardship’s requirements because the structures were not necessarily recognized legally outside of the U.S. Upon conclusion of these sessions, the CWG-Stewardship also agreed to defer further consideration of the “Contract Co.” model (in part, because it did not receive sufficient support after the first public comment period), until

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<sup>98</sup> At this point, the CWG-Stewardship had still not secured professional legal advice.

<sup>99</sup> At this point, the CWG-Stewardship had still not secured professional legal advice.

the viability of the remaining models could be further considered. In addition, the CWG-Stewardship agreed to defer further consideration of the fully internal model or the standalone IANA hybrid model. The CWG-Stewardship agreed that the remaining models: two variants of an internal accountability/hybrid model (the legal separation model and the functional separate model) required further research on the part of legal counsel before the CWG-Stewardship could make a determination.

1241 Following the meetings in Istanbul, the CWG-Stewardship, in consultation with its independent legal counsel, held various meetings and reviewed various memos from its legal counsel to determine which of the two variants of an internal accountability/hybrid model – the legal separation model and the functional separation model – would be recommended. The CWG-Stewardship determined that the legal separation model was preferred because it would establish PTI as a separate legal entity at the outset, allowing for possible separation from ICANN in the future, if necessary. In addition, the legal separation model allowed for a contract between ICANN and PTI. With that decision reached, the CWG-Stewardship turned its focus to developing an accountability framework to support this model, while legal counsel assisted in addressing governance issues related to the model.

The consideration for the CWG-Stewardship, with consultation from its independent legal counsel, became whether to support a functionally separate model or a legally separate model. The group eventually chose the legally separate model because it would establish the separate PTI entity at the outset, allowing for possible separation from ICANN in the future, if necessary. With that compromise in place, the CWG-Stewardship turned its focus to developing an accountability framework to support this model, while legal counsel assisted in addressing governance issues.

#### 1242 **Client committee/independent, external legal services**

1243 In March 2015, after an extensive request for proposal process, the CWG-Stewardship obtained the services of an external law firm, Sidley Austin LLP, to provide relevant and independent legal advice. The CWG-Stewardship agreed to channel their communication with the law firm through a Client Committee,<sup>100</sup> with the understanding that all communication (emails and conference calls, between the Client Committee and the law firm) would be publicly available as well as all deliverables prepared by the law firm.

1244 At the invitation of the Client Committee, Sidley Austin LLP attended full CWG-Stewardship meetings to respond to questions and provide additional clarifications.

1245 Membership of the Client Committee, a list of the Sidley Austin team, meeting recordings, agendas, research and memoranda, etc. are publicly available at:  
<https://community.icann.org/display/gnsocwqdtstwrshp/Client+Committee>

1246 Through the Design Team method and taking into account external, independent legal advice, the CWG-Stewardship developed its second draft proposal, which was published for public comment from 22 April 2015 until 20 May 2015. During this public consultation period the aspects of the second proposal were further refined and discussed, using the same method for developing the second proposal.

1247 After closure of the public comment period (20 May 2015), the CWG-Stewardship reviewed all comments received, and, where appropriate, the Design Teams prepared responses to the comments received and refined their output.

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<sup>100</sup> The Client Committee was composed of the two co-chairs and two CWG-Stewardship members.



1248 Based on the second proposal and further discussion by the full CWG-Stewardship and Design Teams, taking into account the public comment analysis, the Final Proposal was developed.

## 1249 **Determining consensus**

1250 The proposal was developed in a bottom-up, multistakeholder manner, which included multiple readings of the drafts. The drafts were posted publicly and open to comment by CWG-Stewardship members and participants with respect to each of the draft proposal iterations. The first draft of the Final Proposal was circulated for review and comment by the CWG-Stewardship, on 1 June 2015, with a dedicated first reading during the 2 June 2015 plenary meeting. The second draft was delivered on 3 June 2015, with a dedicated second reading during the 4 June 2015 call. A third and final reading took place on 9 June.

1251 Following the Final reading, the Final Proposal was sent to the CWG-Stewardship for a 24-hour period during which any errors, comments, or statements could be noted for the record. At the end of this 24-hour period (ending at 23:59 UTC on 10 June), the CWG-Stewardship co-Chairs added a note to Section VI.C., below, and sent the Final Proposal to the SO/AC Chartering Organizations for their approval. Chartering Organizations' approval is requested by 25 June so as to deliver to the ICG.

## 1252 **P1.VI.B. Links to announcements, agendas, mailing lists, consultations, and meeting proceedings**

### 1253 **Meetings**

- Full CWG–Stewardship (meeting dates, agendas, participants and meeting notes): <https://community.icann.org/display/gnsocwgdstwrdsdp/Meetings>
- CWG-Stewardship Sub-Teams: <https://community.icann.org/display/gnsocwgdstwrdsdp/%5BArchive%5D+Work+Item+Sub+Groups>
- Design Teams: <https://community.icann.org/display/gnsocwgdstwrdsdp/Design+Teams>
- Client Committee: <https://community.icann.org/display/gnsocwgdstwrdsdp/Client+Committee>

### 1254 **Public consultations**

- 1 December public consultation on first CWG-Stewardship draft transition proposal: <https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en>
  - Responses to the December 2014 public comment: <https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en#summary>
- February 2015 Discussion document for ICANN52 meeting: <https://community.icann.org/pages/viewpage.action?pagelId=52889457>
- May 2015 public comment on second CWG-Stewardship draft transition proposal: <https://www.icann.org/public-comments/cwg-stewardship-draft-proposal-2015-04-22-en>

1255 **Webinars and other public presentations**

- Webinar 3-4 December 2014:  
<https://community.icann.org/pages/viewpage.action?pagelId=50823496>
- Webinar 3 February 2015:  
<https://community.icann.org/pages/viewpage.action?pagelId=52232656>
- Presentations at ICANN 52 Singapore: <http://singapore52.icann.org/en/schedule/thu-cwg-stewardship>
- Webinars 24 April 2015:  
<https://community.icann.org/pages/viewpage.action?pagelId=52897455>
- Webinars 6-7 May 2015:  
<https://community.icann.org/pages/viewpage.action?pagelId=53772631>
- Webinars 11 June:  
<https://community.icann.org/pages/viewpage.action?pagelId=53778352>

1256 **Mailing list archives**

- <https://community.icann.org/display/gnsocwgdstwrdsHp/Mailing+List+Archives>

1257 **Correspondence**

- <https://community.icann.org/pages/viewpage.action?pagelId=49355992>

1258 **Outreach**

- <https://community.icann.org/display/gnsocwgdstwrdsHp/Outreach+Tracking+CWG-Stewardship>

1259 **P1.VI.C. Assessment of the level of consensus behind your community's proposal, including a description of areas of contention or disagreement**

1260 The Cross Community Working Group on Naming Related Functions (CWG-Stewardship) is pleased to provide its Chartering Organizations with its proposed response to the IANA Stewardship Transition Coordination Group (ICG) Request for Proposals on the IANA Stewardship Transition for your consideration and approval as per its Charter.

1261 The response is the result of extensive work by the CWG's 19 members, 133 participants and a team of highly qualified legal advisors over the past year, which included over 100 calls or meetings, 2 public consultations and more than 4,000 email messages. It represents a carefully crafted balance between key requirements, specific legal advice, and significant compromises by all who participated and includes diligent attention to the input received through the Public Comment proceedings. The final proposal has received the consensus support of the CWG-Stewardship with no objections or minority statements recorded for Chartering Organization consideration.

1262 As noted in the CWG-Stewardship proposal itself, the proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms proposed by the Cross Community Working Group on Enhancing ICANN Accountability

(CCWG-Accountability). The co-chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations, if implemented as expected, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG. If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this proposal will require revision.

## **P1. Annex A: The Community's Use of the IANA Functions – Additional Information**

- 1) Root Zone Change Request Management (NTIA IANA Functions Contract: C.2.9.2.a)**
  - a) Description of the function:** Receive and process Root Zone change requests for TLDs. These change requests include addition of new or updates to existing TLD name servers (NS) and delegation signer (DS) resource record (RR) information, along with associated “glue” (A and AAAA RRs). A change request may also include new TLD entries to the Root Zone.
  - b) Customers of the function:** TLD registries.
  - c) What registries are involved in providing the function:** Root Zone database.
  - d) Overlaps or interdependencies:** Policy for entries in the Root Zone are determined by the ICANN policy-setting mechanisms (e.g., for ccTLDs and gTLDs). The IETF standardization process can create reservations from the global namespace so that certain names that otherwise would be valid in the DNS root are disallowed.
  
- 2) Root Zone WHOIS Change Request and Database Management (NTIA IANA Functions Contract: C.2.9.2.b)**
  - a) Description of the function:** The IFO maintains, updates, and makes publicly accessible a Root Zone WHOIS database with current and verified contact information for all TLD registry operators. The Root Zone WHOIS database, at a minimum, shall consist of the TLD name; the IP address of the TLD's nameservers; the corresponding names of such nameservers; the creation date of the TLD; the name, postal address, email address, and telephone and fax numbers of the TLD registry operator; the name, postal address, email address, and telephone and fax numbers of the technical contact for the TLD registry operator; the name, postal address, email address, and telephone and fax numbers of the administrative contact for the TLD registry operator; reports; date the WHOIS record was last updated; and any other information relevant to the TLD requested by the TLD registry operator. IANA shall receive and process Root Zone WHOIS change requests for TLDs.
  - b) Customers of the function:** TLD registries.
  - c) What registries are involved in providing the function:** Root Zone WHOIS database.
  - d) Overlaps or interdependencies:** None.
  
- 3) Delegation and Redellegation of a ccTLD (NTIA IANA Functions Contract: C.2.9.2.c)**
  - a) Description of the function:** Assigning or re-assigning a manager (sponsoring organization) for a ccTLD registry (including IDN ccTLDs). The IFO applies existing policy frameworks in processing requests related to the delegation and redelegation

- of a ccTLD, such as RFC 1591 Domain Name System Structure and Delegation, the GAC Principles And Guidelines For The Delegation And Administration Of Country Code Top Level Domains, and any further clarification of these policies by interested and affected parties. If a policy framework does not exist to cover a specific instance, ICANN will consult with the interested and affected parties, relevant public authorities, and governments on any recommendation that is not within or consistent with an existing policy framework. In making its recommendations, ICANN shall also take into account the relevant national frameworks and applicable laws of the jurisdiction that the TLD registry serves.
- b) Customers of the function:** ccTLD registries.
  - c) What registries are involved in providing the function:** Root Zone, Root Zone WHOIS database.
  - d) Overlaps or interdependencies:** Policy for entries in the Root Zone are determined both by the ICANN policy setting mechanisms (e.g. for ccTLDs and gTLDs), and by the IETF standardization process (e.g. for specially reserved names)
- 4) Delegation and Redefinition of a gTLD (NTIA IANA Functions Contract: C.2.9.2.d)**
- a) Description of the function:** Assigning or re-assigning a Sponsoring Organization for a gTLD registry. ICANN verifies that all requests related to the delegation and redefinition of gTLDs are consistent with the procedures developed by ICANN. In making a delegation or redefinition recommendation ICANN must provide documentation in the form of a Delegation and Redefinition Report verifying that ICANN followed its own policy framework including specific documentation demonstrating how the process provided the opportunity for input from relevant stakeholders and was supportive of the global public interest.
  - b) Customers of the function:** gTLD registries.
  - c) What registries are involved in providing the function:** Root Zone, Root Zone WHOIS database.
  - d) Overlaps or interdependencies:** Policy for entries in the Root Zone are determined both by the ICANN policy-setting mechanisms (e.g. for ccTLDs and gTLDs), and by the IETF standardization process (e.g. for specially reserved names).
- 5) Redefinition and Operation of the .INT TLD (NTIA IANA Functions Contract: C.2.9.4)<sup>101</sup>**
- a) Description of the function:** Historically, the policy for .INT is described in IETF RFC 1591. The policy allowed registration for both international organizations and for use for international databases for infrastructure use. The policy for .INT related to international databases for infrastructure use was determined by the IETF. RFC 3172 recommended that such uses move under .ARPA, and the only then-extant use of .INT for such infrastructure (the IPv6 reverse mapping tree) was in fact moved under .ARPA; all subsequent infrastructure uses have been under .ARPA. Since this

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<sup>101</sup> The CWG-Stewardship has considered the .INT domain, and concluded that provided there is no policy change under .INT done by ICANN/IANA the CWG-Stewardship does not see any need for changes in the management of the .INT domain in conjunction with the transition. Future administration of the .INT domain should be subject to review post transition.

change, it is only possible for an international treaty organizations to register domain names under .INT for use for the organization itself.

- b) **Customers of the function:** Eligible registrants for registration in .INT (<http://www.iana.org/domains/int/policy>).
- c) **What registries are involved in providing the function:** Root Zone database, Root Zone WHOIS, .INT Zone database, .INT WHOIS database.
- d) **Overlaps or interdependencies:** Historically policy has partially been determined by IETF, however per RFC 3172, .INT is no longer used for international databases for infrastructure use; .ARPA TLD is used instead.

#### 6) **Root DNSSEC Key Management (NTIA IANA Functions Contract: C.2.9.2.f)**

- a) **Description of the function:** The IANA Functions Operator is responsible for generating the Key Signing Key (KSK) and publishing its public portion. The KSK used to digitally sign the Root Zone Signing Key (ZSK) that is used by the Root Zone Maintainer to DNSSEC-sign the Root Zone.
- b) **Customers of the function:** Root Zone Maintainer, DNS validating resolver operators.
- c) **What registries are involved in providing the function:** The Root Zone Trust Anchor.
- d) **Overlaps or interdependencies:** IETF's creation of algorithm numbers for key types.

#### 7) **Root Zone Automation (NTIA IANA Functions Contract: C.2.9.2.e)**

- a) **Description of the function:** A fully automated system that includes a secure (encrypted) system for customer communications; an automated provisioning protocol allowing customers to manage their interactions with the Root Zone management system; an online database of change requests and subsequent actions whereby each customer can see a record of their historic requests and maintain visibility into the progress of their current requests; a test system, which customers can use to test the technical requirements for a change request; and an internal interface for secure communications between the IFO; the Administrator, and the Root Zone Maintainer.
- b) **Customers of the function:** TLD registries.
- c) **What registries are involved in providing the function:** Root Zone database, Root Zone WHOIS.
- d) **Overlaps or interdependencies:** N/A.

#### 8) **Customer Service Complaint Resolution Process (CSCR) (NTIA IANA Functions Contract: C.2.9.2.g)**

- a) **Description of the function:** A process for IANA Functions customers to submit complaints for timely resolution that follows industry best practice and includes a reasonable timeframe for resolution.

- b) **Customers of the function:** TLD registries.
  - c) **What registries are involved in providing the function:** N/A.
  - d) **Overlaps or interdependencies:** All IANA Functions that are customer facing for the names registries.
- 9) **Management of the Repository of IDN Practices (IANA service or activity beyond the scope of the IANA functions contract)**
- a) **Description of the function:** The IANA Repository of TLD IDN Practices, also known as the “IDN Language Table Registry,” was created to support the development of the IDN technology as described in the “Guidelines for the Implementation of Internationalized Domain Names (IDNs)”. In addition to making the IDN Tables publicly available on TLD registry websites, the TLD registries may register IDN Tables with the IANA Functions Operator, which in turn will display them online for public access.
  - b) **Customers of the function:** TLD registries.
  - c) **What registries are involved in providing the function:** IDN Language Table Registry.
  - d) **Overlaps or interdependencies:** IDNs are based on standards developed and maintained by the IETF.
- 10) **Retirement of the Delegation of TLDs (IANA service or activity beyond the scope of the IANA functions contract)**
- a) **Description of the function:** Retire TLDs from active use.
  - b) **Customers of the function:** TLD registries
  - c) **What registries are involved in providing the function:** Root Zone database, Root Zone WHOIS database.
- d) **Overlaps or interdependencies:** N/A.

## **P1. Annex B: Oversight Mechanisms in the NTIA IANA Functions Contract**

1263 The following is a list of oversight mechanisms found in the NTIA IANA Functions Contract:

### **Ongoing Obligations**

- C.2.12.a Program Manager --The contractor shall provide trained, knowledgeable technical personnel according to the requirements of this contract. All contractor personnel who interface with the CO and COR must have excellent oral and written communication skills. "Excellent oral and written communication skills" is defined as the capability to converse fluently, communicate effectively, and write intelligibly in the English language. The IANA Functions Program Manager organizes, plans, directs, staffs, and coordinates the overall program effort; manages contract and subcontract activities as the authorized interface with the CO and COR and ensures compliance with Federal rules and regulations and responsible for the following:
- C.4.1 Meetings -- Program reviews and site visits shall occur annually.
- C.4.2 Monthly Performance Progress Report -- The Contractor shall prepare and submit to the COR a performance progress report every month (no later than 15 calendar days following the end of each month) that contains statistical and narrative information on the performance of the IANA functions (i.e., assignment of technical protocol parameters; administrative functions associated with root zone management; and allocation of Internet numbering resources) during the previous calendar month. The report shall include a narrative summary of the work performed for each of the functions with appropriate details and particularity. The report shall also describe major events, problems encountered, and any projected significant changes, if any, related to the performance of requirements set forth in C.2.9 to C.2.9.4.
- C.4.3 Root Zone Management Dashboard -- The Contractor shall work collaboratively with NTIA and the Root Zone Maintainer, and all interested and affected parties as enumerated in Section C.1.3, to develop and make publicly available via a website, a dashboard to track the process flow for root zone management within nine (9) months after date of contract award.
- C.4.4 Performance Standards Reports -- The Contractor shall develop and publish reports for each discrete IANA function consistent with Section C.2.8. The Performance Standards Metric Reports will be published via a website every month (no later than 15 calendar days following the end of each month) starting no later than six (6) months after date of contract award.
- C.4.5 Customer Service Survey (CSS) --The Contractor shall collaborate with NTIA to develop and conduct an annual customer service survey consistent with the performance standards for each of the discrete IANA functions. The survey shall include a feedback section for each discrete IANA function. No later than 30 days after conducting the survey, the Contractor shall submit the CSS Report to the COR.
- C.5.1 Audit Data -- The Contractor shall generate and retain security process audit record data for one year and provide an annual audit report to the CO and the COR. All root zone management operations shall be included in the audit, and



records on change requests to the root zone file. The Contractor shall retain these records in accordance with the clause at 52.215-2. The Contractor shall provide specific audit record data to the CO and COR upon request.

- C.5.2 Root Zone Management Audit Data -- The Contractor shall generate and publish via a website a monthly audit report based on information in the performance of Provision C.9.2 (a-g) Perform Administrative Functions Associated With Root Zone Management. The audit report shall identify each root zone file and root zone "WHOIS" database change request and the relevant policy under which the change was made as well as identify change rejections and the relevant policy under which the change request was rejected. The Report shall start no later than nine (9) months after date of contract award and thereafter is due to the COR no later than 15 calendar days following the end of each month.
- C.5.3 External Auditor -- The Contractor shall have an external, independent, specialized compliance audit which shall be conducted annually and it shall be an audit of all the IANA functions security provisions against existing best practices and Section C.3 of this contract.

## P1. Annex C: Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Names Functions

### Final

1264 These principles and criteria are meant to be the basis upon which the decisions on the transition of NTIA stewardship are formed. This means that the proposals can be tested against the principles and criteria before they are sent to the ICG.

- 1) **Security, stability and resiliency:** Changes must not undermine the operation of the IANA Functions and should assure accountability and objectivity in the stewardship of the service.
- 2) Transition should be subject to adequate stress testing.
- 3) Any new IANA governance mechanisms should not be excessively burdensome and should be fit for purpose.
- 4) **Support the open Internet:** The transition proposal should contribute to an open and interoperable Internet.
- 5) **Accountability and transparency:** The service should be accountable and transparent.
  - i) **Transparency:** Transparency is a prerequisite of accountability. While there might be confidentiality concerns or concerns over operational continuity during the process of delegation or redelegation of a TLD, the final decision and the rationale for that decision should be made public or at least be subject to an independent scrutiny as part of an *ex-post* assessment of service performance. Unless prevented or precluded by confidentiality, any and all audit reports and other review materials should be published for inspection by the larger community.
  - ii) **Independence of accountability:** Accountability processes should be independent of the IANA Functions Operator<sup>102</sup> and should assure the accountability of the IANA Functions Operator to the inclusive global multistakeholder community.
  - iii) **Independence of policy from IANA:** The policy processes should be independent of the IANA Functions Operator. The IANA Functions Operator's role is to implement changes in accordance with policy agreed through the relevant bottom-up policy process.
  - iv) **Protection against Capture**<sup>103</sup>: Safeguards need to be in place to prevent capture of the service or of any IANA oversight or stewardship function.

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<sup>102</sup> The term IANA Functions Operator means the unit that provides the service.

<sup>103</sup> A group can be considered captured when one or more members are able to effectively control outcomes despite a lack of agreement from other stakeholders whose agreement or non-objection would be required to achieve consensus. Conditions for consensus will need to be agreed appropriate for the group.

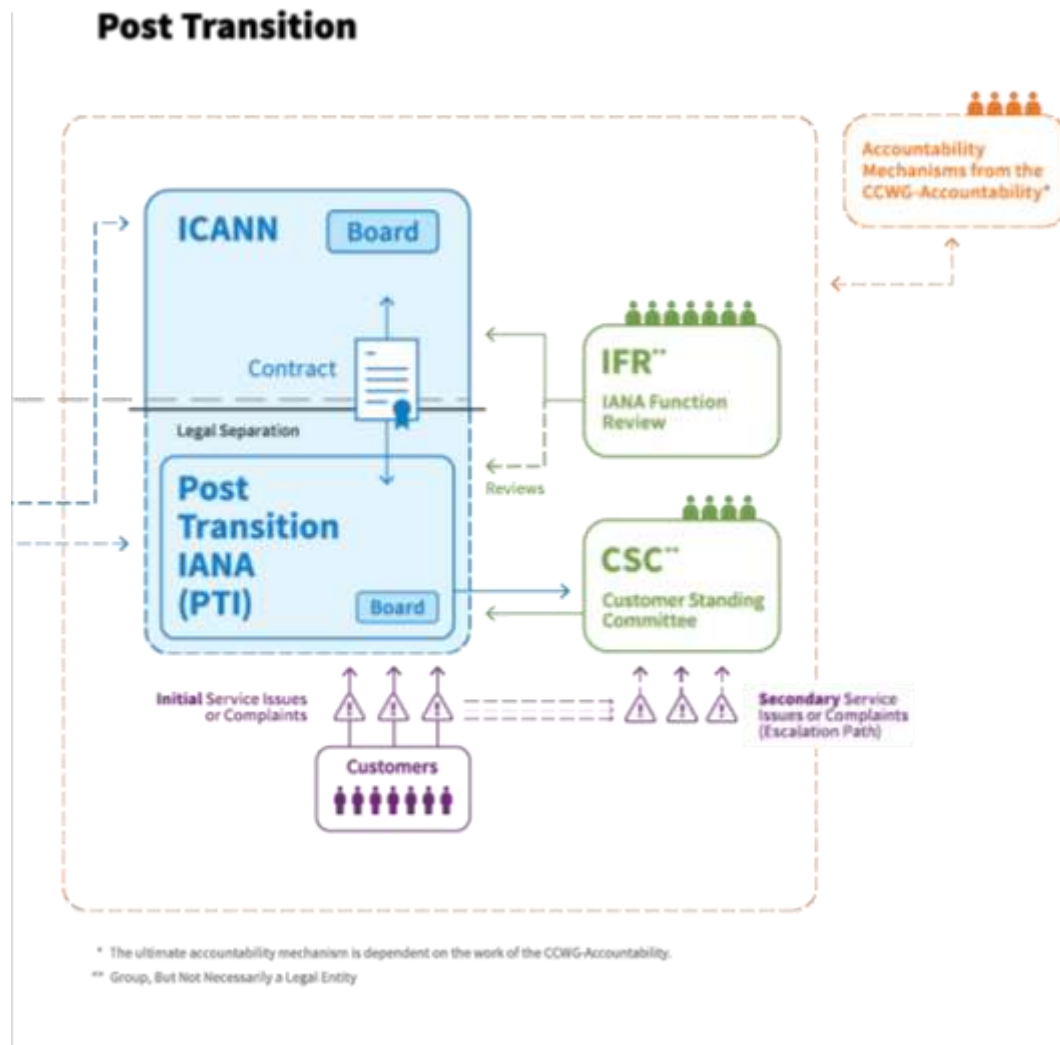
- v) **Performance standards:** The IANA Functions Operator needs to meet agreed service levels and its decisions should be in line with agreed policy. Processes need to be in place to monitor performance and mechanisms should be in place to remedy failures. A fallback provision also needs to be in place in case of service failure.
  - vi) **Appeals and redress:** Any appeals process should be independent, robust, affordable, timely, provide binding redress open to affected parties and be open to public scrutiny. Appeals should be limited to challenging the implementation of policy or process followed, not the policy itself.
- 6) **Service levels:** The performance of the IANA Functions must be carried out in a reliable, timely and efficient manner. It is a vital service and any proposal should ensure continuity of service over the transition and beyond, meeting a recognized and agreed quality of service that is in line with service-level commitments.
- i) Service level commitments should be adaptable to the developing needs of the customers of the IANA Functions and subject to continued improvement.
  - ii) Service quality should be independently audited (*ex-post* review) against agreed commitments.
- 7) **Policy based:** The decisions and actions of the IANA Functions Operator should be made objectively based on policy agreed to through the recognized bottom-up multistakeholder processes. As such, decisions and actions of the IANA Functions Operator should:
- i) Be predictable (i.e, decisions are clearly rooted in agreed and applicable policy as set by the relevant policy body).
  - ii) Adhere to laws/processes (i.e., for ccTLDs: Respect national laws and processes, as well as any applicable consensus ICANN policies and IETF technical standards). Post-transition of the IANA Functions, the IANA Functions Operator will continue to provide service to existing registries in conformance with prevailing technical norms, conforming with the policy decisions of registries and the security and stability of the Root Zone itself.
  - iii) Be non-discriminatory.
  - iv) Be auditable (*ex-post* review).
  - v) Be appealable by significantly interested parties.
- 8) **Diversity of the customers of the IANA Functions:**
- i) The IANA Functions operator needs to take account of the variety of forms of relationship with TLD operators. The proposal will need to reflect the diversity of arrangements in accountability to the direct users of the IANA Functions.
  - ii) For ccTLDs, the IANA Functions Operator should provide a service without requiring a contract and should respect the diversity of agreements and arrangements in place for ccTLDs. In particular, the IANA Functions Operator should not impose any additional requirements on the registry unless they are directly and demonstrably linked to the global security, stability, and resilience of

the DNS.

- iii) For gTLDs, the IANA Functions Operator should continue to provide service notwithstanding any on-going or anticipated contractual disputes between ICANN and the gTLD operator. No additional requirements for prompt delivery of IANA services should be imposed unless they are directly and demonstrably linked to the global security, stability and resilience of the DNS.
- 9) Separability:** Any proposal must ensure the ability to:
- i) Separate the IANA Functions from the current operator (i.e. ICANN) if warranted and in line with agreed processes.
  - ii) Convene a process for selecting a new IANA Functions Operator.
  - iii) Consider separability in any future transfer of the IANA Functions.
- 10) Multistakeholderism:** Any proposal must foster multistakeholder participation in the future oversight of the IANA Functions.

## P1. Annex D: Diagram

This diagram is excerpted from a set of overview slides used for CWG-Stewardship briefing webinars. To view the full set of slides, see <https://community.icann.org/x/sJc0Aw>.



## **P1. Annex E: IANA Contract Provisions to be Carried Over Post-Transition (Statement of Work)**

1265 *The following provisions of the IANA Functions Contract are expected to be carried over to the IANA Statement of Work (and included in the ICANN-PTI Contract) noting that updates will need to be made to reflect the changing relationship with NTIA post-transition, and ensure consistency in terminology as well as updates as the result of other recommendations in the transition proposal:*

- *C.1.3. – Working relationship with all affected parties*
- *C.2.6 - Transparency and Accountability*
- *C.2.7. Responsibility and respect for stakeholders*
- *C.2.8 - Performance Standards*
- *C.2.9.2.a - Root Zone File Change Request Management*
- *C.2.9.2.b - Root Zone WHOIS Change Request and Database Management*
- *C.2.9.2.c - Delegation and Redelegation of a Country Code Top Level Domain (a similar provision should be created concerning retirement of a Country Code Top Level Domain)*
- *C.2.9.2.d - Delegation And Redelegation of a Generic Top Level Domain (gTLD)*
- *C.2.9.2.e – Root zone Automation*
- *C.2.9.2.f - Root Domain Name System Security Extensions (DNSSEC) Key Management*
- *C.2.12.a – Qualified Program Manager*
- *C.3.1 – Secure Systems*
- *C.3.2. – Secure System Notification*
- *C.3.3. – Secure Data*
- *C.3.4. – Security Plan*
- *C.3.5. – Director of Security*
- *C.4.2. – Monthly Performance Progress Report*
- *C.4.3 – Root Zone Management Dashboard*
- *C.4.4 – Performance Standards Reports*
- *C.4.5. – Customer Service Survey*
- *C.5.1. – Audit Data*
- *C.5.2 – Root Zone Management Audit Data*
- *C.5.3 – External Auditor*
- *C.6.1. – Conflict of interest*
- *C.6.2. – Conflict of Interest Officer*
- *Sub-sections of C.6.2 (C.6.2.1-5) - additional conflict of interest requirements.*
- *C.7.1. – Redundancy*

- *C.7.2. – Contingency plan*
- *C.7.3. – Transition to a Successor Contractor*
- *C.12.b – Key personnel*
- *Baseline requirements for DNSSEC in the authoritative root zone*

## P1. Annex F: IANA Function Reviews - Statement of Work Duration and Review Periodicity

1266 **What period (duration) should be covered by the first statement of work post-transition?**

1267 It is critical that any proposal provide opportunities to improve the performance of the IANA Functions Operator as it relates to naming as well as to review the proposed oversight structure against the needs of its customers and the ICANN community. This is especially important in the initial period following the transition of the NTIA's stewardship over the IANA Functions, in order to account for lessons learned as a result of the IANA Stewardship Transition, to review the effectiveness of new structures created pursuant to the IANA Stewardship Transition, and to address any implications for the IANA Functions Operator's performance. As a result, the CWG-Stewardship recommends that the review of PTI's performance against the ICANN-PTI Contract and the IANA Statement of Work (IANA SOW) for the naming functions occur no more than **two years** from the date of the IANA Stewardship Transition. This review will be led by a multistakeholder body drawn from the ICANN community.

1268 Following the initial review period of two years from the date of the IANA Stewardship Transition, a longer period in between reviews will be advisable to avoid the constant flow of reviews, while still accounting for the emerging or evolving needs of IANA customers and the ICANN community. We recommend that subsequent reviews be initiated on a calendar basis with a recommended standard period of no more than five-year intervals.

1269 While the IANA Function Review will normally be scheduled based on a regular rotation of no more than five years in line with other ICANN reviews, a Special IANA Function Review may also be initiated by community action.

1270 Periodic IANA Function Reviews will be focused on the performance of PTI against the IANA SOW, as well as reviewing the IANA SOW to determine if any amendments should be recommended. The outcomes of an IANA Function Review are not limited and could include a variety of recommendations.

1271 **What should be the process for reviewing or amending IANA SOWs (including approval by the community and acceptance by ICANN)?**

1272 The review could identify recommended amendments to the IANA SOW to address any performance deficiencies, or to the CSC charter to address any issues or deficiencies. The process of developing and approving amendments will take place through a defined process that includes, at minimum, the following steps, in advance of an amendment to either document being proposed:

- Consultation with the IANA Functions Operator;
- Consultation with the CSC;
- Public input session for ccTLD and gTLD operators; and
- Public comment period.



1273 Drafted amendments will be subject to at least the following processes before they came into effect:

- Public comment period;
- Ratification by the ccNSO and the GNSO Councils by a supermajority threshold; and
- Approval by the ICANN Board.

1274 The timeline for implementing any amendments to the IANA SOW will be agreed to between the IANA Function Review Team and the IANA Functions Operator.

1275 **Scope of IANA Function Reviews**

1276 At minimum, the IANA Function Review will consider the following:

- The performance of the IANA Functions Operator against the requirements set forth in the IANA SOW;
- Any necessary additions to the IANA SOW to account for the needs of consumers of the IANA naming functions or the ICANN community at large;<sup>104</sup>
- Openness/transparency procedures for the IANA Functions Operator and any oversight structures, including reporting requirements and budget transparency;
- The effectiveness of new structures created to carry out IANA oversight in monitoring performance and handling issues with the IANA Functions Operator;
- The relative performance of the IANA Functions pre- and post-transition according to established service levels; and
- Discussion of process or other improvements (where relevant to the mandate of the IANA Function Review) suggested by the CSC or community.

1277 At minimum, the following inputs will be considered as a part of the review:

- The current IANA SOW.
- Regular reports provided by the IANA Functions Operator during the defined review period, including:
  - Monthly performance reports;
  - Delegation/redelegation reports;
  - Annual IANA audits;
  - Security Process Reports;
  - RZM Data Audits;
  - Response to IANA Customer Satisfaction Surveys; and<sup>105</sup>

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<sup>104</sup> Note: this does not include any review of policy developed or adopted through agreed processes or on ICANN's relationship with contracted TLDs.

<sup>105</sup> It is expected that these reports be retained for the duration of the reporting period, and be made available to members of the IANA Function Review Team (to the extent that they are not published publically).

- Conflict of Interest Enforcement and Compliance Report.
- Inputs by the CSC, including:
  - Issues flagged in reviewing above reports;
  - Public transcripts and meeting minutes;
  - Inputs related to the effectiveness of any remediation efforts with the IANA Functions Operator, and
  - Annual evaluation of IANA Functions Operator performance.
- Community inputs through Public Consultation Procedures defined by the IANA Function Review Team, potentially including:
  - Public comment periods.
  - Input at in-person sessions during ICANN meetings.
  - Responses to public surveys related to IANA Functions Operator performance; and
  - Public inputs during meetings of the IANA Function Review Team.

1278 **What are the goals of the reviews?**

1279 In reviewing the above data points the goal of the IANA Function Review Team will be to:

- Evaluate the performance of the IANA Functions Operator and any related oversight bodies vis-à-vis the needs of its direct customers and the expectations of the broader ICANN community;
- Evaluate the performance of any IANA oversight bodies with respect to the responsibilities set forth in their charters;
- Consider and assess any changes put in place since the last IANA Function Review and their implications for the performance of the IANA Naming Functions;
- Determine if any amendments to the SOW should be recommended; and
- Identify areas for improvement in the performance of the IANA Functions and associated oversight mechanisms.

1280 Any recommendations will be expected to identify improvements in these areas that were supported by data and associated analysis about existing deficiencies and how they could be addressed.

1281 **Composition of IANA Function Review Teams**

1282 Who are the relevant stakeholders?

1283 All stakeholder groups represented at ICANN will be relevant for the reviews done by the IANA Function Review Team. Additionally, the Number and Protocol operational communities will each be offered the opportunity to name a liaison to the review group. The IANA Function Review Team will be composed as follows:

4. Group	5. IFRT Members
6. ccNSO	7. 2
8. ccTLDs (non-ccNSO)	9. 1
10. Registry Stakeholder Group (RySG)	11. 2
12. Registrar Stakeholder Group (RsSG)	13. 1
14. Commercial Stakeholder Group (CSG)	15. 1
16. Non-Commercial Stakeholder Group (NCSG)	17. 1
18. Government Advisory Committee (GAC)	19. 1
20. Security and Stability Advisory Committee (SSAC)	21. 1
22. Root Server Operators Advisory Committee (RSSAC)	23. 1
24. At-Large Advisory Committee (ALAC)	25. 1
26. CSC Liaison	27. 1

1284 In any case where a recommendation focuses on a service specific to gTLDs or to ccTLDs, or where the processes are different between the two, the final recommendation should not be decided in the face of opposition from that community's members. Solely gTLD issues must not be decided in opposition to GNSO members and solely ccTLD issues (or issues which are handled differently for ccTLDs) must not be decided in opposition to ccTLD members of the IANA Function Review Team.

1285 Additionally, an IANA Functions Operator staff member will be appointed as a point of contact for the IANA Function Review Team.

1286 **What body should coordinate reviews?**

1287 The ICANN Board, or an appropriate sub-committee of the Board, must ensure that an IANA Function Review Team is convened at no more than five-year intervals (or convened to enable the first periodic IANA Function Review to be completed) for the purpose of leading a review of the IANA SOW and the additional performance parameters defined above. The IANA Function Review Team will not be a standing body and will be reconstituted for every IANA Function Review.

1288 Individuals interested in participating in the IANA Function Review Team would submit an Expression of Interest that includes a response addressing the following matters:

- Why they are interested in becoming involved in the IANA Function Review Team;
- What particular skills they would bring to the IANA Function Review Team;

- Their knowledge of the IANA Functions;
- Their understanding of the purpose of the IANA Function Review Team; and
- That they understand the time necessary required to participate in the review process and can commit to this role.

1289 Supporting Organizations or Advisory Committees, in accordance with their respective internally defined processes, will appoint individuals who have submitted Expressions of Interest. In the case of the non-ccNSO ccTLD representative, the ccNSO will be the appointing body; in appointing the non-ccNSO representative it is strongly recommended that the ccNSO also consult with the Regional ccTLD Organizations, namely AfTLD, APTLD, LACTLD, and CENTR.

1290 **What is the scope of its responsibility for leading the review?**

1291 The IANA Function Review Team defined above will have the primary responsibility for carrying out the IANA performance review, including:

- Review and evaluation of the review inputs defined above;
- Initiation of public comment periods and other processes for wider community input;
- Considering inputs received during public comment periods and other procedures for community input; and
- Development of recommendations on changes to the IANA SOW, and to IANA Functions Operator performance.

1292 The IANA Function Review will be a high-intensity project and all members selected are expected to participate actively in the work of the IANA Function Review Team.

1293 The IANA Function Review Team will be an internal-to-ICANN body defined within the ICANN bylaws as a fundamental bylaw. ICANN will provide secretariat and other support for the IANA Function Review Team.

1294 **What sort of process structure is warranted?**

1295 The CWG-Stewardship recommends that the IANA Function Review be organized along the same ICANN Cross Community Working Group guidelines that have developed over the past years and which have been used successfully in the process of developing the IANA Stewardship Transition recommendations. As with the CWG-Stewardship, this review group will be co-chaired by someone designated by the GNSO and someone designated by the ccNSO. The groups will work on a consensus basis. In the event that consensus could not be reached, the IANA Function Review Team could decide by a majority vote of the group members.

1296 The CWG-Stewardship expects that each IANA Function Review should take nine months from the appointment of members to the IANA Function Review Team to the publication of a final report, including conducting two 40-day public comment periods.

1297 **How is the wider community involved in such a review?**

1298 As with other Cross Community Working Groups, the CWG-Stewardship recommends that all mailing lists and meetings will be open to interested participants and transparent, with recordings and transcripts made available to the public. At several stages in the process, community comment will be requested:

- Near the beginning of the process, the community will be asked to consider issues relevant to the review; and
- Midway through the process, a draft report will be provided for community review.

1299 Once the final report is prepared, it will be provided to the community.

1300 **What should trigger reviews?**

1301 Similar to the Affirmation of Commitment (AoC) Reviews, the IANA Function Review will be triggered on a calendar basis, with the first call for Expressions of Interest being scheduled to kick off one year from the date of the IANA Stewardship Transition to allow sufficient time to convene the IANA Function Review Team and complete the IANA Function Review within two years of the date of the IANA Stewardship Transition. Subsequent reviews will be scheduled to occur at no more than five-year intervals from the date of the initial IANA Function Review.

1302 A non-periodic or “Special” IANA Function Review (Special IFR) can only be initiated when the following escalation mechanisms have been exhausted:

- CSC remedial action procedures are followed and fail to address the identified deficiency (see Annex G); and
- The IANA Problem Resolution Process is followed and fails to correct the deficiency (See Annex J).

1303 Following exhaustion of the foregoing escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process (as defined in Annex G), and the IANA Problem Resolution Process (as defined in Annex J) and for determining whether or not a Special IFR is necessary. After consideration, which may include a Public Comment period and must include meaningful consultation with other SO/ACs. In order to trigger a Special IFR, it would require a vote of both of the ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority). The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IANA Function Review. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of the IANA Functions operation and should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs.

1304 The requirement to conduct and facilitate the periodic and special IANA Function Reviews would be articulated in the ICANN Bylaws and included as an ICANN fundamental bylaw under consideration by CCWG-Accountability. In addition, the IFR and Special IFR mechanisms could be set forth in the contract between ICANN and Post-Transition IANA or PTI.

1305 **CCWG Accountability Dependencies**

1306 Enumeration of the relevant accountability mechanisms relating to the IFR and Special IFR:

- Creation of an ICANN fundamental bylaw to describe the IFR and Special IFR mechanisms, including the above voting thresholds for triggering a Special IFR (i.e.,

after specified escalation methods have been exhausted and then upon a supermajority vote of each of the ccNSO and GNSO Councils) and approval of the outcomes of an IFR and Special IFR (which may include a separation process, as described in Annex L).

1307 **Table of Reviews**

28. Review Type	29. Frequency	30. Responsible
31. IANA Function Review (IFR) including:  32. Statement Of Work (SOW)	33. Initially, two years, then moving to no more than five years  34.  35.  36. Special IFR can also be triggered by the ICANN community	37. IANA Function Review Team  38.
39. Review monthly performance report	40. Monthly	41. CSC
42. Site visit	43. On-demand	44. IANA Function Review Team
45. Review CSC report on IANA Functions Operator performance SOW report	46. Annual	47. AC/SO/ICANN  48. Comment period  49. ICANN Board
50. Review performance metrics	51. Quarterly	52. CSC
53. Review customer survey report	54. Yearly	55. CSC
56. Review security audit process report	57. Annual	58. CSC
59. Review RZM audit report	60. Quarterly	61. CSC  62. Root Zone Operators
63. Review annual audit	64. Annually	65. CSC with

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report		community input (i.e., open ICANN comments)  66.
67. Review Conflict of Interest Enforcement Compliance audit report	68. Annually	69. Community review (AC/SO/Board) with comments to IFO

## **P1. Annex G: Proposed Charter of the Customer Standing Committee (CSC)**

### 1308 **Mission**

- 1309 The Customer Standing Committee (CSC) has been established to perform the operational oversight previously performed by the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) as it relates to the monitoring of performance of the IANA naming function. This transfer of responsibilities took effect on [date].
- 1310 The mission of the CSC is to ensure continued satisfactory performance of the IANA function for the direct customers of the naming services. The primary customers of the naming services are top-level domain registry operators, but also include root server operators and other non-root zone functions.
- 1311 The mission will be achieved through regular monitoring by the CSC of the performance of the IANA naming function against agreed service level targets and through mechanisms to engage with the IANA Functions Operator to remedy identified areas of concern.
- 1312 The CSC is not mandated to initiate a change in the IANA Functions Operator via a Special IANA Function Review, but could escalate a failure to correct an identified deficiency to the ccNSO and GNSO, which might then decide to take further action using agreed consultation and escalation processes, which may include a Special IANA Function Review.

### 1313 **Scope of Responsibilities**

- 1314 The CSC is authorized to monitor the performance of the IANA naming function against agreed service level targets on a regular basis.
- 1315 The CSC will analyse reports provided by the IANA Functions Operator on a monthly basis and publish their findings.
- 1316 The CSC is authorized to undertake remedial action to address poor performance in accordance with the Remedial Action Procedures (see illustrative procedures at the end of this Annex). The Remedial Action Procedures are to be developed and agreed to by the CSC and the IANA Functions Operator post-transition, once the CSC is formed.
- 1317 In the event performance issues are not remedied to the satisfaction of the CSC, despite good-faith attempts to do so, the CSC is authorized to escalate the performance issues to the ccNSO and GNSO for consideration.
- 1318 The CSC may receive complaints from individual registry operators regarding the performance of the IANA Naming Function; however, the CSC will not become involved in a direct dispute between any registry operator and IANA.
- 1319 The CSC will review individual complaints with a view to identifying any patterns of poor performance by the IANA Functions Operator in responding to complaints of a similar nature. In relation to problem resolution, if CSC determines that remedial action has been



exhausted and has not led to necessary improvements, the CSC is authorized to escalate to the PTI Board and further if necessary.

- 1320 The CSC will, on an annual basis or as needs demand, conduct a consultation with the IANA Functions Operator, the primary customers of the naming services, and the ICANN community about the performance of the IANA Functions Operator.
- 1321 The CSC, in consultation with registry operators, is authorized to discuss with the IANA Functions Operator ways to enhance the provision of IANA's operational services to meet changing technological environments; as a means to address performance issues; or other unforeseen circumstances. In the event it is agreed that a material change in IANA naming services or operations would be beneficial, the CSC reserves the right to call for a community consultation and independent validation, to be convened by the IANA Functions Operator, on the proposed change. Any recommended change must be approved by the ccNSO and RySG.
- 1322 The IANA Functions Operator would be responsible for implementing any recommended changes and must ensure that sufficient testing is undertaken to ensure smooth transition and no disruption to service levels.
- 1323 The CSC will provide a liaison to the IANA Function Review Team and a liaison to any Separation Cross Community Working Group.

1324 **Conflict of Interest**

- 1325 The ICANN Bylaws make clear that it must apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment; which would require transparent fairness in its dispute resolution processes. Members of the CSC should accordingly disclose any conflicts of interest with a specific complaint or issue under review. The CSC may exclude from the discussion of a specific complaint or issue any member deemed by the majority of CSC members and liaisons to have a conflict of interest.

1326 **Membership Composition**

- 1327 The CSC should be kept small and comprise representatives with direct experience and knowledge of IANA naming functions. At a minimum the CSC will comprise:
- Two gTLD Registry Operators.
  - Two ccTLD Registry Operators.
  - One additional TLD representative not considered a ccTLD or gTLD registry operator such as the IAB for .ARPA could also be included in the minimum requirements but is not mandatory.
  - One liaison from the IANA Functions Operator (PTI).
- 1328 Liaisons can also be appointed from the following organisations; however, providing a Liaison is not mandatory for any group:
- One liaison each from other ICANN SOs and ACs:

- GNSO (non-registry)
- ALAC
- NRO (or ASO)
- GAC
- RSSAC
- SSAC

1329 Liaisons shall not be members of or entitled to vote on the CSC, but otherwise liaisons shall be entitled to participate on equal footing with members of the CSC.

1330 The Chair of the CSC will be elected on an annual basis by the CSC. Ideally the Chair will be a direct customer of the IANA naming function, and cannot be the IANA Functions Operator Liaison.

1331 The CSC and the IANA Functions Operator will nominate primary and secondary points of contact to facilitate formal lines of communication.

1332 The CSC as a whole will decide who will serve as the Liaison to the IANA Function Review Team. Preference should be given to the Liaison being a registry representative given that technical expertise is anticipated to be valuable in the role.

1333 **Membership Selection Process**

1334 Members and Liaisons to the CSC will be appointed by their respective communities in accordance with internal processes. However, all candidates will be required to submit an Expression of Interest that includes a response addressing the following matters:

- Why they are interested in becoming involved in the CSC.
- What particular skills they would bring to the CSC.
- Their knowledge of the IANA Functions.
- Their understanding of the purpose of the CSC.
- That they understand the time necessary required to participate in the CSC and can commit to this role.

1335 Interested candidates should also include a resume or curriculum vitae or biography in support of their Expression of Interest.

1336 While the ccTLD and gTLD members will be appointed by the ccNSO and RySG respectively and liaisons by their applicable groups, ccTLD or gTLD registry operators that are not members of these groups will be eligible to participate in the CSC as members or liaisons. The ccNSO and RySG should consult prior to finalizing their selections with a view to providing a slate of members and liaisons that has, to the extent possible, diversity in terms of geography and skill set.

A representative for a TLD registry operator not associated with a ccTLD or gTLD registry, will be required to submit an Expression of Interest to either the ccNSO and GNSO Council. The Expression of Interest must include a letter of support from the registry operator. This provision is intended to ensure orderly formal arrangements, and is not intended to imply those other registries are subordinate to either the ccNSO or the GNSO.

1337 The full membership of the CSC must be approved by the ccNSO and the GNSO. While it will not be the role of the ccNSO and GNSO to question the validity of any recommended appointments to the CSC they will take into account the overall composition of the proposed CSC in terms of geographic diversity and skill sets.

### 1338 **Terms**

1339 CSC appointments, regardless of whether members or liaisons, will be for a two-year period with the option to renew for up to two additional two-year terms. The intention is to stagger appointments to provide for continuity and knowledge retention.

1340 To facilitate this, at least half of the inaugural CSC appointees will be appointed for an initial term of three years. Subsequent terms will be for two years.

1341 CSC appointees must attend a minimum of nine meetings in a one-year period, and must not be absent for more than two consecutive meetings. Failure to meet this requirement may result in the Chair of the CSC requesting a replacement from the respective organisation.

### 1342 **Recall of members**

1343 Any CSC appointee can be recalled at the discretion of their appointing community.

1344 In the event that a ccTLD or gTLD registry representative is recalled, a temporary replacement may be appointed by the designating group while attempts are made to fill the vacancy. As the CSC meets on a monthly basis best efforts should be made to fill a vacancy within one month of the recall date.

1345 The CSC may also request the recall of a member of the CSC in the event they have not met the minimum attendance requirements. The appointing community will be responsible for finding a suitable replacement.

### 1346 **Meetings**

1347 The CSC shall meet at least once every month via teleconference at a time and date agreed upon members of the CSC.

1348 The CSC will provide regular updates, no less than three per year, to the direct customers of the IANA naming function. These updates may be provided to the RySG and the ccNSO during ICANN meetings.

1349 The CSC will also consider requests from other groups to provide updates regarding the IANA Functions Operator's performance.

1350 **Record of Proceedings**

1351 Minutes of all CSC teleconferences will be made public within five business days of the meeting.

1352 Any remedial action will also be reported by the CSC.

1353 Information sessions conducted during ICANN meetings will be open and posting of transcripts and presentations will be done in accordance with ICANN’s meeting requirements.

1354 **Secretariat**

1355 The IANA Functions Operator will provide secretariat support for the CSC. The IANA Functions Operator will also be expected to provide and facilitate remote participation in all meetings of the CSC.

1356 **Review**

1357 The Charter will initially be reviewed by a committee of representatives from the ccNSO and the RySG one year after the first meeting of the CSC. The review is to include the opportunity for input from other ICANN stakeholders, via a Public Comment process. Any recommended changes are to be ratified by the ccNSO and the GNSO.

1358 Thereafter, the Charter will be reviewed at the request of the CSC, ccNSO or GNSO and may also be reviewed in connection with the IANA Function Review.

1359 The effectiveness of the CSC will initially be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review will be determined by the ccNSO and GNSO.

1360 The CSC or the IANA Functions Operator can request a review or change to service level targets. Any proposed changes to service level targets as a result of the review must be agreed to by the ccNSO and GNSO.

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1361 **Proposed Remedial Action Procedures**

1362 This proposal is illustrative of what could be included in the Remedial Action Procedures. It is anticipated that the procedures would be agreed between the CSC and the IANA Functions Operator prior to implementation.

	<b>Notification</b>	<b>1st Escalation</b>	<b>2nd Escalation</b>	<b>3rd Escalation</b>
<b>Occurs</b>	<ul style="list-style-type: none"> <li>Process control limit exceeded</li> <li>IANA customer presents evidence that IANA did not meet SLE</li> </ul>	<ul style="list-style-type: none"> <li>Corrective action plan late</li> <li>Corrective action plan milestones missed</li> <li>Two or more additional</li> </ul>	<ul style="list-style-type: none"> <li>Corrective action plan late</li> <li>Corrective action plan milestones missed</li> <li>Two or more additional “notification”</li> </ul>	<ul style="list-style-type: none"> <li>Corrective action plan from 2nd escalation not delivered or executed timely.</li> <li>Additional similar violations occur when corrective action from 2nd</li> </ul>

	<ul style="list-style-type: none"> <li>IANA periodic report indicates SLE not met</li> </ul>	<p>“notification” violations occur while corrective action plan is open</p>	<p>violations occur while corrective action plan is supposed to be in place</p>	<p>escalation is supposed to be in place</p>
<b>Addressee</b>	IANA Manager	PTI Board	Global Domains Division President	ICANN Board, CEO
<b>Message Content</b>	<ul style="list-style-type: none"> <li>Identify SLE breach and evidence</li> <li>Conference call request to discuss issues raised by CSC message.</li> <li>Corrective action requirement</li> <li>Time frame</li> <li>Identify party requiring response</li> </ul>	<ul style="list-style-type: none"> <li>Identify SLE breach and evidence</li> <li>Conference call request to discuss issues raised by CSC message.</li> <li>Corrective action requirement</li> <li>Time frame</li> </ul>	<ul style="list-style-type: none"> <li>Same as previous</li> </ul>	<ul style="list-style-type: none"> <li>Same as previous</li> </ul>
<b>Response Requested</b>	<ul style="list-style-type: none"> <li>Agreement that SLE violation occurred (or evidence to contrary)</li> <li>Cause</li> <li>Correction made on individual case</li> <li>Corrective action plan to:</li> <li>remedy current situation</li> <li>prevent future occurrence</li> <li>Corrective action plan required in 14-days</li> </ul>	<ul style="list-style-type: none"> <li>Reissue corrective action plan to:</li> <li>Remediate earlier failed plan</li> <li>Include new violations</li> <li>Corrective action plan milestones missed</li> <li>Two or more additional “notification” violations occur while corrective action plan is open</li> </ul>	<ul style="list-style-type: none"> <li>Same as previous plus</li> <li>Organizational, operational changes to correct lack of corrective action</li> </ul>	<ul style="list-style-type: none"> <li>Same as previous plus</li> <li>Remediation through the ICANN-PTI Contract and/or Special IFR</li> </ul>

## P1. Annex H: Service Level Expectations

The CWG-Stewardship is not proposing any changes to the current work flow process. The CWG-Stewardship is suggesting that there is a requirement placed on IANA staff, (as part of the implementation phase) to measure, record and report additional details of transaction times for each Root Zone Management process.

Such transparency will provide factual information to assist the CSC, IFRT and the Community to determine and confirm that the IANA Functions Operator is continuing to provide non-discriminatory service to the naming community. Further by having clarity as to process, it can be confirmed that IANA staff may not be the cause of the delay in the execution of the change request. On other occasions due to the wide time window for current SLEs, there is an opportunity for — or the perception for — certain TLD Managers to have preferential treatment and change requests completed in a matter of days, whilst other requests take much longer and yet still be in the approved time.

### Principles

These are a set of guiding principles that will help define the expectation for the monitoring and reporting environment, and guide the definition of the individual criteria used for reporting and assessment of the naming-related portions of the IANA Functions:

1. **Attributable measures.** *Unless clearly impractical, individual metrics should be reported attributing time taken to the party responsible. For example, time spent by IANA staff processing a change request should be accounted for distinctly from time spent waiting for customer action during a change request.*
2. **Overall metrics.** *In addition to the previous principle, overall metrics should be reported to identify general trends associated with end-to-end processing times and processing volumes.*
3. **Relevance.** *All metrics to be collected should be relevant to the validation of customer service. In addition some are the critical metrics that are considered important to set specific thresholds for judging breaches in the IANA Functions Operator's ability to provide an appropriate level of service.*
4. **Clear definition.** *Each metric should be sufficiently defined such that there is a commonly held understanding on what is being measured, and how an automated approach would be implemented to measure against the standard.*
5. **Definition of thresholds.** *The definition of specific thresholds for performance criteria should be set based on analysis of actual data. This may require first the definition of a metric, a period of data collection, and later analysis by IANA customers before defining the threshold.*
6. **Review process.** *The service level expectations should be reviewed periodically, and adapted based on the revised expectations of IANA's customers and relevant updates to the environment. They should be mutually agreed between the community and the IANA Functions Operator.*
7. **Regular reporting.** *To the extent practical, metrics should be regularly reported in a near real-time fashion.*

## Capturing the current status-quo for IANA Root Zone Management

### Introduction

Service Level Expectations (SLEs) for a domain name registry are typically based on measuring specific transactions sent by a client to the registry. The metric for a transaction is generally of the form of “Transaction A must complete within X period Y percent of the time measured over Z”, for example, “a root zone update must complete within 72 hours 95% of the time measured on a monthly basis”. The Root Zone Management process currently presents unique challenges in that IANA is not responsible for all phases of processing, therefore the SLEs must be written to accommodate the phases of the process, and to be mindful of the different attribution for these phases.

These SLE metrics are based on the following current assumptions:

A. For the purposes of the SLE discussion, the current process is simplified to five key stages for all change requests (notification is implicit in each stage):

1. Confirm the details of the change.
2. Verify the change complies with documented technical standards and policies and all applicable checks pass.
3. Obtain authorization/consent to proceed with the change.
4. Implement the change.
5. Notify the change requester of completion of the change.

B. Root Zone Management processes for routine change requests are largely automated. This automation includes:

1. A web-based interface for submitting change requests to the IANA Functions Operator. The web-based interface authenticates the credentials presented by the change requester and facilitates the creation of root zone file and root zone database change requests.
2. Near-real time confirmation email to the initiator of the change request of its safe receipt by the IANA system. Note, in certain circumstances, the request is initiated by other means such as fax or written letter. In these situations, email may not necessarily be used in communications.
3. Automated technical checks conducted by the IANA system on the change request. These checks ensure conformance of the technical data with agreed minimum standards, and check for errors in the material submitted.
4. Seeking consent from the relevant contacts for the domain, through an automated email verification process where approval requests are sent to both, at a minimum, the admin and technical contacts at the Registry for both parties to consent to the update. (Note: Some contacts are slow to respond which creates inefficiency in the validation process. In certain circumstances, third party verification is also required, e.g. governmental approvals).

5. The verified change request is transmitted to NTIA for authorization. For changes that impact the root zone file, the change request is also transmitted to the Root Zone Maintainer. This is performed via an online interface.

6. Once confirmed, notification is sent by NTIA to the IANA Functions Operator, and for changes that impact the root zone file, to the Root Zone Maintainer authorizing the change request for implementation.

7. Prior to implementation, the Root Zone Maintainer repeats automated technical compliance checks on the request and once verified, implements the change within the root zone file. This file is typically published twice daily.

8. On publication of updates to the Root Zone file, Root Zone Maintainer notifies the IANA Functions Operator, who verifies the changes match the requested changes, and notifies the Registry.

C. The processing role currently undertaken by the NTIA will no longer exist in a post-transition environment and those steps will no longer be undertaken. This means that IANA will have responsibility for triggering implementation at the conclusion of processing and communicating directly with the maintainer of the Root Zone.

D. IANA's online systems operate 24 hours a day, 365 days a year, except for maintenance periods, as befits a service that has customers around the globe.

### **Monitoring Past Performance:**

(We accept past performance is no indication of future performance but it does capture the status-quo).

The CWG-Stewardship conducted a historical analysis of IANA performance based on two sources: data published in IANA performance reports, and transaction logs provided by ccTLD registries interacting with the IANA root management function. The data sources were for the period September 2013 to January 2015, which provided approximately 565 total data points – only 27 transactions took longer than 9 days and 13 took longer than 12 days. It should also be highlighted that some/much of the delay is as a result of the Registry not responding to the IANA Functions Operator to authorize the change request – so the delay is not necessarily within the IANA Functions Operator's control. Four transactions took longer than one year (which is not necessarily a problem if the stability of the DNS is assured). A summary of this research is presented [here](#).

Work to define the final SLE to be included with the proposal submitted to the NTIA will be run in parallel with the ICG process to review the CWG-Stewardship proposal. The objective is to ensure that the CWG-Stewardship proposal is not delayed by work to define the SLEs and so to optimize use of the time prior to the final submission of a proposal to the NTIA. Review of the ongoing work can be viewed here: <https://community.icann.org/x/CA4nAw>.



## P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions

1363 (Modified Procedure)

1364 Refer to the existing ICANN-IANA process at <http://www.iana.org/help/escalation-procedure>.

1365 If anyone experiences an issue with the IANA Functions Operator's delivery of the IANA services, then it should be reported to the IANA Functions Operator as follows. This process should be used in cases where response has been too slow, where a possible mistake has been made, or when there appears to have been inequitable service delivery.

### 1366 **Phase 1 – Initial remedial process for IANA naming functions**

1367 The complainant could send an e-mail to [escalation@iana.org](mailto:escalation@iana.org) and provide the ticket numbers of the requests where the problem arose. If the problem is not resolved, IANA staff will escalate the problem to the following team members in this order as applicable:

- IANA Function Liaison for Root Zone Management;
- IANA Functions Program Manager; and
- Ombudsman (voluntary step).

1368 Efforts are made to resolve complaints as soon as possible but the structured process above allows escalation of complaints to the IANA management team. If, at any point, the complainant is not satisfied with the resolution process, the complainant can use the Ombudsman (or similar process) instead.

### 1369 **Who can use the process?**

1370 This process is open to anyone.<sup>106</sup> The functions include:

- Protocol Parameters management, including the management of the .ARPA TLD.
- Root Zone Management;
- Root DNS KSK Management;
- Internet Number Resources Allocation; and
- Management of the .INT TLD.

1371

### 1372 **What information must be provided?**

1373 In addition to providing the ticket numbers for the requests where the problem arose, the customer should provide any other information that may be needed to understand and resolve the complaint.

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<sup>106</sup> Including individuals, ccTLD regional organizations, ICANN SO/ACs, etc.

1374 **What is the expected time line?**

1375 Receipt of a complaint will be acknowledged within one business day and a substantive response will be sent within two business days. Efforts will be made to resolve complaints as soon as possible.

1376 **Is there another resolution process?**

1377 The Ombudsman or similar service can help resolve problems using Alternative Dispute Resolution techniques. (In the case of the current IANA Functions Operator, the ICANN [Ombudsman web pages](#) have more details.)

1378 **Escalation contact information for the current IANA Functions Operator (ICANN)**

Role	Name	Email Address
IANA	IANA Staff	iana@iana.org
IANA Function Liaison for Technical Protocol Parameters Assignment	Michelle Cotton	michelle.cotton@icann.org
IANA Function Liaison for Root Zone Management	Kim Davies	kim.davies@icann.org
IANA Function Liaison for Internet Number Resource Allocation	Naela Sarras	Naela.sarras@icann.org
IANA Functions Program Manager	Elise Gerich	elise.gerich@icann.org
Ombudsman	Chris LaHatte	ombudsman@icann.org

1379 If an issue is escalated to members of the IANA team and/or to the Ombudsman or equivalent, the CSC is notified of the issue for informational purposes only.

1380 **Phase 2 (for IANA naming services only)**

1381 Should the issue not be resolved after Phase 1, the following escalation mechanisms will be made available to direct customers, the IFO and the ICANN Ombudsman:<sup>107</sup>

- a) If issue is not addressed, the complainant (direct customer), IFO or the ICANN Ombudsman may request mediation.<sup>108</sup>
- b) CSC is notified of the issue by complainant and/or the IANA Functions Operator. CSC reviews to determine whether the issue is part of a persistent performance issue and/or is an indication of a possible systemic problem. If so, the CSC may seek remediation through the IANA Problem Resolution Process (see Annex J).
- c) The complainant (direct customer) may initiate an Independent Review Process or pursue other applicable legal recourses that may be available, if the issue is not addressed.

<sup>107</sup> Non-direct customers, including TLD organizations, that are of the view that an issue has not been addressed through Phase 1 may escalate the issue to the ICANN Ombudsman or via the applicable liaisons to the CSC to Phase 2.

<sup>108</sup> The CWG-Stewardship recommends that as part of the implementation of this proposal, ICANN Staff explore possible approaches with regards to mediation such as, for example, Section 5.1 of the Base gTLD Registry Agreement (<https://www.icann.org/resources/pages/registries/registries-agreements-en>).

## **P1. Annex J: IANA Problem Resolution Process (for IANA naming services only)**

1382 (New procedure)

1383 **Problem resolution (including responding to persistent performance issues or systemic problems)**

1384 The Customer Standing Committee (CSC) is authorized to monitor the performance of the IANA Functions against agreed service level targets on a regular basis. In the event that persistent performance issues are identified by the CSC, the CSC will seek resolution in accordance with a Remedial Action Plan, which includes:

- 1) CSC reports persistent performance issues to the IANA Functions Operator staff and requests remedial action in a predetermined number of days.
- 2) CSC confirms completion of remedial action.
- 3) If CSC determines that the remedial action has been exhausted and has not led to necessary improvements, the CSC is authorized to escalate to the PTI Board and further if necessary.
- 4) If the performance issues are still not resolved after escalation to the PTI Board, the CSC is authorized to escalate to the ccNSO and/or the GNSO,<sup>109</sup> which might then decide to take further action including the initiation of a Special IFR.

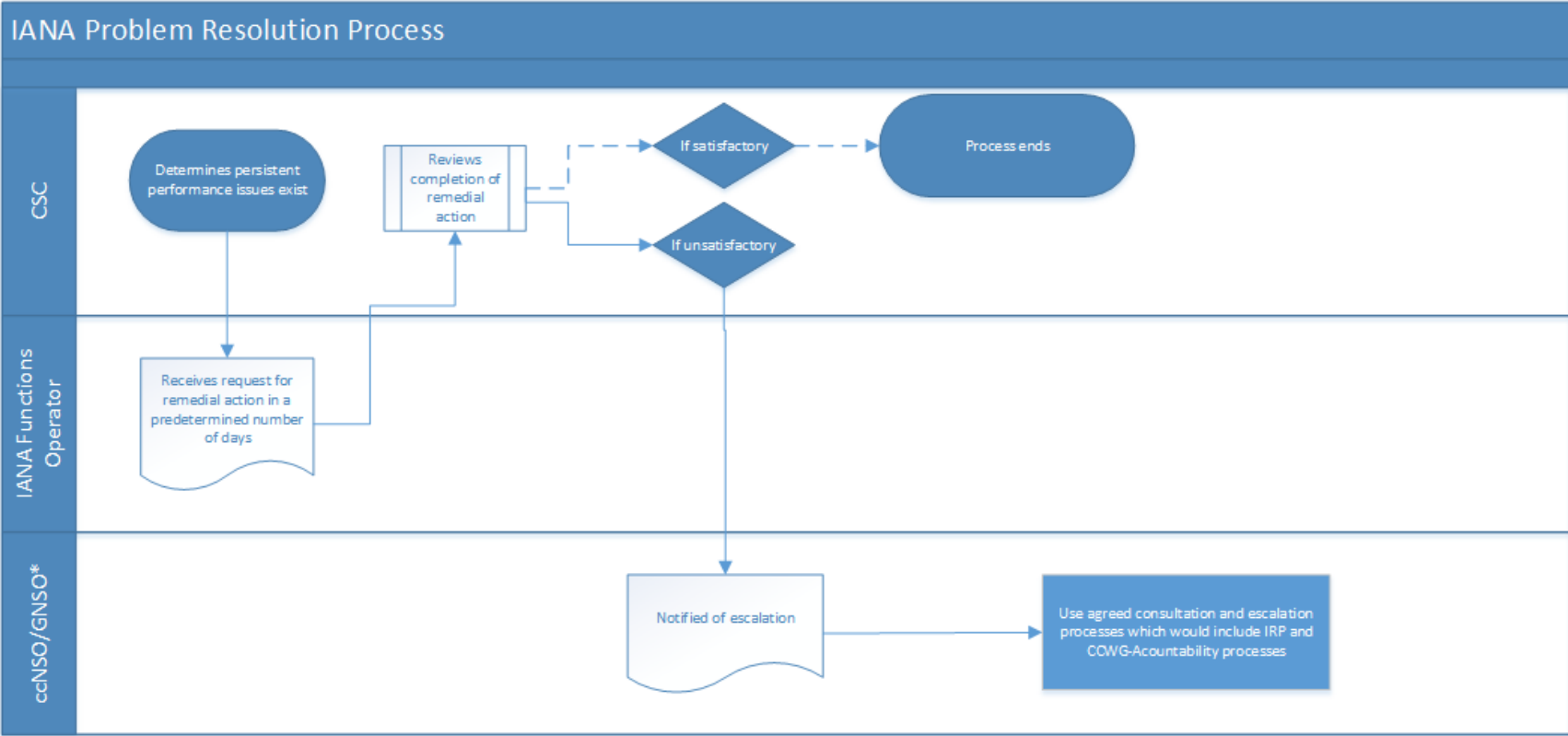
1385 **Systemic problems**

1386 The IANA Function Review will include provisions to consider and address whether there are any systemic issues that are impacting IANA naming services.

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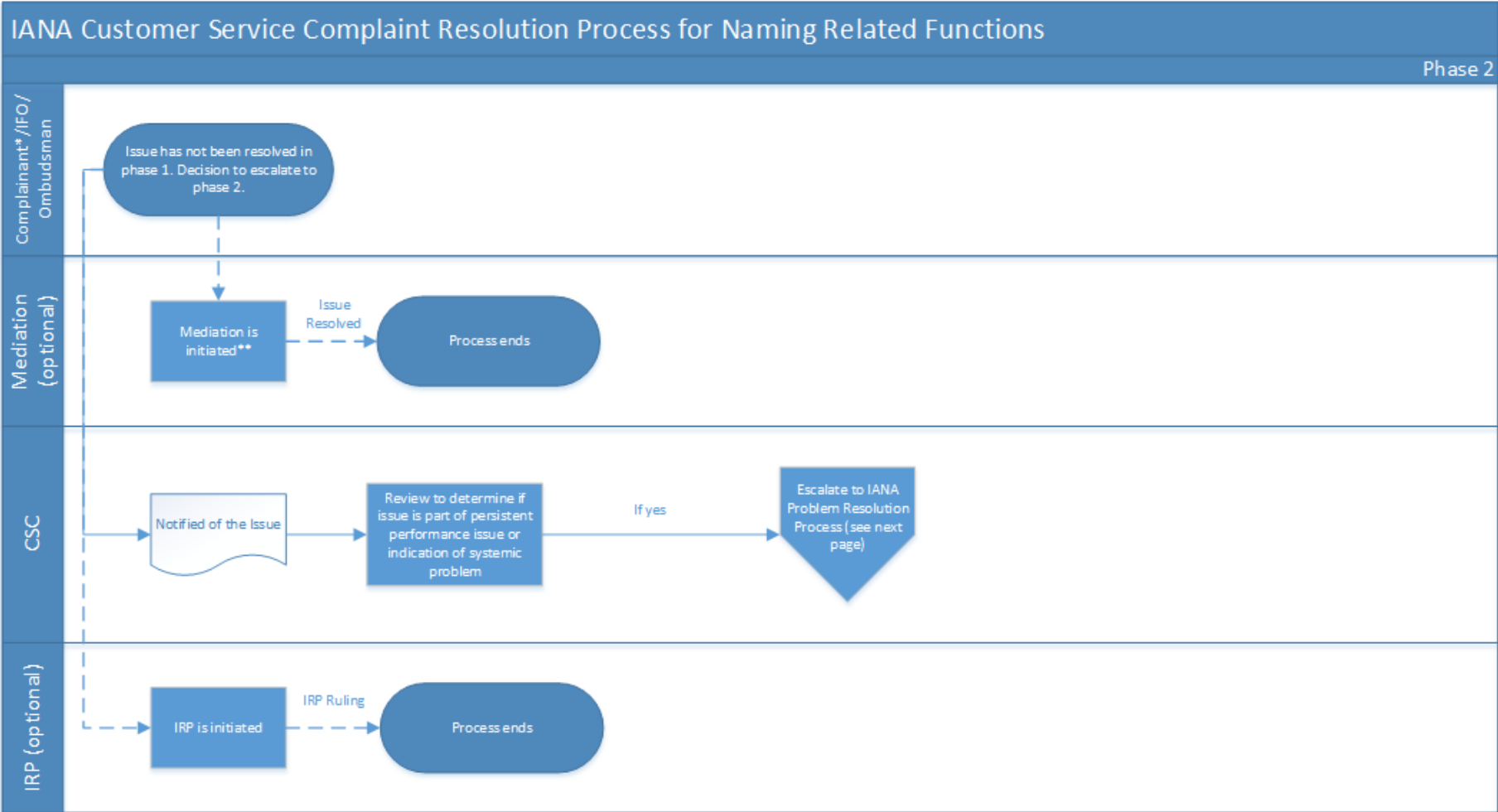
<sup>109</sup> The roles of the ccNSO and GNSO in this step should be further investigated to ensure that this is consistent with their missions as well as to identify any actions that may be needed by the SOs to allow for this role.

# P1. Annex J-1: Escalation Mechanisms Flow Charts

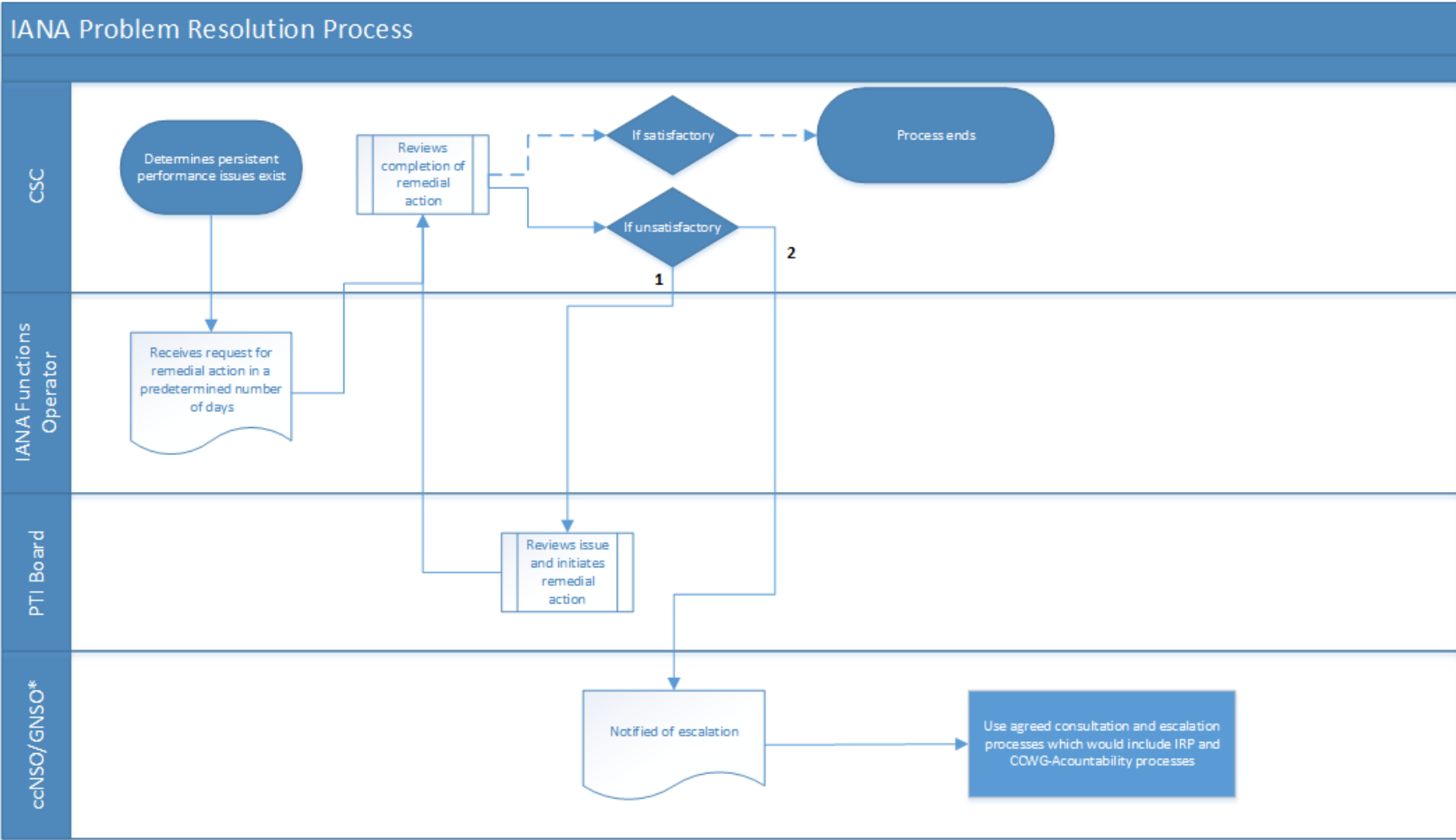


\* The roles of the ccNSO and GNSO in this step should be further investigated to ensure that this is consistent with their missions as well as to identify any actions that may be needed by the SOs to allow for this role.

Note: The IANA Function Review will include provision to consider whether there are any systemic issues that are impacting IANA Naming services, which might then decide to take further action using agreed consultation and escalation mechanisms which would include IRP and COWG-Accountability Work Stream 1 accountability mechanisms.



\* Phase 2 is reserved for direct customers complaints (either initiated by complainant, IFO or ombudsman)  
 \*\* The CWG-Stewardship recommends that as part of the implementation of this proposal, ICANN Staff explore possible approaches with regards to mediation such as, for example, Section 5.1 of the Base gTLD Registry Agreement (<https://www.icann.org/resources/pages/registries/registries-agreements-en>).



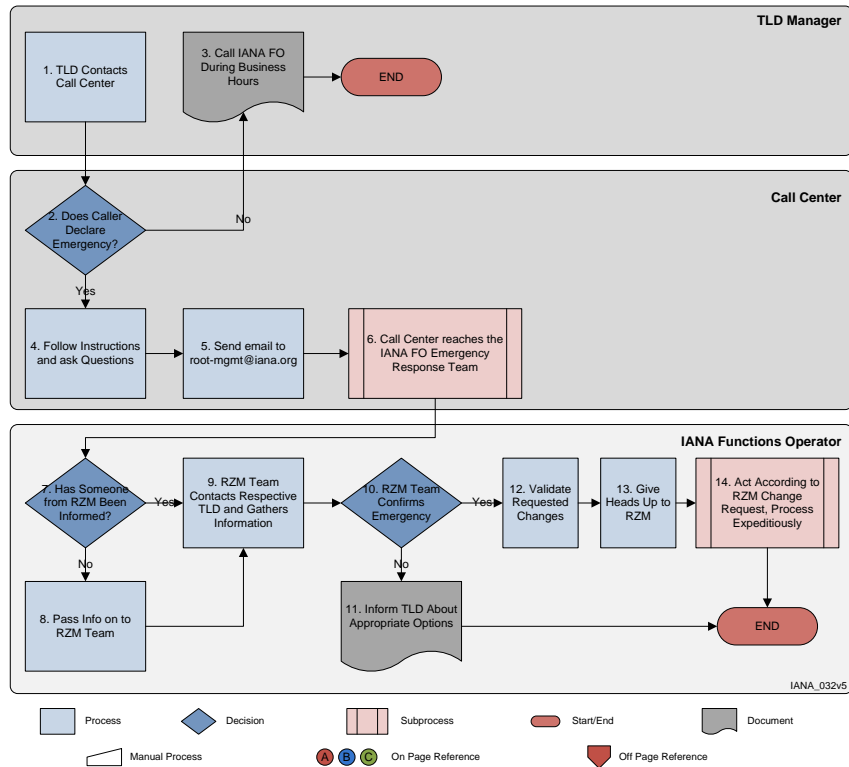
\* The roles of the ccNSO and GNSO in this step should be further investigated to ensure that this is consistent with their missions as well as to identify any actions that may be needed by the SOs to allow for this role.

Note: The IANA Function Review will include provision to consider whether there are any systemic issues that are impacting IANA Naming services, which might then decide to take further action using agreed consultation and escalation mechanisms which would include IRP and CCWG-Accountability Work Stream 1 accountability mechanisms.

## P1. Annex K: Root Zone Emergency Process

- 1387 In addition to general staff availability during standard business hours, the IANA Functions Operator will continue to provide TLD managers with a 24x7 emergency contact number that allows TLD managers to quickly reach the IANA Functions Operator to declare an emergency and seek to expedite a Root Zone change request. The IANA Functions Operator will execute such changes in accordance with the obligations of the standard Root Zone management workflow as expeditiously as possible. This prioritization will include performing emergency reviews of the request as the first priority, out of ordinary business hours if necessary, and informing its contacts at the Root Zone Maintainer of any pending changes that will require priority authorization and implementation.
- 1388 Please note that both figures below are consistent with existing processes but terminology has been updated to ensure consistency and general applicability.

Figure 1.2-41. 24x7 Emergency Process



**Figure 1.2-42. 24x7 Emergency Process Step-by-Step Description**

<b>1</b>	<b>TLD Contacts Call Center</b>
<b>Description</b>	All TLD managers are provided with an emergency contact telephone number that will reach a 24x7 call center.
<b>2</b>	<b>DOES CALLER DECLARE AN EMERGENCY?</b>
<b>Description</b>	The caller is asked if the issue is an emergency that requires an urgent root zone change, and can not wait until regular business hours.
<b>3</b>	<b>CALL IANA Functions Operator DURING BUSINESS HOURS</b>
<b>Description</b>	In the event the caller decides it is not an emergency, their contact details are logged and they are advised to speak to IANA Function staff during regular business hours.
<b>4</b>	<b>FOLLOW INSTRUCTIONS AND ASK QUESTIONS</b>
<b>Description</b>	Call center staff follow a set of instructions to solicit relevant information relating to the nature of the emergency, and the contact details of the TLD manager.
<b>5</b>	<b>SEND EMAIL TO <a href="mailto:ROOT-MGMT@IANA.ORG">ROOT-MGMT@IANA.ORG</a></b>
<b>Description</b>	The particulars of the emergency call are sent by the call center staff to the ticketing system. This opens a ticket and starts an audit log of the specific request.
<b>6</b>	<b>CALL CENTER REACHES THE IANA Functions Operator EMERGENCY RESPONSE TEAM</b>
<b>Description</b>	The call center has the emergency roster of IANA Functions staff, as well as escalation points for IANA Functions Operator senior management. The call center will call through the roster until they contact a person to hand the issue to. The IANA Function staff member that receives the issue will be the primary person responsible for resolution of the issue.
<b>7</b>	<b>HAS SOMEONE FROM THE ROOT ZONE MANAGEMENT (RZM) TEAM BEEN INFORMED?</b>
<b>Description</b>	The primary person responsible checks if the Root Zone Management team within the IANA Functions staff is aware of the issue.
<b>8</b>	<b>PASS INFO ON TO RZM TEAM</b>
<b>Description</b>	If necessary, information relating to the emergency request is communicated to the Root Zone Management team.
<b>9</b>	<b>RZM TEAM CONTACTS TLD MANAGER</b>
<b>Description</b>	The IANA Functions staff performing the root zone management functions contacts the TLD manager using the contact details provided to the call center. The nature of the issue is discussed in more detail, and a plan is devised to resolve the issue.
<b>10</b>	<b>RZM TEAM CONFIRMS EMERGENCY</b>



<b>Description</b>	Following dialog with the TLD manager, the RZM team confirms the particulars of the issue and the need to perform an emergency root zone change to resolve the issue.
<b>11</b>	<b>INFORM TLD ABOUT APPROPRIATE OPTIONS</b>
<b>Description</b>	In the event the TLD manager and RZM team deem that an emergency root zone change can not resolve the issue, IANA Functions Operator will inform the TLD manager about what other options they have to resolve the issue.
<b>12</b>	<b>VALIDATE REQUESTED CHANGES</b>
<b>Description</b>	IANA Functions Operator validates the request in accordance with the standard procedures described in the Root Zone Change process, including performing technical checks and performing contact confirmations. IANA Functions Operator takes steps to conduct these as quickly as possible.
<b>13</b>	<b>GIVE HEADS UP TO Root Zone Maintainer</b>
<b>Description</b>	IANA Functions Operator takes all available steps to inform personnel at the Root Zone Maintainer that there is an active emergency change request being conducted, and encourages the Root Zone Maintainer to process the request as quickly as possible.
<b>14</b>	<b>ACT ACCORDING TO ROOT ZONE CHANGE REQUEST</b>
<b>Description</b>	IANA Functions Operator executes the root zone change request as quickly as possible according to all standard policies and procedures. IANA Functions Operator prioritizes the rapid implementation of the request above other requests at normal priority.

## P1. Annex L: Separation Process

- 1389 In the event that an IANA Function Review results in a decision to initiate a separation process, the following processes must be followed.
- 1390 If the IFR determines that a separation process is necessary, it will recommend the creation of a Separation Cross Community Working Group (SCWG). This recommendation will need to be approved by a supermajority of each of the GNSO and the ccNSO Councils, according to their normal procedures for determining supermajority, and will need to be approved by the ICANN Board after a public comment period, as well as a community mechanism derived from the CCWG-Accountability process.<sup>110</sup> A determination by the ICANN Board to not approve a SCWG that had been supported by a supermajority of the ccNSO and GNSO Councils will need to follow the same supermajority thresholds and consultation procedures as ICANN Board rejection (by a supermajority vote) of a PDP recommendation that is supported by a GNSO supermajority.
- 1391 There will be no prescribed result arising from the separation process. It will be empowered to make a recommendation ranging from “no action required” to the initiation of an RFP and the recommendation for a new IFO, or the divestiture or reorganization of PTI. The SCWG will follow the overall guidelines and procedures for ICANN Cross Community Working Groups. The SCWG working procedures should ensure transparency to the fullest extent possible by creating open discussion listservs and holding open calls, with read- or listen-only modes for non-participants.<sup>111</sup>

### 1392 **Composition**

1393 The SCWG will be composed as follows:<sup>112</sup>

- ccNSO - 2
- ccTLDs (non-ccNSO) - 1
- Registry Stakeholder Group (RySG) - 3
- Registrar Stakeholder Group (RrSG) - 1
- Commercial Stakeholder Group (CSG) - 1
- Non-Commercial Stakeholder Group (NCSG) - 1
- Government Advisory Committee (GAC) - 1

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<sup>110</sup> This community mechanism could include ICANN membership, if ICANN were to become a membership organization per the CCWG-Accountability work efforts.

<sup>111</sup> Any other recommendations produced by the Special IFR would need to include implementation recommendations, including the possible initiation of an SCWG with a specific mandate, and would need to be approved by a supermajority of each of the ccNSO and GNSO Councils, the ICANN Board and a community mechanism derived from the CCWG-Accountability process.

<sup>112</sup> Given the unique purpose and task of the Separation Cross Community Working Group, if this composition diverges from the recommendation of the Cross Community Working Group on Principles for Cross Community Working Groups, the structure in this proposal shall prevail.

- Security and Stability Advisory Committee (SSAC) - 1
- Root Server Operators Advisory Committee (RSSAC) - 1
- At-Large Advisory Committee (ALAC) - 1
- CSC Liaison (selected by CSC) - 1
- Special IFR Team Liaison (selected by IFR Team) - 1
- Liaison from Protocol operational community - 1 (TBD with their approval)
- Liaison from Numbers operational community - 1 (TBD with their approval)

1394 Each group will be responsible for appointing its own representative to the SCWG. In the case of the non-ccNSO ccTLD representative, the ccNSO will be the appointing body; in appointing the non-ccNSO representative it is strongly recommended that the ccNSO also consult with the Regional ccTLD Organizations, namely AfTLD, APTLD, LACTLD, and CENTR.

1395 It is strongly recommended that the representatives appointed to the SCWG be different representatives than those that participated in the Special IFR (with the exception of the liaison to the IANA Function Review Team appointed by the CSC). This will provide an additional check, accounting for the fact that different skill sets may be required for the two processes, and provide for broader community representation in the IANA oversight process.

1396 To the extent possible, it is recommended that individuals with experience managing an RFP process be appointed to the SCWG. For communities appointing more than one representative to the SCWG it is strongly advised that, to the extent possible, the appointed representatives come from different ICANN geographic regions, to provide for diversity on the SCWG.<sup>113</sup>

### 1397 **Responsibilities**

1398 The SCWG will be responsible for:

- Determine how to resolve the issue(s) which triggered formation of the SCWG; and
- If the decision is to issue an RFP:
  - Developing RFP Guidelines and Requirements for the performance of the IANA Naming Functions;
  - Soliciting input on requirements to plan, and participation in, the RFP Process;
  - Reviewing responses to the RFP<sup>114</sup>;
  - Selecting the entity that will perform the IANA Naming Functions; and

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<sup>113</sup> One specific expectation is that with six total registry seats on the SCWG, including ccTLD and gTLD registries, all five ICANN geographical regions be represented.

<sup>114</sup> The then current IFO would not be prevented from participating in the RFP. In the event of the PTI, it would be possible for either the S-IFR or the PTI itself to recommend changes to its structure to better accomplish its task and to remediate any problems. This remediation could include recommendations for further separation.

- Managing any other Separation Process.
  - If a different process such as PTI divestiture or other reorganization is to be recommended, develop recommendations for that process.
- 1399 The selection of a new operator to perform the IANA Naming Functions or other separation process will be subject to approval by the ICANN Board, and a community mechanism derived from the CCWG-Accountability process.<sup>115</sup> A determination by the ICANN Board to not approve a recommendation by the SCWG that had been supported by a supermajority of the ccNSO and GNSO Councils will need to follow the same supermajority thresholds and consultation procedures as ICANN Board rejection (by a supermajority vote) of a PDP recommendation that is supported by a supermajority of the GNSO.

The entity prevailing in the RFP will carry out the role currently performed by PTI for the IANA naming functions. ICANN will remain the contracting party for the performance of the IANA naming functions and would enter into a contract, including a statement of work, with this entity. If PTI were selected to continue performance of the IANA Functions, it would remain an affiliate of ICANN (unless a structural change was a condition of the bid proposal or of the selection). Otherwise, the new entity would be a subcontractor for the performance of the IANA Functions. It should be noted that this does not address the way that non-naming IANA functions would be provided; depending on the arrangements with other communities, it is possible that those functions would move in concert with the naming functions; it is equally possible that they would not.

#### 1400 **CCWG Accountability Dependencies**

- 1401 Enumeration of the relevant accountability mechanisms that could or must be exhausted before a separation process could be triggered:
- Creation of an ICANN fundamental bylaw to describe the IANA Function Review (IFR) and establish the above voting thresholds for triggering a Special IFR and approving the outcomes of an IFR.
  - Creation of an ICANN fundamental bylaw to describe the procedure for creating the SCWG and its functions and establish the voting thresholds for approval of a new operator for the performance of the IANA Functions or other end-result of the SCWG process.
  - Approval by a community mechanism derived from the CCWG-Accountability process to approve the final selection of the SCWG (if this tenet of the CCWG-Accountability proposal is not implemented a new approval mechanism will have to be put in place.
    - Per the above separation process the selection of the entity that would perform the IANA naming functions following a separation process will require community approval through the established mechanism derived from the CCWG-Accountability process.

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<sup>115</sup> This community mechanism could include ICANN membership, if ICANN were to become a membership organization per the CCWG-Accountability work efforts.

## **P1. Annex M: Framework for Transition to Successor IANA Functions Operator**

### 1402 **Framework principles**

- The integrity, stability, and availability of the IANA Functions must be the core concern during any transition of the IANA Functions.
- Both the incumbent and any possible future IANA Functions Operator will be required to fully engage in the transition plan.
- All involved parties will be required to provide appropriate transition staff and expertise to facilitate a stable transition of the IANA operations.

### 1403 **Framework recommendations**

- 1) The transition framework outlined in this document must be further developed into a detailed, fully functional, transition plan within 18 months of the date of implementation of the overall IANA Stewardship Transition.
- 2) The budget for IANA operations should be augmented with specific funding for the detailed transition plan development referred to in 1 (see above).
- 3) The process established for the potential transitioning of the IANA Functions to an operator other than the incumbent operator should specifically recognize that the detailed transition plan referred to in 1 (see above) must be in place before the commencement of the transitioning process.
- 4) Once developed, the full Transition to Successor IANA Functions Operator Plan should be reviewed every year to ensure that it remains up to date and every five years to ensure that it remains fit for purpose.

### 1404 **Dependencies**

1405 Some elements of this framework may have to be adapted further depending on the CWG-Stewardship names model selected and the final transition proposal from the ICG to NTIA.

1406 Additionally, part of the final proposal development work will need to identify those elements/clauses of the CWG-Stewardship's proposal that are relevant to the transition framework (using the NTIA-ICANN Functions Contract clauses table in C.7.3 for guidance).

1407 Note on terminology: While the current plan is based on a contractual relationship between the NTIA and ICANN, the CWG-Stewardship has elected to refer to the "operator" of the IANA Functions rather than "contractor" for the purposes of this

annex. So ICANN as the current operator is referred to as the Incumbent IANA Functions Operator (IIFO) and the successor operator is referred to as the Successor IANA Functions Operator (SIFO) in this Annex M.

1408 **(Revised) plan: framework for transition to Successor IANA Operator**

1409 This framework plan outlines key actions that will allow the incumbent IANA Functions Operator (IIFO) to ensure an orderly transition of the IANA Functions to a successor IANA Functions Operator (SIFO) while maintaining continuity and security of operations.

1410 **Document structure**

1411 This document identifies those functions, systems, processes and documents that might need to be transitioned by the incumbent IANA Functions Operator, including actions that would be required to allow a successor operator to perform the IANA Functions.

1412 Additional documents of importance to a transition include:<sup>116</sup>

- Current KSK Operator Function Termination Plan.
- Current CCOP (DIDP was not able to be released as requested through the DIDP process due to security and stability related concerns).
- Current ICANN Plan for Transition to Successor Contractor.

1413 **Transition actions**

- 1) **IANA website:** The Incumbent IANA Functions Operator will transfer the content of the IANA website and provide copies of, or links to, the publicly available text for all processes, performance standards, request templates, and other pages used to support operations or provide context to reporting. Intellectual property rights related to the IANA website and published documents will need to be assigned or licensed to the successor operator.
- 2) **IANA Functions registry data:** Data held by IANA Functions Operator will also need to transition, and some of that data will affect other communities; details of the data that is being transitioned will be determined when the full transition plan is produced.
- 3) **Root Zone automation system:** The Incumbent IANA Functions Operator will transfer relevant information and management software, as appropriate and as determined by the transition plan.
- 4) **Request history data:** The Incumbent IANA Functions Operator will provide a

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<sup>116</sup> All documents are available on the CWG-Stewardship Wiki here:  
<https://community.icann.org/display/gnsocwgdtdstwrshp/DT-L+Transition+Plan>.

copy of the databases it has used to store requests data, including ticketing systems and workflow management systems used for protocol parameter registries and the maintenance of the DNS Root Zone. The Incumbent IANA Functions Operator will also provide copies of any published reports and paper records it holds supporting these request histories.

- 5) **Documentation and knowledge:** The Incumbent IANA Functions Operator will provide a copy of all documentation that captures formalized processes, institutional knowledge and experience related to the operation of the IANA Functions. The IIFO is also encouraged to provide documentation related to Monthly Performance Progress reports, Customer Satisfaction Surveys, External Auditor reports, Conflicts of Interest processes established by the IIFO, and the IIFO's Contingency and Continuity of Operations Plan.
- 6) **Secure notification system data** The Incumbent IANA Functions Operator will provide details of the notification categories, the subscribers to those categories and a history of notifications.
- 7) **Root KSK transition** In 2010, ICANN developed a Root Zone KSK Operator Function Termination Plan that sets out the steps ICANN will take if required to transition its duties and responsibilities as the Root Zone Key Signing Key (KSK) operator to another entity. This plan was provided to NTIA in 2010.<sup>117</sup> That plan requires that a full KSK rollover be done so the successor starts fresh.<sup>118</sup>
- 8) **Transition assistance:** The Incumbent IANA Functions Operator will assist the successor IANA Functions Operator during the transition period until the time the requisite service levels, security and stability are achieved. Such assistance would include training the employees of the successor IANA Functions Operator and developing training material.
- 9) **Security for data retention:** The Incumbent IANA Functions Operator will continue to provide security for any data retained by it after transferring such data to the successor IANA Functions Operator.

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<sup>117</sup> [KSK Termination Plan \(June 2010\)](#)

<sup>118</sup> Given that there has up to now never been such a KSK roll-over and given the desire to maintain stability of security of the root zone a somewhat lighter procedure can be followed (TBD). The important part is the transfer of administration of the HSMs, related infrastructure and the operation of the key ceremonies. This is not unlike the process that took place in April 2015 when the Hardware Security Modules (HSM) were replaced - see: <https://www.icann.org/news/announcement-3-2015-03-23-en>

## **P1. Annex O: ccTLD Appeals Mechanism Background and Supporting Findings**

- 1414 While the CWG-Stewardship's 1 December, 2014 draft proposal contained an appeal mechanism that would have applied to ccTLD delegation and redelegations, some question arose as to the level of support within the ccTLD community on aspects of this proposal (see below). Design Team B was formed to assess whether there might be sufficient consensus within the ccTLD community on such an appeal mechanism. DT-B decided to undertake a survey of the ccTLD community to assess this (see the survey and the results summarized below).
- 1415 After informing the ccTLD community about the upcoming survey, it was sent to the 'ccTLD World' list, the most comprehensive list of the managers of the 248 ccTLDs on March 23, 2015 with responses accepted to 3 April 2015. Overall, responses on behalf of just 28 managers were received (see below). Such a low level of response was judged to be an insufficient basis to provide a mandate for the inclusion of an appeal mechanism in the CWG-Stewardship's proposal. While acknowledging the limitations of drawing any conclusions from a survey with such a low response rate, it is nevertheless worthwhile pointing out that these limited responses tended to reinforce the overall recommendation.
- 1416 While 93% of respondents (Q.1) believe there is a need for an appeal mechanism, only 58% (Q.2) believe that it should be developed and introduced now as part of the IANA Stewardship Transition and 73% (Q.3) agreed that it should be developed and introduced after the IANA Stewardship Transition has taken place. Questions designed to probe the level of consensus on the parameters of such an appeal mechanism (see Q.5 – Q.9) elicited no consensus suggesting that it would take considerable time for the ccTLD community to come to a consensus view on the details of an appeal mechanism. Some 71% of respondents (Q.3) indicated that they would not wish to see the design of such a mechanism delay the finalization of the IANA Stewardship Transition.
- 1417 **Survey of ccTLD Managers on Need for Appeal Mechanism for ccTLD Delegations and Redelegations**
- 1418 On 1 December 2014, the Cross Community Working Group on NTIA Stewardship Transition issued a [draft proposal](#) which contained a proposal for an "independent appeals panel":
- 1419 "Independent Appeals Panel (IAP) - The CWG-Stewardship recommends that all IANA actions which affect the Root Zone or Root Zone WHOIS database be subject to an independent and binding appeals panel. The Appeals Mechanism should also cover any policy implementation actions that affect the execution of changes to the Root Zone File or Root Zone WHOIS and how relevant policies are applied. This need not be a permanent body, but rather could be handled the same way as commercial disputes are often resolved, through the use of a binding arbitration



process using an independent arbitration organization (e.g., ICDR, ICC, AAA) or a standing list of qualified people under rules promulgated by such an organization.”

1420 There exists in the ccTLD community an apparent lack of consensus on the question of the introduction of an ‘appeals mechanism’ in respect of ccTLD delegations and redelegations. At ICANN 51 in Los Angeles an overwhelming majority of ccTLD representatives at the 15 October 2014 ccNSO meeting indicated their wish for an ‘appeal mechanism’ as part of the IANA transition, though what was meant by ‘an appeal mechanism’ was not defined. In a survey of all ccTLD managers undertaken in November 2014, 94% of respondents agreed that ‘if the IANA operator does not perform well or abuses its position, the affected ccTLD should have the opportunity to (have access to) an independent and binding appeal process’. The expression of need resulted in the appeal mechanism proposal that the CWG-Stewardship released on 1 December 2014. The proposal indicates that such a mechanism could be used in disputes over the consistency of ccTLD delegation or redelegation decisions.

1421 A survey was undertaken in January of this year of CWG-Stewardship members and participants (this includes representation from many communities, not just ccTLD managers) on many aspects of the CWG-Stewardship’s 1 December proposal. It found that 97% of respondents agreed that, “*ccTLD registry operators should have standing to appeal delegation and re-delegation decisions to which they are a party that they believe are contrary to applicable laws and/or applicable approved ccTLD policy*”. However when questions were posed about potential specific parameters of such an appeal mechanism support for it was reduced. For example, only 54% of respondents agreed that “*ccTLD registry operators should have standing to appeal delegation and redelegation decisions to which they are a party that they believe are contrary to applicable laws and/or applicable approved ccTLD policy, even if the operator is not a party involved in the delegation or redelegation*”. In addition, only 60% of respondents agreed that, “*Governments should have standing to appeal any ccTLD delegation or redelegation decisions that they believe are contrary to applicable laws*”.

1422 This information suggests that while there may be support for an appeal mechanism in general, consensus may be difficult to achieve on some of the important aspects of such a mechanism, including:

- Who would ‘have standing’ to appeal decisions,
- What aspects of decisions might be subject to an appeal,
- Whether the scope should be limited to determining whether the process followed was complete and fair,
- Whether the dispute resolution panel would have the authority to substitute its own view on a delegation, for example, direct that the incumbent manager be retained rather than a proposed new manager, or
- Be limited to requiring that the delegation process be repeated.

1423 As a consequence, this survey is intended to determine whether they might be sufficient consensus within the ccTLD community as a whole to seek a binding

appeal mechanism and if so, whether this should be sought as part of the IANA Stewardship Transition process.

1424 **Questions**

1425 Overall Need for an Appeal Mechanism

- 1) Do you as a ccTLD manager believe that there is a need for an appeal mechanism on ccTLD (re)delegation decisions?
- 2) If you answered 'yes' should such a mechanism be
  - a) Developed now and introduced as part of the IANA Stewardship Transition, or
  - b) Developed later, likely by the ccNSO, and introduced after the IANA transition has taken place.
- 3) If the design of this appeal mechanism were preventing the finalization of the IANA Stewardship Transition, would you agree to defer finalizing it so that the IANA process could be completed (this would likely entail the ccNSO proceeding with a separate process).

1426 Form of Appeal Mechanism and Composition of Panel

- 4) The CWG-Stewardship indicated it believes that an appeal need not be a permanent body, but rather could be handled the same way as commercial disputes are often resolved, through the use of a binding arbitration process, an independent arbitration organization, such as the ICC, ICDR or AAA, or a standing list of qualified panelists under established rules promulgated by such an organization. The CWG-Stewardship recommended that a three-person panel be used, with each party to a dispute choosing one of the three panelists, with these two panelists choosing the third panelist. Do you agree with this overall approach to establishing an appeal mechanism? Do you have another idea – please indicate.
- 5) Where there is a panel of individuals, should they be chosen:
  - a) From a list of recognized international experts regardless of country, or
  - b) From individuals the country that the ccTLD represents.
  - c) In another manner (please specify).

1427 Eligibility to Appeal a (re)delegation decision.

- 6) Who do you believe should be permitted to appeal a ccTLD (re)delegation decision?

- a) The governmental or territorial authority referred to in a. above?
  - b) The incumbent ccTLD manager?
  - c) Other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation?
- 7) Should any of the parties referenced above be excluded from the appeals process? If yes, please indicate.

Scope and Authority of the Appellant Organization

- 8) Should there be any limit on the scope of the appeal?
- a) Should the scope be limited to questions about whether procedures have been followed properly?
  - b) Should a panel have the authority to order that an existing delegation process be done again?
  - c) Should it have the authority to suspend a pending delegation?
  - d) Should it have authority to order to revoke and existing delegation?
  - e) Should it have the authority to order that another party be delegated the ccTLD?

1428 **Survey Results**

Question		Data			Percentage	
		Yes	No	Total	Yes	No
1. Do you as a ccTLD manager believe that there is a need for an appeal mechanism on ccTLD (re)delegation decisions?		26	2	28	93	7
2. If you answered 'yes' should such a mechanism be -						
a.	Developed now and introduced as part of the IANA Stewardship Transition	14	10	24	58	42
b.	Developed later and introduced after the IANA transition has taken place.	11	4	15	73	27
3. If the design of this appeal mechanism were preventing the finalization of the IANA Stewardship Transition, would you agree to defer finalizing it so that the IANA process could be completed (this would likely entail the ccNSO proceeding with a separate process).		20	8	28	71	29
4. The CWG-Stewardship indicated it believes that an appeal mechanism need not include a permanent body. It suggested that disputes could be handled the same way		13	8	21	62	38

<p>as many commercial disputes, through the use of a binding arbitration process, using an independent arbitration organization, such as the ICC, ICDR or AAA, or a standing list of qualified panelists under established rules promulgated by such an organization. The CWG-Stewardship recommended using this approach and that it use a three person panel, with each party to a dispute choosing one of the three panelists, with these two panelists choosing the third panelist. Do you agree with this overall approach to establishing an appeal mechanism?</p>						
<p><b>Do you have another idea – please indicate.</b></p> <p>The approach should not be designed now. However I do not see any reason to decide on how it will be set now An "as and when" appeal panel is good because it allows panelist rotation which is an important safeguard against (permanent) panelist that may be lobbied or influenced by parties to a delegation dispute. One can have more confidence in a decision taken by a jointly agreed panel which is only convened for a specific dispute. The only potential challenging area is the choice of a 3rd panelist by the 2 appointed panelists. It may be more plausible to leave the appointment of the 3rd panelist to an arbitration organisation instead of the individual panelists themselves. I think ALL panelist should be chosen independently from each other, from an approved list of panelists, similar to a jury selection process. Let the ccs develop their own mechanism I do not think a central appeals mechanism is workable for ccTLD del/redel appeals but would think that every ccTLD designs its own appeals mechanisms together with its own local internet community (including the relevant government(s)). The ccTLD community should be empowered enough to seek redress at an international independent court in case of unfair treatment by IANA functions Operator. Since national laws are respected in ccTLD policies processes and development, disputes involving Governments with the IANA Functions Operator requires a mechanism that would be acceptable to such sovereign nations. I will suggest Court of Arbitration for IANA functions at the International Court of Appeal at the Hague, similar to Court of Arbitration for Sports put in place by FIFA. The issues are either much more complicated (for example, contested re-delegations) than could be sensibly dealt with by an independent appeals group, or are much simpler in that they just look to see whether due process has been followed and documented. In the first case, I would oppose the creation of such a group. In the second, it would work, but would not necessarily need a complex solution as is proposed. 2. There will be issues for ccTLDs of an organisation in another jurisdiction having a say over the national ccTLD. This is not an acceptable position. ce qui importe, c'est surtout la base sur laquelle ce panel doit se prononcer. Concernant les CCTLD, le cadre légal et réglementaire national doit être la base de la décision prise sur un recours, en même temps que le respect des procédures techniques de délégation - redélégation</p>						
<p>5. Where the appeal mechanism uses a panel of individuals, should they be chosen:</p>						
a.	From a list of recognized international experts regardless of country	11	13	24	46	54
b.	From individuals the country that the ccTLD represents.	11	10	21	52	48

Part 1: Response from the Domain Names Community

c.	In another manner (please specify)	(no responses)				
6. Who do you believe should be permitted to launch an appeal a ccTLD (re)delegation decision?						
a.	The governmental or territorial authority associated with the ccTLD?	23	3	26	88	12
b.	The incumbent ccTLD manager?	24	0	24	100	0
c.	Other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation?	5	16	21	24	76
7. Should any of the parties referenced above be excluded from the appeals process? If yes, please indicate.						
	<p>The FOI recommends only that the incumbent manager should have the right to appeal a non-consented revocation decision.</p> <p>As already mentioned, my understanding was that the goal of the survey was to learn if the appeal mechanism is needed in general; than decide if it is mandatory at this stage of project to enable its completion within planned time frame. So my preliminary answer to all the questions here was YES, however as already pointed out the detail design of the mechanism may be agreed and completed later on.</p> <p>"Other individuals, organisations...." should be excluded because their interest will be very hard to define &amp; quantify. For example, if the ccTLD in dispute accredits foreign registrars, then foreign registrars have interest in the ccTLD operation even though they may not be from the concerned ccTLD country. Rather, let us keep the appeal process to the concerned government &amp; to the incumbent ccTLD manager.</p> <p>No, but there should be clear guidelines on what issues can trigger a valid appeal to prevent appeals tying up the process of running a ccTLD and wasting time and money. Let the ccs develop their own process...who can appeal and the scope will depend on the development of that</p> <p>anyone with a relevant interest (to be determined locally per ccTLD)</p> <p>There might be good reason for the third category, but it would be in limited cases where the role of these organisations was already defined.</p> <p>dans une décision de délégation -redélégation, on peut s'attendre à ce que l'autorité territoriale soit celle qui effectue la demande, et que le conflit se situe entre elle et le gestionnaire du CCTLD. Les autres parties, qui doivent être consultées (consensus de la communauté internet locale) ne devraient pas pouvoir interjeter appel d'une décision, sauf à rendre le processus extrêmement instable.</p>					
8. Should there be any limit on the scope of the appeal?		19	7	26	73	27
9. Should the scope be limited to questions about whether procedures have been followed properly		18	8	26	69	31
a.	Should a panel have the authority to order that an existing delegation process be done again?	17	8	25	69	31
b.	Should it have the authority to suspend a pending delegation?	14	6	20	70	30
c.	Should it have authority to order to revoke and existing delegation?	4	21	25	16	84
d.	Should it have the authority to order that another party be delegated the ccTLD?	2	22	24	8	92

## P1. Annex P: IANA Operations Cost Analysis

1429 **Preamble:**

1430 The cost estimate below corresponds to a "fully absorbed" IANA Functions operations cost for ICANN. It therefore reflects the benefit of leveraging economies of scale from ICANN's infrastructure and expertise of other functions. The fully absorbed IANA Functions operations cost within another entity would be different, as would be a "standalone" cost estimate as the cost of a fully operational and mature IT infrastructure would be higher, economies of scale would not exist, and additional costs of operating a separate organization would be created (relative for example to governance, communication, reporting...).

1431 The below analysis includes a placeholder estimate for the annual depreciation of assets, but does not include any capital costs, or representation of the value of the capital assets that are currently supporting the IANA Functions as operated by ICANN.

US Dollars in millions	Using the FY15 Budget basis	Description
[A]  Direct Costs (IANA department)	\$2.4	These costs cover direct and dedicated personnel (12 employees) and associated costs assigned to delivering the  IANA functions: registration and maintenance of protocol parameter registries; allocation of Internet numbers and the maintenance of the Internet number registries; validation and processing of root zone change requests as well as maintenance of the root zone registry; management of the .int and .arpa domains; and holder of the root zone key signing key for the security of the DNS root zone.

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<p>[B] Direct Costs (Shared resources)</p>	<p>\$1.9</p>	<p>Within ICANN departments other than the IANA department perform or participate in processes directly related to the delivery of the IANA functions.</p> <p>The costs of the activities carried out by other departments to perform the IANA Functions were evaluated by each department's budget owners by identifying the direct external costs (professional services, infrastructure,...), and estimating the time spent by personnel from the department on the identified activities valued at the annual cost of each employee (base+benefits).</p> <p>The full description of the activities that are carried out by those departments are summarized below:</p> <ul style="list-style-type: none"> <li>- Request processing - IT</li> <li>- Root Key Signing - IT, Registry technical Services, SSR, CSE</li> </ul>
<p>[C] Support functions allocation</p>	<p>\$2.0</p>	<p>Support functions which organize the ability for operational activities to be carried out.</p> <p>The total costs of these functions [D], after excluding the shared from those functions included in [B], were divided by the total costs of operational functions [E], to determine a percentage of support functions (([D]+[E]= total costs of ICANN Operations).</p> <p>This percentage was then applied to the total costs of IANA (both IANA department direct costs and shared resources direct costs as defined above), to determine a cost of support function allocated to IANA. This cost [C] is additive to [A] and [B].</p> <p>List of functions included:</p> <ul style="list-style-type: none"> <li>- Executive</li> <li>- Communications</li> <li>- Operations (HR, Finance, Procurement, ERM, PMO/BI, HR development, Operations Executive, Administrative / Real Estate)</li> <li>- IT (cyber-security, admin, infrastructure, PMO, Staff facing solutions)</li> <li>- Governance support (Legal, Board support, NomCom)</li> </ul>
<p><b>Total Functional costs of IANA Functions operations</b></p>	<p><b>\$6.3</b></p>	

1432 [B] Direct costs (shared resources), associated with operations of the IANA Functions and dependencies on other ICANN departments:

**21) Request processing**

- a) RT trouble ticketing system supported and provided by IT

- b)** RZMS software development, support and maintenance by IT
- c)** Email system provided and supported by IT
- d)** Online connectivity provided and supported by IT
- e)** OFAC checks supported by Legal
- f)** Board resolutions reviewed by Legal/sometimes drafted by Legal.  
Delegation/Redelegation Reports reviewed by Legal on an as-needed basis
- g)** All hardware and infrastructure provided and supported by IT
- h)** Support from GSE to gather information for ccTLD requests

**22) Root Key Signing**

- a)** Roles in ceremonies by IT, Registry Technical Services, SSR, Strategy, GSE, and program department
- b)** Suite of Security documents reviewed and adopted by SSR and IT departments
- c)** Facility rent and connectivity to the Key Management Facility (KMF) provided by IT
- d)** DNSSEC SysTrust Audit requires work samples from IT, Legal, and SSR
- e)** Third Party Contract/RFP prepared by Procurement and reviewed by Legal

**23) IANA Website**

- a)** Hardware provided, administered, and supported by IT
- b)** Contract compliance requirements reviewed by Legal
- c)** Web-admin support to post reports and documents on ICANN website

**24) Security to protect data and systems**

- a)** Security plan reviewed and accepted by IT and SSR
- b)** Reviewed by Legal prior to submission to NTIA

**25) Continuity and Contingency of service**

- a)** Dependent on IT and Finance
- b)** Plan reviewed by IT, SSR, HR, Legal, and Finance prior adoption

**26) Conflict of Interest compliance**



- a) Annual report prepared by HR and Legal
- 27) Monthly reporting of performance**
- a) Posted on hardware maintained and administered by IT
  - b) Contract compliance requirements reviewed by Legal
- 28) Customer Service Survey**
- a) RFP prepared by Procurement
  - b) Final report from 3rd party reviewed by Legal prior to posting
- 29) Administrative support**
- a) Share Administrative Assistant with Contractual Compliance – 50% dedicated to supporting IANA department
- 30) Annual updates to Agreements**
- a) Legal review of annual Supplemental Agreement to the IETF MOU

## P1. Annex Q: IANA Budget

- 1433 The costs of providing the IANA services by ICANN under its agreement with the NTIA are currently not sufficiently separated from other ICANN expenses in the ICANN operating plans and budgets to determine reasonable estimates of projected costs after the IANA stewardship is transferred away from NTIA. The need for clearer itemization and identification of IANA Functions operations costs is consistent with current expectations of the interested and affected parties of the IANA Functions, and the broader community as expressed in ATRT1 and ATRT2, to separate policy development and IANA Functions operations. As a result, the CWG-Stewardship has provided recommendations with regard to the information and level of detail it expects to receive from ICANN in relation to the IANA budget in the future (see Section III.A, paragraph 161).
- 1434 In addition, the CWG-Stewardship recommends three areas of future work that can be addressed once the CWG-Stewardship proposal is finalized for SO/AC approval and again after the ICG has approved a proposal for IANA Stewardship Transition:
- 1) Identification of any existing IANA naming services related cost elements that may not be needed after the IANA Stewardship Transition, if any.
  - 2) Projection of any new cost elements that may be incurred as a result of the IANA Stewardship Transition and in order to provide the ongoing services after the transition.
  - 3) A review of the projected IANA Stewardship Transition costs in the FY16 budget to ensure that there are adequate funds to address significant cost increases if needed to implement the transition plan without unduly impacting other areas of the budget.

### **CCWG Accountability Dependencies**

Enumeration of the relevant accountability mechanisms relating to the IANA Budget:

- The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The CWG-Stewardship recommends that the IFO's comprehensive costs should be transparent and ICANN's operating plans and budget should include itemization of all IANA operations costs to the project level and below as needed. An itemization of IANA costs would include "Direct Costs for the IANA department", "Direct Costs for shared resources" and "Support functions allocation". Furthermore, these costs should be itemized into more specific costs related to each specific function to the project level and below as needed. PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis. PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship

that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget. The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.

## P1. Annex R: Evaluation Method for Implications

1435 For the purposes of this document “workability” will be defined as per the following methodology:

- Criteria to be evaluated:
  - Complexity of the new method.
  - Implementation requirements for the new method.
  - Impact on the IFO for working with the new method.
  - Impact on the IFO customers resulting from using the new method.
  - Potential impact on the security, stability and resiliency of the DNS.
- Classification of evaluation of criteria:
  - 0 - signifies significant requirements or negative impact.
  - 1 - signifies moderate requirements or negative impact.
  - 2 - signifies minor requirements or impact.
  - 3 - signifies no requirements or impact.

1436 Scoring method: Add the score of all the criteria to generate a workability evaluation. The best possible score is 15 = 100% which would be judged very workable. The worst score possible would be 0 = 0% and should be considered completely unworkable. Beyond the total score other factors may influence the final workability assessment, such as considering changes which are evaluated as having a significant negative impact on the security, stability, and resiliency of the DNS, as being automatically unworkable. Overall unless there are special factors being considered, a score of 50% or above would be considered workable.

Summary of evaluations:

Element Being Analysed	Score	Evaluation
PTI as an affiliate of ICANN	score = 8/15 = 53%	workable
Contract between ICANN and PTI	score = 12/15 = 80%,	workable
IFR	score = 9/15 = 60%	workable
CSC	score = 11/15 = 73%	workable
Customer complaint and escalation procedures	score = 11/15 = 73%	workable
Approving changes to the Root Zone environment	score = 8/15 = 53%	workable
Replacing NTIA as the Root Zone Management Process administrator	score = 13/15 = 87%	workable

1437 **Detailed Evaluation**

● **PTI as an affiliate of ICANN (total score = 8/15 = 53%, workable)**

- What is changing: IANA is currently internal to ICANN. Creating a separate legal entity for the IANA functions will obviously require changes to the procedures as to how the IFO relates to ICANN.
- Complexity of the new method:
  - 1 – IANA is currently operating as a division of the Global Domains Division; further separation into PTI is an important step but can be considered moderate in this case.
- Implementation requirements for the new method:
  - 0 – Establishing PTI involves significant implementation work.
- Impact on the IFO for working with the new method:
  - 1 – The actual impact on the IFO of transitioning to the PTI as an affiliate of ICANN should be moderate.
- Impact on the IFO customers resulting from using the new method:
  - 3 – This should be transparent for the IANA naming customers.
- Potential impact on the security, stability and resiliency of the DNS:
  - 3 – Given the current IFO systems, processes, procedures and personnel for these activities to be transferred to PTI, as an affiliate of ICANN, no additional risks are foreseen for the security, stability, or resiliency of the Internet.
- Total score = 8/15 = 53%, workable.

● **Contract between ICANN and PTI (total score = 12/15 = 80%, very workable)**

- What is changing: Currently the contract is between ICANN and the NTIA. The new contract will be between ICANN and PTI. This will require new processes and procedures.
- Complexity of the new method:
  - 2 – IANA currently works under the NTIA IANA Functions Contract and the PTI-ICANN Contract should mirror this contract in most aspects. As such the impact should be considered minor.
- Implementation requirements for the new method:
  - 2 – The new contract will have to be adjusted to reflect the withdrawal of NTIA and the addition of PTI but this should be considered minor.
- Impact on the IFO for working with the new method:
  - 2 – Given IANA currently reports and ICANN and is subject to the NTIA IANA Functions Contract it is estimated that the ICANN-PTI Contract will only have a minor impact on the IFO.

- Impact on the IFO customers resulting from using the new method:
  - 3 – This should be transparent for the IANA naming customers.
- Potential impact on the security, stability and resiliency of the DNS:
  - 3 – None compared to the current NTIA IANA Functions Contract.
- Total score = 12/15 = 80%, very workable.

● **IFR (total score = 9/15 = 60%, workable)**

- What is changing: Currently the NTIA is responsible for the evaluation of IANA services and the decision to extend the current contract or undertake an RFP. The IFR is the proposed mechanism to replace the more complex oversight elements.
- Complexity of the new method:
  - 0 – Given this requires the creation of a non-standing committee for each review and detailed processes around these reviews, this will be complex.
- Implementation requirements for the new method:
  - 1 – Adding the IFR and its powers to the ICANN Bylaws will be a significant undertaking.
- Impact on the IFO for working with the new method:
  - 3 – Given the last NTIA Process, which led to the IANA Functions Contract this should not represent any additional impact to the IFO.
- Impact on the IFO customers resulting from using the new method:
  - 3 – This should be transparent for the IANA naming customers.
- Potential impact on the security, stability and resiliency of the DNS:
  - 2 – Given the IFR can recommend a change in IFO provider (subject to further approvals) this could have some impact on the security, stability and resiliency of the DNS, if a transition is ultimately required.
- Total score = 9/15 = 60%, workable.

● **CSC (total score = 11/15 = 73%, workable)**

- What is changing: Currently IANA is responsible for ongoing monitoring of IANA performance of its functions. The CSC is the proposed mechanism to replace this function.
- Complexity of the new method:
  - 1 – Given this requires the creation of a new ICANN standing committee with a new charter this is considered moderately complex.
- Implementation requirements for the new method:

- 1 – Adding the CSC and its powers to the ICANN Bylaws will be a significant undertaking.
  - Impact on the IFO for working with the new method:
    - 3 – Given IANA currently works with the NTIA for performance tracking and that the CSC role is limited to this. It should have no additional impact on the IFO.
  - Impact on the IFO customers resulting from using the new method:
    - 3 – This should be transparent for the IANA naming customers while providing new mechanisms for resolving customer issues.
  - Potential impact on the security, stability and resiliency of the DNS:
    - 3 – None foreseeable.
  - Total score = 11/15 = 73%, workable.
- Customer complaint and escalation procedures (total score = 11/15 = 73%, workable)**
  - What is changing: The NTIA had its internal procedures for addressing lack of performance and complaints by IANA customers. These customer complaint and escalation procedures seek to replace these.
  - Complexity of the new method:
    - 1 – More complex than current methods.
  - Implementation requirements for the new method:
    - 2 – Most of the implementation should have been covered in the IFR and CSC.
  - Impact on the IFO for working with the new method:
    - 2 – Some changes required – limited impact.
  - Impact on the IFO customers resulting from using the new method
    - 3 – There should be no negative impact on the IFO customers as complaint and escalation procedures are either similar or improved.
  - Potential impact on the security, stability and resiliency of the DNS:
    - 3 – None foreseeable.
  - Total score = 11/15 = 73%, workable.
- Approving changes to the Root Zone environment (total score = 8/15 = 53%, workable)**
  - What is changing: NTIA was responsible for approving all changes to the Root Zone environment. This section proposes a replacement for this process.
  - Complexity of the new method:

- 0 – Significantly more complex than current NTIA-only approval.
  - Implementation requirements for the new method:
    - 1 – This should include procedure for creating review teams, draft terms of reference for review teams and process for obtaining ICANN Board approval for changes.
  - Impact on the IFO for working with the new method:
    - 3 – Not different than the current process for IFO.
  - Impact on the IFO customers resulting from using the new method:
    - 3 – There should be no negative impact on the IFO customers – possibly more transparency about the process.
  - Potential impact on the security, stability and resiliency of the DNS:
    - 1 – Changes to the Root Zone environment have a potential to threaten the security, stability and resiliency of the DNS. Although one expects the same participants would be involved as would be under the current process and the safeguards should be the same or better, any change to the Root Zone environment should be evaluated as moderate.
  - Total score = 8/15 = 53%, workable.
- Replacing NTIA as the Root Zone Management Process administrator (total score = 13/15 = 87%, very workable)**
  - What is changing: NTIA currently approves all changes to the Root Zone or its WHOIS database. This will no longer be required.
  - Complexity of the new method:
    - 3 – Removing the requirement for a third party approval of all changes to the Root Zone removes a layer of complexity.
  - Implementation requirements for the new method:
    - 2 – Minor coding and process documentation changes.
  - Impact on the IFO for working with the new method:
    - 3 – Lowering the complexity produces a positive impact on the IFO.
  - Impact on the IFO customers resulting from using the new method:
    - 3 – From a process point of view this will be transparent to clients with the possible exception of some performance increases.
  - Potential impact on the security, stability and resiliency of the DNS:
    - 2 – Although basically considered a formality the NTIA authorization could be considered as providing a minor added value to the security, stability and resiliency of the Internet.
  - Total score = 13/15 = 87%, very workable.



## P1. Annex S: Draft Proposed Term Sheet (as proposed by Legal Counsel)

*What follows below is an initial draft proposed term sheet that could be the precursor to the ICANN-PTI Contract. This is based on a legal memorandum prepared by legal counsel to the CWG-Stewardship on May 18, 2015. To the extent this term sheet is inconsistent with the current proposal, the current proposal governs. The term sheet will be subject of negotiation between PTI and ICANN (with PTI having independent legal advice).*

### PROPOSED KEY TERMS FOR ICANN-PTI CONTRACT

- All terms are subject to further review and discussion
- Terms in [square brackets] are placeholders only
- Terms connected by “or” are alternatives
- TBD means To Be Determined

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
<b>PARTIES</b>	<ul style="list-style-type: none"> <li>• The Parties to the ICANN-PTI Contract are:                             <ul style="list-style-type: none"> <li>○ ICANN</li> <li>○ PTI (IANA Functions Operator for naming functions)</li> </ul> </li> </ul>		III.A
<b>DURATION</b>		F	
Initial Term	<ul style="list-style-type: none"> <li>• The period of performance of the ICANN-PTI Contract shall commence on [October 1, 2015] (the “Commencement Date”) and shall end on the [fifth (5<sup>th</sup>)] anniversary of the Commencement Date.</li> </ul>	F.1, I.70	
Renewal Terms	<ul style="list-style-type: none"> <li>• The ICANN-PTI Contract will provide for automatic renewal, unless ICANN elects not to renew the ICANN-PTI Contract upon recommendation by an IANA Function Review Team (IFRT), with support of the ICANN Board.</li> <li>• Any ICANN election of non-renewal shall be provided with not less than [[__] months] prior written notice, and PTI shall provide full support and cooperation to ICANN, and to any successor entity to PTI, in order to effect an orderly, stable, secure and efficient transition of this Contract and</li> </ul>	I.59, I.70	III.A.

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>services and obligations provided by PTI hereunder. See also the Continuity of Operations provisions below.</p> <ul style="list-style-type: none"> <li>• If the ICANN-PTI Contract automatically renews, the extended contract shall include this automatic renewal clause.</li> <li>• The renewal period shall commence immediately following the end of the initial term and shall end on the [fifth (5th)] anniversary of the commencement of the renewal term [TBD]</li> </ul>		
<b>IANA Function Review</b>	<ul style="list-style-type: none"> <li>• The IANA Function Review (IFR) of PTI's performance will be conducted by the IFRT in accordance with the processes set forth in ICANN's governance documents.</li> <li>• PTI shall submit to the procedures and scope of the IFR. PTI agrees to make any necessary changes, including amendment to the ICANN-PTI Contract, as adopted and implemented by ICANN and approved by the Members of ICANN following an IFR.</li> <li>• An initial IFR shall take place two years following the transition of the IANA functions to PTI.</li> <li>• Subsequent IFRs shall occur at no more than five-year intervals.</li> <li>• A Special IFR may also be initiated by the ccNSO and GNSO Councils, following the exhaustion of the identified escalation mechanisms.</li> </ul>		III.A./Annex F
<b>Performance Monitoring</b>	<ul style="list-style-type: none"> <li>• The CSC will be established to monitor PTI performance of the IANA naming function according to the ICANN-PTI Contract and Service Level Expectations (SLEs).</li> <li>• PTI shall act in good-faith to resolve all issues identified by CSC directly and to submit to the escalation mechanics set forth in the ICANN-PTI Contract and ICANN governance documents.</li> <li>• The CSC shall be empowered to escalate identified areas of concern as set forth in</li> </ul>		III.A./Annex G

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>“Escalation Mechanisms” below.</p>		
<p><b>ESCALATION MECHANISMS (IANA Customer Service Complaint Resolution Process)</b></p>	<ul style="list-style-type: none"> <li>• Phase 1: If anyone experiences an issue with PTI’s delivery of IANA naming functions, the complainant can send an email to PTI, which will escalate the complaint internally as required. This process is open to anyone, including individuals, registries, ccTLD regional organizations and ICANN SO/ACs.</li> <li>• Phase 2: If the issue identified in Phase 1 is not addressed by PTI to the reasonable satisfaction of the complainant, then complainants that are direct customers only may request mediation. ICANN and CSC will be notified of the issue and CSC will conduct a review to determine whether the issue is part of a persistent performance issue or an indication of a systemic problem. If so, the CSC may seek remediation through the Problem Resolution Process described below. This process is only open to direct customers. Non-direct customers, including TLD organizations, who have issues unresolved in Phase 1, may escalate the issues to the ombudsman or the applicable liaisons to the CSC.</li> <li>• The complainant may also initiate an Independent Review Process if the issue is not addressed in the steps above.</li> </ul>		<p>III.A./ Annex I</p>
<p><b>ESCALATION MECHANISMS (IANA Problem Resolution Process)</b></p>	<p>The CSC may seek resolution with PTI performance issues in accordance with the Remedial Action Plan which includes:</p> <ul style="list-style-type: none"> <li>• CSC reports persistent issues to PTI and requests remedial action in [TBD] days.</li> <li>• CSC confirms completion of the remedial action by PTI.</li> <li>• If CSC determines that the remedial action has been exhausted and has not led to necessary improvements, the CSC is authorized to escalate to the ccNSO and/or the GNSO, who might then decide to take further action using</li> </ul>		<p>III.A./ Annex J</p>

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	agreed consultation and escalation processes to be finalized post-transition.		
<b>ESCALATION MECHANISMS (Root Zone Emergency Process)</b>	[Retain provisions from current ICANN-NTIA Contract.]		III.A/ Annex K
<b>ESCALATION MECHANISMS (Separation Review)</b>	<ul style="list-style-type: none"> <li>• A separation review can be triggered by IFRT in accordance with provisions to be inserted in ICANN governance documents. PTI shall submit to and comply with the IFR mechanics, including the separation review mechanics, adopted and implemented by ICANN.</li> <li>• All recommendations resulting from the separation review must be approved by the ICANN board.</li> </ul>		III.A/ Annex L
<b>CONTINUITY OF OPERATIONS</b>	<ul style="list-style-type: none"> <li>• Retain provisions from current ICANN-NTIA Contract, except that ICANN will perform duties of the Contract Officer (CO) and Contract Officer Representative (COR). PTI agrees to be fully engaged in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable transition of the IANA functions on terms more fully developed in the ICANN-PTI Contract.</li> <li>• ICANN, in conjunction with CSC as necessary, shall review the transition plan every five years.</li> </ul>	C.7	III.A/ Annex M
<b>COST/PRICE</b>	<ul style="list-style-type: none"> <li>• Fees, if any, will be based on direct costs and resources incurred by PTI.</li> <li>• After one year of charging fees, PTI must collaborate with all Interested and Affected Parties to develop the fee structure and a method to track costs for each IANA function. PTI must submit copies of the above and a description of the collaboration efforts to ICANN.</li> <li>• “Interested and Affected Parties” means the multistakeholder, private sector led, bottom-up policy development model for the DNS that ICANN represents; [the IETF, the IAB, 5 RIRs;] ccTLD and gTLD operators; governments; and the Internet user</li> </ul>	B.2	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	community.		
<b>CONSTRUCTIVE WORKING RELATIONSHIPS</b>	PTI must maintain constructive working relationships with all Interested and Affected Parties to ensure quality and satisfactory performance.	C.1.3	
<b>PTI REQUIREMENTS</b>			
Subcontracting; [U.S. Presence Requirements]	<ul style="list-style-type: none"> <li>• No subcontracting.</li> <li>• PTI must be U.S. owned and operated, incorporated and organized under U.S. law.</li> <li>• Primary IANA functions must be performed in the U.S.</li> <li>• PTI must have a U.S. physical address.</li> </ul>	C.2.1	
Performance of IANA Functions	<ul style="list-style-type: none"> <li>• IANA functions must be performed in a stable and secure manner.</li> <li>• IANA functions are administrative and technical in nature based on established policies developed by the Interested and Affected Parties.</li> <li>• PTI must treat each IANA function with equal priority and process all requests promptly and efficiently.</li> </ul>	C.2.4	
Separation of Policy Development and Operational Roles	PTI staff members will not initiate, advance, or advocate any policy development related to the IANA functions. This section shall not be construed to prevent contributions by staff members by way either of background information or direct text contribution to any document, provided both that the PTI staff are not the only authors of the contribution and that the primary function of the staff member's contribution is in supplying relevant IANA experience and insight.	C.2.5	
Transparency and Accountability	PTI shall collaborate with all Interested and Affected Parties to develop and post user instructions including technical requirements for the IANA naming function.	C.2.6	Annex C
Performance; Service Levels	PTI shall collaborate with all Interested and Affected Parties to develop, maintain, enhance and post performance standards for each IANA function. ICANN and PTI shall develop service level agreements (SLAs) to be annexed to the Contract in accordance with the SLEs attached as	C.2.8	Annex C/ Annex H

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	Annex I hereto for the performance of these functions.		
Internet Assigned Numbers Authority (IANA) Naming Functions	IANA naming functions include: the administration of certain responsibilities associated with the Internet DNS root zone management; and other services related to the management of the ARPA and INT top-level domains (TLDs).	C.2.9	
IANA Functions	IANA functions include (1) the IANA Naming Functions, (2) the coordination of the assignment of technical Internet protocol parameters, and (3) the allocation of Internet numbering resources.		
Responsibility and Respect for Stakeholders	PTI shall collaborate with all Interested and Affected Parties to develop and post for each IANA function a process for documenting the source of policies and procedures and how each will be implemented.	C.2.7	
Perform Administrative Functions Associated With Root Zone Management	<ul style="list-style-type: none"> <li>• PTI will facilitate and coordinate the root zone of the DNS and maintain 24/7 operational coverage.</li> <li>• Process flow for root zone management involves two roles that are performed by two different entities: <ul style="list-style-type: none"> <li>○ PTI as the IANA Functions Operator</li> <li>○ VeriSign (or its successor) as the Root Zone Maintainer (RZM).</li> </ul> </li> <li>• PTI shall work collaboratively with the RZM.</li> <li>• Any amendment to the roles and responsibilities of PTI and the RZM with respect to root zone management will require approval of the ICANN Board [and the Members of ICANN or a Special IFR.]</li> </ul>	C.2.9.2	III.A./
Root Zone File Change Request Management	<ul style="list-style-type: none"> <li>• The RZM will receive and process from PTI root zone file change requests for TLDs, including addition of new or updates to existing TLD name servers (NS) and delegation signer (DS) resource record (RR) information along with associated 'glue' (A and AAAA RRs). A change request may also include new TLD entries to the root zone file. No authorization for TLD change requests will be needed.</li> <li>• RZM shall process root zone file changes</li> </ul>	C.2.9.2.a	III.A.

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	as expeditiously as possible.		
Root Zone “WHOIS” Change Request and Database Management	<ul style="list-style-type: none"> <li>• PTI will maintain, update, and make publicly accessible a Root Zone “WHOIS” database with current and verified contact information for all TLD registry operators, at a minimum:               <ul style="list-style-type: none"> <li>○ TLD name;</li> <li>○ the IP address of the primary nameserver and secondary nameserver for the TLD;</li> <li>○ the corresponding names of such nameservers;</li> <li>○ the creation date of the TLD;</li> <li>○ name, address, email, phone and fax numbers of the TLD registry operator;</li> <li>○ name, address, email, phone and fax numbers of the technical contact for the TLD registry operator;</li> <li>○ name, postal address, email address, phone and fax numbers of the administrative contact for the TLD registry operator;</li> <li>○ reports;</li> <li>○ date record last updated;</li> <li>○ any other information relevant to the TLD requested by the TLD registry operator.</li> </ul> </li> <li>• The RZM shall receive and process root zone “WHOIS” change requests for TLDs from PTI. No authorization for TLD change requests shall be required.</li> </ul>	C.2.9.2.b	III.A., paragraph 150
Delegation and Redefinition of a Country Code Top Level -Domain (ccTLD)	<ul style="list-style-type: none"> <li>• PTI shall apply existing policy frameworks in processing requests related to the delegation and redelegation of a ccTLD, such as RFC 1591, the GAC Principles (2005) and any further clarification of these policies by Interested and Affected Parties.</li> <li>• If a policy framework does not exist to cover a specific instance, PTI will consult</li> </ul>	C.2.9.2.c	III.A, paragraph 160/ Annex O

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>with the Interested and Affected Parties; relevant public authorities; and governments on any recommendation that is not within or consistent with an existing policy framework.</p> <ul style="list-style-type: none"> <li>• PTI shall also take into account the relevant national frameworks and applicable laws of the jurisdiction that the TLD registry serves.</li> <li>• PTI shall submit its recommendations to the [[CSC] or [RZM] or [Independent Evaluator]] via a Delegation and Redelegation Report.</li> </ul>		
<p>Delegation and Redelegation of a Generic Top Level Domain (gTLD)</p>	<ul style="list-style-type: none"> <li>• PTI shall verify that all requests related to the delegation and redelegation of gTLDs are consistent with the procedures developed by ICANN.</li> <li>• PTI shall submit its request to the RZM via a Delegation and Redelegation Report, with a copy to ICANN and the registry operator(s) involved.</li> </ul>	<p>C.2.9.2.d</p>	
<p>Root Zone Automation</p>	<ul style="list-style-type: none"> <li>• PTI shall work with ICANN, the CSC and the RZM, and collaborate with all Interested and Affected Parties, to deploy a fully automated root zone management system promptly, including, at a minimum: <ul style="list-style-type: none"> <li>○ a secure (encrypted) system for customer communications;</li> <li>○ an automated provisioning protocol allowing customers to manage their interactions with the root zone management system;</li> <li>○ an online database of change requests and subsequent actions whereby each customer can see a record of their historic requests and maintain visibility into the progress of their current requests;</li> <li>○ test system, which customers can use to meet the technical requirements for a change request;</li> <li>○ an internal interface for secure</li> </ul> </li> </ul>	<p>C.2.9.2.e</p>	



PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	communications between ICANN, PTI, and the RZM.		
Root DNSSEC Key Management	<ul style="list-style-type: none"> <li>• PTI shall be responsible for the management of the root zone Key Signing Key (KSK), including generation, publication, and use for signing the Root Keyset.</li> </ul>	C.2.9.2.f	
.INT TLD	<ul style="list-style-type: none"> <li>• PTI shall operate the .INT TLD within the current registration policies for the TLD.</li> <li>• If ICANN designates a successor registry, PTI will facilitate a smooth transition.</li> </ul>	C.2.9.4	
Inspection Of All Deliverables And Reports Before Publication	<ul style="list-style-type: none"> <li>• [ICANN] will perform final inspection and acceptance of all deliverables and reports, including those articulated as Contractor Requirements in the NTIA-ICANN Contract.</li> </ul>	C.2.11	
PTI To Provide Qualified Program Manager	<ul style="list-style-type: none"> <li>• PTI shall provide trained, knowledgeable technical personnel with excellent oral and written communication skills (i.e., the capability to converse fluently, communicate effectively, and write intelligibly in the English language).</li> <li>• PTI's IANA Functions Program Manager organizes, plans, directs, staffs, and coordinates the overall program effort; manages contract and subcontract activities as the authorized interface with ICANN, including CSC, and the IFRT and is responsible for the following: <ul style="list-style-type: none"> <li>○ Shall be responsible for the overall ICANN-PTI Contract performance and shall not serve in any other capacity under the ICANN-PTI Contract.</li> <li>○ Shall have demonstrated communications skills with all levels of management.</li> <li>○ Shall meet and confer with ICANN regarding the status of specific PTI activities and problems, issues, or conflicts requiring resolution.</li> <li>○ Shall be capable of negotiating and making binding decisions for PTI within his or her scope of delegated authority.</li> </ul> </li> </ul>	C.2.12.a	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<ul style="list-style-type: none"> <li>○ Shall have extensive experience and proven expertise in managing similar multi-task contracts of this type and complexity.</li> </ul>		
Key Personnel	<ul style="list-style-type: none"> <li>● In addition to the Qualified Program Manager, PTI shall assign to the ICANN-PTI Contract the following key personnel:                             <ul style="list-style-type: none"> <li>○ IANA Functions Program Manager</li> <li>○ IANA Function Liaison for Root Zone Management</li> </ul> </li> </ul>	C.2.12.b	
Changes to Key Personnel	<ul style="list-style-type: none"> <li>● PTI shall obtain PTI Board consent prior to making key personnel substitutions.</li> <li>● Replacements for key personnel must possess qualifications equal to or exceeding the qualifications of the personnel being replaced, unless an exception is approved.</li> <li>● Requests for changes in key personnel shall be submitted to the PTI Board at least 15 working days prior to making any permanent substitutions. The request should contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the PTI Board. The PTI Board will notify PTI within 10 working days after receipt of all required information of the decision on substitutions.</li> </ul>	H.8	
Budget Meetings; Funding	<p>ICANN will meet [annually] with the [President of PTI] to review and approve the budget for the IANA Naming Services for the next [three] years. ICANN shall fund PTI at agreed budget levels.</p>		
<b>TRANSPARENCY OF DECISION-MAKING</b>	<p>To enhance consistency, predictability and integrity in decision-making of IANA related decisions, PTI shall:</p> <ul style="list-style-type: none"> <li>● Continue the current practice of public reporting on naming related decisions.</li> <li>● Make public all recommendations by PTI on naming related decisions.</li> <li>● Agree not to redact any PTI Board minutes related to naming decisions.</li> </ul>		

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<ul style="list-style-type: none"> <li>• Have the President and PTI Board Chair sign an annual attestation that it has complied with the above provisions.</li> <li>• ICANN shall provide PTI a budget sufficient to allow it to hire independent legal counsel to provide advice on the interpretation of existing naming related policy.</li> <li>• These provisions regarding reporting and transparency, along with the availability of independent legal advice, are intended to discourage decisions that may not be fully supported by existing policy.</li> </ul>		
<b>SECURITY REQUIREMENTS</b>	Retain from current ICANN-NTIA Contract.	C.3	
<b>PERFORMANCE METRIC REQUIREMENTS</b>			
Program Reviews and Site Visits	<ul style="list-style-type: none"> <li>• Program Reviews shall be conducted monthly by CSC and ICANN.</li> <li>• Site Visits shall be conducted on-demand by the IFRT.</li> </ul>	C.4.1	Annex F
Monthly Performance Progress Report	<ul style="list-style-type: none"> <li>• PTI shall prepare and submit to the CSC and ICANN a performance progress report every month (no later than 15 calendar days following the end of each month) that contains statistical and narrative information on the performance of the IANA functions (i.e., assignment of technical protocol parameters; administrative functions associated with root zone management; and allocation of Internet numbering resources) during the previous calendar month.</li> <li>• The report shall include a narrative summary of the work performed for each of the functions with appropriate details and particularity. The report shall also describe major events, problems encountered, and any projected significant changes, if any, related to the performance of requirements set forth in C.2.9 to C.2.9.4 of the ICANN-NTIA Contract.</li> </ul>	C.4.2	Annex F
Root Zone	<ul style="list-style-type: none"> <li>• PTI shall work collaboratively with ICANN</li> </ul>	C.4.3	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
Management dashboard	and the RZM, and all Interested and Affected Parties, to maintain and enhance the dashboard to track the process flow for root zone management.		
Performance Standards Reports	<ul style="list-style-type: none"> <li>PTI shall publish reports for each discrete IANA function consistent with Section C.2.8 of the ICANN-NTIA Contract. The Performance Standards Metric Reports will be published via a website every month (no later than 15 calendar days following the end of each month).</li> </ul>	C.4.4	
Customer Service Survey	<ul style="list-style-type: none"> <li>PTI shall collaborate with the CSC and ICANN to maintain and enhance the annual customer service survey consistent with the performance standards for each of the discrete IANA functions. The survey shall include a feedback section for each discrete IANA function. No later than 30 days after conducting the survey, PTI shall submit the CSS Report to ICANN and publicly post the CSS Report.</li> </ul>	C.4.5	Annex F
Final Report	<ul style="list-style-type: none"> <li>PTI shall prepare and submit a final report on the performance of the IANA functions that documents standard operating procedures, including a description of the techniques, methods, software, and tools employed in the performance of the IANA functions. PTI shall submit the report to the CSC and ICANN no later than 30 days after expiration of the ICANN-PTI Contract.</li> </ul>	C.4.6	
Inspection and acceptance	<ul style="list-style-type: none"> <li>The CSC and ICANN will perform final inspection and acceptance of all deliverables and reports articulated in Section C.4 of the ICANN-NTIA Contract.</li> </ul>	C.4	
<b>AUDIT REQUIREMENTS / IANA FUNCTION REVIEW &amp; IFRT</b>	<ul style="list-style-type: none"> <li>Retain provisions from current ICANN-NTIA Contract, except that ICANN is the CO and COR.</li> <li>PTI shall submit to the procedures and scope of the IFR and CSC as set forth in ICANN governance documents.</li> <li>PTI agrees to make any necessary changes, including amendment to the ICANN-PTI Contract, as adopted and implemented by</li> </ul>	C.5	Annex F

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	ICANN following an IFR.		
<b>CONFLICT OF INTEREST REQUIREMENTS</b>	Retain provisions from current ICANN-NTIA.	C.6, H.9	
<b>PERFORMANCE EXCLUSIONS</b>			
PTI not authorized to make changes to Root Zone; link to VeriSign Cooperative Agreement	PTI not authorized to make modifications, additions, or deletions to the root zone file or associated information. (The ICANN-PTI Contract will not alter the root zone file responsibilities as set forth in Amendment 11 of the [Cooperative Agreement NCR-9218742 between the U.S. Department of Commerce and VeriSign, Inc. or any successor entity]). See Amendment 11 at <a href="http://ntia.doc.gov/files/ntia/publications/amend11_052206.pdf">http://ntia.doc.gov/files/ntia/publications/amend11_052206.pdf</a> .	C.8.1	
PTI not to change policies and procedures or methods	PTI not authorized to make material changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA functions. PTI shall not change the established methods associated with the performance of the IANA functions without prior approval of ICANN.	C.8.2	
Relationship to other contracts	The performance of the functions under the ICANN-PTI Contract, including the development of recommendations in connection with Section C.2.9.2 of the ICANN-NTIA Contract, shall not be, in any manner, predicated or conditioned on the existence or entry into any contract, agreement or negotiation between PTI and any party requesting such changes or any other third-party. Compliance with this Section must be consistent with C.2.9.2d of the ICANN-NTIA Contract.	C.8.3 (which cross-references C.2.9.2)	
Baseline Requirements for DNSSEC in the Authoritative Root Zone	DNSSEC at the authoritative Root Zone requires cooperation and collaboration between the root zone management partners and ICANN. The baseline requirements encompass the responsibilities and requirements for both PTI and the RZM, to be retained as set forth in Appendix 2 to the ICANN-NTIA Contract.	Appendix 2	
<b>INSPECTION AND ACCEPTANCE</b>	ICANN will perform representative final inspection and acceptance of all work performed, written communications regardless of form, reports, and other services and deliverables related to Section C prior to any publication/posting called for by the ICANN-PTI Contract. Any deficiencies shall be	E	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	corrected by PTI and resubmitted to ICANN within 10 workdays after notification.		
<b>INTELLECTUAL PROPERTY</b>			
Trademarks	[ICANN will grants PTI an exclusive, royalty-free, fully-paid, worldwide license to use the IANA trademark and all related trademarks in connection with PTI's activities under the ICANN-PTI Contract.]		
Patents, Inventions, Copyrights, Copyrightable Works and Trade Secrets	<p>ICANN shall own all intellectual property conceived, reduced to practice, created or otherwise developed by PTI under the Contract. PTI shall assign, and shall cause any employees or contractors to assign, all rights in any patentable subject matter, patent applications, copyrights, trade secrets and all other intellectual property created by the PTI during the course of PTI's duties under the ICANN-PTI Contract to ICANN. With respect to copyright, the ICANN-PTI Contract is a "work for hire" agreement and ICANN shall be deemed the author and shall own all copyrightable works created by PTI hereunder, and all copyright rights thereto. In the event this is not deemed a work for hire agreement, PTI shall assign ownership of the copyrightable works and copyrights to ICANN.</p> <p>ICANN shall license back any patents, patent applications, copyrights and trade secrets to PTI for the duration of the ICANN-PTI Contract solely to the extent necessary for PTI to perform its obligations under the ICANN-PTI Contract. This license shall be non-exclusive and royalty-free.</p>	H.2	
<b>CONFIDENTIALITY AND DATA PROTECTION</b>	The ICANN-PTI Contract will contain reasonable and customary provisions relating to confidentiality and data protection.	H.10	
<b>INDEMNIFICATION</b>	[ICANN shall indemnify, defend and hold harmless PTI from all claims arising from PTI's performance or failure to perform under the ICANN-PTI Contract.]	H.13	

## **P1. Annex T: ICANN Response to CWG-Stewardship Consultation**

See <https://community.icann.org/x/-Zk0Aw>.

## **Part 2. Response from the Internet Number Community**



# Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA from the Internet Number Community

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# Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA from the Internet Number Community

## P2. Abstract

- 2001 This document is a response from the Internet Number Community to the IANA Stewardship Transition Coordination Group (ICG) Request for Proposals made on September 8, 2014. This document was prepared by the CRISP Team, which was established by the Internet Number Community through the Regional Internet Registries specifically for the purpose of producing this document.
- 2002 Please note that an appendix, including uncommon acronyms and defined terms, is included at the end of this document.

## P2. Proposal type

- 2003 *Identify which category of the IANA functions this submission proposes to address:*

Names                       Numbers                       Protocol Parameters

### P2.I. The Community's Use of the IANA

- 2004 *This section should list the specific, distinct IANA services or activities your community relies on. For each IANA service or activity on which your community relies, please provide the following:*

*A description of the service or activity.*

*A description of the customer of the service or activity.*

*What registries are involved in providing the service or activity.*

*A description of any overlaps or interdependencies between your IANA requirements and the functions required by other customer communities*

- 2005 **P2.I.A. The service or activity**

- 2006 The IANA activities relevant to the Internet Number Community are:

- the allocation of blocks of Internet Number Resources (namely IPv4 addresses, IPv6 addresses, and Autonomous System Numbers, AS Numbers, or ASNs) to the Regional Internet Registries (RIRs);

- the registration of such allocations in the corresponding IANA Number Registries;
- other related registry management tasks including the management of returned IP address space, and general registry maintenance; and
- the administration of the special-purpose “IN-ADDR.ARPA” and “IP6.ARPA” DNS zones, in accordance with IPv4 and IPv6 allocations, respectively.

2007 These activities are referred to in this document, collectively, as “IANA Numbering Services.”

2008 **P2.I.B. The customer of the service or activity**

2009 The RIRs, the not-for-profit membership-based organizations accountable to the Internet Number Community, manage the registration and distribution of Internet Number Resources (as defined above) on a regional basis. The five RIRs are:

AFRINIC Serving Africa

APNIC Serving the Asia-Pacific Region

ARIN Serving Canada, some North Atlantic and Caribbean islands, Antarctica, and the United States

LACNIC Serving Latin America and portions of the Caribbean

RIPE NCC Serving Europe, Central Asia, and the Middle East

2010 The RIRs receive blocks of Internet Number Resources from the IANA Number Registries managed by the IANA Numbering Services Operator and distribute and register those number resources at the regional level. The RIRs also fill a secretariat role, facilitating the open, transparent, and bottom-up number resource Policy Development Process.

2011 The RIRs have a long-standing and straightforward operational relationship with the IANA. The IANA maintains the IANA Number Registries from which the RIRs receive allocations to distribute to the community. The RIRs also coordinate with the IANA to correctly register any resources that are returned to the IANA Number Registries. Collectively, the system for administering Internet Number Resources is referred to as the Internet Number Registry System and is described in detail in RFC 7020.

2012 **P2.I.C. Registries are involved in providing the service or activity**

2013 The relevant IANA registries are:

- the IPv4 address registry: <http://www.iana.org/assignments/ipv4-address-space>
- the IPv6 address registry: <http://www.iana.org/assignments/ipv6-unicast-address-assignments>
- the ASN registry: <http://www.iana.org/assignments/as-numbers>
- the IN-ADDR.ARPA DNS zone

- the IP6.ARPA DNS zone

2014 Collectively these registries are referred to as the IANA Number Registries.

2015 **P2.I.D. Overlaps or interdependencies between your IANA requirements and the functions required by other customer communities**

2016 The Internet Engineering Task Force (IETF) is responsible for the specification of the entire IP address space and AS number space. Through the respective IANA Number Registries (see above), the IETF delegates unicast IP address and AS number space into the Internet Numbers Registry System (RFC 7020). These registries are published via the IANA.ORG web site.

2017 Within the IANA Number Registries, there may be reserved values or ranges and special-purpose registries which are outside the Internet Number Registry System and instead administered under the direction of the IETF. The delineation of the specific ranges delegated to the Internet Numbers Registry System is provided in RFC 7249. It is expected that this delineation may change from time to time by actions of the IETF (through the RFC process) or the RIRs (through the global policy development process). Potential reasons for changes include the release of previously reserved space for general use and the reservation of previously unused space for a special purpose.

2018 The global Internet community also depends upon the IANA Numbering Services Operator for administration of the special-purpose IN-ADDR.ARPA and IP6.ARPA DNS zones which are associated with IPv4 and IPv6 address spaces, respectively. These zones are delegated to the IANA by the Internet Architecture Board (IAB) and “[s]ub-delegations within this hierarchy are undertaken in accordance with the IANA’s address allocation practices” (RFC 3172). The Internet Corporation for Assigned Names and Numbers (ICANN), in its role as the IANA Numbering Services Operator, administers these zones as “agreed technical work items” per the *IETF-IANA MoU*. This work is outside the scope of the National Telecommunications and Information Administration (NTIA) contract.

2019 Provision of reverse DNS services in the IN-ADDR.ARPA and IP6.ARPA domains may also require interaction with the .ARPA registry. Collectively these registries are referred to as the IANA Number Registries.

2020 The Internet Number Community also makes use of the term IANA in the description of their processes, policies, and public database records.

2021 **Relevant links:**

*IETF-ICANN MoU* Concerning the Technical Work of the Internet Assigned Numbers Authority: <https://www.icann.org/resources/unthemed-pages/ietf-icann-mou-2000-03-01-en>

NTIA IANA Functions Contract: <http://www.ntia.doc.gov/page/iana-functions-purchase-order>

RFC 3172, Management Guidelines & Operational Requirements for the Address and Routing Parameter Area Domain (“arpa”): <https://tools.ietf.org/html/rfc3172>

RFC 7020, *The Internet Numbers Registry System*: <https://tools.ietf.org/html/rfc7020>

RFC 7249, *Internet Numbers Registries*: <https://tools.ietf.org/html/rfc7249>

## **P2.II. Existing Pre-Transition Arrangements**

2022 *This section should describe how existing IANA-related arrangements work, prior to the transition.*

### **2023 P2.II.A. Policy Sources**

2024 *This section should identify the specific source(s) of policy which must be followed by the IANA functions operator in its conduct of the services or activities described above. If there are distinct sources of policy or policy development for different IANA activities, then please describe these separately. For each source of policy or policy development, please provide the following:*

*Which IANA service or activity (identified in Section I) is affected.*

*A description of how policy is developed and established and who is involved in policy development and establishment.*

*A description of how disputes about policy are resolved.*

*References to documentation of policy development and dispute resolution processes.*

#### **2025 P2.II.A.1. Affected IANA service or activity**

2026 The affected services and activities are those describe in I.A and I.C above.

2027 IANA Numbering Services are provided without involvement by the NTIA.

#### **2028 P2.II.A.2. How policy is developed and established and by whom**

2029 The policies under which the IANA Numbering Services are provided are developed and agreed within the Internet Number Community via an open, transparent, and bottom-up policy development process. The community engages in regional policy development processes facilitated by each RIR; these processes are open to all stakeholders regardless of specific background or interest or geographic location of residence or activity. Links to the regional Policy Development Processes (PDPs) are included in the RIR Governance Matrix published on the Number Resource Organization (NRO) web site: [www.nro.net/about-the-nro/rir-governance-matrix](http://www.nro.net/about-the-nro/rir-governance-matrix)

2030 Any individual may submit a global policy proposal to the Global Policy Development Process, or gPDP. The community must ratify the proposed policy within each RIR. The NRO Executive Council (NRO EC) then refers the proposal to the Address Supporting Organization Address Council (ASO AC), which reviews the process by which the proposal was developed and, under the terms of the *ASO Memorandum of Understanding* (ASO MoU), passes it to the ICANN Board of Directors for ratification as a global policy.

- 2031 There are currently three global policies related to management of the IANA Number Registries of IPv4 addresses, IPv6 addresses, and Autonomous System Numbers: <https://www.nro.net/policies>
- IANA Policy for Allocation of IPv6 Blocks to Regional Internet Registries;
  - IANA Policy for Allocation of ASN Blocks to Regional Internet Registries; and
  - Global Policy for Post Exhaustion IPv4 Allocation Mechanisms by the IANA.
- 2032 A fourth global policy, ICP-2, *Criteria for Establishment of New Regional Internet Registries*, governs the community's formation of new RIRs.
- 2033 The global gPDP described in the *Global Policy Development Process Document* (<https://www.nro.net/documents/global-policy-development-process>) is used for all of the number-related IANA activities described in Section I, but the policy by which "IN-ADDR.ARPA" and "IP6.ARPA" domains must be delegated following IPv4 and IPv6 address allocations is specified by the IETF in RFC 3172.
- 2034 **P2.II.A.3. How disputes about policy are resolved**
- 2035 The gPDP mentioned above is formally defined in Attachment A of the ASO MoU, signed by ICANN and the RIRs in 2004 (and signed by AFRINIC when it was established as the fifth RIR in 2005). This MoU includes provisions for resolving disputes between the IANA Numbering Services Operator and the Internet Number Community. Although the gPDP allows for the ICANN Board to dispute the outcome of a consensus community decision (escalating to mediation between ICANN and the RIRs), it does not include any role for the IANA contract holder (currently the NTIA). The ASO MoU is an agreement between the Internet Number Community and ICANN; the NTIA has no oversight role in policy-making for IANA Numbering Services, and its transition out of its current role would have no effect on the policy-making framework.
- 2036 A separate MoU, the NRO MoU, establishes the NRO as "a coordinating mechanism of the RIRs to act collectively on matters relating to the interests of the RIRs" and includes provisions for dispute resolutions between RIRs on issues relating to global policy development or implementation.
- 2037 It is the responsibility of the NRO Number Council ("NRO NC"), a group comprising fifteen community members to confirm that the documented RIR PDPs have been followed in the development of policy. Further, this group reviews the policy followed by the Internet Number Community to assure itself that the significant viewpoints of interested parties are adequately considered, and only after this confirmation does it then consider forwarding global policy proposals to the ICANN Board for ratification.
- 2038 The NRO NC also acts in the role of the ICANN ASO AC, and as such it presents the agreed global policy proposal to the ICANN Board for ratification and operational implementation.
- 2039 The ICANN Board reviews the received global number resource policy proposals and may ask questions and otherwise consult with the ASO Address Council and/or the individual RIRs acting collectively through the NRO. The ICANN Board may also consult with other

parties as the Board considers appropriate. If the ICANN Board rejects the proposed policy, it delivers to the ASO AC a statement of its concerns with the proposed policy, including in particular an explanation of the significant viewpoints that were not adequately considered during the RIR processes. By consensus of the Internet Number Community in accordance with the PDPs, the ASO AC may forward a proposed new or modified policy to the ICANN Board. If the resubmitted proposed policy is rejected for a second time by ICANN, then the RIRs or ICANN shall refer the matter to mediation.

2040 In case of disputes where mediation has failed to resolve the dispute, the ICANN ASO MoU provides for arbitration. Via the ASO, the RIRs have been participating in the periodic independent reviews by the Accountability and Transparency Review Team (ATRT) that are called for in ICANN's Bylaws.

2041 **P2.II.A.4. References to documentation of policy development and dispute resolution processes**

2042 **Relevant links:**

*ICANN ASO MoU:* <https://www.nro.net/documents/icann-address-supporting-organization-aso-mou>

*NRO MoU:* <https://www.nro.net/documents/nro-memorandum-of-understanding>

*About the NRO Number Council:* <https://www.nro.net/about-the-nro/the-nro-number-council>

*RIR Governance Matrix:* <https://www.nro.net/about-the-nro/rir-governance-matrix>

*Global Policies:* <https://www.nro.net/policies>

*RFC 3172, Management Guidelines & Operational Requirements for the Address and Routing Parameter Area Domain ("arpa"):* <https://tools.ietf.org/html/rfc3172>

2043 **P2.II.B. Oversight and Accountability**

2044 *This section should describe all the ways in which oversight is conducted over IANA's provision of the services and activities listed in Section I and all the ways in which IANA is currently held accountable for the provision of those services. For each oversight or accountability mechanism, please provide as many of the following as are applicable:*

- *Which IANA service or activity (identified in Section I) is affected.*
- *If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way.*
- *A description of the entity or entities that provide oversight or perform accountability functions, including how individuals are selected or removed from participation in those entities.*
- *A description of the mechanism (e.g., contract, reporting scheme, auditing scheme, etc.). This should include a description of the consequences of the IANA functions operator not meeting the standards established by the mechanism, the extent to which*



*the output of the mechanism is transparent and the terms under which the mechanism may change.*

- *Jurisdiction(s) in which the mechanism applies and the legal basis on which the mechanism rests.*

2045 **P2.II.B.1. Which IANA service or activity is affected?**

2046 The IANA Numbering Services and IANA Number Registries as defined above.

2047 **P2.II.B.2. If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way.**

2048 A decision by the NTIA to discontinue its stewardship of the IANA Numbering Services, and therefore its contractual relationship with the IANA Functions Operator, would have no significant impact on the continuity of IANA Numbering Services currently provided by ICANN. However, it would remove a significant element of oversight from the current system.

2049 ICANN has historically provided IANA Numbering Services via the IANA Number Registries under the terms of the NTIA IANA Functions contract, and therefore IANA Numbering Services for the RIRs are currently subject to change in accordance with that agreement.

2050 **P2.II.B.3. The entity or entities that provide oversight or perform accountability functions**

2051 A description of the entity or entities that provide oversight or perform accountability functions, including how individuals are selected or removed from participation in those entities.

2052 All institutional actors with a role in management of Internet Number Resources are accountable to the open community that develops the policies under which those resources are distributed and registered. The mechanisms used to ensure and enforce this accountability differ for each of these actors.

2053 **P2.II.B.3.i. NTIA**

2054 ICANN, as the current IANA Numbering Services Operator, is obligated by the NTIA agreement to manage the IANA Number Registries according to policies developed by the Internet Number Community.

2055 Although the IANA operator escalation and reporting mechanisms are public in nature, the NTIA has an oversight role in the provision of the services through its contract with ICANN. The ultimate consequence of failing to meet the performance standards or reporting requirements is understood to be a decision by the contracting party (the NTIA) to terminate or not renew the IANA Functions Agreement with the current contractor (ICANN).

2056 **P2.II.B.3.ii. The Regional Internet Registries**

2057 Administration by the IANA Numbering Services Operator consists predominantly of processing of requests from the RIRs for issuance of additional number resources. The five RIRs are intimately familiar with global numbering policies under which the requests are made and maintain communications with the IANA Numbering Services Operator throughout the request process.

2058 The RIRs are not-for-profit membership-based organizations, and as such they are accountable to their members by law. The specific governance processes for each RIR differ depending on where they have been established and the decisions made by their membership, but in all RIRs members have the right to elect individuals to the governing board and to vote on matters related to the respective RIR.

2059 At the same time, an RIR's registration and allocation practices are directed by policies developed by the community. Each RIR's PDP defines how these policies are developed, agreed, and accepted for operational implementation.

2060 The corporate governance documents and PDPs of each RIR are accessible via the RIR Governance Matrix, published on the NRO web site: [www.nro.net/about-the-nro/rir-governance-matrix](http://www.nro.net/about-the-nro/rir-governance-matrix)

2061 **P2.II.B.4. Description of the mechanism**

2062 (e.g., contract, reporting scheme, auditing scheme, etc.). This should include a description of the consequences of the IANA functions operator not meeting the standards established by the mechanism, the extent to which the output of the mechanism is transparent and the terms under which the mechanism may change.

2063 The NTIA IANA Agreement currently defines obligations of the IANA Operator for Internet Number Resources.

2064 This obligation is specifically noted in section C.2.9.3 of the NTIA agreement:

*C.2.9.3 Allocate Internet Numbering Resources – The Contractor shall have responsibility for allocated and unallocated IPv4 and IPv6 address space and Autonomous System Number (ASN) space based on established guidelines and policies as developed by interested and affected parties as enumerated in Section C.1.3.*

2065 The NTIA agreement also lays out specific deliverables for the IANA Numbering Services Operator (ICANN) to produce as a condition of the agreement (see "Section F – Deliveries and Performance"), including performance standards developed in cooperation with the affected parties (in the case of the IANA Number Registries, the affected parties are the RIRs and the Internet Number Community), customer complaint procedures, and regular performance reporting.

2066 These deliverables are met by ICANN via monthly reporting on their performance in processing requests for the allocation of Internet Number Resources; these reports include IANA operational performance against key metrics of accuracy, timeliness, and transparency, as well as the performance metrics for individual requests. The IANA

operations team also provides escalation procedures for use in resolving any issues with requests, as per the “IANA Customer Service Complaint Resolution Process.”

2067 **P2.II.B.5. Jurisdiction and legal basis of the mechanism**

2068 Jurisdiction for the current mechanism is the United States of America under applicable federal government contracting laws and regulations.

2069 Relevant links:

*NTIA IANA Agreement*: <http://www.ntia.doc.gov/page/iana-functions-purchase-order>

*ICANN ASO MoU*: <https://www.nro.net/documents/icann-address-supporting-organization-aso-mou>

*NRO MoU*: <https://www.nro.net/documents/nro-memorandum-of-understanding>

IANA Customer Service Complaint Resolution Process: <http://www.iana.org/help/escalation-procedure>

IANA Performance Standards Metrics Report: <http://www.iana.org/performance/metrics>

RIR Governance Matrix: <https://www.nro.net/about-the-nro/rir-governance-matrix>

## **P2.III. Proposed Post-Transition Oversight and Accountability**

2070 This section should describe what changes your community is proposing to the arrangements listed in Section II.B in light of the transition. If your community is proposing to replace one or more existing arrangements with new arrangements, that replacement should be explained and all of the elements listed in Section II.B should be described for the new arrangements. Your community should provide its rationale and justification for the new arrangements.

2071 If your community’s proposal carries any implications for the interface between the IANA functions and existing policy arrangements described in Section II.A, those implications should be described here.

2072 If your community is not proposing changes to arrangements listed in Section II.B, the rationale and justification for that choice should be provided here.

2073 **P2.III.A. The elements of this proposal**

- ICANN to continue as the IANA Functions Operator for the IANA Numbering Services, hereinafter referred to as the IANA Numbering Services Operator, via a contract with the RIRs;
- IPR related to the provision of the IANA services remains with the community;

- Service Level Agreement with the IANA Numbering Services Operator; and
- Establishment of a Review Committee, with representatives from each RIR, to advise the NRO EC on the review of the IANA functions operator's performance and meeting of identified service levels.

2074 This proposal assumes that specific IANA customers (i.e., the number community, the protocol parameter community, and the name community) will have independent arrangements with the IANA Functions Operator related to maintenance of the specific registries for which they are responsible. At the same time, the Internet Number Community wishes to emphasize the importance of communication and coordination between these communities to ensure the stability of the IANA services. Such communication and coordination would be especially vital should the three communities reach different decisions regarding the identity of the IANA Functions Operator after the transition. Efforts to facilitate this communication and coordination should be undertaken by the affected communities via processes distinct from this stewardship transition process.

2075 **P2.III.A.1.ICANN to continue as the IANA Numbering Services Operator via a contract with the RIRs**

2076 To maintain stability and continuity in operations of the IANA Numbering Services, very minimal changes to the arrangements listed in Section 2.2 are proposed, including the identification of the proposed initial IANA Numbering Services Operator. As noted in numerous NRO communications over the past decade, the RIRs have been very satisfied with the performance of ICANN in the role of the IANA Numbering Services Operator. Taking this into account, and considering the Internet Number Community's strong desire for stability and a minimum of operational change, the Internet Number Community believes that ICANN should remain in the role of the IANA Numbering Services Operator for at least the initial term of the new contract.

2077 Although there are no concrete needs or plans to do so at this point, the Internet Number Community may in the future determine that the IANA Numbering Services related to number resources should be transferred to a different contractor. In such a case, selection of a new contractor shall be conducted in a fair, open, and transparent process, consistent with applicable industry best practices and standards.

2078 **P2.III.A.2.IPR related to the provision of the IANA services remains with the community**

2079 There are several intellectual properties related to the provision of the IANA services whose status should be clarified as part of the transition: the IANA trademark, the IANA.ORG domain name, and public databases related to the performance of the IANA Numbering Services, including the IANA Numbers Registries.

2080 It is important that the IPR status of the registries remains clear and ensures free and unrestricted access to the public registry data throughout the stewardship transition. It is the expectation of the Internet Number Community that the IANA Number Registries are in the public domain.

2081 It is also the expectation of the Internet Number Community that non-public information related to the IANA number resource registries and corresponding services, including the provision of reverse DNS delegation in IN-ADDR.ARPA and IP6.ARPA, is managed by the IANA operator and will be transferred to its successor(s). All rights on non-public information related to the IANA number resource registries and corresponding services must be transferred to the RIRs.

2082 It is the preference of the Internet Number Community that all relevant parties agree to these expectations as part of the transition.

2083 With regards to the IANA trademark and the IANA.ORG domain, it is the expectation of the Internet Number Community that both are associated with the IANA Numbering Services and not with a particular IANA Numbering Services Operator. Identifying an organization that is not the IANA Numbering Services Operator and which will permanently hold these assets will facilitate a smooth transition should another operator (or operators) be selected in the future. It is the preference of the Internet Number Community that the IANA trademark and the IANA.ORG domain name be transferred to an entity independent of the IANA Numbering Services Operator, in order to ensure that these assets are used in a non-discriminatory manner for the benefit of the entire community. From the Internet Number Community's perspective, the IETF Trust would be an acceptable candidate for this role.

2084 The transfer of the IANA trademark and IANA.ORG domain to the IETF Trust will require additional coordination with the other affected communities of the IANA Services, namely, protocol parameters and names. It is the preference of the Internet Number Community that all relevant parties agree to these expectations as part of the transition.

2085 **P2.III.A.3. Service Level Agreement with the IANA Numbering Services Operator**

2086 The Internet Number Community proposes that a new contract be established between the IANA Numbering Services Operator and the five RIRs. The following is a proposal to replace the current NTIA IANA agreement with a new contract that more directly reflects and enforces the IANA Numbering Services Operator's accountability to the Internet Number Community. The proposal attempts to ensure the continuity of processes and mechanisms that have proved successful and with which the community is satisfied.

- The services provided by the IANA Numbering Services Operator in relation to the IANA Numbering Services remain unchanged.
- The policy sources identified in Section II.A are unaffected.
- The oversight and accountability mechanisms detailed in Section II.B remain unchanged.
- The entities that provide oversight or perform accountability functions (the RIRs) remain the same.
- The consequence of failure to meet performance standards remains unchanged: termination or non-renewal of the contract.

2087 The agreement, essentially a Service Level Agreement for the IANA Numbering Services, would obligate the IANA Numbering Services Operator to carry out the IANA Numbering Services according to policies developed by the Internet Number Community via the gPDP as well as management of the delegations within IN-ADDR.ARPA and IP6.ARPA domains. The agreement would include specific requirements for performance and reporting consistent with current mechanisms and would specify consequences should the IANA Numbering Services Operator fail to meet those requirements, the means for the resolution of disputes between the parties, and the terms for renewal or termination of the agreement. IANA Numbering Services should be reliable and consistent, with any registry changes made in an open and transparent manner to the global community. The agreement should also require the IANA Numbering Services Operator to appropriately coordinate with any other operator of IANA services. The agreement would also provide for jurisdiction and governing law regarding the new arrangement.

2088 It is expected that the RIRs, as the contractual party of this agreement, will draft the specific language of this agreement. During the drafting process, the RIRs are expected to consult their respective RIR communities, and that the drafting process will be guided by the principles listed below. References to relevant sections of the current NTIA agreement are also noted, as it is expected the new agreement will share many of the same contractual goals and mechanisms.

#### 2089 **IANA Service Level Agreement Principles**

##### **1. Separation of Policy Development and Operational Roles**

The IANA Numbering Services Operator will merely execute the global policies adopted according to the global Policy Development Process defined in the ASO MoU.  
*Relevant section(s) in the NTIA contract: C.2.4, C.2.5*

##### **2. Description of Services Provided to RIRs**

The IANA Numbering Services Operator will maintain the IANA Number Registries and provide IANA Numbering Services to the RIRs in accordance with the specific processes and timelines described in this section of the agreement.  
*Relevant section(s) in the NTIA contract: C.2.9.3*

##### **3. Obligation to Issue Reports on Transparency and Accountability**

The IANA Numbering Services Operator will commit to certain obligations so as to perform the function as expected by the Internet Number Community and will be obliged to periodically issue reports illustrating its compliance with the Internet Number Community's expectations.  
*Relevant section(s) in the NTIA contract: C.2.6, C.2.7, C.2.8*

##### **4. Security, Performance, and Audit Requirements**

The IANA Numbering Services Operator will commit to specific security standards, metric requirements, and audit requirements and will be obliged to periodically issue reports illustrating its compliance with them.  
*Relevant section(s) in the NTIA contract: C.3, C.4, C.5*

##### **5. Review of the IANA Operations**

The RIRs will perform reviews to assess whether the IANA Numbering Services Operator complies with all requirements described in the agreement whenever they

deem appropriate. The IANA Numbering Services Operator will be obliged to facilitate this review.

**6. Failure to Perform**

If the IANA Numbering Services Operator fails to perform as agreed, there will be specific consequences. One of these consequences may be termination of the agreement.

*Relevant section(s) in the NTIA contract: E.2, I.67*

**7. Term and Termination**

RIRs will be able to periodically review the agreement and evaluate whether they want to renew the agreement. Either party may terminate the agreement with reasonable prior notice.

*Relevant section(s) in the NTIA contract: Page 2 of Award, I.51, I.52, I.53*

**8. Continuity of Operations**

If, at the end of the term, the RIRs decide to sign an agreement for provision of IANA Numbering Services by a different party, the previous IANA Numbering Services Operator will be obliged to ensure an orderly transition of the function while maintaining continuity and security of operations.

*Relevant section(s) in the NTIA contract: C.7.3 and I.61*

**9. Intellectual Property Rights and Rights Over Data**

The contract will implement the RIR community expectations as described in section III.A.2.

*Relevant section(s) in the NTIA contract: H.4, H.5*

**10. Resolution of Disputes**

Disputes between the parties related to the SLA will be resolved through arbitration.

**11. Fee**

The fee is based on costs incurred by the IANA Numbering Services Operator in providing the IANA Numbering Service.

*Relevant section(s) in the NTIA contract: B.2*

2090 **P2.III.A.4. Establishment of a Review Committee**

2091 To ensure that the service level defined in the proposed agreement is maintained by the IANA Numbering Services Operator, the NRO EC will periodically review the service level of the IANA Numbering Services provided to the Internet Number Community.

2092 The RIRs shall establish a Review Committee that will advise and assist the NRO EC in its periodic review. The Review Committee will, as needed, undertake a review of the level of service received from the IANA Numbering Services Operator and report to the NRO EC any concerns regarding the performance of the IANA Numbering Services Operator, including especially any observed failure or near-failure by the IANA Numbering Services Operator to meet its obligations under the proposed agreement. Any such Review Committee will advise the NRO EC in its capacity solely to oversee the performance of the IANA Numbering Services, and the Review Committee's advice and comment will be limited to the processes followed in the IANA Numbering Services Operator's performance under

the proposed agreement. Activities of the Review Committee shall be conducted in an open and transparent manner. Reports from the Review Committee shall be published.

2093 The Review Committee should be a team composed of suitably qualified Internet Number Community representatives from each RIR region. The selection of the Review Committee members should be conducted in an open, transparent, and bottom-up manner appropriate for each RIR region. There should be equal representation from each RIR region within the Review Committee.

2094 **P2.III.B. Implications for the interface between the IANA functions and existing policy arrangements**

2095 This proposal carries no implication for the interface between IANA Numbering Services and existing policy arrangements described in Section II.A. The text in Attachment A of the ICANN ASO MoU meets the current and anticipated requirements for a community-driven global policy development process.

2096 As an additional measure of security and stability, the RIRs have documented their individual accountability and governance mechanisms and asked the community-based Number Resource Organization Number Council (NRO NC) to undertake a review of these mechanisms and make recommendations for improvements that may be warranted given the nature of the stewardship transition for Internet Number Resources.

## P2.IV. Transition Implications

2097 This section should describe what your community views as the implications of the changes it proposed in Section III. These implications may include some or all of the following, or other implications specific to your community:

- *Description of operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*
- *Description of any legal framework requirements in the absence of the NTIA contract.*
- *Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.*

2098 **P2.IV.A. Operational requirements to achieve continuity of service throughout the transition**

- *Describe operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*



2099 The intent of the proposal described above is to:

- Minimize risks to operational continuity of the management of the IANA Numbering Services, and;
- Retain the existing framework for making those policies that describe the management of the IANA Number Registries, as this framework is already structured to ensure open, transparent, and bottom-up development of such policies.

2100 Under current arrangements, the NTIA is responsible for extending or renewing the IANA functions agreement and setting the terms of that contract. A new agreement with the five RIRs and the IANA Numbering Services Operator as signatories would shift the responsibility for renewing, setting terms, or terminating the contract to the RIRs, who would coordinate their decisions via the NRO EC. Decisions made regarding the agreement would be based on operational circumstances, past performance, and input from the Internet Number Community.

2101 The shift from the existing contractual arrangement to one or more new contracts covering the IANA Numbering Services Operator's ongoing management of the IANA Numbering Services should result in no operational change for management of the IANA Number Registries. This will help minimize any operational or continuity risks associated with stewardship transition.

2102 By building on the existing Internet registry system (which is open to participation from all interested parties) and its structures, the proposal reduces the risk associated with creating new organizations whose accountability is unproven.

2103 A new agreement specifying IANA operation of the IANA Number Registries can and should be established well before the September 2015 transition target, as we propose to simply reconcile the contracting party with the policy authority, without changing service levels or reporting.

2104 **P2.IV.B. Description of any legal framework requirements in the absence of the NTIA contract**

2105 The necessary legal framework in the absence of the NTIA contract will be fulfilled by the proposed agreement between the IANA Numbering Services Operator and the RIRs. As stated in Section III above, the Service Level Agreement for the IANA Numbering Services, would obligate the IANA Numbering Services Operator to carry out those IANA Numbering Services according to policies developed by the community via the gPDP, as well as management of the delegations within IN-ADDR.ARPA and IP6.ARPA domains.

2106 **P2.IV.C. Workability of any new technical or operational methods**

2107 Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.

2108 This proposal does not propose any new technical or operational methods. There is inclusion of a proposed Review Committee to be established by the five RIRs acting

cooperatively and coordinating through the NRO EC; however, this does not carry any new operational method, as the IANA Numbering Services Operator would remain accountable to the party with whom it is contracting, in this case the five RIRs in place of the NTIA. The proposed Review Committee is a tool for the Internet Number Community to evaluate and review performance of the IANA Numbering Services provided.

## **P2.V. NTIA Requirements**

2109 Additionally, NTIA has established that the transition proposal must meet the following five requirements:

- *Support and enhance the multistakeholder model;*
- *Maintain the security, stability, and resiliency of the Internet DNS;*
- *Meet the needs and expectation of the global customers and partners of the IANA services;*
- *Maintain the openness of the Internet.*
- *The proposal must not replace the NTIA role with a government-led or an inter-governmental organization solution.*

*This section should explain how your community's proposal meets these requirements and how it responds to the global interest in the IANA functions.*

2110 This proposal addresses each of the NTIA's requirements:

### **2111 P2.V.A. Support and enhance the multistakeholder model**

2112 The RIRs are not-for-profit membership-based organizations accountable to their community. The processes developed by the community over time are open, transparent, and bottom-up, and inclusive of all stakeholders, ensuring the opportunity for anyone with an interest in management of Internet Number Resources to participate in policy-making.

2113 Shifting stewardship of the IANA Numbering Services to the Internet Number Community is an important step in acknowledging the maturity and stability of the multistakeholder governance model and in recognizing the success and de facto authority of that model under the current arrangement.

### **2114 P2.V.B. Maintain the security, stability, and resiliency of the Internet DNS**

2115 No changes are proposed in this document that affect the security, stability, or resiliency of the DNS.

2116 This proposal is chiefly concerned with Internet Number Resources, which also need security, stability, and resiliency. The existing operational and policy-making structures related to management of the IANA Number Registries have served the Internet community well over time, and the Internet Number Community has expressed a strong desire for

stability and operational continuity of this critical element of the Internet infrastructure. Accordingly, this proposal suggests minimal changes to existing processes.

2117 **P2.V.C. Meet the needs and expectation of the global customers and partners of the IANA services**

2118 The Internet Number Community is the customer of the Internet number resource IANA Numbering Services. The Internet Number Community has often expressed its satisfaction with the current management of the IANA Numbering Services, which have effectively implemented policies developed by the community and efficiently provided Numbering Services to the RIRs. This proposal has been developed by the Internet Number Community, as the customer of the IANA Numbering Services, and meets its need for continuity and stability in the operation of the IANA Numbering Services. It does this by solidifying the IANA Numbering Services Operator's accountability to the Internet Number Community.

2119 **P2.V.D. Maintain the openness of the Internet**

2120 An open Internet relies on the effective implementation of policies developed via open, transparent, and bottom-up processes, ensuring the transparent and coordinated distribution and registration of Internet Number Resources. The Internet Number Community has a long-standing history of open, transparent, and bottom-up policy-making and operational processes (including the transparent publication of all registration information). By building on the structures developed by the Internet Number Community, this proposal ensures that in this regard the openness of the Internet is maintained.

2121 In addition, the proposed community Review Committee will ensure community involvement in the open and transparent evaluation of the IANA Numbering Services.

2122 **P2.V.E. Not a government-led or inter-governmental solution**

2123 This proposal does not replace the NTIA role with a government-led or an inter-governmental organization solution. This proposal places the RIRs in the role currently occupied by the NTIA. The RIRs are not-for-profit organizations, accountable to the community. The Internet Number Community is open to anyone who wishes to contribute and includes participants from all Internet stakeholder groups, including operators, civil society, business, the technical community, and governments. Open, community-driven, and consensus-based policy development processes mean that no single stakeholder group has a dominant role in policy-making.

## **P2.VI. Community Process**

2124 *This section should describe the process your community used for developing this proposal, including:*

- *The steps that were taken to develop the proposal and to determine consensus.*
- *Links to announcements, agendas, mailing lists, consultations and meeting proceedings.*
- *An assessment of the level of consensus behind your community's proposal, including a description of areas of contention or disagreement.*

### **2125 P2.VI.A. Steps taken to develop consensus and the proposal**

2126 The Internet Number Community process is open, transparent, and bottom-up, with the initial discussions and proposal elements agreed on a regional basis in each region of the Internet Number Community. The consensus output of these five regional discussions has been consolidated in a single global proposal.

2127 This process was deliberately modeled on the processes that the Internet Number Community has successfully employed for policy-making at the regional and global levels. It reflects the strong commitment emerging from all community discussions to employing proven structures and mechanisms in this process.

2128 The proposal development can therefore be seen as two distinct phases, first at the regional level and then at the global level. It is important to emphasize that neither of these phases occurred in isolation; throughout the first phase there was communication between the five regions, and during the second phase each region remained apprised of progress and provided feedback on successive iterations of the global proposal.

### **2129 P2.VI.B. Regional Processes**

2130 The Internet Number Community's process for developing a new agreement for operation of the IANA Numbering Services was founded on the regional Internet Number Community structure, in which stakeholders discuss policies and other issues relevant to numbers resources. The Internet Number Community has for many years fostered the open, transparent, and bottom-up participation of a broad range of stakeholders. Existing mechanisms and communication channels therefore existed to facilitate the IANA stewardship transition discussion, eliminating the need for new processes, communication channels, or bodies. The RIRs have worked actively over the years to engage the full range of stakeholders via outreach activities within their regions as part of their commitment to openness, inclusiveness, and transparency. Building on these outreach activities, the RIRs and the CRISP Team have ensured that this proposal has been the product of input and feedback from the full range of stakeholders with an interest in Internet Number Resources.

2131 The RIRs operate according to open, transparent, bottom-up, and consensus-based processes, allowing anyone with an interest to participate in the discussions on an equal footing. Holding the IANA stewardship discussion within this community has ensured broad participation and facilitated examination of the issues raised in the context of local and

regional circumstances. The very active community engagement within all regions not only shows the positive commitment of the Internet Number Community to this process but also demonstrates the Internet Number Community's mature and well-functioning decision-making processes.

2132 The Internet Number Community discussed the IANA stewardship issues on five regional and two global mailing lists and at RIR and other public meetings, both face-to-face and via remote participation. Although the discussions have been uniformly open and transparent, with all discussions archived on mailing lists and meeting records, each region has contributed to the community consensus via regionally defined processes suitable to their particular local needs and culture.

2133 Links to specific output documents and archives of all of the Internet Number Community discussions are available at <https://www.nro.net/nro-and-internet-governance/iana-oversight/timeline-for-rirs-engagement-in-iana-stewardship-transition-process>

2134 **P2.VI.B.1. AFRINIC regional process**

2135 The AFRINIC community held an IANA oversight transition workshop during the May 25 through June 6, 2014, Africa Internet Summit in Djibouti. As a follow-up to the meeting, AFRINIC set up a mailing list to provide a platform for the African Internet community to discuss the IANA oversight transition process. The mailing list was announced on July 4, 2014. The list and its archives can be found at <https://lists.afrinic.net/mailman/listinfo.cgi/ianaoversight>

2136 AFRINIC has a dedicated web portal for sharing information on the IANA stewardship transition: <http://afrinic.net/en/community/iana-oversight-transition>

2137 AFRINIC also conducted a survey seeking community input on the IANA Stewardship Transition:  
<http://afrinic.net/images/stories/Initiatives/%20survey%20on%20the%20iana%20stewardship%20transition.pdf>

2138 The last face-to-face meeting at which IANA oversight transition consultations were held with the community was during the AFRINIC-21 meeting, held in Mauritius from November 22 through 28, 2014. Recordings of the session are available:  
<http://meeting.afrinic.net/afrinic-21/en/vod>

2139 Discussions continued on the [ianaoversight@afrinic.net](mailto:ianaoversight@afrinic.net) mailing list until the closure of comments set by the CRISP Team on January 12, 2015.

2140 The AFRINIC region CRISP Team was appointed by the AFRINIC Board of Directors. Key milestones of the appointment process were:

2141 October 27, 2014: Public Call for nominations — The call was sent by the AFRINIC CEO to major community mailing lists, indicating intent of the Board to make appointments by November 12, 2014: <https://lists.afrinic.net/pipermail/announce/2014/001326.html>

2142 November 8, 2014: The AFRINIC CEO announced the 5 nominated candidates:  
<https://lists.afrinic.net/pipermail/ianaoversight/2014-November/000099.html>

2143 November 13, 2014: The AFRINIC Board Chair announced the three CRISP Team members selected to the community: <https://lists.afrinic.net/pipermail/rpd/2014/004381.html>

2144 The AFRINIC IANA oversight transition information page:  
<http://www.afrinic.net/en/community/iana-oversight-transition>

2145 **P2.VI.B.2. APNIC regional process**

2146 APNIC set up a public mailing list on April 1, 2014, to develop a regional position on the IANA stewardship transition: <http://mailman.apnic.net/mailman/listinfo/IANAxfer>

2147 A web site dedicated to sharing up-to-date information on the IANA stewardship transition was set up: <http://www.apnic.net/community/iana-transition>

2148 A draft proposal was discussed at the dedicated session at the APNIC 38 Meeting in September 2014, and a regional community consensus was reached. The meeting included bidirectional remote participation via live webcast and a virtual conference room: <https://conference.apnic.net/38/program#iana>

2149 On October 23, 2014, through a post to the APNIC IANAxfer mailing list, APNIC sought volunteers from the Asia Pacific community to nominate to join the CRISP Team. The nominees were asked to provide information about their qualifications and interest to the APNIC Executive Council for its consideration. The nomination period was open for two weeks. On November 12, 2014, the APNIC Executive Council announced the three APNIC representatives selected to join the CRISP Team: <http://blog.apnic.net/2014/11/13/dr-govind-and-ms-okutani-appointed-to-nro-crisp-team>

2150 Information was also posted on APNIC's IANA oversight transition web site: <http://www.apnic.net/community/iana-transition>

2151 Discussion continued on the [ianaxfer@apnic.net](mailto:ianaxfer@apnic.net) mailing list until the closure of the comments on January 12, 2015.

2152 **P2.VI.B.3. ARIN regional process**

2153 ARIN held a community consultation from October 1 through October 10, 2014, including a live session on October 9, during the ARIN 34 meeting in Baltimore, USA.

2154 On October 13, ARIN established a mailing list, [iana-transition@arin.net](mailto:iana-transition@arin.net), to facilitate regional discussion of the IANA stewardship transition planning process. This mailing list remained open for comments and updates throughout the transition planning process. The archives are open and available for all Internet community members to view: <http://lists.arin.net/pipermail/iana-transition>

2155 A regional survey was conducted from October 13 through 20, 2014, eliciting 64 responses: [https://www.arin.net/participate/governance/iana\\_survey.pdf](https://www.arin.net/participate/governance/iana_survey.pdf)

2156 On October 25, 2014, ARIN put a call out for volunteers to serve on the CRISP Team as community representatives of the ARIN region. The call for volunteers ended on October 31,

2014. The ARIN Board of Trustees considered all the resulting nominees and on November 8 announced the appointment of its three CRISP Team members.

2157 On November 21, 2014, the first ARIN draft proposal was shared on [iana-transition@arin.net](mailto:iana-transition@arin.net) and discussion followed: [http://teamarin.net/wp-content/uploads/2014/03/ARIN\\_draft\\_proposal.pdf](http://teamarin.net/wp-content/uploads/2014/03/ARIN_draft_proposal.pdf)

2158 ARIN has set up a web portal dedicated to the IANA Stewardship Transition planning process: <http://teamarin.net/education/internet-governance/iana-transition>

2159 **P2.VI.B.4. LACNIC regional process**

2160 The LACNIC community began a consultative process on August 15, 2014, with a public teleconference in which LACNIC's CEO discussed the methodology, expected timeline, and consultation scope with the community. The primary goal was to obtain the region's input to the multistakeholder debate on the transition of stewardship of the IANA Numbering Services, gathering regional points of view, concerns, suggestions, and recommendations, specifically concerning Internet number resource management.

2161 From that starting point, three representatives from the community guided the regional debate: <http://www.lacnic.net/en/web/transicion/representantes>

2162 Discussion took place on the [internet-gov@lacnic.net](mailto:internet-gov@lacnic.net) mailing list.

2163 From August 15 through September 15, 2014, open discussion was held.

2164 On September 23, moderators presented a preliminary transition document summarizing all contributions and discussions.

2165 A thirty-day community discussion of the preliminary document ended on October 24.

2166 During the October 27 through 31 LACNIC meeting in Santiago, the preliminary transition document was discussed in two sessions. The first session focused on the global IANA oversight transition process and the work done by the name, number, and protocol communities. The second focused on the proposals from the mailing list and began the process of drafting a final LACNIC regional community proposal.

2167 Following these sessions, there was an additional week of community discussion ending November 15, before the proposal was ratified by LACNIC's Board of Directors and submitted to the CRISP Team.

2168 Announcement of the appointment of the LACNIC region members of the CRISP Team: <http://www.lacnic.net/en/web/anuncios/2014-crisp-team>

2169 After the board appointed the CRISP Team members, there was continued dialog between the Community Leaders and the LACNIC CRISP Team representatives through email and teleconferences.

2170 The final result of the Consultation at LACNIC Community: <http://www.lacnic.net/en/web/transicion/resultado-consulta-publica>

2171 The list internet-gov@lacnic.net remained open for regional discussion until the closure of the comments on January 12, 2015.

2172 **P2.VI.B.5. RIPE regional process**

2173 The RIPE community agreed at the RIPE 68 Meeting in May 2014 that the development of a community position on IANA stewardship should take place in the existing RIPE Cooperation Working Group and via that working group's public mailing list: <https://www.ripe.net/ripe/mail/wg-lists/cooperation>

2174 The RIPE NCC, as secretariat for the RIPE community, also facilitated discussion of the IANA stewardship in national and regional forums across the RIPE NCC service region from May through November, 2014. Some of these forums also included remote participation facilities. Summaries of all discussions were posted to the RIPE Cooperation Working Group mailing list and on the RIPE web site: <https://www.ripe.net/iana-discussions>

2175 Although there were active, and at times passionate, discussions in the community throughout the consultation period, there was clearly strong agreement on the needs of the Internet Number Community and the general principles that should underpin transition of IANA stewardship. From September through November 2014, RIPE community discussion converged on a set of principles reflecting the community's primary concerns and needs in the development of an IANA stewardship transition proposal. These discussions are reflected in the discussions on the mailing list from that time: <http://www.ripe.net/ripe/mail/archives/cooperation-wg>

2176 Discussions at the RIPE 69 meeting in November 2014 reached consensus on the principles discussed on the mailing list. During the RIPE 69 meeting a general invitation for community volunteers to the CRISP Team was distributed via various RIPE NCC membership and RIPE community mailing lists: <http://www.ripe.net/ripe/mail/archives/ripe-list/2014-November/000877.html>

2177 This announcement noted the procedure whereby the RIPE Chair, in consultation with the RIPE NCC Executive Board, would select two community representatives and a staff representative. At the conclusion of RIPE 69, the community expressed its support for the three RIPE representatives to the CRISP Team.

2178 RIPE Cooperation Working Group Session: <https://ripe69.ripe.net/programme/meeting-plan/coop-wg/#session1>

2179 RIPE 69 Closing Plenary Session: <https://ripe69.ripe.net/archives/video/10112>

2180 **P2.VI.B.6. Internet Number Community Process (CRISP Team)**

2181 Following the broad consultations and active discussion within the five regions, a mechanism was established to develop a single proposal from the Internet Number Community, based on the consensus of the five regions.

2182 On October 16, 2014, the Internet Number Community proposed the formation of the CRISP Team to develop a single Internet Number Community proposal to the IANA Stewardship Coordination Group (ICG). Established around a model similar to the community-based



NRO Number Council, the CRISP Team comprises three community members from each of the RIR regions (two community members and one RIR staff). The selection of the CRISP Team members from each region was facilitated via transparent but distinct processes within each RIR. Details of these selection processes are included in the RIR process descriptions above.

2183 The CRISP Team members are:

AFRINIC Region:

Alan P. Barrett – Independent Consultant  
Mwendwa Kivuva – Network Infrastructure Services, University of Nairobi  
Ernest Byaruhanga (Appointed RIR staff)

ARIN Region:

Bill Woodcock – Executive Director, Packet Clearing House  
John Sweeting – Sr. Director Network Architecture & Engineering, Time Warner Cable  
Michael Abejuela (Appointed RIR staff)

APNIC Region:

Dr Govind – CEO, NIXI  
Izumi Okutani – Policy Liaison, JPNIC  
Craig Ng (Appointed RIR staff)

LACNIC Region:

Nico Scheper – Manager, Curacao IX  
Esteban Lescano – Vice Chairman, Cabase Argentina  
Andrés Piazza (Appointed RIR staff)

RIPE NCC Region:

Nurani Nimpuno – Head of Outreach & Communications, Netnod  
Andrei Robachevsky – Technology Programme Manager, Internet Society  
Paul Rendek (Appointed RIR staff)

2184 **P2.VI.B.7. CRISP Team Methodology**

2185 The charter of the CRISP Team describes its methodology, to ensure maximum transparency and openness of the process. The charter is available on the NRO web site: <https://www.nro.net/crisp-team>

2186 From that charter:

- The CRISP Team shall meet entirely via teleconference for its activities; these teleconferences will be open to the public who wish to listen to the CRISP Team discussions, and will be facilitated by the Regional Internet Registries.

- The CRISP Team shall also work through a public mailing list and the archive of such mailing list will be publicly available. The name of the mailing list will be [ianaxfer@nro.net](mailto:ianaxfer@nro.net).
- The results of each CRISP Team meeting shall be published on the [ianaxfer@nro.net](mailto:ianaxfer@nro.net) mailing list and additionally by each RIR to the community. The CRISP Team members from the region shall monitor and participate in the community discussion in their region regarding CRISP Team outputs.

2187 The CRISP Team held its first teleconference on December 9, 2014. At that meeting, Izumi Okutani (APNIC region) and Alan Barrett (AFRINIC region) were selected as the Chair and Vice-Chair, respectively. A timeline for the process was defined, published, and announced. All CRISP teleconferences have been announced on the relevant regional mailing lists as well as the global [ianaxfer@nro.net](mailto:ianaxfer@nro.net) list. As stipulated in the charter, all CRISP teleconferences have been open to observers. Archives of the audio, video, and minutes of all CRISP teleconferences, as well as several iterations of the proposal draft and a spreadsheet of issues raised by community members and their current status, have been made available online: <https://www.nro.net/crisp-team>

2188 Additionally, the CRISP Team decided that in the interests of efficiency an “internal” CRISP mailing list would be established – only members of the CRISP Team would be able to send mail to this list or receive mail sent to the list, but the list content would be archived publicly on the NRO web site. This archive is available: <https://www.nro.net/pipermail/crisp/>

2189 Throughout the CRISP Team process, CRISP Team members have engaged with their regional communities, ensuring that the communities are informed and sharing information with other CRISP Team members on key events and discussions in their regional forums. They have also consulted the discussion archives of their regional communities as necessary throughout the process to ensure the fair and accurate representation of their community’s views. CRISP Team members have been active in encouraging feedback from their regions, whether on the global [ianaxfer@nro.net](mailto:ianaxfer@nro.net) mailing list or in the regional discussion forums.

#### 2190 **P2.VI.C. Level of consensus behind the community’s proposal**

2191 Throughout CRISP Team deliberations, consensus was determined when, following discussions within the team, no further comments, concerns, or objections were observed. A 24-hour window was set for decisions made during CRISP Team teleconferences and shared on the CRISP Team mailing list to allow those who were not at the call to provide input.

2192 A similar approach was taken for the [ianaxfer@nro.net](mailto:ianaxfer@nro.net) list. Consensus was determined following discussions on the list around an issue raised or a new suggestion when no further comments, concerns, objections were observed.

2193 Prior to submitting this proposal to the ICG, two drafts were published, along with calls for feedback from the global community. These two comment periods were important in ensuring that the community had a chance to actively contribute to resolving issues identified during the process.

2194 In addition, the CRISP Team has called for community feedback on this current draft of the proposal. ICG members and other interested parties can observe the level of support for the proposal in the archives of [ianaxfer@nro.net](mailto:ianaxfer@nro.net) mailing list.

2195 In comparing output coming from each RIR region, many commonalities were identified early in the process, and there was a clear consensus across the five RIR communities on the basic principles for this proposal. The Internet Number Community tradition of open, transparent, and bottom-up processes defined the discussions in all regions, and a solid trust in the RIR system was consistently expressed throughout the process. Although all five regional inputs differed, no major conflicts or irreconcilable points of contention were identified.

Notable points of difference included the views on the format of the agreement to be established between the IANA Numbering Services Operator and the RIRs, and on the need for an oversight body to periodically review the agreement. The current proposal reflects the consensus agreement reached on these issues through discussion within the CRISP Team and in public forums, especially the [ianaxfer@nro.net](mailto:ianaxfer@nro.net) mailing list.

2196 In the global discussions at [ianaxfer@nro.net](mailto:ianaxfer@nro.net), several issues received close attention and provoked significant discussion. These issues included:

- Composition of Review Committee
- Details of the agreement, including its term and termination conditions, dispute resolution and the need of SLA text to be submitted
- Intellectual property rights of the data and trademarks associated with the IANA Numbering Services

2197 Comments mainly focused on clarification of details of these issues. Support was expressed by several people on the [ianaxfer@nro.net](mailto:ianaxfer@nro.net) mailing list on the final, agreed elements of the proposal listed in Section III.

2198 There was clear agreement from the global community on positions regarding each of these issues, as reflected in the content of the current proposal. The CRISP Team believes therefore that the current proposal fully reflects the consensus of the global Internet Number Community.

## P2. Appendix: Definitions

**Address Supporting Organization (ASO):** a Supporting Organization in the ICANN structure, as defined in the ICANN Bylaws, and was formed in 2004 by the ICANN ASO MoU. The ASO's role is to review and develop recommendations on Internet Protocol (IP) address policy and to advise the ICANN Board. The functions of the ASO are carried out by the Address Supporting Organization Address Council (ASO AC). <https://aso.icann.org/about-the-aso/>

**Address Supporting Organization Address Council (ASO AC):** has the following responsibilities in the ICANN structure and processes: undertaking a role in the global policy development process; defining procedures for the selection of individuals to serve on other ICANN bodies, in particular seats 9 and 10 on the ICANN Board, and implementing any roles assigned to the AC in such procedures; and providing advice to the ICANN Board on number resource allocation policy, in conjunction with the RIRs. The ASO AC function is carried out by the members of the NRO NC.

**CRISP Team:** The Consolidated RIR IANA Stewardship Proposal (CRISP) team was established by the five RIRs specifically for the purpose of producing this document.

**Global Policies:** Internet number resource policies that have the agreement of all RIRs according to their policy development processes and ICANN, and require specific actions or outcomes on the part of IANA or any other external ICANN-related body in order to be implemented.

**Global Policy Development Process (gPDP):** The RIR communities' process for the development of policy relating to management of the global Internet number registries. The gPDP is employed in the development of policies relating to all of the number-related IANA activities described in Section I, except those relating to maintenance of the "IN-ADDR.ARPA" and "IP6.ARPA" domains. The gPDP is formally defined in Attachment A of the ASO MoU and posted on the NRO website: <https://www.nro.net/documents/global-policy-development-process>

**IANA Number Registries:** Refers collectively to the IPv4, IPv6, and ASN registries, as well as the associated IN-ADDR.ARPA and IP6.ARPA DNS zones. The registries can be found here: <http://www.iana.org/numbers>

**IANA Numbering Services Operator:** The party contractually engaged to perform the IANA Numbering Services.

**IANA Numbering Services:** The IANA activities relevant to the Internet Number Community, which are the allocation of blocks of Internet Number Resources (namely IPv4 addresses, IPv6 addresses, and Autonomous System Numbers or ASNs) to the Regional Internet Registries (RIRs); the registration of such allocations in the corresponding IANA Internet Number Registries; other related registry management tasks including the management of returned IP address space, and general registry maintenance; and the administration of the special-purpose "IN-ADDR.ARPA" and "IP6.ARPA" DNS zones, in accordance with IPv4 and IPv6 allocations, respectively.

**ICANN Address Supporting Organization Memorandum of Understanding (ICANN ASO MoU):** A Memorandum of Understanding signed by ICANN and the NRO in 2004, under which the NRO shall fulfill the role, responsibilities and functions of the ASO (including that the NRO NC shall carry out the functions of the ASO AC).

**Internet Number Community or RIR Community:** Collaborative forum operating through decision-making processes that are bottom-up, inclusive and open to all parties interested in the IANA numbering services as well as in the services of the five RIRs.

**Internet Number Registry System:** The system for administering Internet Number Resources, whereby the IANA maintains the Number Registries from which the RIRs receive allocations to distribute to the

community and the RIRs coordinate with the IANA to correctly register any resources that are returned to the Number Registries. This system is described in detail in RFC 7020.

**Internet Number Resources:** IP addresses (IPv4, IPv6) and Autonomous System (AS) Numbers.

**Number Resource Organization (NRO):** A coordinating mechanism of the RIRs to act collectively on matters relating to the interests of the RIRs, established by an MoU between the RIRs.

**Number Resource Organization (NRO):** The Number Resource Organization (NRO) is a coordinating mechanism of the RIRs to act collectively on matters relating to the interests of the RIRs. It was established in 2003 by a Memorandum of Understanding between the four RIRs in operation at that time (and signed by AFRINIC upon its establishment in 2005). <https://nro.net/>

**Number Resource Organization Executive Council (NRO EC):** A group of appointed representatives of each RIR, normally the CEOs.

**Number Resource Organization Executive Council (NRO EC):** Body that represents the NRO and its suborganizations in all matters. Made up of one representative from each RIR, generally the CEO or Director of the RIR. Chairmanship of the NRO EC rotates through each of the RIRs on an annual basis.

**Number Resource Organization Memorandum of Understanding (NRO MoU):** A Memorandum of Understanding signed in 2003 by the four RIRs in operation at the time, and subsequently signed by AFRINIC in 2005. The MoU established the Number Resource Organization and defines its activities and sub-organizations.

**Number Resource Organization Number Council (NRO NC):** A body made up of three community members from each RIR community. It acts in an advisory capacity to the NRO Executive Council and to review of any global policy proposal to confirm that the documented RIR PDPs and relevant procedures were followed in its development and approval. In the ICANN structure, the members of the NRO NC serve the functions of the Address Supporting Organization Address Council (ASO AC).

**Policy Development Process (PDP):** The process within each RIR by which the community makes policies relating to the distribution and registration of Internet number resources within its service region. While these PDPs differ in some specifics, they share common characteristics: all RIR PDPs are open to all and follow an established, bottom-up process of collaboration; all RIR PDPs are transparent in their working methods, utilizing public mailing lists and open community forums; all RIR PDPs reach conclusions by community consensus; and the policies produced by an RIR PDP are made freely and publicly available.

**Regional Internet Registry (RIR):** The not-for-profit membership-based organizations responsible for the distribution and registration of Internet Number Resources in continent-sized geopolitical regions, as first proposed by the IETF in RFC 1366. The RIRs are an important element in the Internet Number Registry System as defined in RFC 7020. The RIRs were established in a bottom-up fashion and serve a secretariat role for their communities, facilitating the open, inclusive, bottom-up development of number resource policy. There are currently five RIRs in operation, as described in Section 1.B. of this document.

## **Part 3. Response from Protocol Parameters Registries Community**

# Draft Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Protocol Parameters Registries

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# Draft Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Protocol Parameters Registries

## P3. Abstract

3001 The U.S. NTIA has solicited a request from ICANN to propose how the NTIA should end its oversight of the IANA functions. After broad consultations, ICANN has in turn created the IANA Stewardship Transition Coordination Group. That group solicited proposals for three three major IANA functions: names, numbers, and protocol parameters. This document contains the IETF response to that solicitation for protocol parameters. It is meant to be included in an aggregate response to the NTIA alongside those for names and numbering resources that are being developed by their respective operational communities.

3002 Status of This Memo

3003 This Internet-Draft is submitted in full conformance with the provisions of [BCP 78](#) and [BCP 79](#). Internet-Drafts are working documents of the Internet Engineering Task Force (IETF). Note that other groups may also distribute working documents as Internet-Drafts. The list of current Internet-Drafts is at <http://datatracker.ietf.org/drafts/current/>. Internet-Drafts are draft documents valid for a maximum of six months and may be updated, replaced, or obsoleted by other documents at any time. It is inappropriate to use Internet-Drafts as reference material or to cite them other than as "work in progress."

3004 This Internet-Draft will expire on July 10, 2015.<sup>119</sup>

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## P3.1. IETF Introduction

3008 In March of 2014 the U.S. National Telecommunications & Information Administration (NTIA) announced its intent to transition oversight of Internet Assigned Numbers Authority (IANA) functions [NTIA-Announce]. In that announcement, NTIA asked the Internet Corporation for Assigned Names and Numbers (ICANN) to establish a process to deliver a proposal for

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<sup>119</sup> The draft is being held for publication in the RFC Editor's queue.

transition. As part of that process, the IANA Stewardship Transition Coordination Group (ICG) was formed. The charter for the ICG can be found in Appendix B. The ICG in turn solicited proposals regarding post-transition arrangements from the names, numbers, and protocol parameters communities in order to put forth a proposal to the NTIA. The final request for proposal (RFP) can be found in Appendix C.

3009 While there are interactions between all of the IANA functions and IETF standards, this document specifically addresses the protocol parameters registries function. Section 1 (this section) contains an introduction that is sourced solely within the IETF. Section 2 contains the questionnaire that was written by the ICG and a formal response by the IETF.<sup>120</sup>

3010 We note that the following text was stated as footnote in the original RFP:

In this RFP, "IANA" refers to the functions currently specified in the agreement between NTIA and ICANN [<http://www.ntia.doc.gov/page/iana-functions-purchase-order>] as well as any other functions traditionally performed by the IANA functions operator. SAC-067 [<https://www.icann.org/en/system/files/files/sac-067-en.pdf>] provides one description of the many different meanings of the term "IANA" and may be useful reading in addition to the documents constituting the agreement itself.

## P3.2. The Formal RFP Response

3011 The entire Request for Proposals, including introduction, can be found in Appendix C.

### 3012 **Proposal type**

3013 *Identify which category of the IANA functions this submission proposes to address:*

Names       Numbers       **Protocol Parameters**

3014 This response states the existing practice of the IETF, and also represents the views of the Internet Architecture Board and the IETF.

## P3.I. The Community's Use of the IANA

3015 *This section should list the specific, distinct IANA services or activities your community relies on. For each IANA service or activity on which your community relies, please provide the following:*

*A description of the service or activity.*

*A description of the customer of the service or activity.*

*What registries are involved in providing the service or activity.*

*A description of any overlaps or interdependencies between your IANA requirements and the functions required by other customer communities*

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<sup>120</sup> This proposal has been reformatted.

3016 **P3.I.A. The service or activity**

**IETF Response:**

3017 Many IETF protocols make use of commonly defined protocol parameters. These parameters are used by implementers, who are the primary users of the IETF standards and other documents. To ensure consistent interpretation of these parameter values by independent implementations, and to promote universal interoperability, these IETF protocol specifications define and require globally available registries containing the parameter values and a pointer to any associated documentation. The IETF uses the IANA protocol parameters registries to store this information in a public location. The IETF community presently accesses the protocol parameter registries via references based on the iana.org domain name, and makes use of the term "IANA" in the protocol parameter registry processes [\[RFC5226\]](#).

3018 **P3.I.B. The customer of the service or activity**

**IETF Response:**

3019 The IANA protocol parameters registries operator maintains the protocol parameters registries for the IETF in conformance with all relevant IETF policies, in accordance with the Memorandum of Understanding [\[RFC2860\]](#) and associated supplemental agreements that include service level agreements (SLAs) established between the IETF and ICANN [\[MOUSUP\]](#).

3020 The IETF is a global organization that produces voluntary standards, whose mission is to produce high quality, relevant technical and engineering documents that influence the way people design, use, and manage the Internet in such a way as to make the Internet work better [\[RFC3935\]](#). IETF standards are published in the RFC series. The IETF is responsible for the key standards that are used on the Internet today, including IP, TCP, DNS, BGP, and HTTP, to name but a few.

3021 The IETF operates in an open and transparent manner [\[RFC6852\]](#). The processes that govern the IETF are also published in the RFC series. The Internet Standards Process is documented in [\[RFC2026\]](#). That document explains not only how standards are developed, but also how disputes about decisions are resolved. [RFC 2026](#) has been amended a number of times [\[BCP9info\]](#). The standards process can be amended in the same manner that standards are approved. That is, someone proposes a change by submitting a temporary document known as an Internet-Draft, the community discusses it, and if rough consensus can be found the change is approved by the Internet Engineering Steering Group (IESG), who also have day-to-day responsibility for declaring IETF consensus on technical decisions, including those that affect the IANA protocol parameters registries. Anyone may propose a change during a Last Call, and anyone may participate in the community discussion.

3022 **P3.I.C. What Registries are involved in providing the service or activity**

**IETF Response:**

3023 The protocol parameters registries are the product of IETF work. These also include the top-level registry for the entire IP address space and some of its sub-registries, autonomous system number space, and a number of special use registries with regard to domain names. For more detail please refer to the documentation in the "overlaps or interdependencies" section.

3024 Administration of the protocol parameters registries is the service that is provided to the IETF.

3025 **P3.I.D. Overlaps or interdependencies between your IANA requirements and the functions required by other customer communities**

**IETF Response:**

3026 In this context, the IETF considers "overlap" to be where there is in some way shared responsibility for a single registry across multiple organizations. In this sense, there is no overlap between organizations because responsibility for each registry is carefully delineated. There are, however, points of interaction between other organizations, and a few cases where the IETF may further define the scope of a registry for technical purposes. This is the case with both names and numbers, as described in the paragraphs below. In all cases, the IETF coordinates with the appropriate organizations.

3027 It is important to note that the IETF does not have formal membership. The term "the IETF" includes anyone who wishes to participate in the IETF, and IETF participants may also be members of other communities. Staff and participants from ICANN and the Regional Internet Registries (RIRs) regularly participate in IETF activities.

- The IETF has specified a number of special use registries with regard to domain names. These registries require coordination with ICANN as the policy authority for the DNS root, including community groups that are responsible for ICANN policy on domain names such as the Generic Names Supporting Organization (GNSO) and the Country Code Names Supporting Organization (ccNSO). There are already mechanisms in place to perform this coordination, and the capacity to modify those mechanisms to meet new conditions as they might arise. [[RFC6761](#)]
- The IETF specifies the DNS protocol. From time to time there have been and will be updates to that protocol. As we make changes we will broadly consult the operational community about the impact of those changes, as we have done in the past.
- The IETF specifies minimum requirements for root servers. [[RFC2870](#)] Those requirements are currently under review, in consultations with the root server community.
- The routing architecture has evolved over time, and is expected to continue to do so. Such evolution may have an impact on appropriate IP address allocation strategies. If and when that happens, the IETF will consult and coordinate with the RIR community, as we have done in the past.

- The IETF is responsible for policy relating to the entire IP address space and AS number space. Through the IANA protocol parameters registries, the IETF delegates unicast IP address and AS number ranges to the RIRs [RFC7020], [RFC7249]. Special address allocation, such as multicast and anycast addresses, often require coordination. Another example of IP addresses that are not administered by the RIR system is Unique Local Addresses (ULAs) [RFC4193], where local networks employ a prefix that is not intended to be routed on the public Internet. New special address of the standards. In all cases, these special assignments are listed in the IANA protocol parameters registries.
- The IETF maintains sub-registries for special IPv4 and IPv6 assignments. These are specified in [RFC3307], [RFC5771], and [RFC6890]. The IETF coordinates such assignments with the RIRs.
- Changes to IETF standards may have impact on operations of RIRs and service providers. A recent example is the extensions to BGP to carry the Autonomous System numbers as four-octet entities [RFC6793]. It is important to note that this change occurred out of operational necessity, and it demonstrated strong alignment between the RIRs and the IETF.

## **P3.II. Existing Pre-Transition Arrangements**

3028 *This section should describe how existing IANA-related arrangements work, prior to the transition.*

### **3029 P3.II.A. Policy Sources**

3030 *This section should identify the specific source(s) of policy which must be followed by the IANA functions operator in its conduct of the services or activities described above. If there are distinct sources of policy or policy development for different IANA activities, then please describe these separately. For each source of policy or policy development, please provide the following:*

- *Which IANA service or activity (identified in Section I) is affected.*
- *A description of how policy is developed and established and who is involved in policy development and establishment.*
- *A description of how disputes about policy are resolved.*
- *References to documentation of policy development and dispute resolution processes.*

#### **3031 P3.II.A.1. Affected IANA service or activity**

**IETF Response:**

3032 The protocol parameters registries.

3033 **P3.II.A.2. How policy is developed and established and by whom**

**IETF Response:**

3034 Policy for overall management of the protocol parameters registries is stated in [[RFC6220](#)] and [[RFC5226](#)]. The first of these documents explains the model for how the registries are to be operated, how policy is set, and how oversight takes place. [RFC 5226](#) specifies the policies that specification writers may employ when they define new protocol registries in the "IANA Considerations" section of each specification. All policies at the IETF begin with a proposal in the form of an Internet-Draft. Anyone may submit such a proposal. If there is sufficient interest, a working group whose scope includes the proposed work may choose to adopt it, the IESG may choose to create a working group, or an Area Director may choose to sponsor the draft. In any case, anyone may comment on the proposal as it progresses. A proposal cannot be passed by the IESG unless it enjoys sufficient community support as to indicate rough consensus [[RFC7282](#)]. In each case, a "Last Call" is made so that there is notice of any proposed change to a policy or process. Anyone may comment during a Last Call. For example, this process is currently being used to update [RFC 5226](#) [[I-D.leiba-cotton-iana-5226bis](#)].

3035 **P3.II.A.3. How disputes about policy are resolved**

**IETF Response:**

3036 Most disputes are handled at the lowest level through the working group and rough consensus processes. Should anyone disagree with any action, [Section 6.5 of \[RFC2026\]](#) specifies a multi-level conflict resolution and appeals process that includes the responsible Area Director, the IESG, and the IAB. Should appeals be upheld, an appropriate remedy is applied. In the case where someone claims that the procedures themselves are insufficient or inadequate in some way to address a circumstance, one may appeal an IAB decision to the Internet Society Board of Trustees.

3037 **P3.II.A.4. References to documentation of policy development and dispute resolution processes**

**IETF Response:**

3038 As mentioned above, [\[RFC2026\] Section 6.5](#) specifies a conflict resolution and appeals process. [\[RFC2418\]](#) specifies working group procedures. Note that both of these documents have been amended in later RFCs as indicated in the [[RFC-INDEX](#)].

3039 **P3.II.B. Oversight and Accountability**

3040 *This section should describe all the ways in which oversight is conducted over IANA's provision of the services and activities listed in Section I and all the ways in which IANA is currently held accountable for the provision of those services. For each oversight or accountability mechanism, please provide as many of the following as are applicable:*

- *Which IANA service or activity (identified in Section I) is affected.*

- *If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way.*
- *A description of the entity or entities that provide oversight or perform accountability functions, including how individuals are selected or removed from participation in those entities.*
- *A description of the mechanism (e.g., contract, reporting scheme, auditing scheme, etc.). This should include a description of the consequences of the IANA functions operator not meeting the standards established by the mechanism, the extent to which the output of the mechanism is transparent and the terms under which the mechanism may change.*
- *Jurisdiction(s) in which the mechanism applies and the legal basis on which the mechanism rests.*

3041 **P3.II.B.1. Which IANA service or activity is affected?**

**IETF Response:**

3042 The protocol parameters registries.

3043 **P3.II.B.2. If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way.**

**IETF Response:**

3044 All policy sources relating to the protocol parameters registry are affected.

3045 **P3.II.B.3. The entity or entities that provide oversight or perform accountability functions**

3046 *A description of the entity or entities that provide oversight or perform accountability functions, including how individuals are selected or removed from participation in those entities.*

**IETF Response:**

3047 The Internet Architecture Board (IAB) is an oversight body of the IETF whose responsibilities include, among other things, confirming appointment of IESG members, managing appeals as discussed above, management of certain domains, including .ARPA [[RFC3172](#)], and general architectural guidance to the broader community. The IAB must approve the appointment of an organization to act as IANA operator on behalf of the IETF. The IAB is also responsible for establishing liaison relationships with other organizations on behalf of the IETF. The IAB's charter is to be found in [[RFC2850](#)].

3048 The IAB members are selected and may be recalled through a Nominating Committee (NOMCOM) process, which is described in [[RFC3777](#)] and its updates. This process provides for selection of active members of the community who themselves agree upon a slate of candidates. The active members are chosen randomly from volunteers with a history

of participation in the IETF, with limits regarding having too many active members with the same affiliation. The selection of the active members is performed in a manner that makes it possible for anyone to verify that the correct procedure was followed. The slate of candidates selected by the active members are sent to the Internet Society Board of Trustees for confirmation. In general, members are appointed for terms of two years. The IAB selects its own chair.

3049 The IAB provides oversight of the protocol parameters registries of the IETF, and is responsible for selecting appropriate operator(s) and related per-registry arrangements. Especially when relationships among protocols call for it, registries are at times operated by, or in conjunction with, other bodies. Unless the IAB or IETF has concluded that special treatment is needed, the operator for registries is currently ICANN.

3050 **P3.II.B.4. Description of the mechanism**

3051 *(e.g., contract, reporting scheme, auditing scheme, etc.). This should include a description of the consequences of the IANA functions operator not meeting the standards established by the mechanism, the extent to which the output of the mechanism is transparent and the terms under which the mechanism may change.*

**IETF Response:**

3052 A memorandum of understanding (MoU) between ICANN and the IETF community has been in place since 2000. It can be found in [\[RFC2860\]](#). The MoU defines the work to be carried out by the IANA functions operator for the IETF and the Internet Research Task Force (IRTF), a peer organization to the IETF that focuses on research.[\[RFC2014\]](#) Each year a service level agreement is negotiated that supplements the MoU.

3053 Day-to-day administration and contract management is the responsibility of the IETF Administrative Director (IAD). The IETF Administrative Oversight Committee (IAOC) oversees the IAD. The members of the IAOC are also the trustees of the IETF Trust, whose main purpose is to hold certain intellectual property for the benefit of the IETF as a whole. IAOC members are appointed by the Internet Society Board of Trustees, the IAB, the IESG, and the NOMCOM [\[RFC4071\]](#). The IAOC works with the IANA functions operator to establish annual IANA performance metrics [\[METRICS\]](#) and operational procedures, and the resulting document is adopted as an supplement to the MoU each year [\[MOUSUP\]](#). Starting from 2014, in accordance with these supplements, an annual audit is performed to ensure that protocol parameter requests are being processed according to the established policies. The conclusions of this audit will be available for anyone in the world to review.

3054 To date there have been no unresolvable disputes or issues between the IETF and the current IANA functions operator. [\[RFC2860\]](#) specifies that should a technical dispute arise, "the IANA shall seek and follow technical guidance exclusively from the IESG." In the unlikely event that a more difficult situation should arise, the IAOC and the IAB would engage ICANN management to address the matter. The MoU also provides an option for either party to terminate the arrangement with six months notice. Obviously such action would only be undertaken after serious consideration. In that case a new IANA functions operator would be selected, and a new agreement with that operator would be established.



3055 **P3.II.B.5. Jurisdiction and legal basis of the mechanism**

**IETF Response:**

3056 This mechanism is global in nature. The current agreement does not specify a jurisdiction.

### **P3.III. Proposed Post-Transition Oversight and Accountability**

3057 *This section should describe what changes your community is proposing to the arrangements listed in Section II.B in light of the transition. If your community is proposing to replace one or more existing arrangements with new arrangements, that replacement should be explained and all of the elements listed in Section II.B should be described for the new arrangements. Your community should provide its rationale and justification for the new arrangements.*

3058 *If your community's proposal carries any implications for the interface between the IANA functions and existing policy arrangements described in Section II.A, those implications should be described here.*

3059 *If your community is not proposing changes to arrangements listed in Section II.B, the rationale and justification for that choice should be provided here.*

**IETF Response:**

3060 No new organizations or structures are required. Over the years since the creation of ICANN, the IETF, ICANN, and IAB have together created a system of agreements, policies, and oversight mechanisms that already cover what is needed. This system has worked well without any operational involvement from the NTIA.

3061 IANA protocol parameters registry updates will continue to function day-to-day, as they have been doing for the last decade or more. The IETF community is very satisfied with the current arrangement with ICANN. [RFC 2860](#) remains in force and has served the IETF community very well. [RFC 6220](#) has laid out an appropriate service description and requirements.

3062 However in the absence of the NTIA contract a few new arrangements may be needed in order to ensure the IETF community's expectations are met. Those expectations are the following:

- The protocol parameters registries are in the public domain. It is the preference of the IETF community that all relevant parties acknowledge that fact as part of the transition.
- It is possible in the future that the operation of the protocol parameters registries may be transitioned from ICANN to subsequent operator(s). It is the preference of the IETF community that, as part of the NTIA transition, ICANN acknowledge that it will carry out the obligations established under C.7.3 and I.61 of the current IANA functions contract between ICANN and the NTIA [[NTIA-Contract](#)] to achieve a smooth transition to subsequent operator(s), should the need arise. Furthermore, in the event of a transition it is the expectation of the IETF community that ICANN, the IETF, and subsequent

operator(s) will work together to minimize disruption in the use the protocol parameters registries or other resources currently located at iana.org.

3063 In developing our response we have been mindful of the following points that the IETF community has discussed over the last year [ProtoParamEvo14] that have led to the following guiding principles for IAB efforts that impact IANA protocol parameter registries. These principles must be taken together; their order is not significant.

1. The IETF protocol parameters registries function has been and continues to be capably provided by the Internet technical community. The strength and stability of the function and its foundation within the Internet technical community are both important given how critical protocol parameters are to the proper functioning of IETF protocols. We think the structures that sustain the protocol parameters registries function need to be strong enough that they can be offered independently by the Internet technical community, without the need for backing from external parties. And we believe we largely are there already, although the system can be strengthened further, and continuous improvements are being made.
2. The protocol parameters registries function requires openness, transparency, and accountability.

Existing documentation of how the function is administered and overseen is good [[RFC2860](#)], [[RFC6220](#)]. Further articulation and clarity may be beneficial. It is important that the whole Internet community can understand how the function works, and that the processes for registering parameters and holding those who oversee the protocol parameters function accountable for following those processes are understood by all interested parties. We are committed to making improvements here if necessary.

3. Any contemplated changes to the protocol parameters registries function should respect existing Internet community agreements.

The protocol parameters registries function is working well. The existing Memorandum of Understanding in [RFC 2860](#) defines "the technical work to be carried out by the Internet Assigned Numbers Authority on behalf of the Internet Engineering Task Force and the Internet Research Task Force." Any modifications to the protocol parameters registries function should be made using the IETF process to update [RFC 6220](#) and other relevant RFCs. Put quite simply: evolution, not revolution.

4. The Internet architecture requires and receives capable service by Internet registries.

The stability of the Internet depends on capable provision of not just IETF protocol parameters, but IP numbers, domain names, and other registries. Furthermore, DNS and IPv4/IPv6 are IETF-defined protocols. Thus we expect the role of the IETF in standards development, architectural guidance, and allocation of certain name/number parameters to continue. IP multicast addresses and special-use DNS names are two examples where close coordination is needed. The IETF will continue to coordinate with ICANN, the RIRs, and other parties that are mutually invested in the continued smooth operation of the Internet registries. We fully understand the need to work together.

5. The IETF will continue management of the protocol parameter registry function as an integral component of the IETF standards process and the use of resulting protocols.

[RFC 6220](#) specifies the role and function of the protocol parameters registry, which is critical to IETF standards processes and IETF protocols. The IAB, on behalf of the IETF, has the responsibility to define and manage the relationship with the protocol registry operator role. This responsibility includes the selection and management of the protocol parameter registry operator, as well as management of the parameter registration process and the guidelines for parameter allocation.

6. The protocol parameters registries are provided as a public service.

Directions for the creation of protocol parameters registries and the policies for subsequent additions and updates are specified in RFCs. The protocol parameters registries are available to everyone, and they are published in a form that allows their contents to be included in other works without further permission. These works include, but are not limited to, implementations of Internet protocols and their associated documentation.

These principles will guide the IAB, IAOC, and the rest of the IETF community as they work with ICANN to establish future IANA performance metrics and operational procedures.

## P3.IV. Transition Implications

3064 *This section should describe what your community views as the implications of the changes it proposed in Section III. These implications may include some or all of the following, or other implications specific to your community:*

- *Description of operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*
- *Description of any legal framework requirements in the absence of the NTIA contract.*
- *Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.*

### **IETF Response:**

3065 No structural changes are required for the handling of protocol parameters. The principles listed above will guide IAB, IAOC, and the rest of the IETF community as they work with ICANN to establish future IANA performance metrics and operational procedures, as they have in the past.

3066 As no services are expected to change, no continuity issues are anticipated, and there are no new technical or operational methods proposed by the IETF to test. The IETF leadership,

ICANN, and the RIRs maintain an ongoing informal dialog to spot any unforeseen issues that might arise as a result of other changes.

3067 What is necessary as part of transition is the completion of any supplemental agreement(s) necessary to achieve the requirements outlined in our response in Section III of this RFP.

## **P3.V. NTIA Requirements**

3068 *Additionally, NTIA has established that the transition proposal must meet the following five requirements:*

- *Support and enhance the multistakeholder model;*
- *Maintain the security, stability, and resiliency of the Internet DNS;*
- *Meet the needs and expectation of the global customers and partners of the IANA services;*
- *Maintain the openness of the Internet.*
- *The proposal must not replace the NTIA role with a government-led or an inter-governmental organization solution.*

3069 *This section should explain how your community's proposal meets these requirements and how it responds to the global interest in the IANA functions.*

3070 This proposal addresses each of the NTIA's requirements:

### **3071 P3.V.A. Support and enhance the multistakeholder model**

**IETF Response:**

3072 Because the IETF is open to everyone, participation is open to all stakeholders. IETF processes outlined in Section I were used to develop this proposal. Those same processes have been and shall be used to amend governance of the protocol parameters function. As mentioned previously, anyone may propose amendments to those processes, and anyone may take part in the decision process.

### **3073 P3.V.B. Maintain the security, stability, and resiliency of the Internet DNS**

**IETF Response:**

3074 No changes are proposed in this document that affect the security, stability, and resiliency of the DNS.

3075 **P3.V.C. Meet the needs and expectation of the global customers and partners of the IANA services**

**IETF Response:**

3076 Implementers and their users from around the world make use of the IETF standards and the associated IANA protocol parameters registries. The current IANA protocol parameters registries system is meeting the needs of these global customers. This proposal continues to meet their needs by maintaining the existing processes that have served them well in the past.

3077 **P3.V.D. Maintain the openness of the Internet**

**IETF Response:**

3078 This proposal maintains the existing open framework that allows anyone to participate in the development of IETF standards, including the IANA protocol parameters registries policies. Further, an implementer anywhere in the world has full access to the protocol specification published in the RFC series and the protocol parameters registries published at [iana.org](http://iana.org). Those who require assignments in the IANA protocol registries will continue to have their requests satisfied, as specified by the existing policies for those registries.

3079 **P3.V.E. Not a government-led or inter-governmental solution**

**IETF Response:**

3080 Policy oversight is performed by the IAB, which is neither a government-led or an intergovernmental organization.

## **P3.VI. Community Process**

3081 *This section should describe the process your community used for developing this proposal, including:*

- *The steps that were taken to develop the proposal and to determine consensus.*
- *Links to announcements, agendas, mailing lists, consultations and meeting proceedings.*
- *An assessment of the level of consensus behind your community's proposal, including a description of areas of contention or disagreement.*

3082 **P3.VI.A. Steps taken to develop consensus and the proposal**

**IETF Response:**

3083 The IESG established the IANAPLAN working group to develop this response. Anyone was welcome to join the discussion and participate in the development of this response. An open mailing list ([ianaplan@ietf.org](mailto:ianaplan@ietf.org)) has been associated with the working group. In addition, IETF's IANA practices have been discussed in the broader community, and all input has

been welcome. Normal IETF procedures [RFC2026] [RFC2418] were used to determine rough consensus. The chairs of the working group reviewed open issues and, after an internal working group last call, determined that all had been satisfactorily addressed, and subsequently the IESG did a formal IETF-wide Last Call followed by a formal review and determined that the document had rough consensus.

3084 **P3.VI.B. Links to announcements, agendas, mailing lists, consultations and meeting proceedings**

**IETF Response:**

3085 The following list is not exhaustive, as there have been many open discussions about this transition within the IETF community in the past few months.

3086 Creation of an open mailing list to discuss the transition:

<http://mailarchive.ietf.org/arch/msg/ietf-announce/Ztd2ed9U04qSxlk9-Oj80jJLXc>

3087 Announcement of a public session on the transition:

[http://mailarchive.ietf.org/arch/msg/ietf-announce/M5zVmFFvTbtgVyMB\\_fjUSW4rJ0c](http://mailarchive.ietf.org/arch/msg/ietf-announce/M5zVmFFvTbtgVyMB_fjUSW4rJ0c)

3088 Announcement by the IESG of the intent to form a working group:

<http://mailarchive.ietf.org/arch/msg/ietf-announce/QsvU9qX98G2KqB18jy6UfhwKjXk>

3089 The working group discussion:

<http://www.ietf.org/mailarchive/web/ianaplan/current/maillist.html>

3090 2014-10-06 Interim Meeting Agenda, Minutes, and presentations:

<http://www.ietf.org/proceedings/interim/2014/10/06/ianaplan/proceedings.html>

3091 Working group last call:

<http://mailarchive.ietf.org/arch/msg/ianaplan/EGF9rfJxn5QpQnRXmS2QxYKYR8k>

3092 Agenda from IETF 91 IANAPLAN WG meeting:

<http://www.ietf.org/proceedings/91/agenda/agenda-91-ianaplan>

3093 Minutes of IETF 91 IANAPLAN WG meeting:

<http://www.ietf.org/proceedings/91/minutes/minutes-91-ianaplan>

3094 Shepherd write-up: <http://datatracker.ietf.org/doc/draft-ietf-ianaplan-icg-response/shepherdwriteup/>

3095 IETF last call: [http://mailarchive.ietf.org/arch/msg/ietf-announce/i5rx6PfjJCRax3Lu4qZ\\_38P8wBq](http://mailarchive.ietf.org/arch/msg/ietf-announce/i5rx6PfjJCRax3Lu4qZ_38P8wBq)

3096 **P3.VI.C. Level of consensus behind the community's proposal**

**IETF Response:**

3097 This document has attained rough consensus of the IETF Working Group and of the IETF community as a whole, as judged first by the working group chairs and then by the sponsoring Area Director, and then by the IESG in accordance with [RFC2026] during the 18 December 2014 IESG telechat. The IESG has approved the draft, pending insertion of this answer in this section and the IAB approval note. The IAB approved a statement for inclusion in the document on 19 December 2014.

3098 Over the course of the development of the document, several suggestions were raised that did not enjoy sufficient support to be included. Two general areas of suggestion that generated much discussion were

- A suggestion for a stronger statement over what terms the IAOC should negotiate.
- A suggestion that "iana.org" and other associated marks be transferred to the IETF trust.

3099 At the end of the working group process, although there was not unanimous support for the results, the working group chairs concluded that rough consensus existed in the working group. The document shepherd's summary of the WG consensus for this document can be found here:

3100 <https://datatracker.ietf.org/doc/draft-ietf-ianaplan-icg-response/shepherdwriteup/>

3101 During IETF last call, additional people voiced support for the document. There were several editorial comments that resulted in changes, as well as some discussion of more substantial comments some of which resulted in text changes. There was some discussion of comments already discussed earlier in the process, and but no new objections were raised during the IETF last call. A summary of the last call comments can be found from here:

3102 <http://www.ietf.org/mail-archive/web/ianaplan/current/msg01500.html>

3103 New draft versions were prepared that took into account all the agreed changes from the last call. The final version was then approved by the IESG.

3104 **P3.4. IANA Considerations**

3105 This memo is a response to a request for proposals. No parameter allocations or changes are sought.

3106 **P3.5. Security Considerations**

3107 While the agreement, supplements, policies, and procedures around the IANA function have shown strong resiliency, the IETF will continue to work with all relevant parties to facilitate improvements while maintaining availability of the IANA registries.

3108 **P3.6. IAB Note**

3109 The IAB supports the response in this document.

3110 **P3.7. Acknowledgments**

3111 This document describes processes that have been developed by many members of the community over many years. The initial version of this document was developed collaboratively through both the IAB IANA

3112 Strategy Program and the IETF IANAPLAN WG. Particular thanks go to Jari Arkko, Marc Blanchet, Brian Carpenter, Alissa Cooper, John Curran, Leslie Daigle, Heather Flanagan, Christer Holmberg, John Klensin, Barry Leiba, Milton Mueller, Andrei Robachevsky, Andrew Sullivan, Dave Thaler, Greg Wood, and Suzanne Woolf.

3113 **P3.8.References**

3114 **P3.8.1 Normative References**

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- [NTIA-Announce] "NTIA Announcement of Intent to Transition Key Internet Domain Name Functions", March 2014, <<http://www.ntia.doc.gov/press-release/2014/ntiaannounces-intent-transition-key-internet-domain-namefunctions>>.
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### 3115 P3.7.2 Informative References

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## P3. Appendix A. Changes

NOTE: This section to be removed by RFC Editor at publication.

### A.1. Changes from -08 to -09

- Update URL for summary of the IETF Last Call.
- Two minor editorial improvements.

### A.2. Changes from -07 to -08

- Update text describing the consensus process.
- Insert IAB approval text.
- Point to the proceedings of IETF 91 for IANAPLAN WG agenda and minutes.

### A.3. Changes from -06 to -07

- Merge "No new changes are needed" with "No new organizations or structures are required". Fewer words to say the same thing.
- consult to consult and coordinate.
- RFC Editor comments.
- Edits resulting from Security Area review by Sean Turner.
- Edits resulting from AD comments.

### A.4. Changes from -05 to -06

- Inclusion of agreed substantial comments from the AD.
- Editorial changes.

### A.5. Changes from -04 to -05

- Change to simpler text for answer about stability and security.
- Mention of RFC 5226bis.

### A.6. Changes from -03 to -04

- Additional text regarding what is needed in Section III.
- Appropriate language modifications in section IV to match the above changes in III.
- Acknowledgments edits.

### A.7. Changes from -02 to -03

- Terminology consistency.
- Add IAB section.
- Changes based on WG discussion on what we prefer as part of the transition regarding IPR.
- Add discussion about .ARPA domain.
- Elaboration of what registries are involved.
- Additional text around coordination with ICANN.
- Working groups can adopt items within their charters.
- IAB appointments generally last two years.
- Add mention of the Trust.
- Security Considerations update.

### A.8. Changes from -01 to -02

- A better description special registries and BGP ASNs.
- Clarity on how the address space and ASNs are delegated.
- Many editorials corrected.
- Mention of the annual review as part of the SLAs.
- Change about how overlap is presented.
- A number of small wording changes based on feedback.

### A.9. Changes from -00 to -01

- Front matter greatly reduced.
- Appendices with charter and RFP added.
- Jurisdiction text changed.
- Proposed changes include supplemental agreement(s) to address jurisdiction, dispute resolution, and IPR, including names and marks.
- Transition implications slightly modified to reference supplemental agreement

## **P3. Appendix B. The Charter of the IANA Stewardship Coordination Group**

<https://www.icann.org/en/system/files/files/charter-icg-27aug14-en.pdf>

## **P3. Appendix C IANA Stewardship Transition Coordination Group RFP**

<https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf>

# **CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations**

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23 February 2016



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**LIST OF ANNEXES & APPENDICES .....51**

# Summary

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- 01 Since December 2014, a working group of ICANN community members has developed a set of proposed enhancements to ICANN's accountability to the global Internet community. This document is being distributed for the consideration and approval of the working group's 6 Chartering Organizations.
- 02 This effort is integral to the transition of the United States' stewardship of the IANA functions to the global Internet community, reflecting the ICANN community's conclusion that improvements to ICANN's accountability were necessary in the absence of the accountability backstop that the historical contractual relationship with the United States government provided. The accountability improvements set out in this document are not designed to change ICANN's multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN's day-to-day operations.
- 03 The main elements of the proposal are outlined below, supported by additional annexes and appendices. Together with ICANN's existing structures and groups, these accountability enhancements will ensure ICANN remains accountable to the global Internet community.
- **A revised Mission Statement** for the ICANN Bylaws that sets out what ICANN does. This Mission Statement clarifies but does not change ICANN's historic mission.
  - An enhanced **Independent Review Process** and redress process with a broader scope and the power to ensure ICANN stays within its Mission.
  - New specific **powers** for the ICANN community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus, including the powers to:
    - Reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans.
    - Reject changes to ICANN's Standard Bylaws.
    - Approve changes to new Fundamental Bylaws, Articles of Incorporation and ICANN's sale or other disposition of all or substantially all of ICANN's assets.
    - Remove an individual ICANN Board Director.
    - Recall the entire ICANN Board.
    - Initiate a binding Independent Review Process (where a panel decision is enforceable in any court recognizing international arbitration results).
    - Reject ICANN Board decisions relating to reviews of the IANA functions, including the triggering of Post-Transition IANA separation.
    - The rights of inspection and investigation
  - A community Independent Review Process as an enforcement mechanism further to a Board action or inaction.
- 04 All of these community powers can only be exercised after extensive community discussions and debates through processes of **engagement and escalation**. The process of escalation provides many opportunities for the resolution of disagreements between parties before formal action is required.
- 05 The accountability elements outlined above will be supported through:
- Additions to the ICANN Bylaws to create an **Empowered Community** that is based on a simple legal vehicle designed to act on the instructions of ICANN stakeholder groups when

needed to exercise the Community Powers. The Empowered Community is granted the status of a Designator (a recognized role in law) and has the standing to enforce the Community Powers if needed.

- Core elements of ICANN's governing documents, including the Articles of Incorporation and **Fundamental Bylaws** that can only be changed with agreement between the ICANN community and the ICANN Board.

06 In addition, further proposed changes include:

- Recognition of **ICANN's respect for Human Rights** into the Bylaws.
- Incorporation of ICANN's commitments under the 2009 **Affirmation of Commitments** with the United States Department of Commerce into the Bylaws, where appropriate.
- Improved accountability and diversity standards for ICANN's **Supporting Organizations and Advisory Committees**.
- A commitment to discuss additional accountability improvements and broader accountability enhancements in 2016 that do not need to be in place or committed to prior to the IANA Stewardship Transition. These include:
  - Considering improvements to ICANN's standards for diversity at all levels.
  - Further enhancements to the accountability of ICANN's Supporting Organizations and Advisory Committees, as well as ICANN staff.
  - Improving ICANN's transparency relating to ICANN's Documentary Information Disclosure Policy (DIDP), interactions with governments, whistleblower policy and Board deliberations.
  - Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment in the Bylaws.
  - Addressing questions focused on jurisdiction of contracts and dispute settlements.
  - Considering enhancements to the role and function of the ICANN Ombudsman.

07 To develop these recommendations to improve ICANN's accountability, the working group:

- Relied on suggestions and proposals generated inside the working group and by the broader Internet multistakeholder community.
- Conducted three public comment periods to gather feedback on earlier drafts and discussed iterations of its recommendations across the world at ICANN meetings and through online webinars.
- Rigorously "stress tested" ICANN's current and proposed accountability mechanisms to assess their strength against problematic scenarios the organization could potentially face.
- Engaged two external law firms to ensure the legal reliability of the proposed accountability enhancements.
- Made the minimum enhancements to ICANN's accountability necessary to meet the baseline requirements of the community, as required for the IANA Stewardship Transition.
- Met the requirements of the group that developed the IANA Stewardship Transition proposal for the Domain Names community.
- Met the requirements of the U.S. National Telecommunications and Information Agency for the IANA Stewardship Transition.

- 08 Each of the twelve recommendations has a corresponding annex with additional details including a summary, CCWG-Accountability<sup>1</sup> Recommendations, Detailed Explanation of Recommendations, Changes from the 'Third Draft Proposal on Work Stream 1 Recommendations,' Stress Tests Related to this Recommendation, how the recommendation meets the CWG-Stewardship<sup>2</sup> Requirements, and how the recommendation addresses NTIA Criteria.
- 09 **Note:** Minority statements can be found in Appendix A: Documenting Consensus (Including Minority Views)

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<sup>1</sup> Cross Community Working Group on Enhancing ICANN Accountability

<sup>2</sup> Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions

# Background

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- 10 On 14 March 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the [Internet Assigned Numbers Authority \(IANA\) Functions](#) to the global multistakeholder community. NTIA asked ICANN to convene an inclusive, global discussion to determine a process for transitioning the stewardship of these functions to the Internet community.
- 11 During initial discussions on how to proceed with the transition process, the ICANN multistakeholder community, recognizing the safety net that the NTIA provides as part of its stewardship role of the IANA Functions, raised concerns about the impact of the transition on ICANN's accountability.
- 12 To address these concerns, the ICANN community requested that ICANN's existing accountability mechanisms be reviewed and enhanced as a key part of the transition process. As a result, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened. The CCWG-Accountability's work consists of two tracks:

13 **Work Stream 1:** Focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

14 **Work Stream 2:** Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

- 15 Any other consensus items that are not required to be in place within the IANA Stewardship Transition timeframe can be addressed in Work Stream 2. There are mechanisms in Work Stream 1 to adequately enforce implementation of Work Stream 2 items, even if they were to encounter resistance from ICANN Management or others.
- 16 The work documented in this Draft Proposal focuses on Work Stream 1, with some references to related activities that are part of Work Stream 2's remit.

# Requirements

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17 This section provides an overview of the requirements the CCWG-Accountability has to fulfill in developing its recommendations

## 18 **NTIA Requirements**

19 NTIA [has requested](#) that ICANN “convene a multistakeholder process to develop a plan to transition the U.S. Government stewardship role” with regard to the IANA Functions and related Root Zone management. In making its announcement, the NTIA specified that the transition Proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model.
- Maintain the security, stability, and resiliency of the Internet DNS.
- Meet the needs and expectations of the global customers and partners of the IANA services.
- Maintain the openness of the Internet.

20 NTIA also specified that it would not accept a Proposal that replaces its role with a government-led or an intergovernmental organization solution.

21 Additionally, NTIA also requires that the CCWG-Accountability Proposal clearly document how it worked with the multistakeholder community, which options it considered in developing its Proposal, and how it tested these.

22 Please Refer to Annex 14: NTIA Requirements for the details of how the CCWG-Accountability meets these requirements.

## 23 **CWG-Stewardship Requirements**

24 In the transmittal letter for the CWG-Stewardship transition plan to the IANA Stewardship Transition Coordination Group (ICG), the CWG-Stewardship noted the following regarding its dependencies on the CCWG-Accountability work in response to an earlier version of this document:

25 “The CWG-Stewardship is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms proposed by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). The co-Chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability Work Stream 1 recommendations, if implemented as expected, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG-Accountability. If any element of these level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship, this will require revision.”

26 The CWG-Stewardship requirements of the CCWG-Accountability are detailed on pages 20 – 21 of the CWG-Stewardship Proposal transmitted on 25 June 2015. The Work Stream 1 Proposals from the CCWG-Accountability address all of these conditions.

27 These requirements are:

1. ICANN Budget
  2. ICANN Board and Community Empowerment Mechanisms
  3. IANA Function Review and Separation Process
  4. Customer Standing Committee
  5. Appeals Mechanism
  6. Post-Transition IANA (PTI) Governance
  7. Fundamental Bylaws
- 28 Please refer to Annex 13: CWG-Stewardship Requirements for details on how the CCWG-Accountability meets these requirements.

# The CCWG-Accountability's Findings and Recommendations

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29 This section provides an overview of the CCWG-Accountability's findings and recommendations regarding Work Stream 1:

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

31 **Recommendation #2:** Empowering the Community through Consensus: Engagement, Escalation, and Enforcement

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

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

34 **Recommendation #5:** Changing Aspects of ICANN's Mission, Commitments, and Core Values

35 **Recommendation #6:** Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries out its Mission

36 **Recommendation #7:** Strengthening ICANN's Independent Review Process

37 **Recommendation #8:** Improving ICANN's Request for Reconsideration Process

38 **Recommendation #9:** Incorporating the Affirmation of Commitments in ICANN's Bylaws

39 **Recommendation #10:** Enhancing the Accountability of Supporting Organizations and Advisory Committees

40 **Recommendation #11:** Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)

41 **Recommendation #12:** Committing to Further Accountability Work in Work Stream 2

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42 Note:
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- The language in the Summary, CCWG-Accountability Recommendations, and Changes from the “Third Draft Proposal on Work Stream 1 Recommendations” sections of the Recommendations is copied from the matching Annexes which were approved as consensus positions by the CCWG-Accountability. Only the formatting has been modified to accommodate the structure of the main report.
- The language proposed in recommendations for ICANN Bylaw revisions are conceptual at this stage. The CCWG-Accountability’s external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws (Fundamental and Standard Bylaws).

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

### 43 **Summary**

44 Under California law and the current Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the ICANN Board of Directors has the final responsibility for the activities and affairs of ICANN.

45 With removal of the U.S. National Telecommunications and Information Administration (NTIA) as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the ICANN Board may object to the results.

46 The CCWG-Accountability recommends creating a new entity that will act at the direction of the multistakeholder community to exercise and enforce Community Powers. The entity will take the form of a California unincorporated association and be given the role of "Sole Designator" of ICANN Board Directors and will have the ability to directly or indirectly the Community Powers. The entity will be referred to as the "Empowered Community."

47 As permitted under California law, the Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove ICANN Board Directors (whether an individual Director or the entire Board). Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.

48 The CCWG-Accountability accepts that its statutory power will be limited as described above, and that this is sufficient given:

- The creation of "Fundamental Bylaws" that can only be modified jointly by the ICANN Board and Empowered Community.
- All recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws.
- The right of inspection is granted to "Decisional Participants" in the Empowered Community.
- The right of investigation is granted to the Decisional Participants in the Empowered Community.

49 The process for the Empowered Community to use a Community Power is outlined in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

### 50 **CCWG-Accountability Recommendations**

51 The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce Community Powers:

- This entity will take the form of a California unincorporated association and be given the role of Sole Designator of ICANN Board Directors and will have the ability to directly or indirectly enforce the Community Powers. This entity will be referred to as the Empowered Community.

- The Empowered Community will act as directed by participating Supporting Organizations (SOs) and Advisory Committees (ACs), which will be referred to as the Decisional Participants in the Empowered Community.
- The Empowered Community, and the rules by which it is governed, will be constituted in ICANN's Fundamental Bylaws, along with provisions to ensure the Empowered Community cannot be changed or eliminated without its own consent (see Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation).
- The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.

52 Additionally, the CCWG-Accountability recommends including in the ICANN Bylaws:

- The right for Decisional Participants in the Empowered Community to inspection as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.
- The right of investigation, which includes the adoption of the following audit process: upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.
- The following limitation associated with the Governmental Advisory Committee (GAC) acting as a Decisional Participant: If the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice (referred to as the "GAC carve-out").

In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.

The GAC carve-out preserves the ICANN Board's unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus – as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18) – while protecting the Empowered Community's power to challenge such Board decisions.

53 **Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Scope and limitations with respect to the right to inspect accounting books and records of ICANN confirmed, emphasizing the difference between DIDP and inspection rights.
- Added inspection rights for accounting books and records and minutes based on a one Decisional Participant threshold.
- Introduced additional suggestion by the ICANN Board regarding investigation right (audits), based on three Decisional Participants in the Empowered Community threshold.

- Confirmed direction for implementation to avoid abusive claims.
- Compromise on Recommendation #11 required the creation of the “GAC carve-out.”

#### 54 **Relevant Annexes**

- Annex 01 – Details on Recommendation #1: Establishing an Empowered Community for enforcing Community Powers
- Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation
- Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

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

#### 55 **Summary**

#### 56 **Engagement**

57 Today, the Internet Corporation for Assigned Names and Numbers (ICANN) Board of Directors voluntarily consults with the multistakeholder community on a variety of decisions, including the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms such as public consultations and information sessions to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an “engagement process.”

58 The CCWG-Accountability is recommending that engagement processes for specific ICANN Board actions be constituted in the Fundamental Bylaws. Although the ICANN Board engages voluntarily in these processes today, this recommendation would formally require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:

- Approving ICANN’s Five-Year Strategic Plan.
- Approving ICANN’s Five-Year Operating Plan.
- Approving ICANN’s Annual Operating Plan & Budget.
- Approving the Internet Assigned Numbers Authority (IANA) Functions Budget.
- Approving any modifications to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
- Making ICANN Board decisions relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process.

59 If it is determined that there is divergence between the ICANN Board and the community after the engagement process, the Empowered Community (as defined in Recommendation #1:

Establishing an Empowered Community for Enforcing Community Powers) may decide to use a Community Power after the appropriate “escalation process” has been satisfied.

60 The Empowered Community may begin an escalation process to:

- Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget.
- Reject a change to ICANN Standard Bylaws.
- Approve changes to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
- Remove an individual ICANN Board Director.
- Recall the entire ICANN Board.
- Initiate a binding community Independent Review Process (IRP), where a panel decision is enforceable in any court recognizing international arbitration results, or a non-binding Request for Reconsideration, where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN’s Board or staff.

61 Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

## 62 **Escalation**

63 The escalation process can differ, sometimes significantly, from one Community Power to another.

64 One of the most standardized versions of the escalation process is required for all Community Powers to “reject,” remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.

- **This escalation process comprises the following steps:**

1. An individual starts a petition in a Supporting Organization (SO) or Advisory Committee (AC) that is a Decisional Participant in the Empowered Community (see Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers).
  - If the petition is approved by that SO or AC, it proceeds to the next step.
  - If the petition is not approved by that SO or AC, the escalation process is terminated.
2. The SO or AC that approved the petition contacts the other Decisional Participants to ask them to support the petition.
  - At least one additional SO and/or AC must support the petition (for a minimum of two or, for Board recall, three) for a Community Forum to be organized to discuss the issue.
    - If the threshold is not met, the escalation process is terminated.
    - If the threshold is met, a Community Forum is organized to discuss the petition.
3. An open Community Forum of one or two days is organized for any interested stakeholder in the community to participate.
  - The petitioning SO and/or AC will:

- Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants.
  - Designate a representative(s) to liaise with SOs/ACs to answer questions from the SOs/ACs.
  - If desired, optionally, request that ICANN organize a conference call prior to the Community Forum for the community to discuss the issue.
  - If the ICANN Board and the Empowered Community can resolve their issues before or in the Community Forum, the escalation process is terminated.
  - Otherwise, the Empowered Community must decide if it wishes to use its Community Power.
4. The Empowered Community considers use of a Community Power.
- If the threshold to use a Community Power is not met, or there is more than one objection, then the escalation process is terminated.
  - If the threshold is met for using the Community Power, and there is no more than one objection, the Empowered Community advises the ICANN Board of the decision and directs it to comply with the decision (as outlined in the Fundamental Bylaws for this Community Power).
5. The Empowered Community advises the ICANN Board.
- If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct the Board to take any necessary action to comply with the decision.

65 **Enforcement**

66 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community using a Community Power (other than a decision to remove an individual Director or the entire ICANN Board pursuant to the Empowered Community's statutory power, as discussed below), the Empowered Community must decide if it wishes to begin the enforcement process.

67 The enforcement process can proceed in one of two ways:

- The Empowered Community may initiate mediation and community IRP procedures.
- The Empowered Community may initiate an escalation process to recall the entire ICANN Board.

68 The enforcement process may result in a resolution of the issue. Otherwise, if needed, the result of the enforcement process is enforceable in court.

69 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

70 **CCWG-Accountability Recommendations**

- 71 Establish a Fundamental Bylaw that requires the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:
- Approving ICANN’s Five-Year Strategic Plan.
  - Approving ICANN’s Five-Year Operating Plan.
  - Approving ICANN’s Annual Operating Plan & Budget.
  - Approving the IANA Functions Budget.
  - Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
  - Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.
- 72 Include the engagement, escalation and enforcement processes in the Fundamental Bylaws.
- Note: The escalation processes for each Community Power are outlined in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.

73 **Table: Required Thresholds for the Various Escalation and Enforcement Processes (Based on a Minimum of Five Decisional Participants in the Empowered Community)**

Required Community Powers?	Petition Threshold to convene a Community Forum	Is there consensus support to exercise a Community Power?
74 1. Reject a proposed Operating Plan/Strategic Plan/Budget	75 Two SOs/ACs	76 Four support rejection, and no more than one objection
77 2. Approve a change to Fundamental Bylaws and Articles of Incorporation, and approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets	78 N/A	79 Three support approval, and no more than one objection
80 3. Reject changes to Standard Bylaws	81 Two SOs/ACs, including the SO that led the PDP that requires the Bylaw change (if any)	82 Three support rejection, including the SO that led the PDP that requires the Bylaw change (if any), and no more than one objection

<b>Required Community Powers?</b>	<b>Petition Threshold to convene a Community Forum</b>	<b>Is there consensus support to exercise a Community Power?</b>
83 4a. Remove an individual Board Director nominated by an SO or AC (and appointed by the Empowered Community)	84 Majority within nominating SO/AC	85 Invite and consider comments from all SOs/ACs. 3/4 majority within the nominating SO/AC to remove their director
86 4b. Remove an individual Board Director nominated by the Nominating Committee (and appointed by the Empowered Community)	87 Two SOs/ACs	88 Three support, and no more than one objection
89 5. Recall the entire Board of Directors	90 Three SOs/ACs	91 Four support, and no more than one objection <sup>3</sup>
92 6. Initiate a binding IRP or a Request for Reconsideration	93 Two SOs/ACs	94 Three support, including the SO(s) that approved the policy recommendations from the PDP which result is being challenged through the IRP (if any), and no more than one objection 95 Require mediation before IRP begins
96 7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process	97 Two SOs/ACs	98 Four support, and no more than one objection

99 Implementation of the Empowered Community currently anticipates that all of ICANN's SOs, the ALAC and GAC (if the GAC chooses to participate) would participate in the Empowered Community – that is, they will be listed in the Bylaws as the five Decisional Participants.

100 The thresholds presented in this document were determined based on this assessment. If fewer than five of ICANN's SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.

101 In the event of the creation (or removal) of SOs/ACs, the corresponding percentage could be used as useful guidelines in refining the thresholds. There would, however, need to be a conscious decision, depending on the circumstances, regarding these adjustments. If such a change were to affect the list of Decisional Participants in the Empowered Community, the

<sup>3</sup> A minority of CCWG-Accountability participants prefer to require five SOs and ACs, or allow one objection to block consensus.



change would follow the Fundamental Bylaw change process, which enables such a conscious decision to be undertaken.

102 The CCWG-Accountability also recommends that in a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board's implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects, with the following exception:

- Where the power to be exercised is recalling the entire Board for implementing GAC advice, the reduced threshold would apply only after an IRP has found that, in implementing GAC advice, the Board acted inconsistently with the ICANN Bylaws. If the Empowered Community has brought such an IRP and does not prevail, the Empowered Community may not exercise its power to recall the entire the Board solely on the basis of the matter decided by the IRP. It may, however, exercise that power based on other grounds.

103 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Extended time for certain escalation steps in response to comments. Kept overall timeline similar by combining and removing some steps (mandatory conference call).
- Made it mandatory for petitioning party to reach out to SOs/ACs to socialize relevant information before Community Forum.
- Acknowledged comments regarding the thresholds adjustment in case the number of Decisional Participants is lower (page 12, paragraph 60 of the Third Draft Proposal), by removing this option and replacing it with a lower threshold for approving changes to Fundamental Bylaws. Since the Fundamental Bylaw change process is a requirement for “approval” and not a “rejection” option, this would preserve the requirement for stronger protection of Fundamental Bylaws.
- Determined that the use of the corresponding percentage for thresholds as recommended by the Board can be suggested as a guideline in the event of the creation of new SOs/ACs, but there would need to be a conscious decision, depending on the circumstances. If such a new SO/AC were to become a Decisional Participant in the Empowered Community, this change would require a change to the Fundamental Bylaws and would therefore require approval by the Empowered Community.
- Implemented the compromise for Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18) that the threshold requirements would be modified if the GAC was a Decisional Participant.

104 **Relevant Annexes**

- 105 Annex 02 – Details on Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, and Enforcement
- 106 Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation
- 107 Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

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

### 108 **Summary**

109 Currently, the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN) have a single mechanism for amendment.

- Any provision of the ICANN Bylaws can be changed by a 2/3 vote of all the Directors on the ICANN Board.
- The ICANN Board is not required to consult the multistakeholder community or the wider public before amending the Bylaws, but has voluntarily done so up to this point.

110 The CCWG-Accountability recommends classifying each ICANN Bylaw as either a “Fundamental Bylaw” or a “Standard Bylaw,” with Fundamental Bylaws being more difficult to change.

111 Specifically, the CCWG-Accountability recommends that:

- Public consultations be required on all changes to ICANN Bylaws, both Fundamental and Standard.
- The requirement for public consultations to be added to the ICANN Bylaws as a Fundamental Bylaw to ensure that ICANN must continue to engage with the community in the future.
- Any changes to Fundamental Bylaws require approval from both the ICANN Board and Empowered Community, as outlined in the respective Community Power (as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers).
- The threshold for ICANN Board approval for changing a Fundamental Bylaw is raised from 2/3 to 3/4.
- Approval for changes to the Articles of Incorporation use the same process required for approving changes to Fundamental Bylaws, including public consultations.

112 Why is the CCWG-Accountability recommending this?

- The CCWG-Accountability felt that it was critical to ensure that the ICANN Bylaws that embody the purpose of the organization (Mission, Commitments and Core Values) and are meant to ensure the accountability of the ICANN Board, cannot be changed by the ICANN Board acting alone.

### 113 **CCWG-Accountability Recommendations**

114 The CCWG-Accountability recommends:

- Classifying each ICANN Bylaw as either a Fundamental Bylaw or a Standard Bylaw.
- Making the following CCWG-Accountability and CWG-Stewardship Recommendations Fundamental Bylaws:

- The Empowered Community for enforcing Community Powers, including the role of Sole Designator of ICANN's Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- The escalation and enforcement mechanisms as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
- The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.
- The seven Community Powers as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- The Mission, Commitments and Core Values as described in Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values.
- The framework for the Independent Review Process (IRP) as described in Recommendation #7: Strengthening ICANN's Independent Review Process.
- The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal.
- The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal.
- The rights of investigation and inspection as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- Requiring ICANN to conduct public consultations on any proposed changes to Standard Bylaws, Fundamental Bylaws or the Articles of Incorporation.
- Requiring approval for any changes to Fundamental Bylaws and the Articles of Incorporation from both the ICANN Board and the Empowered Community as outlined in the Community Power as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- Raising the threshold for ICANN Board approval for changing a Fundamental Bylaw or the Articles of Incorporation from 2/3 to 3/4 of all the Directors on the ICANN Board.

115

### **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**








- Clarified that IANA Function Review (IFR) provisions apply only to the IANA naming functions (CWG-Stewardship requirement).
- Clarified the process for changes of Articles of Incorporation to be similar to process for changes to Fundamental Bylaws, as well as the process for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Added a specific recommendation that the current Articles of Incorporation be modified to remove the notion of members and reflect the need for an affirmative vote of at least 3/4 of all the Directors on the ICANN Board, as well as approval by the Empowered Community.

116 **Relevant Annexes**

117 Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

118 Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

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

 <p><b>REJECT BUDGET OR STRATEGIC/ OPERATING PLAN</b></p>	 <p><b>REJECT CHANGES TO ICANN STANDARD BYLAWS</b></p>	 <p><b>APPROVE CHANGES TO FUNDAMENTAL BYLAWS OR ARTICLES, OR CERTAIN ASSET SALES</b></p>	
 <p><b>REMOVE INDIVIDUAL ICANN BOARD DIRECTORS</b></p>	 <p><b>RECALL ENTIRE ICANN BOARD</b></p>	 <p><b>LAUNCH COMMUNITY INDEPENDENT REVIEW PROCESS OR REQUEST FOR RECONSIDERATION</b></p>	 <p><b>REJECT ICANN BOARD DECISIONS RELATING TO IANA FUNCTIONS REVIEWS</b></p>

119 **Summary**

120 The CCWG-Accountability has recommended seven powers for the community that should be in place to improve ICANN's accountability and ensure community engagement.

121 These "Community Powers" are:

1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.

2. Reject a change to ICANN Standard Bylaws.
3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
4. Remove an individual ICANN Board Director.
5. Recall the entire ICANN Board.
6. Initiate a binding Independent Review Process (IRP) (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process for the IANA naming functions.

122 The Community Powers and associated processes were designed to ensure that no stakeholder can singlehandedly exercise any power, and that under no circumstances, would any individual segment of the community be able to block the use of a power.

## 123 **CCWG-Accountability Recommendations**

124 The CCWG-Accountability recommends:

- Defining the following Community Powers as Fundamental Bylaws:
  1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.
  2. Reject a change to ICANN Standard Bylaws.
  3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  4. Remove an individual ICANN Board Director.
  5. Recall the entire ICANN Board.
  6. Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
  7. Reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of any PTI separation process for the IANA naming functions.
- Adding an ICANN Bylaw that states that if the entire ICANN Board is removed, an Interim Board will be established only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations (SOs), Advisory Committees (ACs), and the Nominating Committee (NOMCOM) will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

- The ICANN Bylaws will state that, except in circumstances in which urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies or management, including replacement of the serving President and CEO.
- Note: Details on what the powers do is presented in greater detail in the following section and the details of how these can be used can be found in Annex 2.
- That there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows:
  - Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes.
  - Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it.
  - Fundamental Bylaws would require that if the change to the ICANN Bylaws is the result of a Policy Development Process, the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change. If the SO that led the Policy Development Process that requires the Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.

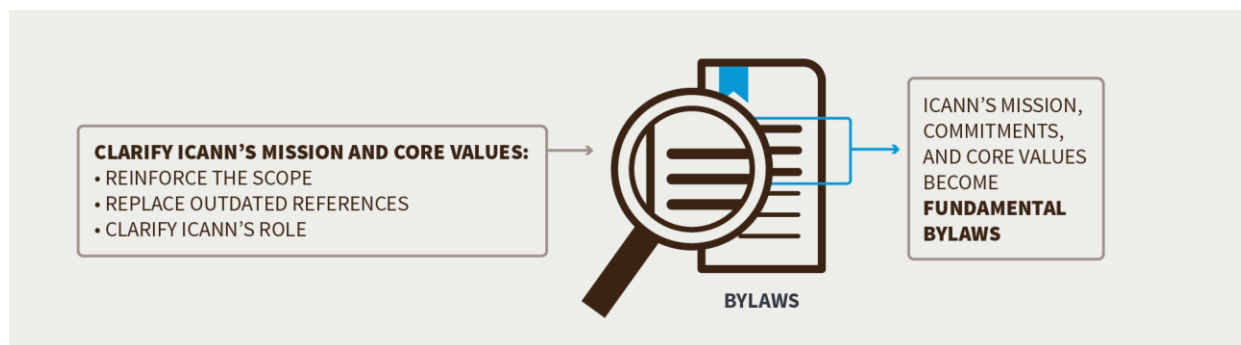
125 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Budget rejection for PTI significantly updated.
- Caretaker budget expanded.
- Indemnification for removal of an ICANN Board Director greatly expanded.
- Escalation steps amended to match process in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, and Enforcement.
- Scope of community IRP modified to match Recommendation #7: Strengthening ICANN's Independent Review Process.
- “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation” is now: “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN's Sale or Other Disposition of All or Substantially All of ICANN's Assets.”
- “The Power to Initiate a Binding IRP (Where a Panel Decision is Enforceable in any Court Recognizing International Arbitration Results)” now includes the possibility for the Empowered Community to file a Request for Reconsideration.

126 **Relevant Annexes**

- 127 Annex 02 – Details on Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement
- 128 Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation
- 129 Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

## Recommendation #5: Changing Aspects of ICANN's Mission, Commitments, and Core Values



### 130 Summary

131 The CCWG-Accountability is recommending changes to the ICANN Bylaws to assure that the Bylaws reflect the CCWG-Accountability recommendations.

- Note: The language proposed in this recommendation for ICANN Bylaw revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

### 132 Mission Statement

133 The CCWG-Accountability recommends the following changes to ICANN's "Mission Statement," (Bylaws, Article I, Section 1):

- Clarify that ICANN's Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.
- Clarify that ICANN's Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
- Clarify that ICANN's powers are "enumerated." Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN's authority.
  - Note: This does not mean ICANN's powers can never evolve. However, it ensures that any changes will be deliberate and supported by the community.

134 **Core Values**

01 The CCWG-Accountability recommends the following changes to ICANN's "Core Values" (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN's existing Core Values provisions into "Commitments" and "Core Values."
  - Incorporate ICANN's obligation 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 open and transparent processes that enable competition" into the Bylaws.
  - Note: These obligations are currently contained in ICANN's Articles of Incorporation.
- Designate certain Core Values as "Commitments." ICANN's Commitments will include the values that are fundamental to ICANN's operation, and are intended to apply consistently and comprehensively.

Commitments will include ICANN's obligations to:

- Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Limit its activities to those within ICANN's Mission that require, or significantly benefit from, global coordination.
  - Employ open, transparent, bottom-up, multistakeholder processes.
  - Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
    - Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility.
    - Add an obligation to avoid capture.

135 Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 ("Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment") to drop the phrase "where feasible and appropriate," the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference).

136 **Balancing or Reconciliation Test**

137 The CCWG-Accountability recommends modification to the "balancing" language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with*



*the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with 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.*

138 **Fundamental Bylaws Provisions**

139 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

140 **CCWG-Accountability Recommendations**

141 Modify ICANN's Fundamental Bylaws to implement the following:

142 **Mission**

143 The Mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's scope is to coordinate the development and implementation of policies:
  - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.
4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

144 ICANN shall act strictly in accordance with, and only as reasonably appropriate, to achieve its Mission.

145 ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.

146 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.

147 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.
2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called "Picket Fence") are intended and understood to be within the scope of ICANN's Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN's Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN's approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party's right to challenge the other party's interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN's Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN's Mission.
4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

## 148 **Section 2. Commitments & Core Values**

149 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.

### 150 **Commitments**

151 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:

1. Preserve and enhance its neutral and judgment-free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet.

3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination.
4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (1) seek input from the public, for whose benefit ICANN shall in all events act, (2) promote well-informed decisions based on expert advice, and (3) ensure that those entities most affected can assist in the policy development process.
5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.
6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

152 **Core Values**

153 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies.
2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making 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.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, 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.
6. Striving to achieve a reasonable balance between the interests of different stakeholders.

154 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.

155 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.

156 In any situation where one Core Value must be reconciled with 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.

157 Note: Specific recommendations on how to implement these modifications can be found at the end of the next section.

## 158 **Changes from the 'Third Draft Proposal on Work Stream 1 Recommendations'**

159 For space considerations the list of changes is not included here. Please consult Annex 5 - Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values for a detailed list of modifications.

## 160 **Relevant Annexes**

161 Annex 05 – Details on Recommendation #5: Changing Aspects of ICANN's Mission, Commitments, and Core Values

# **Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission**

## 162 **Summary**

163 The subject of including a commitment to respect Human Rights in the ICANN Bylaws has been extensively discussed by the CCWG-Accountability.

164 The CCWG-Accountability sought legal advice on whether, upon the termination of the IANA Functions Contract between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), ICANN's specific Human Rights obligations could be called into question. It was found that, upon termination of the contract, there would be no significant impact on ICANN's Human Rights obligations. However, the CCWG-Accountability reasoned that a commitment to respect Human Rights should be included in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet.

165 This proposed draft Bylaw on Human Rights would reaffirm ICANN's existing obligations within its Core Values, and would clarify ICANN's commitment to respect Human Rights.

166 Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or "Mission creep," and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights "within its Core Values."

167 The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.

168 The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until a Framework of Interpretation on Human Rights (FOI-HR) is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR

will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).

- 169 Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN's commitment to respect Human Rights.

170 **CCWG-Accountability Recommendations**



- Include a Bylaw with the following intent in Work Stream 1 recommendations:

“Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.”

- Note: This proposed draft Bylaw will be reviewed by both CCWG-Accountability’s lawyers and ICANN’s legal department and then submitted to the CCWG-Accountability for approval before its submission to the Board for approval.
- Include the following in Work Stream 2 activities:
  - Develop an FOI-HR for the Human Rights Bylaw.
  - Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.
  - Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
  - Consistent with ICANN’s existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.

- Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC).
- Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out.
- Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

171 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language with a few exceptions which included the ICANN Board.
- The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN's legal team and CCWG-Accountability's legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.
- The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.
- The ICANN Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN's Core Values, which were accepted by the CCWG-Accountability.

172 **Relevant Annexes**

- 173 Annex 06 – Details on Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission

## **Recommendation #7: Strengthening ICANN's Independent Review Process**

- 174 The purpose of the Independent Review Process (IRP) is to ensure that ICANN does not exceed the scope of its limited technical Mission and complies with its Articles of Incorporation and Bylaws.
- 175 A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN's existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith.

176 The CCWG-Accountability therefore proposes several enhancements to the IRP to ensure that the process is:

- Transparent, efficient and accessible (both financially and from a standing perspective).
- Designed to produce consistent and coherent results that will serve as a guide for future actions.

177 The CCWG-Accountability also proposes that the IRP:

- Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws – including any violation of the Bylaws resulting from action taken in response to advice/input from any Supporting Organization (SO) or Advisory Committee (AC).
- Hear and resolve claims that Post-Transition IANA (PTI), through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
- Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
- Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws.
- Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community's legal expenses.
- Be subject to certain exclusions relating to the results of an SO's policy development process, country code top-level domain delegations/redelegations, numbering resources, and protocols parameters.

178 **CCWG-Accountability Recommendations**

- Modifying the Fundamental Bylaws to implement the modifications associated with this recommendation on the IRP which include:
  - Hear and resolve claims that ICANN through its Board of Directors or staff has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO).
  - Hear and resolve claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Hear and resolve claims that expert panel decisions are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims that DIDP decisions by ICANN are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.

- A standing judicial/arbitral panel: The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially affected by ICANN's action or inaction in violation of the Articles of Incorporation and/or Bylaws.
  - Composition of Panel and Expertise: Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration is necessary.
  - Diversity: English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).
  - Size of Panel:
    - Standing Panel: Minimum of seven panelists.
    - Decisional Panel: Three panelists.
  - Independence: Panel members must be independent of ICANN, including ICANN SOs and ACs.
  - Recall: Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by way of the IRP subgroup.
- Initiation of the Independent Review Process: An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN's Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.
- Standing: Any person/group/entity "materially affected" by an ICANN action or inaction in violation of ICANN's Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. The Board's failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected.
- Community Independent Review Process: The CCWG-Accountability recommends giving the Empowered Community the right to present arguments on behalf of the Empowered Community to the IRP Panel. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community's legal expenses.
- Standard of Review: The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of the ICANN Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions.
- Accessibility and Cost: The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example



access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded from utilizing the process.

- **Implementation:** The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. 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. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes 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, the CCWG-Accountability proposes to subject the IRP to periodic community review.
- **Transparency:** The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing ICANN's Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.

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### **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- The scope of the IRP will be restricted to the IANA naming functions for claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN.
- The scope of the IRP will include actions and inactions of PTI by way of the PTI Board being bound to ensure that PTI complies with its contractual obligations with ICANN in the Bylaws. ICANN's failure to enforce material obligations will be appealable by way of the IRP as a Bylaws violation.
- The scope of the IRP will include claims that DIDP decisions by ICANN are inconsistent with ICANN's Bylaws.
- Clarified that ICANN must modify Registry Agreements with gTLD Operators to expand scope of arbitration available thereunder to cover PTI service complaints.
- **Exclusion:** The IRP will not be applicable to protocols parameters.
- **Exclusion:** An IRP cannot be launched that challenges the result(s) of an SO's policy development process (PDP) without the support of the SO that developed such PDP or, in the case of joint PDPs, without the support of all of the SOs that developed such PDP.
- **Limitation:** An IRP challenge of expert panel decisions is limited to a challenge of whether the panel decision is consistent with ICANN's Bylaws.
- The legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN.

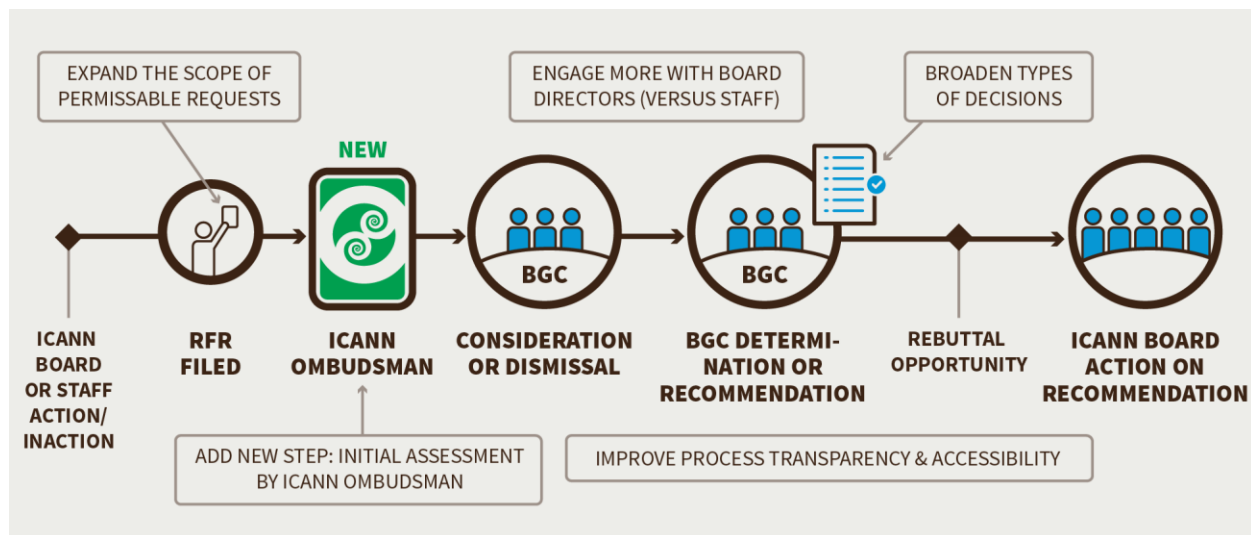
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### **Relevant Annexes**

181

Annex 07 – Details on Recommendation #7: Strengthening ICANN's Independent Review Process

## Recommendation #8: Improving ICANN's Request for Reconsideration Process



### 182 Summary

183 Currently, any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction as provided for in [Article IV, Section 2 of ICANN's Bylaws](#).

184 The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, including:

- Expanding the scope of permissible requests.
- Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
- Narrowing the grounds for summary dismissal.
- Making the ICANN Board of Directors responsible for determinations on all requests (rather than a committee handling staff issues).
- Making ICANN's Ombudsman responsible for initial substantive evaluation of the requests.

185 The CCWG-Accountability also proposes several enhancements to transparency requirements and firm deadlines in issuing of determinations, including:

- Recordings/transcripts of Board discussion should be posted at the option of the requestor.
- An opportunity to rebut the Board Governance Committee's (BGC's) final recommendation before a final decision by the ICANN Board should be provided.
- Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

186 ICANN's Document and Information Disclosure Policy (DIDP) will be addressed in Work Stream 2. The CCWG-Accountability recommends that the policy should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.

## 187 **CCWG-Accountability Recommendations**

188 Modify [Article IV, Section 2 of ICANN's Bylaws](#) to reflect the following changes:

- Expanding the scope of permissible requests.
- Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
- Narrowing the grounds for summary dismissal.
- Requiring determinations on all requests to be made by the ICANN Board of Directors (rather than a committee handling staff issues).
- Requiring ICANN's Ombudsman to make the initial substantive evaluation of the requests.
- Requiring recordings/transcripts of Board discussion to be posted at the option of the requestor.
- Providing a rebuttal opportunity to the BGC's final recommendation before a final decision by the ICANN Board.
- Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

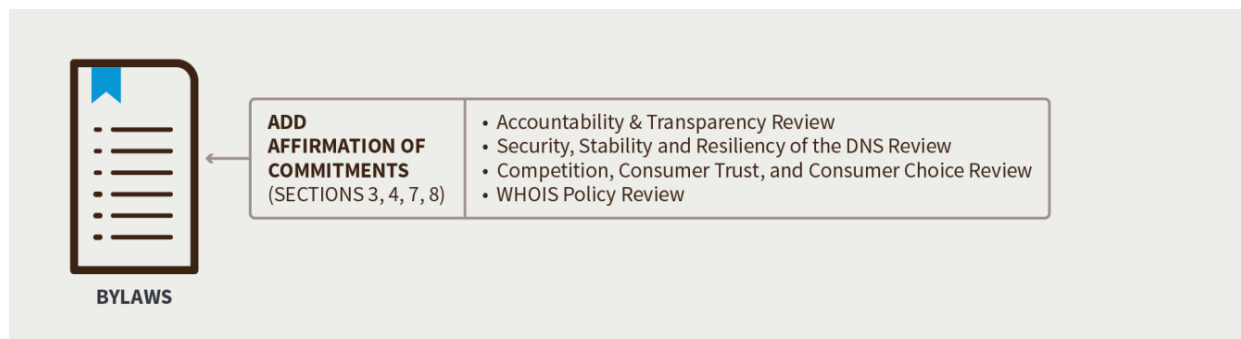
## 189 **Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Conflicts in timing for Board approval addressed by changing 60 days to 75 days and the total of 120 days to 135 days.

## 190 **Relevant Annexes**

191 Annex 08 – Details on Recommendation #8: Improving ICANN's Request for Reconsideration Process

## Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws



### 192 Summary

193 Based on stress test analysis, the CCWG-Accountability recommends incorporating the reviews specified in the Affirmation of Commitments, a 2009 bilateral agreement between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), into the ICANN Bylaws. This will ensure that community reviews remain a central aspect of ICANN's accountability and transparency framework.

194 Specifically, the CCWG-Accountability proposes to:

- Add the relevant ICANN Commitments from the Affirmation of Commitments into the ICANN Bylaws.
- Add the four review processes specified in the Affirmation of Commitments to the ICANN Bylaws, including:
  - Ensuring accountability, transparency, and the interests of global Internet users.
  - Enforcing ICANN's existing policy relating to WHOIS, subject to applicable laws.
  - Preserving security, stability, and resiliency of the Domain Name System (DNS).
  - Promoting competition, consumer trust, and consumer choice.

195 In addition, to support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs.

### 196 CCWG-Accountability Recommendations



197 The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments (see information about Stress Test #14 in the “Detailed Explanation of Recommendations” section, below).

198 To ensure continuity of these key commitments, the CCWG-Accountability proposes the following two accountability measures:

- Preserve in the ICANN Bylaws any Relevant ICANN Commitments from the Affirmation of Commitments<sup>4</sup>
  - This includes Sections 3, 4, 7, and 8 of the Affirmation of Commitments. Sections 3, 4, 8a, and 8c would be included in the Core Values section of the ICANN Bylaws.
  - Part of the content of Section 8b of the Affirmation of Commitments (the part relating to the location of ICANN’s principal office), is already covered by ICANN Bylaws Article XVIII. Article XVIII is to be classified as a Standard Bylaw and is not to be moved into the Core Values section with material derived from Affirmation of Commitments Sections 8a and 8c.
  - Section 7 of the Affirmation of Commitments would be inserted as a new Section 8 in Article III, Transparency, of the ICANN Bylaws.
- Bring the Four Affirmation of Commitments Review Processes into the ICANN Bylaws
  - The following four reviews will be preserved in the reviews section of the Bylaws:
    - Ensuring accountability, transparency, and the interests of global Internet users.
    - Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws.
    - Preserving security, stability, and resiliency of the DNS.
    - Promoting competition, consumer trust, and consumer choice.

199 After these elements of the Affirmation of Commitments are adopted in the ICANN Bylaws, the following should take place:

- ICANN and NTIA should mutually agree to terminate the Affirmation of Commitments.

<sup>4</sup> Sections 3, 4, 7, and 8 of the Affirmation of Commitments contain relevant ICANN commitments. The remaining sections in the Affirmation of Commitments are preamble text and commitments of the U.S. Government. As such, they do not contain commitments by ICANN, and cannot usefully be incorporated in the Bylaws.

- New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned Affirmation of Commitments review should not be deferred simply because the new rules allow up to five years between review cycles. If the community prefers to do a review sooner than five years from the previous review, that is allowed under the new rules.
- Through its Work Party IRP Implementation Oversight Team (WP-IRP IOT), the CCWG-Accountability will examine the suggestion to include a mid-term review of the Independent Review Process (IRP).
- To support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff, and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs.
- These operational standards should include issues such as: composition of Review Teams, Review Team working methods (meeting protocol, document access, role of observers, budgets, decision making methods, etc.), and methods of access to experts. These standards should be developed with the community and should require community input and review to be changed. The standards are expected to reflect levels of detail that are generally not appropriate for governance documents, and should not require a change to the Bylaws to modify. This is an implementation issue aligned with the need for review of the proposed Bylaws text developed by the CCWG-Accountability that has been provided as guidance to legal counsel.

200 A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws and will be classified as Fundamental Bylaws. Specifications will be based on the requirements detailed by the CWG-Stewardship. It is anticipated that the Bylaw drafting process will include the CWG-Stewardship.

201 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- The AoC text for Competition, Consumer Trust & Consumer Choice review is reintroduced.
- All AoC reviews (and the IFR and Special IFR) should be incorporated into the Bylaws.
- The WP-IRP IOT will examine the suggestion to include a mid-term review of the IRP. The ATRT scope will be expanded to suggest a review of the IRP (paragraph 89).
- The representation and number of seats on Review Teams that relate to gTLD reviews will remain unchanged from the Third Draft Proposal (paragraph 54).
- The Board amendment on WHOIS/future Registration Directory Services policy (paragraph 127) should be included.
- The ICANN Articles of Incorporation address ICANN's state of incorporation (or corporate domicile), and the ICANN Bylaws (Article XVIII) address the separate issue of the location of ICANN's principal office. Article XVIII of the ICANN Bylaws will be classified as a Standard Bylaw (see paragraph 5).

- The Board suggestion regarding AoC reviews operational standards to be developed as part of implementation should be included on the understanding that Recommendation #9 would be respected and that this text would address implementation details only (see paragraph 8).
- CCWG-Accountability lawyers advised clarifying “diversity” in paragraph 54 regarding composition of AoC Review Teams. CCWG-Accountability notes that “diversity” considerations could include geography, skills, gender, etc., and that chairs of participating ACs and SOs should have flexibility in their consideration of factors in selecting Review Team members.
- CCWG-Accountability lawyers suggested “the group of chairs can solicit additional nominees or appoint less than 21 members to avoid potential overrepresentation of particular ACs or SOs if some nominate less than 3 members.” The CCWG-Accountability proposed “up to 21”, so it is not actually proposing a fixed number of Review Team members. “Fixed” has been replaced with “limited” in paragraph 54. CCWG-Accountability purposely allowed AC/SO chairs to select additional Review Team members from ACs/SOs that had offered more than 3 candidates. This is to accommodate ACs/SOs that had greater interest in a review, such as the GNSO, which would be the most concerned with reviews of new gTLDs and WHOIS/Directory Services. Therefore, the representation and number of seats on the Review Team will remain unchanged from the Third Draft Proposal.
- Replaced “participants” with “observers” in paragraph 54.

## Relevant Annexes

- 202 Annex 09 – Details on Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws

## Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

### 203 Summary

204 The CCWG-Accountability recommends addressing the accountability of Supporting Organizations (SOs) and Advisory Committees (ACs) in a two-stage approach:

- In Work Stream 1: Include the review of SO and AC accountability mechanisms in the independent structural reviews performed on a regular basis.
- In Work Stream 2: Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.

### 205 CCWG-Accountability Recommendations

206 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.

207 The CCWG-Accountability recommends the following.

208 **Work Stream 1:**

209 Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.

- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
- This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:

*The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

- The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

210 **Work Stream 2:**

211 Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.

- Evaluate the proposed "Mutual Accountability Roundtable" to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>5</sup>

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<sup>5</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: *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 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 at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO, and all Supporting Organizations and Advisory Committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how his or her constituency addressed the issue, indicating what worked and didn't work. This could be followed 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.*



- Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.

212 Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

213 **Changes Made Since the Third Draft Proposal**

- Added: The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

- In Work Stream 2 recommendations, added: Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.

214 **Relevant Annexes**

215 Annex 10 – Details on Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

## Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)

### 216 Summary

217 Currently, Governmental Advisory Committee (GAC) advice to the ICANN Board has special status as described in the ICANN Bylaws Article XI, Section 2:

*j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

218 Stress Test #18 considers a scenario where ICANN's GAC would amend its operating procedures to change from consensus decisions (no objections) to majority voting for advice to the ICANN Board. Since the Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the ICANN Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice on public policy matters.

219 In addition, if the GAC lowered its decision threshold while also participating in the new Empowered Community (if the GAC chooses to so participate), some stakeholders believe that this could increase government influence over ICANN.

220 In order to mitigate these concerns, the CCWG-Accountability is recommending changes be made to the ICANN Bylaws relating to GAC advice.

### 221 CCWG-Accountability Recommendations

222 The CCWG-Accountability recommends that the following changes be made to the ICANN Bylaws Article XI, Section 2 (emphasis added):

223 *j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. **Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of 60% of the Board**, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

224 This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must "try to find a mutually acceptable solution," as required in ICANN's current Bylaws. This recommendation shall not create any new obligations for the ICANN Board to

consider, vote upon, or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC advice.

- 225 The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection). When transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection.
- 226 The CCWG-Accountability recommends inserting a requirement that all ACs provide a rationale for their advice. A rationale must be provided for formal advice provided by an Advisory Committee to the ICANN Board. The Board shall have the responsibility to determine whether the rationale provided is adequate to enable determination of whether following that advice would be consistent with ICANN's Bylaws.
- 227 To address concerns regarding GAC advice that is inconsistent with the ICANN Bylaws, the CCWG-Accountability recommends adding this clarification for legal counsel to consider when drafting Bylaws language:

*ICANN cannot take action - based on advice or otherwise – that is inconsistent with its Bylaws. While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. Any aggrieved party or the Empowered Community will have standing to bring claims through the IRP that the Board acted (or failed to act) in a manner inconsistent with the ICANN Articles of Incorporation or Bylaws, even if the Board acted on GAC advice.*

- 228 Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability's external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

## 229 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Changed the 2/3rds threshold for the Board rejecting GAC consensus advice to 60%. As part of the compromise, this required changes in Recommendations #1 and #2 to implement a GAC “carve out.”

## 230 **Relevant Annexes**

- 231 Annex 11 – Details on Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)

## Recommendation #12: Committing to Further Accountability Work in Work Stream 2

### 232 **Summary**

233 The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.

234 As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:

- Considering improvements to ICANN's standards for diversity at all levels.
- Staff accountability.
- Supporting Organizations and Advisory Committee accountability.
- Improving ICANN's transparency with a focus on:
  - Enhancements to ICANN's existing Documentary Information Disclosure Policy (DIDP).
  - Transparency of ICANN's interactions with governments.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw.
- Addressing jurisdiction-related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
- Considering enhancements to the Ombudsman's role and function.

235 The CCWG-Accountability expects to begin refining the scope of Work Stream 2 during the upcoming [ICANN55 Meeting](#) in March 2016. It is intended that Work Stream 2 recommendations will be published for comments by the end of 2016.

236 The community raised concerns that after the IANA Stewardship Transition, there may be a lack of incentive for ICANN to implement the proposal arising out of Work Stream 2. To prevent this scenario, the CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability Work Stream 2 recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. In a [letter](#) dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.

### 237 **CCWG-Accountability Recommendations**

238 The CCWG-Accountability recommends that the Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1

recommendations. The Bylaw would task the group with creating further enhancements to ICANN's accountability limited to the Work Stream 2 list of issues:

- Considering improvements to ICANN's standards for diversity at all levels.
- Staff accountability.
- Supporting Organizations and Advisory Committee accountability.
  - Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
  - Evaluate the proposed "Mutual Accountability Roundtable" to assess viability.
  - Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.
  - Assess whether the IRP would also be applicable to SO and AC activities.
- Improving ICANN's transparency with a focus on:
  - Enhancements to ICANN's existing DIDP.
  - Transparency of ICANN's interactions with governments.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw.
- Addressing jurisdiction-related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
- Considering enhancements to the Ombudsman's role and function.

239 The CCWG-Accountability notes that further enhancements to ICANN accountability can be accommodated through the accountability review process (see Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees) or through specific, ad hoc, cross community working group initiatives.

240 **Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Interim Bylaws clarifications to address Board's concerns by highlighting that Work Stream 2 will be following similar rules as Work Stream 1: consensus recommendations, endorsement by Chartering Organizations, ability for the Board to engage in special dialogue, 2/3 threshold for such Board decision, etc.
- Edits to the documents will include focus on fact that Work Stream 2 deliberations will be open to all (similar to Work Stream 1).
- List of Work Stream 2 items is "limited to" instead of "related to." A note is added that clarifies that further items beyond this list can be accommodated through regular review cycles, or specific CCWG-Accountability.

- Timeframe discussion: target dates are needed, but hard deadlines would not be appropriate or helpful.
- Agreed to incorporate Public Experts Group (PEG) Advisor input to strengthen the diversity requirement.
- Enhancing the Ombudsman role and function is confirmed as a Work Stream 2 item.
- Re-inserted staff accountability requirement.

241 **Relevant Annexes**

242 Annex 12 – Details on Recommendation #12: Committing to Further Accountability Work in Work Stream 2

## Conclusion

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- 243 The CCWG-Accountability believes that the set of accountability mechanisms it has proposed, outlined above, empowers the community through the use of the bottom-up, multistakeholder model by relying on of the stakeholders within ICANN's existing and tested community structures. Furthermore, the CCWG-Accountability believes that this community-driven model is appropriate for replacing the accountability inherent in ICANN's historical relationship with the U.S. Government.

### **Community Powers are an Effective Replacement of the Safety Net Provided by the U.S. Government's Current IANA Stewardship Role**

- 244 The CCWG-Accountability believes that the Seven Community Powers, as a package, can effectively replace the safety net that the U.S. Government has provided to date as part of its oversight role. It is recommended that these powers need to be enforced by a court of law only as a last resort. The CCWG-Accountability has based its recommendations on existing structures and recommends:
- Considering the entire community as ICANN's Empowered Community.
  - Ensuring no part of the community has more rights than another part, either by having the ability to push through its individual interests or by blocking community consensus. The CCWG-Accountability has ensured that no Community Powers or statutory rights can be exercised singlehandedly.
  - Ensuring the community can only jointly exercise its powers using a consensus-based model.

### **The CCWG-Accountability Believes that the Recommended Accountability Frameworks Provided in this Proposal Meet the Requirements of the Domain Names Community and the IANA Stewardship Transition Proposal**

- 245 The CCWG-Accountability will seek confirmation from the Cross Community Working Group that developed the IANA Stewardship Transition that this Proposal meets its requirements.
- 246 The CCWG-Accountability believes that its Proposal also meets the requirements NTIA published for the transition and will present its analysis of this in the full Proposal.

# List of Annexes & Appendices

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- ⊙ **Annex 1** – Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers
- ⊙ **Annex 2** – Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement
- ⊙ **Annex 3** – Recommendation #3: Redefining ICANN’s Bylaws as “Standard Bylaws” and “Fundamental Bylaws”
- ⊙ **Annex 4** – Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers
- ⊙ **Annex 5** – Recommendation #5: Changing aspects of ICANN’s Mission, Commitments, and Core Values
- ⊙ **Annex 6** – Recommendation #6: Reaffirming ICANN’s Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission
- ⊙ **Annex 7** – Recommendation #7: Strengthening ICANN’s Independent Review Process
- ⊙ **Annex 8** – Recommendation #8: Improving ICANN’s Request for Reconsideration Process
- ⊙ **Annex 9** – Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws
- ⊙ **Annex 10** – Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees
- ⊙ **Annex 11** – Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)
- ⊙ **Annex 12** – Recommendation #12: Committing to Further Accountability Work in Work Stream 2
- ⊙ **Annex 13** – CWG-Stewardship Requirements of the CCWG-Accountability
- ⊙ **Annex 14** – Meeting NTIA’s Criteria for the IANA Stewardship Transition
- ⊙ **Annex 15** – Stress Testing



- ⊙ **Appendix A** – Documenting Consensus (Including Minority Views)
- ⊙ **Appendix B** – Charter
- ⊙ **Appendix C** – Background & Methodology
- ⊙ **Appendix D** – Engagement and Participation Summaries (Summary and Documenting Public Consultations)
- ⊙ **Appendix E** – Initial Work to Determine Focus of the Work Stream 1 Proposal
- ⊙ **Appendix F** – Legal Counsel
- ⊙ **Appendix G** – Legal Documents
- ⊙ **Appendix H** – Bylaws Drafting process & Implementation Timeline
- ⊙ **Appendix I** – Affirmation of Commitments
- ⊙ **Appendix J** – Glossary
- ⊙ **Appendix K** – Co-Chairs’ Special Appreciation of Staff and Rapporteurs Efforts

# Annex 01 – Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers

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## 1. Summary

- 01 Under California law and the current Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the ICANN Board of Directors has the final responsibility for the activities and affairs of ICANN.
- 02 With removal of the U.S. National Telecommunications and Information Administration (NTIA) as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the ICANN Board may object to the results.
- 03 The CCWG-Accountability recommends creating a new entity that will act at the direction of the multistakeholder community to exercise and enforce Community Powers. The entity will take the form of a California unincorporated association and be given the role of “Sole Designator” of ICANN Board Directors and will have the ability to directly or indirectly the Community Powers. The entity will be referred to as the “Empowered Community.”
- 04 As permitted under California law, the Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove ICANN Board Directors (whether an individual Director or the entire Board). Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.
- 05 The CCWG-Accountability accepts that its statutory power will be limited as described above, and that this is sufficient given:
  - The creation of “Fundamental Bylaws” that can only be modified jointly by the ICANN Board and Empowered Community.
  - All recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws.
  - The right of inspection is granted to “Decisional Participants” in the Empowered Community.
  - The right of investigation is granted to the Decisional Participants in the Empowered Community.
- 06 The process for the Empowered Community to use a Community Power is outlined in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

## 2. CCWG-Accountability Recommendations

- 07 The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce Community Powers:
- This entity will take the form of a California unincorporated association and be given the role of Sole Designator of ICANN Board Directors and will have the ability to directly or indirectly enforce the Community Powers. This entity will be referred to as the Empowered Community.
  - The Empowered Community will act as directed by participating Supporting Organizations (SOs) and Advisory Committees (ACs), which will be referred to as the Decisional Participants in the Empowered Community.
  - The Empowered Community, and the rules by which it is governed, will be constituted in ICANN's Fundamental Bylaws, along with provisions to ensure the Empowered Community cannot be changed or eliminated without its own consent (see Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation).
  - The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.
- 08 Additionally, the CCWG-Accountability recommends including in the ICANN Bylaws:
- The right for Decisional Participants in the Empowered Community to inspection as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.
  - The right of investigation, which includes the adoption of the following audit process: upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.
  - The following limitation associated with the Governmental Advisory Committee (GAC) acting as a Decisional Participant: If the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice (referred to as the "GAC carve-out").
- In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.
- The GAC carve-out preserves the ICANN Board's unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus (as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)) while protecting the Empowered Community's power to challenge such Board decisions.

## 3. Detailed Explanation of Recommendations

### 09 Background

- 10 With removal of NTIA as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the Board may object to the results.

### 11 Objectives

- 12 In developing a mechanism to ensure the community can effectively enforce its decisions, the CCWG-Accountability agreed to:
- Minimize the degree of structural or organizational changes required in ICANN to create the mechanism for these powers.
  - Organize the mechanism in line and compatible with the current ICANN SO and AC structures (with flexibility to evolve these structures in the future).
  - Address the dependencies of the CWG-Stewardship.
  - Provide the following powers and rights that would be constituted in the Fundamental Bylaws and would also be legally enforceable:
    - The power to reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans (CWG-Stewardship dependency).
    - The power to reject changes to ICANN Standard Bylaws.
    - The power to approve changes to Fundamental Bylaws (CWG-Stewardship dependency) and changes to the Articles of Incorporation, and to approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
    - The power to remove individual ICANN Board Directors (along with appointment, CWG-Stewardship dependency).
    - The power to recall the entire ICANN Board (CWG-Stewardship dependency).
    - The power to launch a community Independent Review Process (along with an appeal mechanism for issues relating to the IANA functions, CWG-Stewardship dependency) or Request for Reconsideration.
    - The power to reject ICANN Board decisions relating to reviews of the IANA functions, including the procedure to implement a separation process relating to Post-Transition IANA (CWG-Stewardship dependency).
    - The rights of inspection and investigation.

### 13 Why the Sole Designator Model?

#### Concerns with Supporting Organization/Advisory Committee Membership Model

- 14 The CCWG-Accountability's "[Initial Draft Proposal on Work Stream 1 Recommendations](#)" proposed a Supporting Organization/Advisory Committee Membership Model as the reference model for the community enforcement mechanism. However, in the Public Comment Period, 4

May – 3 June 2015, significant concerns were expressed and the CCWG-Accountability initiated work on alternative solutions.

15 A core concern of the Supporting Organization/Advisory Committee Membership Model was the ability of the ICANN community to fully participate in the new accountability framework, and was integral to the work in devising a new approach.

16 The CCWG-Accountability’s [“Second Draft Proposal on Work Stream 1 Recommendations”](#) proposed a “Sole Member” model instead of the Supporting Organization/Advisory Committee Membership Model.

### 17 **Concerns with a Sole Member Model**

18 In the Public Comment Period on the “Second Draft Proposal on Work Stream 1 Recommendations,” concerns were raised about the Sole Member model. Under California law, Members have certain statutory powers that cannot be waived. Commenters expressed concern that these rights, such as the ability to dissolve the corporation, could not be adequately constrained and might have unintended and unanticipated consequences.

### 19 **The Sole Designator Model**

20 To address the concerns described above, the CCWG-Accountability now recommends implementing a “Sole Designator” model. The Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove individual ICANN Board Directors or the entire Board, which is a requirement of the CCWG-Accountability and the CWG-Stewardship.

21 This removes the concerns related to unintended and unanticipated consequences of the additional statutory powers associated with a Member. Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.

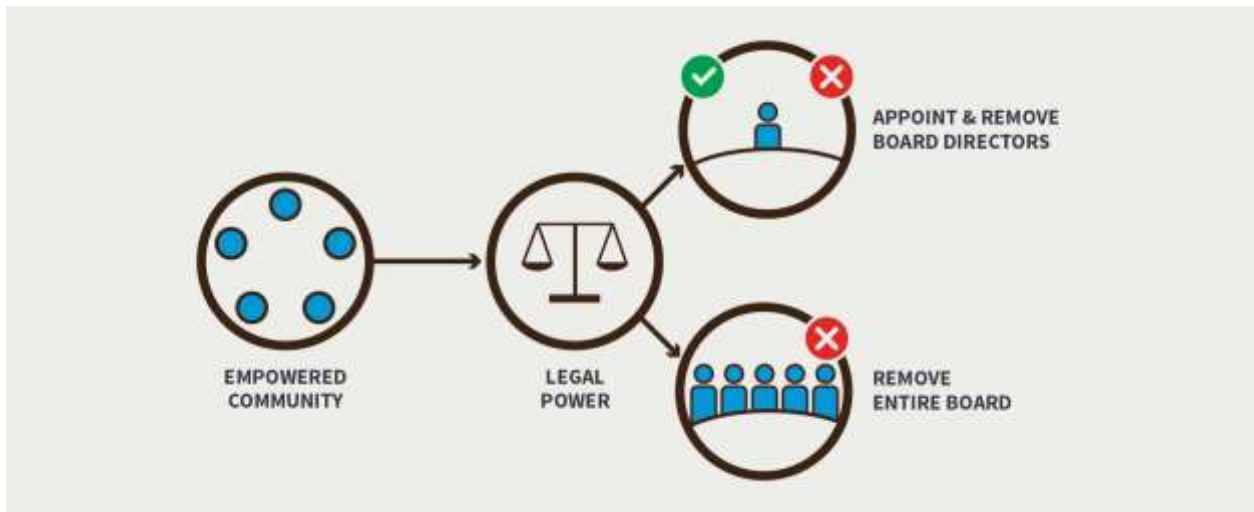
- Given that the right to inspect, as outlined in California Corporations Code 6333, is not a statutory right of a Sole Designator, and that the community felt this was a critical requirement, the CCWG-Accountability recommends this right be granted to Decisional Participants in the Empowered Community in the Fundamental Bylaws.

22 The CCWG-Accountability’s external legal counsel informed the group that adopting a Sole Designator model could effectively be implemented while meeting the community’s requirements and having minimal impact on the corporate structure of ICANN.

### 23 **Legal Advice on Implementing the Empowered Community**

24 To implement the Sole Designator model, ICANN’s SOs and ACs would create a unified entity to enforce their Community Powers. This unified entity will be referred to as the Empowered Community.

25 The Empowered Community will have the right to appoint and remove ICANN Board Directors, whether individually or in its entirety.



- 26 If the ICANN Board refused to comply with a decision by the Empowered Community to use the statutory rights, the refusal could be petitioned in a court that has jurisdiction to force the ICANN Board to comply with that decision.
- 27 The CCWG-Accountability accepts that its statutory power will be limited as described above and that this is sufficient given:

**1. All of the recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws and protected from any changes without Empowered Community approval.**

- This includes the Independent Review Process (IRP), which issues binding decisions. This also includes the Empowered Community’s power to launch a community IRP challenge if it believes the ICANN Board is in breach of its Articles of Incorporation or Bylaws.<sup>1</sup>
- The ICANN Board would be in breach of its own Bylaws if it refused to comply with a decision by the Empowered Community with respect to an accountability mechanism defined in the Fundamental Bylaws.
- If a community IRP challenge with respect to such a decision is successful and the Board still refused to comply with the decision, the Empowered Community could petition a court that has jurisdiction to force the ICANN Board to comply with that decision.
- Alternatively, the Empowered Community could remove the Board with the expectation that the new Board would respect the decision.

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<sup>1</sup> For example, if the Board were not to accept the decision of the Empowered Community to use one of its Community Powers. Community Powers are documented in Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.

**2. The Empowered Community has legal standing as a California unincorporated association.**

- The Empowered Community will act as directed by participating SOs and ACs (the Decisional Participants in the Empowered Community).

**3. The Empowered Community and the rules by which it is governed will be constituted as a Fundamental Bylaw, along with provisions in the Articles of Incorporation and Bylaws to protect it from any changes without its own approval.**

**4. The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.**

- Note: Legal counsel indicated that the Articles of Incorporation could be amended to ensure that the ICANN Board must consider the community’s interpretation of the “global public interest” as ICANN pursues the charitable and public purposes set forth in Article III. The CCWG-Accountability recommends this change as part of the shift from a Sole Member to a Sole Designator model. The Articles will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.

28 **Additional Rights Granted by Inclusion in the ICANN Bylaws**

29 **Right to inspect accounting books and records of ICANN**

30 In addition to the statutory rights that the Empowered Community will have and the new Community Powers described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers, the CCWG-Accountability recommends including in the ICANN Fundamental Bylaws the right for Decisional Participants in the Empowered Community to inspect as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.

31 This inspection right is distinct from the Document Information Disclosure Policy (DIDP). While any eligible party can file a request according to the DIDP, inspection rights are only accessible to Decisional Participants in the Empowered Community. The scopes are also different as explained below.

32 This inspection right would include the accounting books and records of ICANN, and the minutes of proceedings of the Board of Directors and committees of the Board of Directors, on the conditions discussed below. Since ICANN will not have statutory “members,” the right to inspect “member” meeting minutes would not apply.

33 Although the Corporations Code does not define “books and records of account,” the term is generally understood to refer to the journals and ledgers in which financial transactions are originally entered and recorded, and the statements compiled from them. The term generally does not extend to source documents on which books and records of account are based, such as canceled checks and invoices. Similarly, the term generally encompasses documents relevant to the operation of the corporation as a whole, and not to those relevant to only a small or isolated aspect of the corporation’s operations.

34 Authority under Section 6333 is sparse, but it is nonetheless clear that a “purpose reasonably related to [a] person’s interests as a member” does not include a member’s commercial or political interests, harassment, or massive and repeated inspection demands probing the

minutiae of financial records and details of management and administration. Similar limitations will be applied to rights of inspection provided by the Bylaws.

- 35 Unlike the exercise of the other Community Powers, which require community engagement and escalation before initiating a request for action by the Empowered Community, the CCWG-Accountability recommends that a petition for inspection be brought directly by a single Decisional Participant in the Empowered Community or by multiple Decisional Participants in the Empowered Community through making a written demand on ICANN for the requested materials. If the Board refuses or ignores the request, the petitioning Decisional Participant(s) could enforce its inspection right directly through the IRP or by petitioning the Empowered Community to initiate the escalation processes for a community IRP or for removing the Board.

### 36 **Investigation right**

37 There could be events where the community might wish to have additional power of transparency into investigations of potential fraud or financial mismanagement in ICANN.

38 To address these concerns, the CCWG-Accountability recommends the adoption of the following audit process: Upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.

39 This right of investigation would be included in the ICANN Fundamental Bylaws.

### 40 **The Empowered Community**

41 Implementation of the Empowered Community currently anticipates that all of ICANN's SOs, the At-Large Advisory Committee (ALAC), and the GAC (if the GAC chooses to participate) would participate in the Empowered Community—that is, they will be listed in the Bylaws as the five Decisional Participants.

42 However, if the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice (referred to as the "GAC carve-out"). In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.

43 The GAC carve-out preserves the ICANN Board's unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus (as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice [Stress Test 18]) while protecting the Empowered Community's power to challenge such Board decisions.

44 Clarifications relating to the GAC carve-out:

- The GAC carve-out will only apply to Empowered Community challenges to ICANN Board actions that were based on GAC consensus advice, meaning the GAC advice was "approved by general agreement in the absence of any formal objection." The GAC carve-out will not apply to Empowered Community challenges to Board decisions that were based on GAC advice that was not supported by consensus (i.e., not "approved by general agreement in the absence of any formal objection").



- Process for identifying GAC consensus advice, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, and applying the GAC carve-out:
  - GAC confirmation: When the GAC provides advice to the Board, the GAC will need to indicate whether the advice was approved by consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.
  - Board confirmation: When the Board takes action that is based on GAC consensus advice, the Board will need to state in its resolution that its decision was based on GAC consensus advice.
  - GAC carve-out identified in petition to use Community Power: When a Board action that is based on GAC consensus advice is challenged, the petitioning SO or AC will need to indicate in the initial petition that the matter meets the requirements for the GAC carve-out and clearly identify the applicable Board action and GAC consensus advice at issue. The decision thresholds (as revised when the GAC carve-out is invoked in accordance in Annex 2) required for the escalation and enforcement processes will need to be met for the Community Power that is being exercised.
- Timing for invoking the GAC carve-out: The petitioning SO or AC will need to indicate in the initial petition to the Empowered Community that the matter meets the requirements for the GAC carve-out. Therefore, the timing restrictions for this aspect of the escalation process will apply (i.e., the petition must be brought within 21 days of a Board decision being published). While this addresses timing of the Board challenge, the Board decision that is being challenged could be based on standing GAC consensus advice that the GAC had provided at an earlier date.

<sup>45</sup> The thresholds presented in this document were determined based on five Decisional Participants. If fewer than five of ICANN's SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.

## 4. Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"

- Scope and limitations with respect to the right to inspect accounting books and records of ICANN confirmed, emphasizing the difference between DIDP and inspection rights.
- Added inspection rights for accounting books and records and minutes based on a one Decisional Participant threshold.
- Introduced additional suggestion by the ICANN Board regarding investigation right (audits), based on three Decisional Participants in the Empowered Community threshold.
- Confirmed direction for implementation to avoid abusive claims.
- Compromise on Recommendation #11 required the creation of the "GAC carve-out."

## 5. Stress Tests Related to this Recommendation

- ST5, 6, 7, 8, 9 10, 16, 24
- ST28
- ST31, 32, 36

## 6. How does this meet the CWG-Stewardship Requirements?

- 46 These recommendations meet the CWG-Stewardship requirement that the CCWG-Accountability recommend the creation of community rights regarding the ability to appoint/remove Directors of the ICANN Board and recall the entire ICANN Board.

## 7. How does this address NTIA Criteria?

47 **Support and enhance the multistakeholder model.**

- Decentralizing power within ICANN through an Empowered Community.
  - Providing a legal set of powers to the community while avoiding the risks of making changes to ICANN's organizational structure.
- 

48 **Maintain the security, stability, and resiliency of the Internet DNS.**

- Creates an effective system of checks and balances on the ICANN Board, which could affect the security, stability and resiliency of the Internet DNS.
- 

49 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Provides a clear set of mechanisms and processes for how the community can participate in and interact with the Empowered Community.
- 

50 **Maintain the openness of the Internet.**

- Preserving policies of open participation in ICANN's SOs and ACs.
  - Retaining decision-making based on consensus rather than voting.
- 

51 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board's implementation of GAC consensus advice. This "carve out," combined with the safeguards in Recommendation #11, leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.
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# Annex 02 – Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement

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## 1. Summary

### 01 Engagement

02 Today, the Internet Corporation for Assigned Names and Numbers (ICANN) Board of Directors voluntarily consults with the multistakeholder community on a variety of decisions, including the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms such as public consultations and information sessions to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an “engagement process.”

03 The CCWG-Accountability is recommending that engagement processes for specific ICANN Board actions be constituted in the Fundamental Bylaws. Although the ICANN Board engages voluntarily in these processes today, this recommendation would formally require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:

- Approving ICANN’s Five-Year Strategic Plan.
- Approving ICANN’s Five-Year Operating Plan.
- Approving ICANN’s Annual Operating Plan & Budget.
- Approving the Internet Assigned Numbers Authority (IANA) Functions Budget.
- Approving any modifications to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
- Making ICANN Board decisions relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process.

04 If it is determined that there is divergence between the ICANN Board and the community after the engagement process, the Empowered Community (as defined in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers) may decide to use a Community Power after the appropriate “escalation process” has been satisfied.

05 The Empowered Community may begin an escalation process to:

- Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget.
- Reject a change to ICANN Standard Bylaws.

- Approve changes to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Remove an individual ICANN Board Director.
- Recall the entire ICANN Board.
- Initiate a binding community Independent Review Process (IRP), where a panel decision is enforceable in any court recognizing international arbitration results, or a non-binding Request for Reconsideration, where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff.
- Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

06 **Escalation**

07 The escalation process can differ, sometimes significantly, from one Community Power to another.

08 One of the most standardized versions of the escalation process is required for all Community Powers to “reject,” remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.

09 **This escalation process comprises the following steps:**

1. An individual starts a petition in a Supporting Organization (SO) or Advisory Committee (AC) that is a Decisional Participant in the Empowered Community (see Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers).
  - If the petition is approved by that SO or AC, it proceeds to the next step.
  - If the petition is not approved by that SO or AC, the escalation process is terminated.
2. The SO or AC that approved the petition contacts the other Decisional Participants to ask them to support the petition.
  - At least one additional SO and/or AC must support the petition (for a minimum of two or, for Board recall, three) for a Community Forum to be organized to discuss the issue.
    - If the threshold is not met, the escalation process is terminated.
    - If the threshold is met, a Community Forum is organized to discuss the petition.
3. An open Community Forum of one or two days is organized for any interested stakeholder in the community to participate.
  - The petitioning SO and/or AC will:
    - Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants.
    - Designate a representative(s) to liaise with SOs/ACs to answer questions from the SOs/ACs.
    - If desired, optionally, request that ICANN organize a conference call prior to the Community Forum for the community to discuss the issue.

- If the ICANN Board and the Empowered Community can resolve their issues before or in the Community Forum, the escalation process is terminated.
  - Otherwise, the Empowered Community must decide if it wishes to use its Community Power.
4. The Empowered Community considers use of a Community Power.
- If the threshold to use a Community Power is not met, or there is more than one objection, then the escalation process is terminated.
  - If the threshold is met for using the Community Power, and there is no more than one objection, the Empowered Community advises the ICANN Board of the decision and directs it to comply with the decision (as outlined in the Fundamental Bylaws for this Community Power).
5. The Empowered Community advises the ICANN Board.
- If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct the Board to take any necessary action to comply with the decision.

## 10 **Enforcement**

- 11 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community using a Community Power (other than a decision to remove an individual Director or the entire ICANN Board pursuant to the Empowered Community's statutory power, as discussed below), the Empowered Community must decide if it wishes to begin the enforcement process.
- 12 The enforcement process can proceed in one of two ways:
- The Empowered Community may initiate mediation and community IRP procedures.
  - The Empowered Community may initiate an escalation process to recall the entire ICANN Board.
- 13 The enforcement process may result in a resolution of the issue. Otherwise, if needed, the result of the enforcement process is enforceable in court.
- 14 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

## **2. CCWG-Accountability Recommendations**

- 15 Establish a Fundamental Bylaw that requires the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:
- Approving ICANN's Five-Year Strategic Plan.

- Approving ICANN's Five-Year Operating Plan.
  - Approving ICANN's Annual Operating Plan & Budget.
  - Approving the IANA Functions Budget.
  - Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  - Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.
- 16 Include the engagement, escalation and enforcement processes in the Fundamental Bylaws.
- Note: The escalation processes for each Community Power are outlined in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.

### 3. Detailed Explanation of Recommendations

#### 17 Engagement

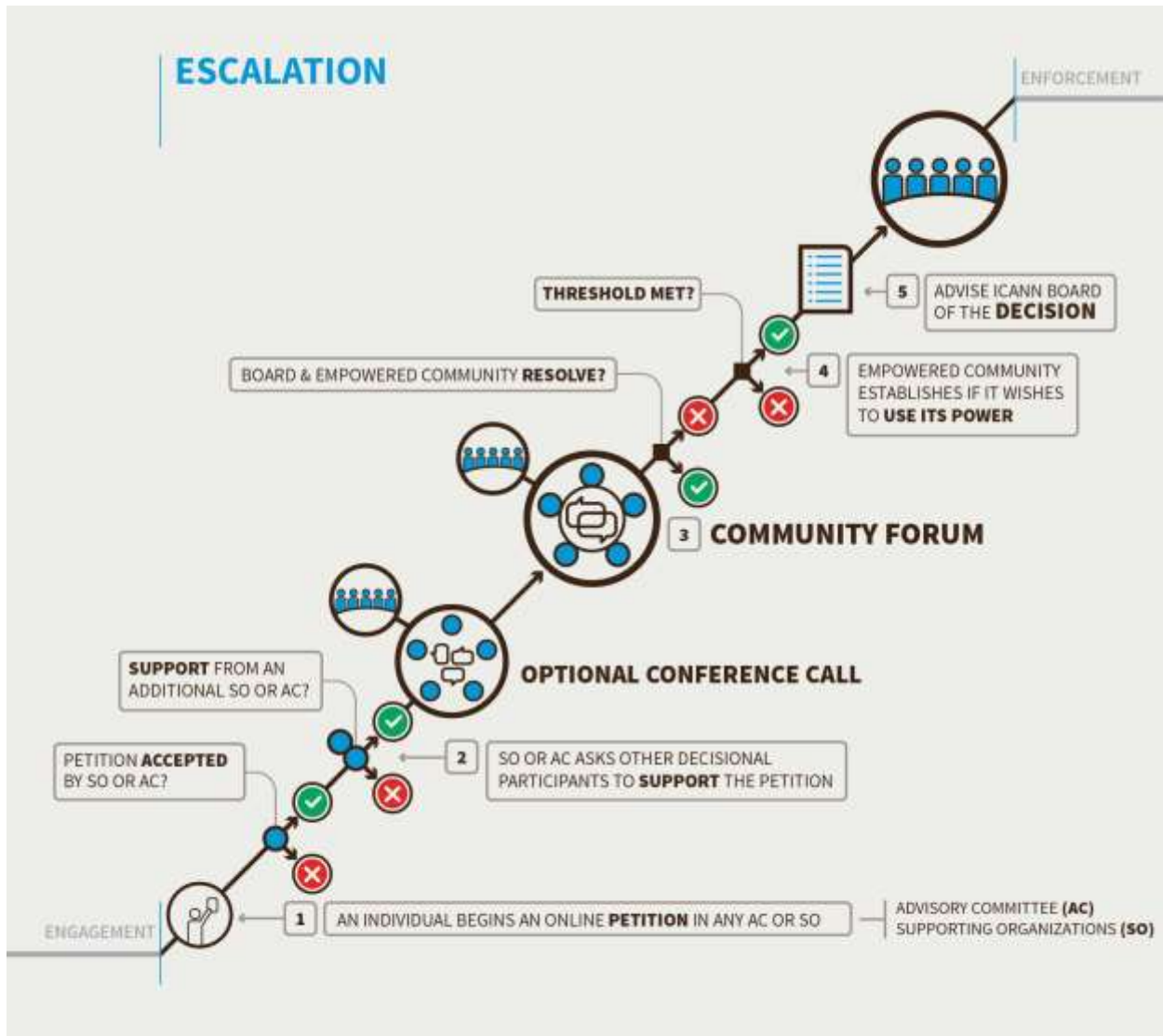
- 18 Today, the ICANN Board voluntarily consults with the community on a variety of decisions, such as the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms, such as public consultations, to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an engagement process.
- 19 The CCWG-Accountability is recommending that this engagement process be constituted in the Fundamental Bylaws. Although the ICANN Board already convenes this process, this recommendation would require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:
- Approving ICANN's Five-Year Strategic Plan.
  - Approving ICANN's Five-Year Operating Plan.
  - Approving ICANN's Annual Operating Plan & Budget.
  - Approving the IANA Functions Budget.
  - Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  - Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.
- 20 If it is determined that there is divergence between the ICANN Board and the community during the engagement process, the Empowered Community may decide to use a Community Power after the appropriate escalation process is satisfied.
- 21 The Empowered Community may begin an escalation process to:
- Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget.
  - Reject a change to ICANN Standard Bylaws.

- Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Remove an individual ICANN Board Director.
- Recall the entire ICANN Board.
- Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
- Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

## 22 Escalation

- 23 The escalation process can differ, sometimes significantly, from one Community Power to another. One of the most standardized versions of the escalation process is required for all Community Powers to "reject," remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.
- Note: Certain exceptions apply to the power to reject changes to Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process, as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- 24 The right to reject an ICANN Board decision relating to IANA Function Reviews (including the triggering of any PTI separation process) may be exercised by the Empowered Community an unlimited number of times.
- Note: The power to approve changes to Fundamental Bylaws and the Articles of Incorporation, and to approve ICANN's sale or other disposition of all or substantially all of ICANN's assets, and the power to remove individual Directors nominated by an SO or AC contain special features that are covered in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.





## 25 **Step 1. Triggering Review by Community Petition**

26 (21 days)

- ⦿ Note: To exercise any of the rejection powers, such as rejection of a budget, the 21-day period begins at the time the Board publishes its vote on the element that may be rejected. If the first step of the petition is not successful within 21 days of the Board publication of the vote, the rejection process cannot be used. A petition begins in an SO or AC that is a Decisional Participant in the Empowered Community.
- ⦿ Any individual can begin a petition as the first step to using a Community Power.
- ⦿ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.

27 **Decision point:**

- ⦿ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
- ⦿ If the SO or AC approves the petition, it can proceed to the next step.

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28 **Step 2. Triggering Review by Community Petition, Part Two**

29 (7 days from the end of the previous step)

- ⦿ The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least one additional Decisional Participant must support the petition (for a minimum of two) for a Community Forum to be organized to discuss the issue. To petition for a Community Forum to consider the recall of the entire ICANN Board requires three Decisional Participants to support the petition.

30 **Decision point:**

- ⦿ If the petition fails to gather the required level of support within seven days, the escalation process terminates.
- ⦿ If a minimum of two (or three, as applicable) Decisional Participants support the petition within seven days, a Community Forum is organized.

- ⦿ Note: For ICANN Board resolutions on changes to Standard Bylaws, Annual Budget, and Strategic or Operating Plans, the Board would be required to automatically provide a 28-day period before the resolution takes effect to allow for the escalation to be confirmed. If the petition is supported by a minimum of two Decisional Participants within the 28-day period, the Board is required to put implementation of the contested resolution on hold until the escalation and enforcement processes are completed. The purpose of this is to avoid requiring ICANN to undo things (if the rejection is approved), which could be potentially very difficult.

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31 **Step 3. Holding a Community Forum**

32 (21 days to organize and hold the event from the date of the petition causing it)

- ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing their preliminary views on the exercise of this Community Power, before or in the Community Forum.
- ⦿ The Forum is to be held within 21 days of the successful petition to hold a Community Forum.
- ⦿ Within 24 hours of a petition being approved, the petitioning Decisional Participant will:

- Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants. Any SO or AC may contribute preliminary thoughts or questions in writing via a specific publicly archived email list set up for this specific issue.
  - Designate a representative(s) to liaise with Decisional Participants to answer questions from the SOs/ACs.
  - If desired, optionally, request that ICANN organize a conference call for the community to discuss the issue.
- ⊙ Community Forum format:
- It is expected that for most powers, this will only involve remote participation methods such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face to face. The one exception to this is the power to recall the entire Board, which would require a face-to-face meeting.
  - The Decisional Participants who supported the petition would decide if holding the Community Forum can wait until the next regularly scheduled ICANN meeting or if a special meeting is required to bring participants together (only in the case of Board recall). In both these cases, the Decisional Participants who supported the petition leading to the Community Forum will publish the date for holding the event, which will not be subject to the 21-day limitation. In this case, the Community Forum would be considered completed at the end of the face-to-face meeting. Note: This extension is not available for exercise of the Community Power regarding the ICANN or IANA Budgets, due to the importance of maintaining a timely budget approval process.
  - Open to all interested participants.
  - Managed and moderated in a fair and neutral manner.
  - ICANN to provide support services. ICANN support staff will collect and publish a public record of the Forum(s), including all written submissions.
  - Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
  - Should the relevant Decisional Participants determine a need for further deliberation, a second and third session of the Community Forum could be held.
  - The Forum will not make decisions or seek consensus, and will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum, as discussed below.

33 **Decision point:**

- ⊙ If the Empowered Community and ICANN Board can resolve the issue before or in the Community Forum, the escalation process terminates. Resolving an issue will be confirmed by the Decisional Participants who supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.
- ⊙ If the Empowered Community and ICANN Board cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.

34 **Step 4. Decision to Use a Community Power as an Empowered Community**

35 (21 days from the conclusion of the Community Forum)

36 **Decision point:**

- ⦿ If four or more (for some powers, three) Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons.
- ⦿ If the proposal does not meet the required thresholds during the 21-day period, the escalation process terminates.

37 **Step 5. Advising the ICANN Board**

38 (1 day)

- ⦿ The Empowered Community will advise the ICANN Board of its decision and direct the Board to take any necessary action to comply with the decision.

39 **Enforcement**

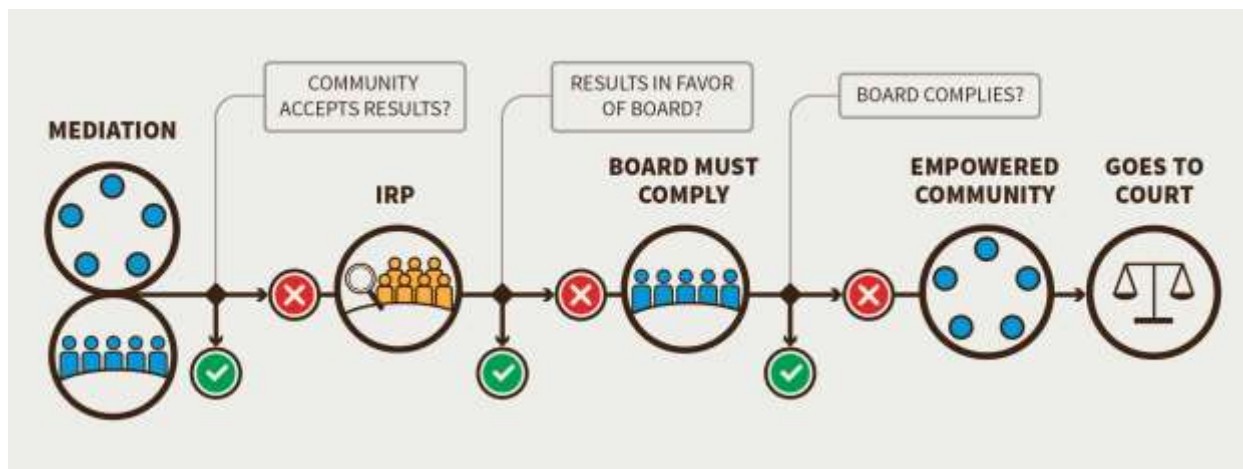
40 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use a Community Power (other than a decision to remove an individual Director or the entire ICANN Board pursuant to the Empowered Community's statutory power, as discussed below), the Empowered Community must decide if it wishes to begin the enforcement process.

41 The ICANN Board will be deemed to have refused or failed to comply with a request by the Empowered Community to use one of its Community Powers if it has not complied with the request within 30 days of being advised of the request by the Empowered Community.

42 The exception to this is removal of ICANN Board Directors or the entire ICANN Board, which should be effective immediately upon notice being provided to the Board. If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

43 The enforcement process can proceed in one of two ways, discussed below.

44 **Option 1: Initiate mediation and community IRP procedures.**



**a) Representatives from ICANN Board and Empowered Community undertake a formal mediation phase.**

- If the Empowered Community accepts the result from the mediation phase (as discussed below), the enforcement process would be terminated.
- If the Empowered Community does not accept the result from the mediation phase, the Empowered Community will proceed with a community IRP.
- Process specification (general guidelines for implementation):
  - The individuals selected by the Decisional Participants to represent them in the Empowered Community will be the Empowered Community representatives in the mediation process.
  - Once the mediator has determined that mediation efforts are completed, the Empowered Community will produce and publicly post a report with its recommendations within 14 days.
  - The Decisional Participants in the Empowered Community should use the standard escalation process to confirm whether to proceed with a community IRP challenge to the Board failing to comply with a decision of the Empowered Community to use a Community Power, using the above report as the basis for the petition. If the Empowered Community does not approve initiating a community IRP, the Empowered Community will be considered as having accepted the result of the mediation.

**b) Representatives from the ICANN Board and Empowered Community undertake a formal and binding IRP.**

- If the result of the community IRP is in favor of the ICANN Board, the enforcement process is terminated.
- If the result of the binding IRP is in favor of the Empowered Community, then the ICANN Board must comply within 30 days of the ruling.

**c) If the ICANN Board does not comply with the decision of the IRP, the Empowered Community has two options:**

- The Empowered Community can petition a court of valid jurisdiction to enforce the result of the IRP.
- The Empowered Community can use its Community Power to recall the entire ICANN Board.

**45 Option 2: Initiate an escalation process to recall the entire ICANN Board.**

- If the requisite threshold of support of Decisional Participants is achieved, the Empowered Community will remove all of the members of the ICANN Board (except the CEO) and replace them with an Interim Board until a new Board can be seated.
- The Empowered Community may legally enforce the power to recall the entire Board in court.

**Table: Required Thresholds for the Various Escalation and Enforcement Processes (Based on a Minimum of Five Decisional Participants in the Empowered Community)**

Required Community Powers?	Petition Threshold to convene a Community Forum	Is there consensus support to exercise a Community Power?
46 1. Reject a proposed Operating Plan/Strategic Plan/Budget	47 Two SOs/ACs	48 Four support rejection, and no more than one objection
49 2. Approve a change to Fundamental Bylaws and Articles of Incorporation, and approve ICANN's sale or other disposition of all or substantially all of ICANN's assets	50 N/A	51 Three support approval, and no more than one objection
52 3. Reject changes to Standard Bylaws	53 Two SOs/ACs, including the SO that led the PDP that requires the Bylaw change (if any)	54 Three support rejection, including the SO that led the PDP that requires the Bylaw change (if any), and no more than one objection

Required Community Powers?	Petition Threshold to convene a Community Forum	Is there consensus support to exercise a Community Power?
55 4a. Remove an individual Board Director nominated by an SO or AC (and appointed by the Empowered Community)	56 Majority within nominating SO/AC	57 Invite and consider comments from all SOs/ACs. 3/4 majority within the nominating SO/AC to remove their director
58 4b. Remove an individual Board Director nominated by the Nominating Committee (and appointed by the Empowered Community)	59 Two SOs/ACs	60 Three support, and no more than one objection
61 5. Recall the entire Board of Directors	62 Three SOs/ACs	63 Four support, and no more than one objection <sup>1</sup>
64 6. Initiate a binding IRP or a Request for Reconsideration	65 Two SOs/ACs	66 Three support, including the SO(s) that approved the policy recommendations from the PDP which result is being challenged through the IRP (if any), and no more than one objection 67 Require mediation before IRP begins
68 7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process	69 Two SOs/ACs	70 Four support, and no more than one objection

71 Implementation of the Empowered Community currently anticipates that all of ICANN's SOs, the ALAC and GAC (if the GAC chooses to participate) would participate in the Empowered Community – that is, they will be listed in the Bylaws as the five Decisional Participants.

72 The thresholds presented in this document were determined based on this assessment. If fewer than five of ICANN's SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.

<sup>1</sup> A minority of CCWG-Accountability participants prefer to require five SOs and ACs, or allow one objection to block consensus.

- 73 In the event of the creation (or removal) of SOs/ACs, the corresponding percentage could be used as useful guidelines in refining the thresholds. There would, however, need to be a conscious decision, depending on the circumstances, regarding these adjustments. If such a change were to affect the list of Decisional Participants in the Empowered Community, the change would follow the Fundamental Bylaw change process, which enables such a conscious decision to be undertaken.
- 74 The CCWG-Accountability also recommends that in a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board's implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects, with the following exception:
- Where the power to be exercised is recalling the entire Board for implementing GAC advice, the reduced threshold would apply only after an IRP has found that, in implementing GAC advice, the Board acted inconsistently with the ICANN Bylaws. If the Empowered Community has brought such an IRP and does not prevail, the Empowered Community may not exercise its power to recall the entire the Board solely on the basis of the matter decided by the IRP. It may, however, exercise that power based on other grounds.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Extended time for certain escalation steps in response to comments. Kept overall timeline similar by combining and removing some steps (mandatory conference call).
- Made it mandatory for petitioning party to reach out to SOs/ACs to socialize relevant information before Community Forum.
- Acknowledged comments regarding the thresholds adjustment in case the number of Decisional Participants is lower (page 12, paragraph 60 of the Third Draft Proposal), by removing this option and replacing it with a lower threshold for approving changes to Fundamental Bylaws. Since the Fundamental Bylaw change process is a requirement for “approval” and not a “rejection” option, this would preserve the requirement for stronger protection of Fundamental Bylaws.
- Determined that the use of the corresponding percentage for thresholds as recommended by the Board can be suggested as a guideline in the event of the creation of new SOs/ACs, but there would need to be a conscious decision, depending on the circumstances. If such a new SO/AC were to become a Decisional Participant in the Empowered Community, this change would require a change to the Fundamental Bylaws and would therefore require approval by the Empowered Community.
- Implemented the compromise for Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18) that the threshold requirements would be modified if the GAC was a Decisional Participant.



## 5. Stress Tests Related to this Recommendation

- ST5, 6, 7, 8, 9, 10, 16, 24, powers
- ST12
- ST13
- ST27
- ST28

## 6. How does this meet the CWG-Stewardship Requirements?

- 75 The CWG-Stewardship required community empowerment mechanisms that would be able to:
- Appoint and remove members of the ICANN Board and to recall the entire ICANN Board.
  - Exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (1) ICANN Board decisions with respect to recommendations resulting from an IANA Function Review (IFR) or Special IFR and (2) the ICANN budget.
  - Approve amendments to ICANN's Fundamental Bylaws.
- The defined escalation and decision-making mechanism recommended by the CCWG-Accountability provide the processes needed to meet these requirements.

## 7. How does this address NTIA Criteria?

76 **Support and enhance the multistakeholder model.**

- Decentralizing power within ICANN through an Empowered Community.
- Solidifying consultation processes between the ICANN Board and community into the ICANN Bylaws.
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.
- Retaining decision-making based on consensus rather than voting.

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77 **Maintain the security, stability and resiliency of the Internet DNS.**

- Proposing a series of procedures that ensure both sides have had the chance to completely and thoroughly discuss any disagreements and have multiple opportunities to resolve any such issues without having to resort to the powers of the Empowered Community for accountability or enforceability.
- Embedding thresholds into procedures to eliminate any risks of capture.

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78 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Including limited timeframes, transparent processes and associated thresholds to maintain operational viability.

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79 **Maintain the openness of the Internet.**

- Establishing a public Community Forum to ensure that all voices and perspectives are heard.
- Preserving policies of open participation in ICANN's SOs and ACs.

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80 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board's implementation of GAC consensus advice. This "carve out," combined with the safeguards in Recommendation #11, leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.
  - Enabling all interested stakeholders to join consultations through SOs and ACs or through the Community Forum.
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# Annex 03 – Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

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## 1. Summary

- 01 Currently, the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN) have a single mechanism for amendment.
  - Any provision of the ICANN Bylaws can be changed by a 2/3 vote of all the Directors on the ICANN Board.
  - The ICANN Board is not required to consult the multistakeholder community or the wider public before amending the Bylaws, but has voluntarily done so up to this point.
- 02 The CCWG-Accountability recommends classifying each ICANN Bylaw as either a “Fundamental Bylaw” or a “Standard Bylaw,” with Fundamental Bylaws being more difficult to change.
- 03 Specifically, the CCWG-Accountability recommends that:
  - Public consultations be required on all changes to ICANN Bylaws, both Fundamental and Standard.
  - The requirement for public consultations to be added to the ICANN Bylaws as a Fundamental Bylaw to ensure that ICANN must continue to engage with the community in the future.
  - Any changes to Fundamental Bylaws require approval from both the ICANN Board and Empowered Community, as outlined in the respective Community Power (as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers).
  - The threshold for ICANN Board approval for changing a Fundamental Bylaw is raised from 2/3 to 3/4.
  - Approval for changes to the Articles of Incorporation use the same process required for approving changes to Fundamental Bylaws, including public consultations.
- 04 Why is the CCWG-Accountability recommending this?
  - The CCWG-Accountability felt that it was critical to ensure that the ICANN Bylaws that embody the purpose of the organization (Mission, Commitments and Core Values) and are meant to ensure the accountability of the ICANN Board, cannot be changed by the ICANN Board acting alone.

## 2. CCWG-Accountability Recommendations

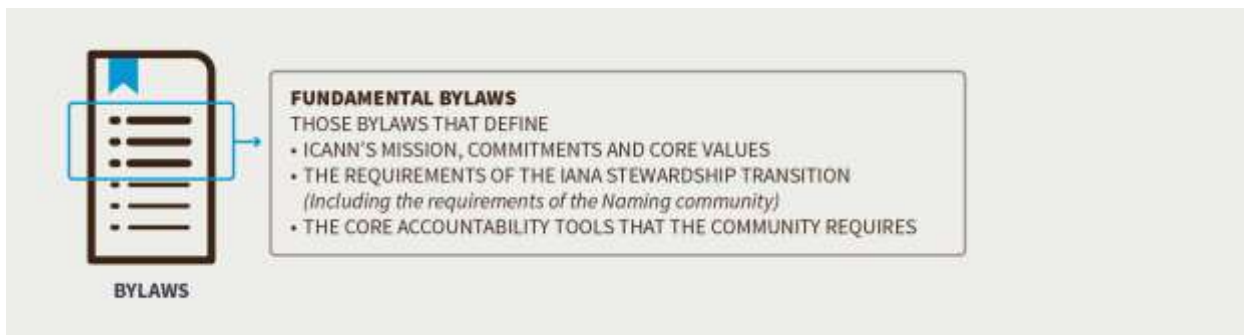
05 The CCWG-Accountability recommends:

- Classifying each ICANN Bylaw as either a Fundamental Bylaw or a Standard Bylaw.
- Making the following CCWG-Accountability and CWG-Stewardship Recommendations Fundamental Bylaws:
  - The Empowered Community for enforcing Community Powers, including the role of Sole Designator of ICANN's Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
  - The escalation and enforcement mechanisms as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
  - The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.
  - The seven Community Powers as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
  - The Mission, Commitments and Core Values as described in Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values.
  - The framework for the Independent Review Process (IRP) as described in Recommendation #7: Strengthening ICANN's Independent Review Process.
  - The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal.
  - The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal.
  - The rights of investigation and inspection as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- Requiring ICANN to conduct public consultations on any proposed changes to Standard Bylaws, Fundamental Bylaws or the Articles of Incorporation.
- Requiring approval for any changes to Fundamental Bylaws and the Articles of Incorporation from both the ICANN Board and the Empowered Community as outlined in the Community Power as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- Raising the threshold for ICANN Board approval for changing a Fundamental Bylaw or the Articles of Incorporation from 2/3 to 3/4 of all the Directors on the ICANN Board.

## 3. Detailed Explanation of Recommendations

06 **What Is a Fundamental Bylaw?**

- 07 ICANN Bylaws describe how power is exercised in ICANN, including setting out the organization's Mission, Commitments and Core Values. Together with the Articles of Incorporation, the Bylaws are an essential part of ICANN because they set the scope of the organization's corporate authority, determine its governance framework and define working practices.
- 08 Today, ICANN Bylaws can be changed by a resolution of the Board upon a 2/3 vote of all the Directors. The CCWG-Accountability believes that the set of key Bylaws that are fundamental to ICANN's stability and operational continuity and essential for the community's decision-rights should be given additional protection from changes by requiring Empowered Community approval of any amendments.
- 09 These key Bylaws will be identified as Fundamental Bylaws.



- 10 As such, the CCWG-Accountability proposes making Fundamental Bylaws harder to change than Standard Bylaws in two ways:
  - By sharing the authority to authorize changes between the ICANN Board and the Empowered Community, organized through participating Supporting Organizations (SOs) and Advisory Committees (ACs) as the “Decisional Participants” in the Empowered Community, as outlined in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
  - By requiring a higher threshold of ICANN Board support to authorize changes to Fundamental Bylaws than for Standard Bylaws.
- 11 The establishment of Fundamental Bylaws would indirectly enhance ICANN's accountability to the global Internet community by sharing the authority of decision-making more widely and increasing the difficulty of amending these key aspects of ICANN.
- 12 This recommendation is important in the context of the IANA Stewardship Transition because the historical contractual relationship with the U.S. Government provided assurance to the multistakeholder community that the fundamental nature of ICANN was unlikely to be changed without widespread agreement. Without that relationship in place, procedural protections and more widely shared decision-rights on core components of ICANN's scope and authority should help maintain the community's confidence in ICANN.

### 13 **Establishing Fundamental Bylaws**

- 14 To implement the establishment of Fundamental Bylaws, a new provision would be added to the Bylaws that sets out:

- Which sections of the Bylaws are Fundamental Bylaws (i.e., a list of the fundamental articles/sections/subsections).
- How new Fundamental Bylaws can be defined, and how existing Fundamental Bylaws can be amended or removed.

15 **Adding New or Amending Existing Fundamental Bylaws**

- 16 While the CCWG-Accountability recommends fortifying certain aspects of the ICANN Bylaws, the global public interest would not be served if ICANN could not evolve in response to the changing Internet environment.
- 17 Therefore, the CCWG-Accountability recognizes the importance of the ability to define new Fundamental Bylaws over time, or to amend or remove existing ones.



- 18 The following steps would be required to establish a new Fundamental Bylaw, or to amend or remove an existing one, where the ICANN Board (or the staff through the ICANN Board) is proposing the addition, amendment or removal:
- The Board proposes a new Fundamental Bylaw, amendment of a Fundamental Bylaw, or removal of a Fundamental Bylaw.
  - The Board approves the addition, amendment, or removal of the Fundamental Bylaw with a 3/4 vote of all the Directors on the ICANN Board.
  - The Empowered Community approves the addition, amendment or removal of the Fundamental Bylaw (as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers).
- 19 If the addition, amendment, or removal of the Fundamental Bylaw is agreed upon by both the ICANN Board and the Empowered Community:
- The new/revised Fundamental Bylaw would be inserted into the ICANN Bylaws, and an appropriate reference to the text as a Fundamental Bylaw would be added (if needed) to the part of the Bylaws that lists them.
  - In the case of an amendment to existing ICANN Bylaws text, the text would be updated.

- In the case of a removal, the text would be removed from the ICANN Bylaws.

20 The CCWG-Accountability does not propose that the community gain the power to directly propose changes to the Bylaws.

## 21 **Which of the Current Bylaws Would Become Fundamental Bylaws?**

22 The CCWG-Accountability recommends that only critical aspects of the ICANN Bylaws be classified as Fundamental Bylaws to avoid introducing unnecessary rigidity into ICANN's structures. The CCWG-Accountability concluded that recommending that all changes to ICANN Bylaws should face the same thresholds that are proposed for Fundamental Bylaws would harm, not help, ICANN's overall accountability.

23 The CCWG-Accountability views "critical aspects" as those that define ICANN's Mission, Commitments and Core Values; the requirements of the CWG-Stewardship Proposal; and the core accountability tools the community requires.

24 Accordingly, the CCWG-Accountability recommends that the following aspects be made Fundamental Bylaws as a part of Work Stream 1:

- The Empowered Community for enforcing Community Powers, including the role of sole designator of ICANN's Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- The escalation and enforcement mechanisms, as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
- The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets, as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.
- The seven Community Powers, as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- The Mission, Commitments and Core Values, as described in Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values.
- The framework for the Independent Review Process, as described in Recommendation #7: Strengthening ICANN's Independent Review Process.
- The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal.
- The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal.
- The rights of investigation and inspection, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.

## 25 **Articles of Incorporation**

26 The CCWG-Accountability legal counsel has advised the following when considering changes to the ICANN Articles of Incorporation:

*“The constituent documents of a California nonprofit public benefit corporation such as ICANN are its Articles of Incorporation and its Bylaws. There is a hierarchy between these documents—the articles prevail to the extent that there is any conflict between the Articles and the Bylaws. This hierarchical relationship holds even if the conflict is between the Articles and a “fundamental” Bylaw that requires the consent of a third-party (in the case of ICANN, the Empowered Community) to be amended.*

*Under California nonprofit corporation law, if a corporation has no statutory members, amendments to the articles may be adopted by the Board. However, the amendment of articles may be made subject to the consent of a third party, just as the amendment of bylaws may be. In the case of ICANN, if the Empowered Community is not provided a right to approve amendments to the Articles, there is a risk that Fundamental Bylaw provisions could be undermined by amendment of the Articles by the ICANN Board, given the hierarchical relationship described above. Thus, we recommend including an approval right with respect to amendments to ICANN’s Articles in favor of the Empowered Community in the same way the Empowered Community has approval rights with respect to Fundamental Bylaws.”*

- 27 As such, the CCWG-Accountability is recommending that changes to the ICANN Articles of Incorporation follow the same approval process and thresholds described above for approving changes to Fundamental Bylaws.



- 28 It is important to note ICANN’s current Articles of Incorporation state that:

*“9. These Articles may be amended by the affirmative vote of at least two-thirds of the directors of the Corporation. When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment.”*

- 29 Therefore, the CCWG-Accountability recommends that the Articles of Incorporation be modified to remove the notion of members and reflect the need for a higher affirmative vote of at least 3/4 of all the Directors on the ICANN Board, as well as approval by the Empowered Community using the same approval process and thresholds as for approving changes to Fundamental Bylaws.



30 **Does the location of ICANN’s principal office need to be a Fundamental Bylaw?**

31 The ICANN Articles of Incorporation and Bylaws address both the state of incorporation (or corporate domicile) of ICANN and the location of its principal office:

- ICANN’s present Articles of Incorporation state:

*“3. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes.”*

- ICANN’s present Bylaws Article XVIII Section 1 state:

*“OFFICES. The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.”*

- The Affirmation of Commitments paragraph 8(b) states:

*“ICANN affirms its commitments to: (b) 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...”*

32 As recommended by the CCWG-Accountability in the above section, the Articles of Incorporation would require that approval of any changes to the Articles of Incorporation use the same process and thresholds required for approving changes to Fundamental Bylaws.

33 Thus, ICANN’s state of incorporation/corporate domicile could not be changed without the affirmative consent of the Empowered Community. However, to ensure that ICANN’s status as a California nonprofit public benefit corporation could not be changed by way of transfer of assets and/or dissolution without the affirmative consent of the Empowered Community, a provision will need to be added to the Articles of Incorporation requiring Empowered Community approval for a transfer of all or substantially all of the assets of ICANN.

34 The ICANN Board could propose a change to the Bylaws provision requiring the location of ICANN’s “principal office” in California, but the Empowered Community could block the change.

35 There was not consensus to support making this provision a Fundamental Bylaw requiring the affirmative consent of the Empowered Community.

36 **Community Power: Approve Changes to Fundamental Bylaws and the Articles of Incorporation**

37 Establishing Fundamental Bylaws and requiring Empowered Community approval of amendments to the Articles of Incorporation would ensure that critical aspects of the powers and processes required to maintain ICANN’s accountability to the community, and the organization’s Mission, Commitments and Core Values, can only be changed as a result of broad consensus of both the ICANN Board and the community.

- 38 The Empowered Community would have to affirmatively consent to any change proposed and adopted by the ICANN Board before the amendment could become legally effective, as part of a joint decision process between the ICANN Board and the Empowered Community. By creating this special joint decision process, authority to change fundamental aspects of ICANN's governing framework is shared more broadly than it is today.
- 39 The CCWG-Accountability is working under the assumption that the Articles of Incorporation and the ICANN Bylaws provisions that are recommended to become Fundamental Bylaws are not likely to change frequently. Where changes are made, they are unlikely to arise on short notice or be needed to deal with short-term operational situations.
- 40 The CCWG-Accountability therefore does not believe that this Community Power, as proposed, poses any challenges to ICANN's ongoing operational viability, stability or efficiency.
- 41 Such changes require a high degree of support from the Decisional Participants in the Empowered Community, as the purpose of this power is to make changing Fundamental Bylaws or the Articles of Incorporation possible only with very wide support from the community.
- 42 For further information about the other Community Powers recommended by the CCWG-Accountability, see Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Clarified that IANA Function Review (IFR) provisions apply only to the IANA naming functions (CWG-Stewardship requirement).
- Clarified the process for changes of Articles of Incorporation to be similar to process for changes to Fundamental Bylaws, as well as the process for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Added a specific recommendation that the current Articles of Incorporation be modified to remove the notion of members and reflect the need for an affirmative vote of at least 3/4 of all the Directors on the ICANN Board, as well as approval by the Empowered Community.

## 5. Stress Tests Related to this Recommendation

- N/A

## 6. How does this meet the CWG-Stewardship Requirements?

- 43 These recommendations meet the CWG-Stewardship requirement that the CCWG-Accountability recommend the creation of Fundamental Bylaws. These include the following:

- ICANN Budgets and Strategic/Operating Plans and IANA Budgets: Community rights regarding the development and consideration of ICANN Budgets, Strategic/Operating Plans and IANA Budgets.
- ICANN Board: Community rights regarding the ability to appoint/remove Directors of the ICANN Board and recall the entire Board.
- ICANN Bylaws: Incorporation of the following into ICANN's Bylaws: IANA Function Review, Special IANA Function Review, PTI Governance, Customer Standing Committee, and the Separation Process.
- Independent Review Process: Should be made applicable to IANA functions and accessible by managers of top-level domains.

## 7. How does this address NTIA Criteria?

44 **Support and enhance the multistakeholder model.**

- Ensuring the multistakeholder model accountability mechanisms cannot be modified without the Empowered Community's approval.
- 

45 **Maintain the security, stability and resiliency of the Internet DNS.**

- Establishing Fundamental Bylaws that provide additional protections to ICANN Bylaws that are critical to the organization's stability and operational continuity.
- 

46 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A
- 

47 **Maintain the openness of the Internet.**

- N/A
- 

48 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A
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# Annex 04 –Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers

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## 1. Summary

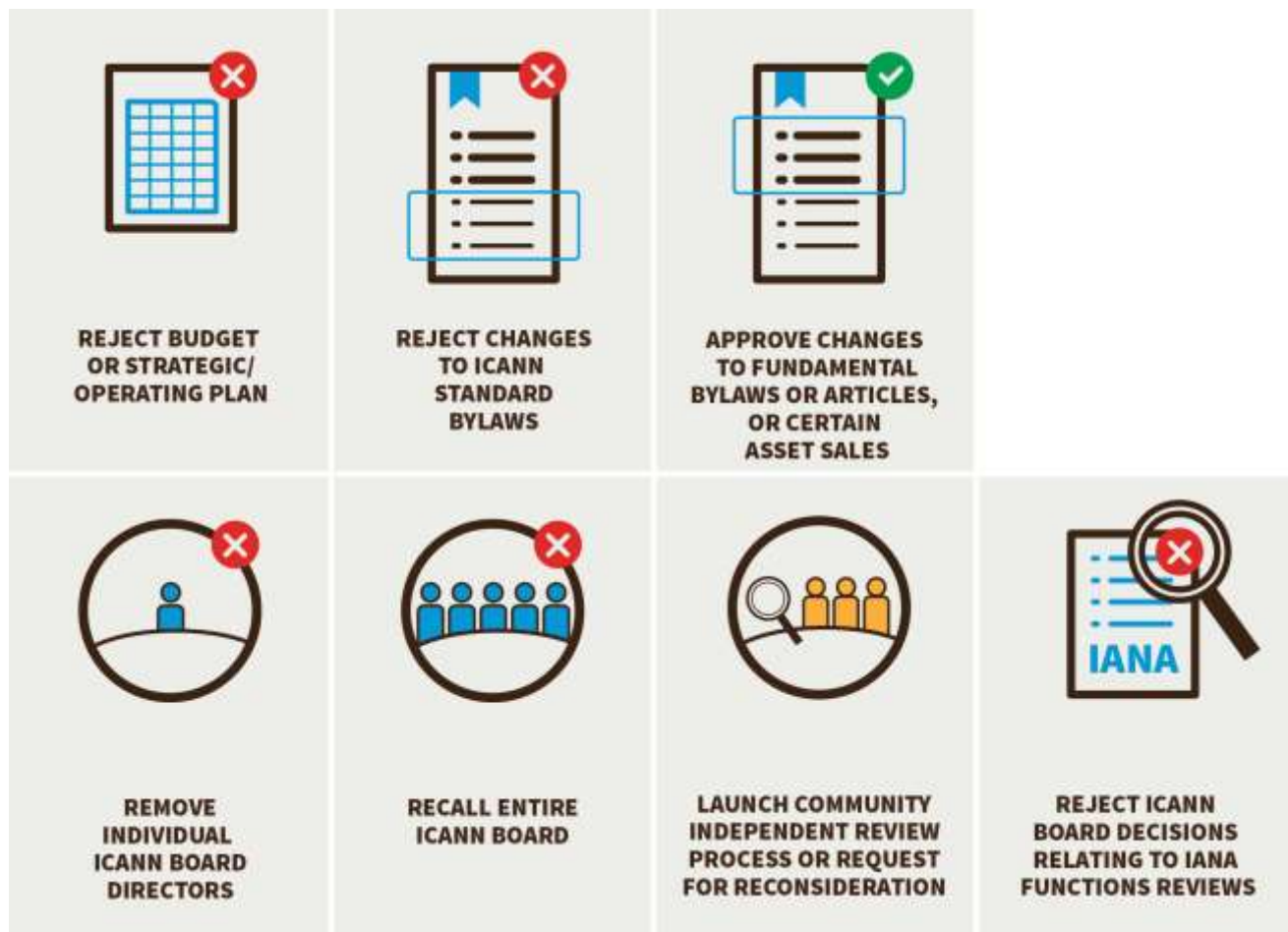
- 01 The CCWG-Accountability has recommended seven powers for the community that should be in place to improve ICANN's accountability and ensure community engagement.
- 02 These “Community Powers” are:
  1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.
  2. Reject a change to ICANN Standard Bylaws.
  3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  4. Remove an individual ICANN Board Director.
  5. Recall the entire ICANN Board.
  6. Initiate a binding Independent Review Process (IRP) (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
  7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process for the IANA naming functions.
- 03 The Community Powers and associated processes were designed to ensure that no stakeholder can singlehandedly exercise any power, and that under no circumstances, would any individual segment of the community be able to block the use of a power.

## 2. CCWG-Accountability Recommendations

- 04 The CCWG-Accountability recommends:
  - Defining the following Community Powers as Fundamental Bylaws:
    1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.
    2. Reject a change to ICANN Standard Bylaws.

3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  4. Remove an individual ICANN Board Director.
  5. Recall the entire ICANN Board.
  6. Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
  7. Reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of any PTI separation process for the IANA naming functions.
- Adding an ICANN Bylaw that states that if the entire ICANN Board is removed, an Interim Board will be established only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations (SOs), Advisory Committees (ACs), and the Nominating Committee (NOMCOM) will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.
    - The ICANN Bylaws will state that, except in circumstances in which urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies or management, including replacement of the serving President and CEO.
    - Note: Details on what the powers do is presented in greater detail in the following section and the details of how these can be used can be found in Annex 2.
  - That there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows:
    - Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes.
    - Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it.
    - Fundamental Bylaws would require that if the change to the ICANN Bylaws is the result of a Policy Development Process, the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change. If the SO that led the Policy Development Process that requires the Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.

### 3. Detailed Explanation of Recommendations



05 The CCWG-Accountability has proposed a set of seven Community Powers designed to empower the community to hold ICANN accountable for the organization's Principles (the Mission, Commitments and Core Values).

06 **The proposed Community Powers are:**

The Power to Reject ICANN's Budget, IANA Functions Budget or Strategic/Operating Plans

The Power to Reject Changes to ICANN Standard Bylaws

The Power to Remove Individual ICANN Board Directors

The Power to Recall the Entire ICANN Board

The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN's Sale or Other Disposition of All or Substantially All of ICANN's Assets

The Power to Initiate a Binding IRP or a Non-Binding Request for Reconsideration

The Power to Reject ICANN Board Decisions Relating to Reviews of IANA Functions, including the Triggering of Any PTI Separation Process

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07 It is important to note that the above powers, as well as the launch of a Separation Cross Community Working Group<sup>1</sup> (as required by the CWG-Stewardship dependencies), can be enforced by using the community IRP or the Community Power to recall the entire Board.

08 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

09 **The Power to Reject ICANN's Budget or Strategic/Operating Plans**

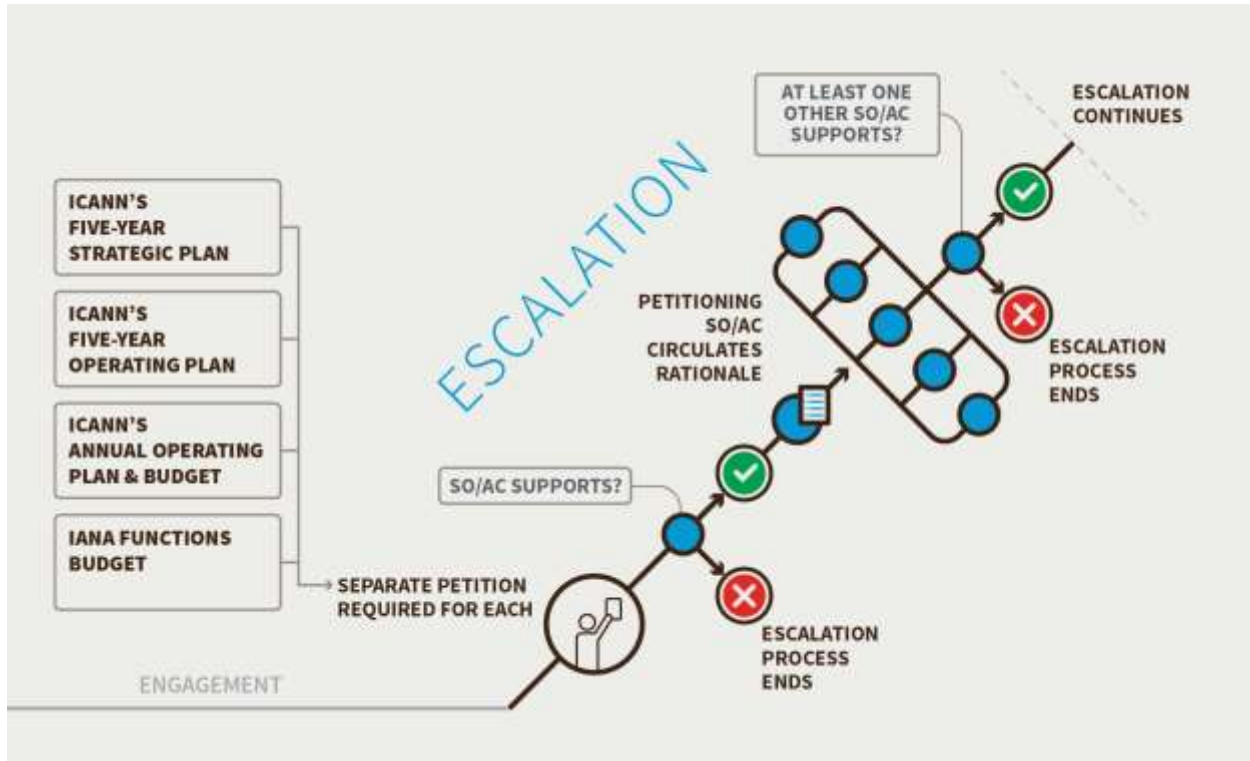
10 The right to set budgets and strategic direction is a critical governance power for any organization. By allocating resources and defining the goals to which these resources are directed, strategic plans, operating plans, and budgets have a significant impact on what ICANN does and how effectively it fulfills its role. The ICANN community already plays an active role in giving input into these key documents through participation in the existing consultation processes ICANN organizes.

11 To provide additional accountability safeguards, the CCWG-Accountability has proposed that the Empowered Community be given the power to reject:

- ICANN's Five-Year Strategic Plan
- ICANN's Five-Year Operating Plan
- ICANN's Annual Operating Plan & Budget
- IANA Functions Budget

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<sup>1</sup> If the CWG-Stewardship's IANA Function Review determines that a Separation Process for the IANA naming functions is necessary, it will recommend the creation of a Separation Cross Community Working Group. This recommendation will need to be approved by a supermajority of each of the Generic Names Supporting Organization and the Country-Code Names Supporting Organization Councils, according to their normal procedures for determining supermajority, and will need to be approved by the ICANN Board after a Public Comment Period, as well as by the Empowered Community.



- 12 The CCWG-Accountability has determined that a separate petition would be required for each budget or strategic/operating plan being challenged. A budget or strategic/operating plan could only be challenged if there are significant issue(s) brought up in the engagement process that were not addressed prior to approval.
- 13 To reinforce the bottom-up, transparent and collaborative approach that ICANN currently uses to enable the community to give input into ICANN's budget documents, the CCWG-Accountability recommends adding a similar consultation process into the ICANN Bylaws for both the ICANN Budget and the IANA Functions Budget. The Bylaws must assure that sufficient budget detail is available, in a timely way, for the community to carefully consider budget matters and provide informed and constructive input (and for this input to be thoroughly considered) prior to the Board making decisions on budget matters.
- 14 A community decision to reject a budget or a plan after it has been approved by the ICANN Board will be based on perceived inconsistency with the purpose, Mission and role set out in ICANN's Articles and Bylaws; the global public interest; the needs of ICANN stakeholders; financial stability, or other matters of concern to the community. The veto could only concern issues that had been raised in the public consultations conducted before the Board approved the budget or plan.
- 15 An SO or AC that is a Decisional Participant in the Empowered Community petitioning to reject a budget or strategic/operating plan would be required to circulate a rationale and obtain support for its petition from at least one other Decisional Participant according to the escalation process.
- 16 The escalation and enforcement processes for rejecting any strategic/operating plan or budget is detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
- 17 If the Community Power to reject the Annual Budget is used, a caretaker budget would be implemented. A caretaker budget is one that provides ongoing funding for crucial ICANN



functions, while the issue/s that caused the Empowered Community's use of the Community Power are resolved. It will be based on current ICANN operations, according to rules developed in the implementation process (which will form a public and transparent "defined approach" to the caretaker budget).

- 18 The CCWG-Accountability also recommends that the caretaker budget concept be embedded in the Fundamental Bylaws, including the responsibility of ICANN's Chief Financial Officer to establish the caretaker budget in accordance with the defined approach.

## 19 **The IANA Functions Budget**

- 20 Under this power, the community will be able to consider the IANA Functions Budget as a separate budget. The IANA Functions Budget is currently part of ICANN's Annual Operating Plan & Budget.

- 21 Under the CWG-Stewardship Final Proposal, an itemization of IANA costs as set forth in the IANA Functions Budget would include "direct costs for the IANA Department", "direct costs for shared resources" and "support functions allocation." Furthermore, the CWG-Stewardship Final Proposal states that these costs should be itemized into more specific costs related to each specific function to the project level and below as needed.

- 22 The IANA Functions Budget requires protection, as recommended by the CWG-Stewardship's Final Proposal. The IANA Functions Budget must be managed carefully and not decreased (without public input) regardless of the status of the other portions of the budget.

- 23 The CCWG-Accountability recommends that there be two distinct processes with respect to the Community Power to reject the IANA Functions Budget and the Community Power to reject the ICANN Budget, meeting the requirements of the CWG-Stewardship. The use of the Community Power to reject the ICANN Budget would have no impact on the IANA Functions Budget, and a rejection of the IANA Functions Budget would have no impact on the ICANN Budget.

- 24 The escalation and enforcement processes for rejecting an IANA Functions Budget is detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

- 25 Should the power be used to reject the annual IANA Functions Budget, a caretaker budget would be implemented (details regarding the caretaker budget are currently under development as noted above).

- 26 The CCWG-Accountability recommends that the caretaker budget approach be embedded in the Fundamental Bylaws, including the responsibility of ICANN's Chief Financial Officer to establish the caretaker budget in accordance with the defined approach.

- 27 The CCWG-Accountability acknowledges that the CWG-Stewardship (or a successor implementation group) is required to develop a proposed process for the IANA Functions Operations-specific Budget establishment and review. This process will be a key input for the implementation of this specific power.

- 28 The CWG-Stewardship may wish to detail the planning process by which the IANA Functions Budget is established as part of its implementation program of work, including the level of detail required to be provided for community input and the timeframes for consultations and approvals. The CCWG-Accountability limits its requirements to those set out in this Recommendation.

- 29 In implementation, any process through which a portion or the whole of the IANA Functions Budget is subject to rejection should include the voice of the operational communities served by the IANA functions (i.e., Domain Names, Numbering Resources and Protocol Parameters). The process must also be implemented in such a way as to ensure the stable and continuous

delivery of the IANA functions, and the proper delivery of contractual service levels to the respective operational communities.

### 30 **The Power to Reject Changes to ICANN Standard Bylaws**

- 31 In addition to the safeguard against the possibility of the ICANN Board unilaterally amending Fundamental Bylaws without consulting the community, the CCWG-Accountability recommends that the Empowered Community be given the power to reject changes to Standard ICANN Bylaws after the Board approves them, but before the changes go into effect.
- 32 Any changes approved by the Board would take 30 days to go into effect to enable the Empowered Community to decide whether a petition to reject the change should be initiated.
- 33 This power, with respect to Standard Bylaws, is a rejection process that is used to tell the ICANN Board that the Empowered Community does not support a Board-approved change. It does not enable the Empowered Community to rewrite a Standard Bylaw change that has been proposed by the Board.
- 34 It is important to note that the CCWG-Accountability has been careful to try not to change ICANN's core policy-making processes. The tools it has proposed to improve accountability are generally aimed at ICANN-wide issues, not policy development in the SOs. However, the power to reject a Standard Bylaw change could interfere with the implementation of a Policy Development Process that requires such a change.
- To ensure this power does not interfere with ICANN's bottom-up Policy Development Processes, the CCWG-Accountability has added an exception to the Standard Bylaws rejection power to ensure that a Bylaw change that is the result of a Policy Development Process cannot be rejected after it is approved by the ICANN Board without the approval of the SO that led the Policy Development Process.
- 35 The escalation and enforcement processes for this power are described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement, with the following exception:
- The CCWG-Accountability proposes that there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows:
    - Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes.
    - Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it.
      - Fundamental Bylaws dealing with rejection of an ICANN Bylaw change would require, if the Bylaws change is the result of a Policy Development Process, that the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change.
      - If the SO that led the Policy Development Process that requires the ICANN Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.

36 **The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN's Sale or Other Disposition of All or Substantially All of ICANN's Assets**

37 To safeguard against the possibility that the ICANN Board could unilaterally amend ICANN Bylaws and/or the Articles of Incorporation without consulting the community, the CCWG-Accountability determined that the community consultation process should be reinforced in Fundamental Bylaws.

38 The proposed set of Fundamental Bylaws would be harder to change than the Standard Bylaws for two reasons:

- The authority to change Fundamental Bylaws and/or the Articles of Incorporation would be shared between the ICANN Board and the Empowered Community.
- The required threshold of ICANN Board support to change a Fundamental Bylaw would be significantly higher than the threshold to change a Standard Bylaw.

39 The CCWG-Accountability emphasizes the importance for the ICANN Board and Empowered Community to be able to define new Fundamental Bylaws and/or Articles of Incorporation over time, or to change or remove existing ones to ensure that ICANN can adapt to the changing Internet environment.

40 The same escalation process applies to ICANN's sale or other disposition of all or substantially all of ICANN's assets.

41 **The escalation process for this power is as follows:**

42 **Step 1. The ICANN Board publishes its approval of a change to the Fundamental Bylaws and/or Articles of Incorporation and/or sale or other disposition of all or substantially all of ICANN's assets**

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43 **Step 2. Holding a Community Forum**

44 (30 days to organize and hold the event from the date of the publication by the Board)

- ⊙ It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face-to-face.
- ⊙ The Community Forum would be open to all interested participants and ICANN will provide support services, including the publishing of recordings and transcripts.
- ⊙ Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
- ⊙ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate their preliminary views in writing on the exercise of this Community Power.
- ⊙ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage; although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional

Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.

- ⊙ The Community Forum should be managed/moderated in a fair and neutral manner.
  - ⊙ Should the relevant Decisional Participants determine a need for further deliberation, a second and third session of the Community Forum could be held.
  - ⊙ ICANN staff will collect and publish a public record of the Forum(s), including all written submissions.
- 

45 **Step 3. Decision to use a Community Power as an Empowered Community**

46 (21 days from the conclusion of the Community Forum)

- ⊙ If three or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power to approve the change to the Fundamental Bylaws or Articles of Incorporation.
  - ⊙ If the required thresholds during the 21-day period are not met, the escalation ends without the change to the Fundamental Bylaws or Articles of Incorporation being approved.
- 

47 **Step 4. Advising the ICANN Board**

48 (1 day)

- ⊙ The Empowered Community will advise the Board of its decision.
- 

49 **The Power to Remove Individual ICANN Board Directors**

50 The power to remove individual ICANN Board Directors would allow for the removal of an ICANN Board Director before the Director's current term comes to an end. This was a formal requirement from the CWG-Stewardship. Note that this power applies only to voting members of the ICANN Board, and not to liaisons (who, as non-voting members of the Board are not treated as Directors under California law).

51 Given that ICANN Board Directors can be nominated in two significantly different ways, (1) Specific SO or AC nomination or (2) Nomination Committee nomination, the processes for removing each type of Director will be different.

52 In cases where the nominating SO or AC perceives that there is a significant issue with its appointed Director, it can use the following escalation process to determine if removal of the Director is recommended.

- It is important to note that this power can only be used once during a Director's term if the escalation process reaches the step of holding a Community Forum, as described above, and then fails to remove the Director.

53 As a condition to being nominated by an SO, AC or the Nominating Committee and seated on the Board, each Director-nominee shall be required to sign an irrevocable letter agreement that:

- Expresses a contractual commitment that: (1) Acknowledges that the nominating AC or SO, or, for Directors nominated by the Nominating Committee, the Empowered Community, has the right to remove the Director from service at any time and for any reason through the processes set out in the ICANN Bylaws (as described below); and (2) Confirms that service as an ICANN Board Director does not establish any employment or other relationship to ICANN, the Empowered Community, the SOs, the ACs, the Nominating Committee, or the agents of any of them, that provides any due process rights related to termination of service as a Director other than those specified in the Bylaws.
- Provides a conditional irrevocable resignation from the ICANN Board that is automatically effective upon a final determination of removal through the individual Director removal process or the full Board recall process upon communication of such decision to the Board (as set forth below).

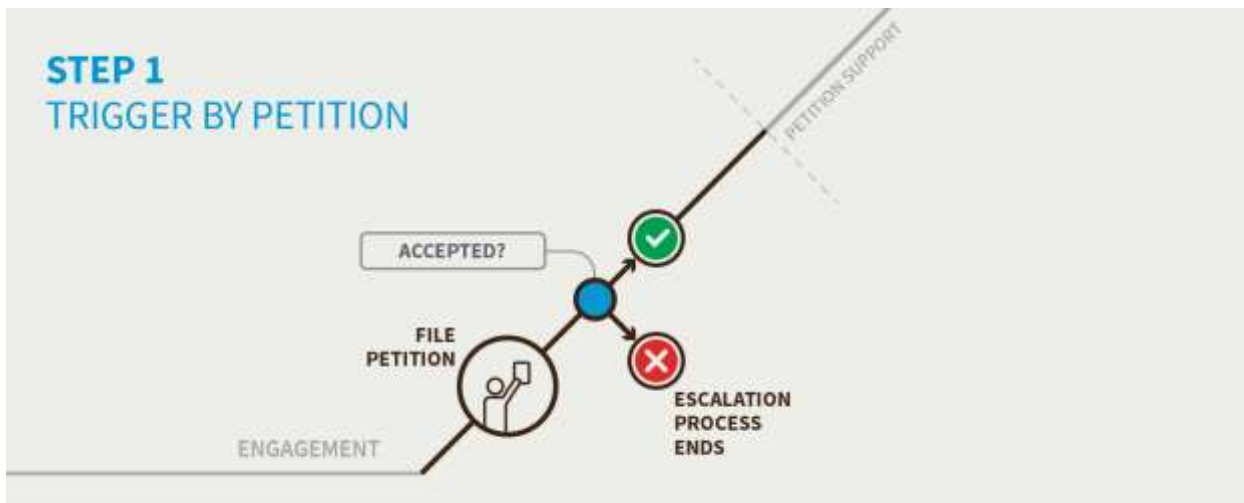
54 Indemnification associated with the removal of individual ICANN Board Directors:

- If a Director initiates a lawsuit in connection with his or her removal or recall (for example, a Director claims that he was libeled in the written rationale calling for his removal), ICANN will provide indemnification and advance expenses as provided below.
- Indemnification will be available (1) to a member of an SO, an AC, the Nominating Committee, or the Empowered Community (2) who is acting as a representative of such organization or committee (3) for actions taken by such representative in such capacity pursuant to processes and procedures set forth in the Bylaws (for example, the chair of an SO submitting a written rationale for the removal of a Director).
- As required by California law and consistent with ICANN's current Bylaws, indemnification will only be available if the actions were taken (1) in good faith and (2) in a manner that the indemnified person reasonably believed to be in the best interests of ICANN.
- Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2.
- Indemnification will cover amounts actually and reasonably incurred in connection with the lawsuit, such as reasonable attorneys' fees of no more than one firm, judgments, and settlements approved by the Board in its reasonable discretion.
- ICANN will advance funds to cover defense expenses where the person meeting the requirements set forth above undertakes to repay to ICANN amounts received for expenses for which the requirements for indemnification are ultimately determined not to have been met.

55 **Directors Nominated by the Nominating Committee (and Appointed by the Empowered Community)**

56 **Step 1. Triggering Individual ICANN Board Director Removal by Community Petition**

57 (21 days from the official posting of the original petition)



- ⦿ Begin a petition in an SO or AC that is a Decisional Participant in the Empowered Community.
- ⦿ Any individual can begin a petition as the first step to using a Community Power. A petition must be supported by a written rationale stating the reasons why removal is sought.
- ⦿ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.
- ⦿ Prior to completion of the petition phase, the affected Director and the Chair of the Board (or Vice Chair if appropriate) are invited to a dialogue, which also includes the individual(s) bringing the petition and the chair of the SO/AC where the petition is under consideration. The purpose of the dialogue is to gain a full understanding of the issues leading to the petition and consider if there are other ways to address the concerns.
- ⦿ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
- ⦿ If the SO or AC approves the petition, it can proceed to the next step.

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58 **Step 2. Triggering Review by Community Petition, Part Two**

59 (7 days from the end of the previous step)



- ⦿ The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least one additional Decisional Participant must support the petition (for a minimum of two) for a Community Forum to be organized to discuss the issue.
- ⦿ If the petition fails to gather the required level of support within seven days, the escalation process terminates.
- ⦿ If a minimum of two Decisional Participants support the petition within seven days, a Community Forum is organized.

60 **Step 3. Holding a Community Forum**

61 (21 days to organize and hold the event from the date of the decision to hold It)



- ⊙ It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face-to-face.
- ⊙ The Community Forum would be open to all interested participants and ICANN will provide support services. The ICANN Board Director who is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised.
- ⊙ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing their preliminary views on the exercise of this Community Power.
- ⊙ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage; although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.
- ⊙ The Community Forum should be managed/moderated in a fair and neutral manner.
- ⊙ Should the relevant SOs or ACs determine a need for further deliberation, a second and third session of the Community Forum could be held.
- ⊙ Staff will collect and publish a public record of the Forum(s), including all written submissions.
- ⊙ If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point, this process cannot be used again by the Empowered Community to remove this specific ICANN Board Director during his or her current term.
- ⊙ If the Empowered Community and the ICANN Board Director cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.



62 **Step 4. Decision to Use a Community Power as an Empowered Community**

63 (21 days from the conclusion of the Community Forum)

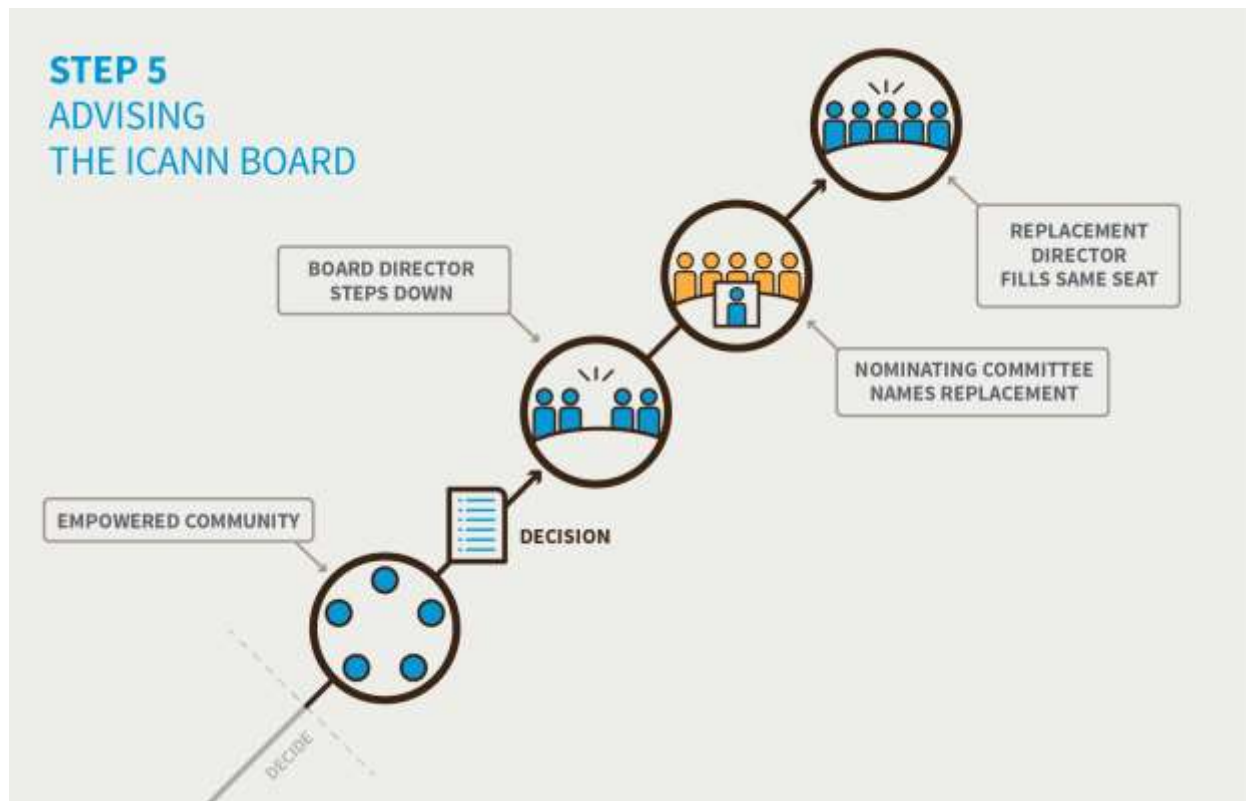


- ⦿ If three or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons.
- ⦿ If the proposal for the Empowered Community to use a Community Power does not meet the required thresholds during the 21-day period, the escalation process terminates.

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64 **Step 5. Advising the ICANN Board**

65 (1 day)



- ⦿ If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct him or her to comply with the decision.
- ⦿ Naming a replacement:
  - The Nominating Committee may instruct the Empowered Community to appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several “reserve” candidates in place.
  - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end.

66 **Directors Nominated by a Supporting Organization or Advisory Committee (and Appointed by the Empowered Community)**

67 **Step 1. Triggering Individual ICANN Board Director Removal by Community Petition**

68 (21 days from the official posting of the original petition)



- ⦿ The petition can only be started in the SO or AC that nominated the Director and that is a Decisional Participant in the Empowered Community.
- ⦿ Any individual can begin a petition as the first step to using a Community Power.
- ⦿ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.
- ⦿ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
- ⦿ If the SO or AC approves the petition, it can proceed to the next step.

69 **Step 2. Holding a Community Forum**

70 (21 days to organize and hold the event from the date of the decision to hold it)

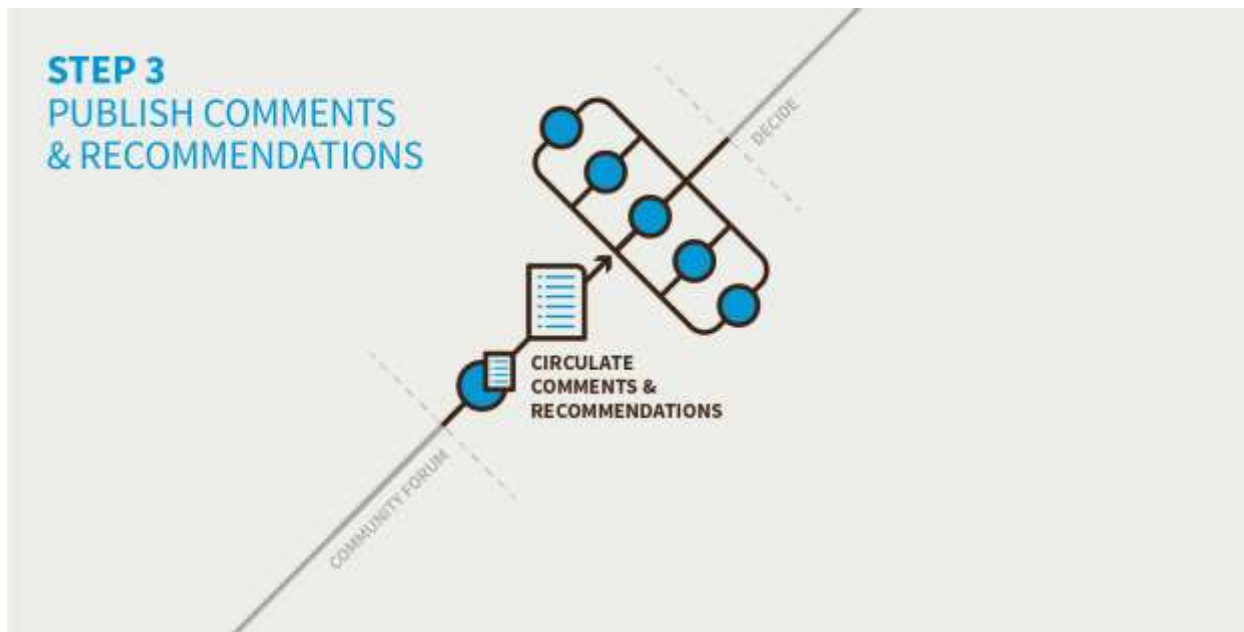


- ⦿ It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face to face. The Community Forum would be open to all interested participants, and ICANN will provide support services. The ICANN Board Director that is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised.
- ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing its preliminary views on the exercise of this Community Power.
- ⦿ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the nominating SO/AC that supported the petition formally agreeing, in accordance with its own mechanisms, that the escalation process should be halted.
- ⦿ The Community Forum should be managed/moderated in a fair and neutral manner and cannot involve a representative of the nominating SO or AC.
- ⦿ Should the relevant SO or AC determine a need for further deliberation, a second and third session of the Community Forum could be held.
- ⦿ Staff will collect and publish a public record of the Forum(s), including all written submissions.
- ⦿ If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point, this process cannot be used again by the Empowered Community to remove this specific ICANN Board Director during his or her current term.
- ⦿ If the Empowered Community and the ICANN Board Director cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.
  - At the end of the Community Forum, the Community Forum Chair will issue a formal call for comments and recommendations from the community within seven days, and input received will be sent to the relevant SO or AC and posted publicly.

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71 **Step 3. Supporting Organizations and/or Advisory Committees Publish Their Comments and Recommendations**

72 (7 Days)



73 **Step 4. Decision to Use a Community Power as a Decisional Participant**

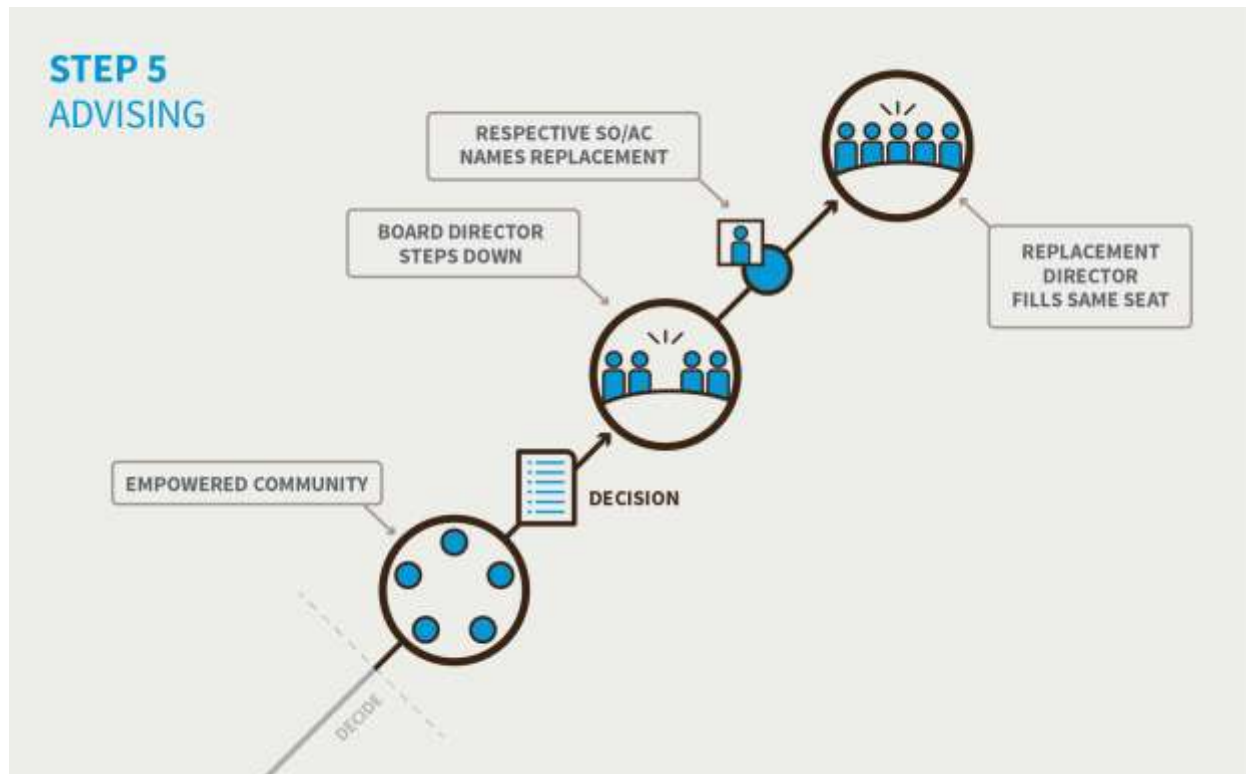
74 (21 days from the conclusion of the period for Supporting Organization and Advisory Committee comments)



- ⦿ If a three-quarters majority within the nominating SO or AC supports using the power within the 21-day period, the Empowered Community will use its power. The SO or AC will also publish an explanation of why it has chosen to do so.
- ⦿ If the nominating SO or AC does not adequately support using the power within the 21-day period, the escalation process terminates.

75 **Step 5. Advising the ICANN Board**

76 (1 Day)



- ⦿ If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct him or her to comply with the decision.
- ⦿ Naming a replacement:
  - The nominating SO or AC is responsible for nominating an individual to fill the vacancy on the ICANN Board through its usual process (as set out in Article VI, Section 12.1 of the Bylaws).
  - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end. Directors appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

77 **The Power to Recall the Entire ICANN Board**

78 The CCWG-Accountability believes there may be situations where removing individual Directors from the ICANN Board may not be a sufficient accountability remedy for the community.

- 79 In cases where the community perceives that a set of problems has become impossible to resolve, the community may wish to signal its lack of confidence in the ICANN Board by petitioning for a recall (i.e., the removal) of the entire Board (except the CEO, who is appointed by the Board).
- 80 The power to recall a Board is a critical enforcement mechanism for the Empowered Community because it can be used to support the other Community Powers and provide a final and binding accountability mechanism.
- 81 By exercising this power, the entire ICANN Board (except the CEO and liaisons who, as non-voting members of the Board are not treated as Directors under California law) could be removed by the Empowered Community. However, it is unlikely that the Empowered Community would use this power lightly, and the engagement and escalation processes are designed to encourage agreement between the ICANN Board and the Empowered Community.
- 82 If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.
- 83 The CCWG-Accountability expects that this power would only be exercised as a last resort after all other attempts at resolution have failed. As a recall of the Board would be extremely disruptive for the entire organization, the CCWG-Accountability has included several safeguards in the proposed escalation process to ensure that this decision reaches the maturity and level of support needed before it can be used
- Note: Special conditions may apply if the “carve out” is invoked for recalling the entire Board. Please consult Annex 2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement for further details.
- 

84 **Step 1. Triggering Recalling the ICANN Board Directors by Community Petition**

85 (21 days from the official posting of the original petition)

- ⦿ Begin a petition in an SO or AC that is a Decisional Participant in the Empowered Community.
  - ⦿ Any individual can begin a petition as the first step in using a Community Power.
  - ⦿ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.
  - ⦿ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
  - ⦿ If the SO or AC does approve the petition within the 21-day period, it proceeds to the next step.
- 

86 **Step 2. Triggering Removal of ICANN Board by Community Petition, Part Two**

87 (7 days from the end of the 21-day period of the previous step)

- ⦿ The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least two additional Decisional Participants must support the petition (for a minimum total of three) for a Community Forum to be organized to discuss the issue.

- ⊙ If the petition fails to gather the required level of support within seven days, the escalation process terminates.
- ⊙ If a minimum of three Decisional Participants support the petition within seven days, a Community Forum is organized.

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88 **Step 3. Holding a Community Forum**

89 (21 days to organize and hold the event from the date of the decision to hold it)

- ⊙ The power to recall the entire Board would require a face-to-face meeting. The three or more SOs or ACs that approved holding the Community Forum would decide if holding the Community Forum can wait until the next regularly scheduled ICANN meeting or if a special meeting is required to bring participants together. In both of these cases, the three or more SO or ACs that have requested the Community Forum will publish the date for holding the event which will not be subject to the 21-day limitation. In this case, the Community Forum would be considered completed at the end of the face-to-face meeting.
- ⊙ The Community Forum would be open to all interested participants, and ICANN will provide support services. The ICANN Board would be invited and expected to attend and be prepared to address the issues raised.
- ⊙ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing its preliminary views on the exercise of this Community Power.
- ⊙ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.
- ⊙ The Community Forum should be managed/moderated in a fair and neutral manner.
- ⊙ Should the relevant SOs or ACs determine a need for further deliberation, a second and third session of the Community Forum could be held.
- ⊙ Staff will collect and publish a public record of the Forum(s), including all written submissions.
- ⊙ If the Empowered Community and the ICANN Board can resolve the issue in the Community Forum, the escalation process terminates.
- ⊙ If the Empowered Community and the ICANN Board cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.

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90 **Step 4. Decision to Use a Community Power as an Empowered Community**

91 (21 days from the conclusion of the Community Forum)

- ⊙ If four or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published



explanation can reflect the variety of underlying reasons. In a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board's implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects.

- ⊙ If the proposal to use a Community Power as the Empowered Community does not meet the required thresholds during the 21-day period, the escalation process terminates.
- 

## 92 **Step 5. Advising the ICANN Board**

93 (1 day)

- ⊙ If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct it to comply with the decision.
- 

## 94 **Interim Board**

95 The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed, the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place.

96 SOs, ACs and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days.

97 The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

98 The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies or management, including replacement of the serving President and CEO.

## 99 **The Power to Initiate a Community Independent Review Process or Request for Reconsideration**

100 A community IRP or Request for Reconsideration may be launched as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement. One example could be to require ICANN to provide documents as required under the right of inspection requirement.

101 A community IRP may be launched for any of the following reasons:

- To hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Articles of Incorporation or Bylaws resulting from action taken in response to advice/input from any AC or SO).

- To hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
- To hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
- To hear and resolve issues relating to Documentary Information Disclosure Policy (DIDP) decisions by ICANN, which are inconsistent with the ICANN Bylaws.
- To hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or ICANN Bylaws.

102 A Request for Reconsideration can be initiated, to require the Board of Directors to reconsider a recent decision or action/inaction by the ICANN Board or staff.

103 The escalation and enforcement processes for initiating a community IRP or a Request for Reconsideration are detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

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

105 The IANA Functions Review, Special IANA Function Review, and the Separation Cross Community Working Group are all accountability mechanisms for the IANA naming functions that the CWG-Stewardship has requested the CCWG-Accountability constitute in the Fundamental Bylaws.

106 As such, these structures will exist within ICANN and many of their recommendations will require ICANN Board approval before implementation (i.e., change in the Statement of Work for the IANA Functions Operator). The CWG-Stewardship determined it was critical that the recommendations of these various bodies be respected by the ICANN Board, and so further required that the CCWG-Accountability provide mechanisms to ensure that the recommendations from these bodies could be enforced.<sup>2</sup>

107 The escalation and enforcement processes for rejecting an ICANN Board decision relating to IANA Function Review, Special IANA Function Review and Separation Cross Community Working Group recommendations are detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

108 The right to reject ICANN Board decisions relating to reviews of IANA naming functions, including ICANN Board decisions relating to Special IANA Function Review and Separation Cross Community Working Group recommendations, can be exercised by the Empowered Community an unlimited number of times.

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<sup>2</sup> Consult the [CWG-Stewardship Final Report](#) for further details.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Budget rejection for PTI significantly updated.
- Caretaker budget expanded.
- Indemnification for removal of an ICANN Board Director greatly expanded.
- Escalation steps amended to match process in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, and Enforcement.
- Scope of community IRP modified to match Recommendation #7: Strengthening ICANN’s Independent Review Process.
- “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation” is now: “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN’s Sale or Other Disposition of All or Substantially All of ICANN’s Assets.”
- “The Power to Initiate a Binding IRP (Where a Panel Decision is Enforceable in any Court Recognizing International Arbitration Results)” now includes the possibility for the Empowered Community to file a Request for Reconsideration.

## 5. How does this meet the CWG-Stewardship Requirements?

- “The Power to Reject ICANN’s Budget or Strategy/Operating Plans” directly meets the following CWG-Stewardship requirement:
  - ICANN Budget: Community rights regarding the development and consideration of the ICANN Budget.
- “The Power to Remove Individual ICANN Board Directors” and “The Power to Recall the Entire ICANN Board” directly meets the following CWG-Stewardship requirement:
  - ICANN Board: community rights regarding the ability to appoint/remove Directors of the ICANN Board, and recall the entire Board.
- “The Power to Approve Changes to Fundamental Bylaws” is directly related to the following CWG-Stewardship requirement:
  - Fundamental Bylaws: All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws.

## 6. How does this address NTIA Criteria?

### 109 Support and enhance the multistakeholder model.

- Decentralizing power within ICANN through an Empowered Community.
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.

- Recommending a process where all are welcome to participate in the consultation processes prior to designing the document that will be put for discussion.
  - Retaining decision-making based on consensus rather than voting.
- 

110 **Maintain the security, stability, and resiliency of the Internet DNS.**

- Elaborating Community Powers associated with a defined escalation process.
  - The multi-step engagement process associated with the escalation process prevents single-step actions and encourages a conciliatory approach.
  - The escalation process includes high thresholds for using accountability actions that are based on consensus of the Empowered Community. This process provides safeguards to prevent a situation where an SO/AC might initiate a petition to reject with the intention of negatively impacting another SO/AC's budget by ensuring that no single SO/AC can use a power singlehandedly and no single AC/SO can singlehandedly block the use of a power.
- 

111 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Including limited timeframes, transparent processes, and associated thresholds to maintain operational viability.
- 

112 **Maintain the openness of the Internet.**

- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.
  - Preserving policies of open participation in ICANN's SOs and ACs.
  - The escalation process includes the convening of a Community Forum where all would be welcome to participate as a potential step. In addition, all are welcome to participate in the consultation process that organized to elaborate these key documents.
- 

113 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board's implementation of GAC consensus advice. This "carve out," combined with the safeguards in Recommendation #11, leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.

- Enabling all interested stakeholders to join consultations through SOs and ACs or through the Community Forum.
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# Annex 05 – Recommendation #5: Changing Aspects of ICANN’s Mission, Commitments and Core Values

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## 1. Summary

01 The CCWG-Accountability is recommending changes to the ICANN Bylaws to assure that the Bylaws reflect the CCWG-Accountability recommendations.

- Note: The language proposed in this recommendation for ICANN Bylaw revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

### 02 **Mission Statement**

03 The CCWG-Accountability recommends the following changes to ICANN’s “Mission Statement,” (Bylaws, Article I, Section 1):

- Clarify that ICANN’s Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.
- Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
- Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority.
  - Note: This does not mean ICANN’s powers can never evolve. However, it ensures that any changes will be deliberate and supported by the community.

### 04 **Core Values**

05 The CCWG-Accountability recommends the following changes to ICANN’s “Core Values” (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN’s existing Core Values provisions into “Commitments” and “Core Values”.
  - Incorporate ICANN’s obligation 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 open and transparent processes that enable competition” into the Bylaws.
  - Note: These obligations are currently contained in ICANN’s Articles of Incorporation.

- Designate certain Core Values as “Commitments.” ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.

Commitments will include ICANN’s obligations to:

- Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Limit its activities to those within ICANN’s Mission that require, or significantly benefit from, global coordination.
  - Employ open, transparent, bottom-up, multistakeholder processes.
  - Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
    - Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility.
    - Add an obligation to avoid capture.
    - Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 (“Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment”) to drop the phrase “where feasible and appropriate,” the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference).

## 06 **Balancing or Reconciliation Test**

- 07 The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with 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.*

## 08 **Fundamental Bylaws Provisions**

- 09 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

## 2. CCWG-Accountability Recommendations

- 10 Modify ICANN's Fundamental Bylaws to implement the following:

11 **Mission**

- 12 The Mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's scope is to coordinate the development and implementation of policies:
  - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.
4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

- 13 ICANN shall act strictly in accordance with, and only as reasonably appropriate, to achieve its Mission.

- 14 ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.

- 15 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.

- 16 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.



2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called “Picket Fence”) are intended and understood to be within the scope of ICANN’s Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN’s Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN’s approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party’s right to challenge the other party’s interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN’s Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN’s Mission.
4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

17 **Section 2. Commitments & Core Values**

- 18 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.

19 **Commitments**

20 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:

1. Preserve and enhance its neutral and judgment-free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet.
3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination.
4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (1) seek input from the public, for whose benefit ICANN shall in all events act, (2) promote well-informed decisions based on expert advice, and (3) ensure that those entities most affected can assist in the policy development process.

5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.
6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

21 **Core Values**

22 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies.
2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making 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.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, 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.
6. Striving to achieve a reasonable balance between the interests of different stakeholders.

23 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.

24 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.

25 In any situation where one Core Value must be reconciled with 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.

26 Note: Specific recommendations on how to implement these modifications can be found at the end of the next section.

### 3. Detailed Explanation of Recommendations

#### 27 **Background**

28 To whom is ICANN accountable? For what is it accountable? Those questions were a necessary starting point for the work of the CCWG-Accountability, and the answers inform all of our recommendations. The Bylaws changes recommended here are designed to answer these questions. Most important, ICANN has a limited Mission, and it must be accountable for actions that exceed the scope of its Mission. In undertaking its Mission, ICANN is also obligated to adhere to policy supported by community consensus and an agreed-upon standard of behavior, articulated through its Commitments and Core Values. Taken together, the proposed Mission, Commitments, and Core Values articulate the standard against which ICANN's behavior can be measured and to which it can be held accountable. Because these Bylaws provisions are fundamental to ICANN's accountability, we propose that they be adopted as Fundamental Bylaws that can only be changed with the approval of the Empowered Community subject to procedural and substantive safeguards.

#### 29 **Mission and Core Values**

30 ICANN's current Bylaws contain:

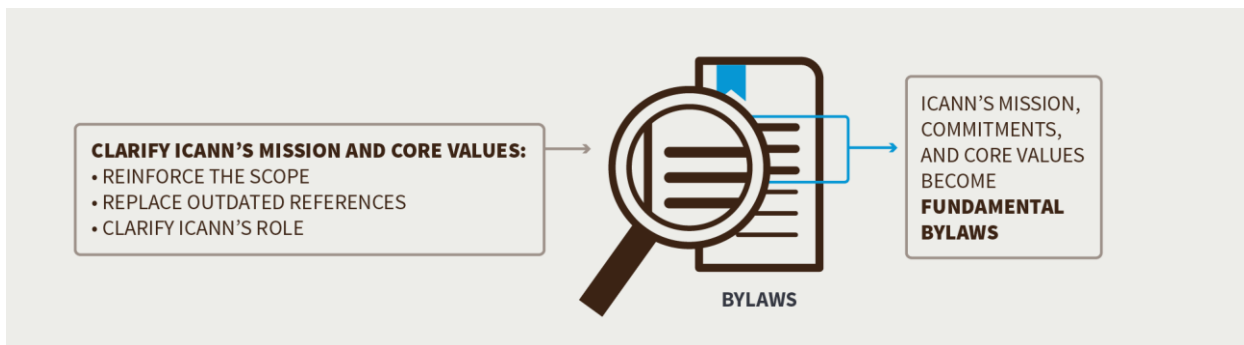
- Mission statement.
- Statement of Core Values.
- Provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment.

31 These three sections are at the heart of ICANN's accountability because they obligate ICANN to act only within the scope of its limited Mission, and to conduct its activities in accordance with certain fundamental principles. As such, these three sections also provide a standard against which ICANN's conduct can be measured and held accountable through existing and enhanced mechanisms such as the Request for Reconsideration process and the Independent Review Process.<sup>1</sup>

32 Based on community input and CCWG-Accountability discussions, it was concluded that these ICANN Bylaws provisions, which were originally adopted in 2003, should be strengthened and enhanced to provide greater assurances that ICANN is accountable to its stakeholders and the global Internet community.

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<sup>1</sup> The current relevant language on this in the ICANN Bylaws was adopted in 2003.

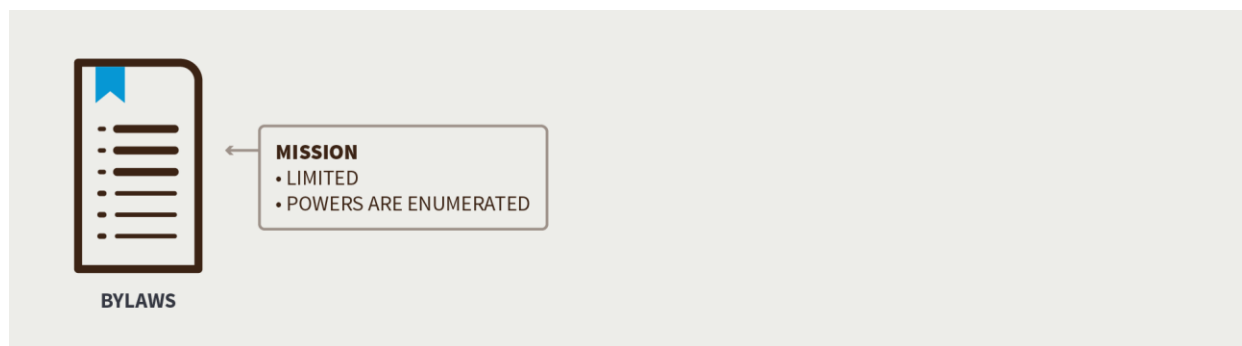


33 In particular, the CCWG-Accountability found that:

- ICANN's Mission statement needed clarification with respect to the scope of ICANN's policy authority.
- The language in the Bylaws describing how ICANN should apply its Core Values was weak and could permit ICANN decision-makers to exercise excessive discretion.
- The current Bylaws did not reflect key elements of the Affirmation of Commitments.
- The Board should have only a limited ability to change these key accountability provisions of ICANN's Bylaws.

34 The CCWG-Accountability recommendations to change aspects of ICANN's Mission, Commitments and Core Values are to address the deficiencies described above. The CCWG-Accountability discussed how to balance the needs of limiting ICANN's Mission and the necessary ability of the organization to adjust to a changing environment.

### 35 Mission Statement

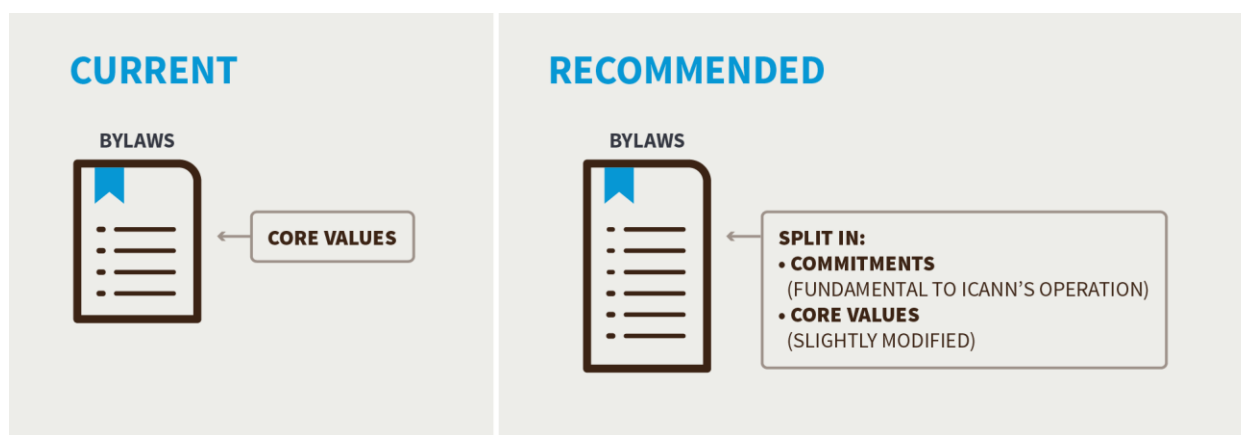


36 The CCWG-Accountability recommends the following changes to ICANN's "Mission Statement," (Bylaws, Article I, Section 1):

- Clarify that ICANN's Mission with respect to naming is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.

- Clarify ICANN’s Mission with respect to numbering, protocol ports and parameters, and the DNS root name server system.
- Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
- Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority.
  - Note: This does not mean ICANN’s powers can never evolve, however it ensures that any changes will be deliberate and supported by the community.

## 37 Core Values



38 The CCWG-Accountability recommends the following changes to ICANN’s Core Values (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN’s existing Core Values provisions into Commitments and Core Values.
  - Incorporate ICANN’s obligation 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 open and transparent processes that enable competition” into the Bylaws.
  - Note: These obligations are currently contained in ICANN’s Articles of Incorporation.
- Designate certain Core Values as Commitments. ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.
 

Commitments will include ICANN’s obligations to:

  - Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Limit its activities to those within ICANN’s Mission that require or significantly benefit from global coordination.
  - Employ open, transparent, bottom-up, multistakeholder processes.

- Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
  - Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility.
  - Add an obligation to avoid capture.

### 39 **Balancing or Reconciliation Test**

40 The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with 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.*

### 41 **Fundamental Bylaws Provisions**

42 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

### 43 **Proposed Mission, Commitments and Core Values** **Mission**

44 The Mission of the Internet Corporation for Assigned Names and Numbers (ICANN) is to ensure the stable and secure operation of the Internet’s unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System (DNS). In this role, ICANN’s scope is to coordinate the development and implementation of policies:
  - a. For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - b. That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol (IP) and Autonomous System (AS) numbers. In this role, ICANN provides registration services

and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.

4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

45 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.

46 ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.

47 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (PICs), with contracted parties in service of its Mission.

48 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.
2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called "Picket Fence") are intended and understood to be within the scope of ICANN's Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN's Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN's approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party's right to challenge the other party's interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN's Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN's Mission.
4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

## 49 **Section 2. Commitments & Core Values**

50 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.

### 51 **Commitments**

1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:
2. Preserve and enhance its neutral and judgment free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
5. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;
6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;
7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

## 52 **Core Values**

53 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies.
2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making 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.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, 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.

6. Striving to achieve a reasonable balance between the interests of different stakeholders.

54 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities.

55 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.

56 In any situation where one Core Value must be reconciled with 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.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

### 57 Comparison of Mission Statement in Current Bylaws, 3<sup>rd</sup> Draft Proposal and Final Proposal

58 Existing Bylaws	59 3 <sup>rd</sup> Draft Proposal 60 (Text in RED shows changes from Existing Bylaws)	61 Final Proposal 62 (Text in RED shows changes from 3 <sup>rd</sup> Draft Proposal)
63 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:	64 The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to <del>coordinate, at the overall level, the global Internet's systems of unique identifiers and in particular</del> to ensure the stable and secure operation of the Internet's unique identifier systems <del>as described below. In particular,</del> <b>Specifically</b> , ICANN:	65 The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:
66 1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:	67 <del>1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:</del> <b>NOTE: This language has been</b>	

		<i>modified and distributed over the specific functions. See below.</i>	
68 a. <i>[Coordinates the allocation and assignment of] Domain names (forming a system referred to as "DNS");</i>	69 1. Coordinates the allocation and assignment of <b>names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's Mission is to coordinate the development and implementation of policies:</b>  70 <b>For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability; and</b>  71 <b>That are developed through a bottom-up, consensus-based multi-stakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.</b>	72 Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's <b>Mission scope</b> is to coordinate the development and implementation of policies:  73 For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of <b>the DNS</b> ; and  74 That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.	
75 2. Coordinates the operation and evolution of the DNS root name server system.	76 2. Coordinates the operation and evolution of the DNS root name server system. <b>In this role, ICANN's Mission is to [to be provided by root server operators].</b>	77 <b>Facilitates coordination of the operation and evolution of the DNS root name server system. <del>In this role, ICANN's Mission is to [to be provided by RSSAC].</del></b>	
78 b. <i>[Coordinates the allocation and assignment of] Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and</i>	79 3. Coordinates the allocation and assignment <b>at the top-most level</b> of Internet Protocol ("IP") and Autonomous System ("AS") numbers. <b>ICANN's Mission is described in the ASO MoU between ICANN and RIRs.</b>	80 3. Coordinates the allocation and assignment at the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. <b><del>ICANN's Mission is described in the ASO MoU between ICANN and RIRs.</del>In this role, ICANN provides registration services and open access for global number registries as</b>	

		<p>requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.</p>
<p>81 c. [Coordinates the allocation and assignment of] Protocol port and parameter numbers.</p>	<p>82 4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's Mission is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, such as the Internet Engineering Task Force.</p>	<p>83 Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's <del>Mission scope</del> is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, <del>such as the Internet Engineering Task Force.</del></p>
<p>84 3. Coordinates policy development reasonably and appropriately related to these technical functions.</p>	<p>85 <del>3. Coordinates policy development reasonably and appropriately related to these technical functions.</del></p> <p>86 <i>Note: The chapeau has been deleted and the remainder of the language has been distributed as shown above.</i></p>	
	<p>87 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>88 ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet's unique identifiers, or the content</p>	<p>90 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>91 ICANN shall not impose regulations on services <del>(i.e., any software process that accepts connections from the Internet)</del> that use the Internet's unique identifiers, or the content</p>

	<p>89 that such services carry or provide. ICANN shall have the ability to negotiate, enter into and enforce agreements with contracted parties in service of its Mission.</p>	<p>92 that such services carry or provide. ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.</p>
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93 **COMMITMENTS & CORE VALUES: ANNOTATED COMPARISON OF CURRENT BYLAWS, 3RD DRAFT PROPOSAL, AND FINAL PROPOSAL**

94 <b>Current Bylaws</b>	95 <b>3<sup>rd</sup> Draft Proposal</b> 96 (Text in <b>RED</b> indicates changes from Existing Bylaws)	97 <b>Final Draft Proposal</b> 98 (Text in <b>RED</b> indicates changes from 3 <sup>rd</sup> Draft Proposal)
99 Section 2. CORE VALUES  100  101 In performing its mission, the following core values should guide the decisions and actions of ICANN:	102 Section 2. COMMITMENTS & CORE VALUES  103 In carrying out its Mission, <del>the following core values should guide the decisions and actions of</del> ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.	104 Section 2. COMMITMENTS & CORE VALUES  105 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.
	106 COMMITMENTS 107 1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:	108 COMMITMENTS 109 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:
110 1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.	111 2. Preserve and enhance <del>the neutral and judgment free operation of the DNS,</del> and the operational stability, reliability, security, global interoperability, resilience, and openness	112 1. Preserve and enhance <del>its</del> neutral and judgment free <del>operation</del> <del>administration</del> of the <del>technical</del> DNS, and the operational stability, reliability, security, global

	of the DNS and the Internet;	interoperability, resilience, and openness of the DNS and the Internet;
113	114 3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;	115 2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
116 2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.	117 4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;	118 3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
119 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.	120 5. Employ open, transparent and <b>bottom-up, multistakeholder</b> policy development processes, <b>led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek input from the public, for whose benefit ICANN shall in all events act,</b> (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;	121 4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;
122 8. Making decisions by applying documented policies neutrally and	125 6. Make decisions by applying documented policies consistently,	126 5. Make decisions by applying documented policies consistently,

<p>objectively, with integrity and fairness.</p> <p>123 (From ARTICLE II, Section 3. NON-DISCRIMINATORY TREATMENT)</p> <p>124 ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.</p>	<p>neutrally, <del>objectively, and fairly with integrity and fairness, without singling out any particular party for discriminatory treatment;</del></p>	<p>neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;</p>
<p>127 10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.</p>	<p>128 7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.</p>	<p>129 6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.</p>
	<p>130 CORE VALUES</p>	<p>131 CORE VALUES</p>
	<p>132 1. In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p>	<p>133 In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p>
<p>134 3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.</p>	<p>135 2. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties <del>and the roles of both ICANN's internal bodies and external expert bodies;</del></p>	<p>136 1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;</p>
<p>137 4. Seeking and supporting broad, informed participation</p>	<p>138 3. Seeking and supporting broad, informed participation reflecting the</p>	<p>139 2. Seeking and supporting broad, informed participation</p>

	reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.	functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making <b>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;</b>	reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making 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;
140	5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.	141 4. Depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market;	142 3. <b>Where feasible and appropriate,</b> depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market;
143	6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.	144 5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest <b>as identified through the bottom-up, multistakeholder policy development process;</b>	145 4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
146	9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.	147 6. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and <b>acting with</b> at a speed that is responsive to the needs of the <b>global Internet community while, as part of the decision-making process, obtaining informed input from those entities most affected.</b>	148 5. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community;



<p>149 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.</p>	<p>150 7. While remaining rooted in the private sector, <del>including business stakeholders, civil society, the technical community, academia, and end users,</del> 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.</p>	<p>151 6. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, 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.</p>
	<p>152 8. Striving to achieve a reasonable balance between the interests of different stakeholders.</p>	<p>153 7. Striving to achieve a reasonable balance between the interests of different stakeholders.</p>
<p>154 These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.</p> <p>155 Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on</p>	<p>157 <del>These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.</del></p> <p>158 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</p> <p>159 <del>Because they are not narrowly prescriptive</del> The specific way in which Core Values apply, individually and collectively, to each new situation <del>will</del></p>	<p>161 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</p> <p>162 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot</p>

<p>many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible.</p> <p>156 Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.</p>	<p><del>necessarily may</del> depend on many factors that cannot be fully anticipated or enumerated. <del>and because they are statements of principle rather than practice,</del> Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>160 <del>Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.</del> In any situation where one Core Value must be reconciled with 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.</p>	<p>be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>163 In any situation where one Core Value must be reconciled with 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.</p>
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## 5. Stress Tests Related to this Recommendation

- ST17: respond to formal advice from ACs (i.e., SSAC)
- ST23 (enforcement / contracts)

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

164 **Support and enhance the multistakeholder model.**

- Ensuring the multistakeholder model accountability mechanisms cannot be modified without the Empowered Community's approval.
- 

165 **Maintain the security, stability and resiliency of the Internet DNS.**

- Establishing "Fundamental Bylaws" that provide additional protections to ICANN Bylaws that are critical to the organization's stability and operational continuity.
- 

166 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A
- 

167 **Maintain the openness of the Internet.**

- N/A
- 

168 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A
- 

## 8. Additional Material

169 **Comparison of Registrar Accreditation Agreement (2013) Specification 4 vs. Registry Agreement (New gTLDs) Specification 1**

170 (the text in RED shows changes between the two agreements)

<b>Registrar Accreditation Agreement (2013) Specification 4</b>	<b>Registry Agreement (New gTLDs) Specification 1</b>
<p>Consensus Policies.</p> <p>1.1. "Consensus Policies" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.</p> <p>1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including registrars. Consensus Policies shall relate to one or more of the following:</p> <p>1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, <b>Registrar Services, Registry Services</b>, or the Domain Name System ("DNS");</p> <p>1.2.2. functional and performance specifications for the provision of Registrar [and Registry] Services;</p> <p>2.3. registrar policies reasonably necessary to</p>	<p>Consensus Policies.</p> <p>1.1. "<i>Consensus Policies</i>" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.</p> <p>1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:</p> <p>1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");</p> <p>1.2.2 functional and performance specifications for the provision of Registry Services;</p> <p><b>1.2.3 Security and Stability of the registry database for the TLD;</b></p> <p>1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;</p>

<p>implement Consensus Policies relating to a gTLD registry;</p> <p>1.2.4. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, <b>but including where such policies take into account use of the domain names</b>); or</p> <p>1.2.5. restrictions on cross-ownership of registry operators and registrars or Resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or Reseller are affiliated.</p> <p>1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:</p> <p>1.3.1. principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);</p> <p>1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;</p> <p>1.3.3. reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);</p> <p>1.3.4. maintenance of and access to accurate and up-to-date</p>	<p>1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or</p> <p>1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.</p> <p>1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:</p> <p>1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);</p> <p>1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;</p> <p>1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and</p> <p>1.3.4 maintenance of and access to accurate and up-to-date information concerning <b>domain name registrations</b>; and</p>
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<p>information concerning <b>Registered Names and name servers;</b></p> <p>1.3.5. procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility <b>among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation;</b> and</p> <p><b>1.3.6. the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.</b></p> <p>1.4. In addition to the other limitations on Consensus Policies, they shall not:</p> <p>1.4.1. prescribe or limit the price of Registrar Services;</p> <p>1.4.2. modify the limitations on Temporary Policies (defined below) or Consensus Policies;</p> <p>1.4.3. modify the provisions in the <b>Registrar Accreditation Agreement regarding terms or conditions for the renewal, termination or amendment of the Registrar Accreditation Agreement or fees paid by Registrar to ICANN;</b> or</p> <p>1.4.4. modify ICANN's obligations to <b>not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and to not single out Registrar for disparate treatment unless justified by substantial and reasonable cause, and</b></p>	<p>1.3.5 procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for <b>servicing registered domain names in a TLD affected by such a suspension or termination.</b></p> <p>1.4. In addition to the other limitations on Consensus Policies, they shall not:</p> <p>1.4.1 prescribe or limit the price of Registry Services;</p> <p><b>1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;</b></p> <p>1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;</p> <p>1.4.4 modify the provisions in the <b>registry agreement regarding fees paid by Registry Operator to ICANN;</b> or</p> <p>1.4.5 modify ICANN's obligations to <b>ensure equitable treatment of registry operators and act</b> in an open and transparent manner.</p>
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<p>exercise its responsibilities in an open and transparent manner.</p>	
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# Annex 06 – Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission

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## 1. Summary

- 01 The subject of including a commitment to respect Human Rights in the ICANN Bylaws has been extensively discussed by the CCWG-Accountability.
- 02 The CCWG-Accountability sought legal advice on whether, upon the termination of the IANA Functions Contract between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), ICANN's specific Human Rights obligations could be called into question. It was found that, upon termination of the contract, there would be no significant impact on ICANN's Human Rights obligations. However, the CCWG-Accountability reasoned that a commitment to respect Human Rights should be included in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet.
- 03 This proposed draft Bylaw on Human Rights would reaffirm ICANN's existing obligations within its Core Values, and would clarify ICANN's commitment to respect Human Rights.
- 04 Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or "Mission creep," and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights "within its Core Values."
- 05 The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.
- 06 The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until a Framework of Interpretation on Human Rights (FOI-HR) is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).
- 07 Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN's commitment to respect Human Rights.



## 2. CCWG-Accountability Recommendations



- Include a Bylaw with the following intent in Work Stream 1 recommendations:

“Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.”

- Note: This proposed draft Bylaw will be reviewed by both CCWG-Accountability’s lawyers and ICANN’s legal department and then submitted to the CCWG-Accountability for approval before its submission to the Board for approval.
- Include the following in Work Stream 2 activities:
  - Develop an FOI-HR for the Human Rights Bylaw.
  - Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.
  - Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
  - Consistent with ICANN’s existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.
  - Consider what effect, if any, this Bylaw will have on ICANN’s consideration of advice given by the Governmental Advisory Committee (GAC).
  - Consider how, if at all, this Bylaw will affect how ICANN’s operations are carried out.
  - Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

### 3. Detailed Explanation of Recommendations

- 08 As part of the discussion of the inclusion of a draft Bylaw on Human Rights, the CCWG-Accountability requested analysis from its legal counsel about whether, upon the termination of the IANA Functions Contract between ICANN and the NTIA, ICANN's specific Human Rights obligations could be called into question. The key aspects are as follows:
- Only nation states have direct Human Rights obligations under international law. However, private sector organizations are required to comply with all applicable laws, including those related to Human Rights.
  - Upon termination of the Contract, there would be no significant impact on ICANN's Human Rights obligations.<sup>1</sup>
- 09 However, the CCWG-Accountability reasoned that a commitment to respect Human Rights **should be included** in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet. These criteria include free expression and the free flow of information.
- 10 Further, the CCWG-Accountability emphasized that adding a commitment to respect Human Rights to the ICANN Bylaws should not lead to an expansion of ICANN's Mission or scope. While there was general agreement that ICANN should commit to respect Human Rights within the limited scope of its Core Values, any type of external enforcement or regulatory activity would be wholly out of scope.
- 11 The CCWG-Accountability also disagreed with any attempt to single out any specific Human Right (such as "freedom of expression") in the proposed draft Bylaw text on the basis that Human Rights cannot be selectively mentioned, emphasized, or applied since they are universal, indivisible, interdependent, and interrelated.
- 12 The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language. There remained a few not in favor of the inclusion, including the ICANN Board.
- 13 The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN's legal team and CCWG-Accountability's legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.
- 14 The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.
- 15 The Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN's Core Values, which was accepted by the CCWG-Accountability.

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<sup>1</sup> See the 29 July 2015 memorandum here:

[https://community.icann.org/download/attachments/53783718/Memo\\_%20%20%20ICANN%20%20Human%20Rights%20Obligations.pdf?version=1&modificationDate=1438504619000&api=v2](https://community.icann.org/download/attachments/53783718/Memo_%20%20%20ICANN%20%20Human%20Rights%20Obligations.pdf?version=1&modificationDate=1438504619000&api=v2). All other legal documents provided are available at <https://community.icann.org/x/OiQnAw>.

- 16 This proposed draft Bylaw on Human Rights reaffirms ICANN’s existing obligations within its Core Values and clarifies ICANN’s commitment to respect Human Rights.
- 17 Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or “Mission creep”, and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights “within its Core Values.”
- 18 The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.
- 19 The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until an FOI-HR is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).
- 20 Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN’s commitment to respect Human Rights, including the development of an FOI-HR.

### 21 **Draft Bylaw on Human Rights**

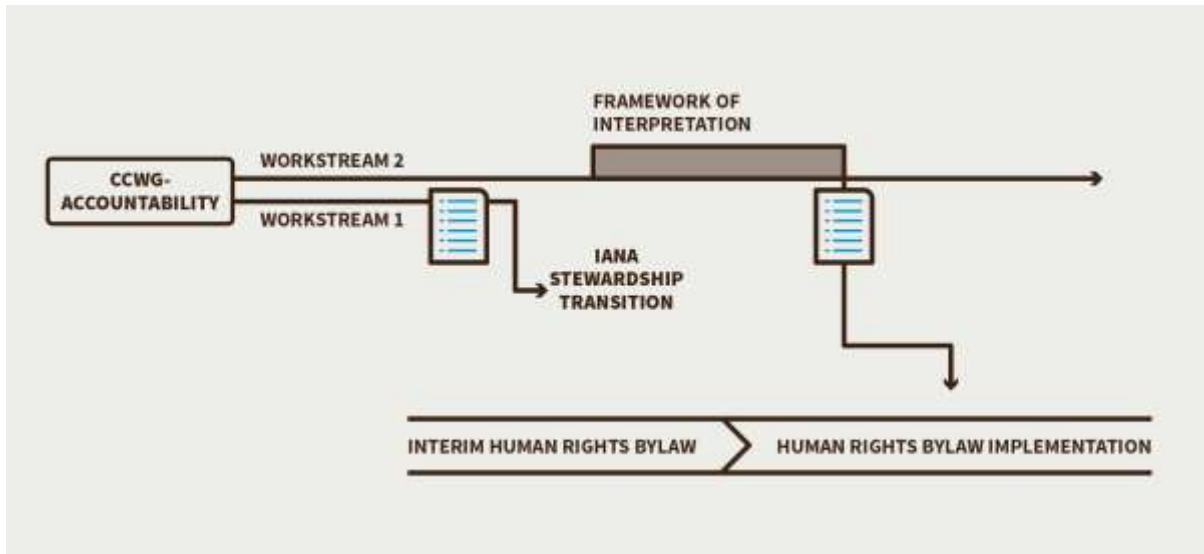
- 22 Responding to public comments received on the Third Draft Proposal, the CCWG-Accountability presents the following proposed draft Bylaw for consideration:

- 23 “Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.”

### 24 **Operationalizing the Commitment to Respect Human Rights**

- 25 To ensure that these Work Stream 2 activities are implemented, the CCWG-Accountability requires that a Bylaw be adopted as part of Work Stream 1. The Bylaw proposed for adoption as part of Work Stream 1 will not enter into force until the FOI-HR is approved.
- 26 The CCWG-Accountability has identified several activities that it recommends be undertaken as part of Work Stream 2 that will fully operationalize ICANN’s commitment to respect Human Rights. Work Stream 2 focuses on accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

27



28 The Human Rights-related activities to be addressed in Work Stream 2 are:

- Developing an FOI-HR for the Bylaw.
- Considering which specific Human Rights conventions or other instruments should be used by ICANN in interpreting and implementing the Bylaw.
- Considering the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
- Considering how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process, consistent with ICANN's existing processes and protocols.
- Considering what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the GAC.
- Considering how, if at all, this Bylaw will affect how ICANN's operations are carried out once an FOI-HR is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations' approval) and the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.
- Considering how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language with a few exceptions which included the ICANN Board.
- The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN's legal team and CCWG-Accountability's legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.
- The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.
- The ICANN Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN's Core Values, which were accepted by the CCWG-Accountability.

## 5. Stress Tests Related to this Recommendation

- N/A

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

29 **Support and enhance the multistakeholder model.**

- N/A
- 

30 **Maintain the security, stability and resiliency of the Internet DNS.**

- N/A

31 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- The global customers and partners of the IANA services have expectations with respect to Human Rights. The implementation of these recommendations will partially address these expectations.
- 

32 **Maintain the openness of the Internet.**

- Recommendation #6 is instrumental to meeting this requirement
- 

33 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A
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# Annex 07 – Recommendation #7: Strengthening ICANN’s Independent Review Process

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## 1. Summary

- 01 The purpose of the Independent Review Process (IRP) is to ensure that ICANN does not exceed the scope of its limited technical Mission and complies with its Articles of Incorporation and Bylaws.
- 02 A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN’s existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith.
- 03 The CCWG-Accountability therefore proposes several enhancements to the IRP to ensure that the process is:
  - Transparent, efficient and accessible (both financially and from a standing perspective).
  - Designed to produce consistent and coherent results that will serve as a guide for future actions.
- 04 The CCWG-Accountability also proposes that the IRP:
  - Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws – including any violation of the Bylaws resulting from action taken in response to advice/input from any Supporting Organization (SO) or Advisory Committee (AC).
  - Hear and resolve claims that Post-Transition IANA (PTI), through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
  - Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws.
  - Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community’s legal expenses.
  - Be subject to certain exclusions relating to the results of an SO’s policy development process, country code top-level domain delegations/redelegations, numbering resources, and protocols parameters.

## 2. CCWG-Accountability Recommendations

- Modifying the Fundamental Bylaws to implement the modifications associated with this recommendation on the IRP which include:
  - Hear and resolve claims that ICANN through its Board of Directors or staff has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO).
  - Hear and resolve claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Hear and resolve claims that expert panel decisions are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims that DIDP decisions by ICANN are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.
- A standing judicial/arbitral panel: The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially affected by ICANN's action or inaction in violation of the Articles of Incorporation and/or Bylaws.
  - Composition of Panel and Expertise: Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration is necessary.
  - Diversity: English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).
  - Size of Panel:
    - Standing Panel: Minimum of seven panelists.
    - Decisional Panel: Three panelists.
  - Independence: Panel members must be independent of ICANN, including ICANN SOs and ACs.
  - Recall: Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by way of the IRP subgroup.
- Initiation of the Independent Review Process: An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN's Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.



- **Standing:** Any person/group/entity “materially affected” by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. The Board’s failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected.
- **Community Independent Review Process:** The CCWG-Accountability recommends giving the Empowered Community the right to present arguments on behalf of the Empowered Community to the IRP Panel. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community’s legal expenses.
- **Standard of Review:** The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of the ICANN Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions.
- **Accessibility and Cost:** The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded from utilizing the process.
- **Implementation:** The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. 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. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes 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, the CCWG-Accountability proposes to subject the IRP to periodic community review.
- **Transparency:** The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing ICANN’s Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.

### 3. Detailed Explanation of Recommendations

- 05 A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN’s existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith. Commenters called for an IRP that was binding rather than merely advisory, and also strongly urged that the process be:
- Transparent, efficient and accessible (both financially and from a standing perspective).

- Designed to produce consistent and coherent results that will serve as a guide for future actions.

## 06 **Purpose of the Independent Review Process**

07 The purpose of the IRP is to ensure that ICANN does not exceed the scope of its limited technical Mission, and otherwise complies with its Articles of Incorporation and Bylaws. The IRP should:

- Empower the community and affected individuals/entities to prevent “Mission creep,” and enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable, accessible expert review of ICANN actions or inaction.
- Ensure that ICANN is accountable to the community and individuals/entities for actions or inaction outside its Mission or that otherwise violate its Articles of Incorporation or Bylaws.
- Reduce disputes going forward by creating precedent to guide and inform the ICANN Board, staff, Supporting Organizations (SOs) and Advisory Committees (ACs), and the community in connection with policy development and implementation.
- Hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.

## 08 **Role of the Independent Review Process**

09 The role of the IRP will be to:

- Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO).
- Hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Per the CWG-Stewardship Final Proposal, ICANN will enter into a contract with PTI that grants PTI the rights and obligations to serve as the IANA Functions Operator for the IANA naming functions, sets forth the rights and obligations of ICANN and PTI, and includes service level agreements for the IANA naming functions.
  - The ICANN Bylaws will require ICANN to enforce its rights under the ICANN-PTI Contract/Statement of Work, to ensure that PTI complies with its contractual obligations. ICANN’s failure to enforce material obligations will constitute a Bylaws violation and be grounds for an IRP by the Empowered Community.
  - The ICANN Bylaws will provide that PTI service complaints of direct customers of the IANA naming functions that are not resolved through mediation may be appealed by way of the IRP, in both cases as provided for in the CWG-Stewardship Final Proposal Annex I, Phase 2.
    - Note that CWG-Stewardship Final Proposal Annex I, Phase 2 also permits PTI Direct Customers to pursue “other applicable legal recourses that may

be available.” ICANN must modify Registry Agreements with gTLD Operators to expand the scope of arbitration available thereunder to cover PTI service complaints and potential inclusion of optional arbitration under agreements with ccTLD registries if developed through the appropriate processes or the development of another alternative dispute resolution mechanism.

- The standard of review for PTI cases will be an independent assessment of whether there was a material breach of PTI obligations under the contract with ICANN, whether through action or inaction, where the alleged breach has resulted in material harm to the complainant.
- Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
- Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws.
- Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.

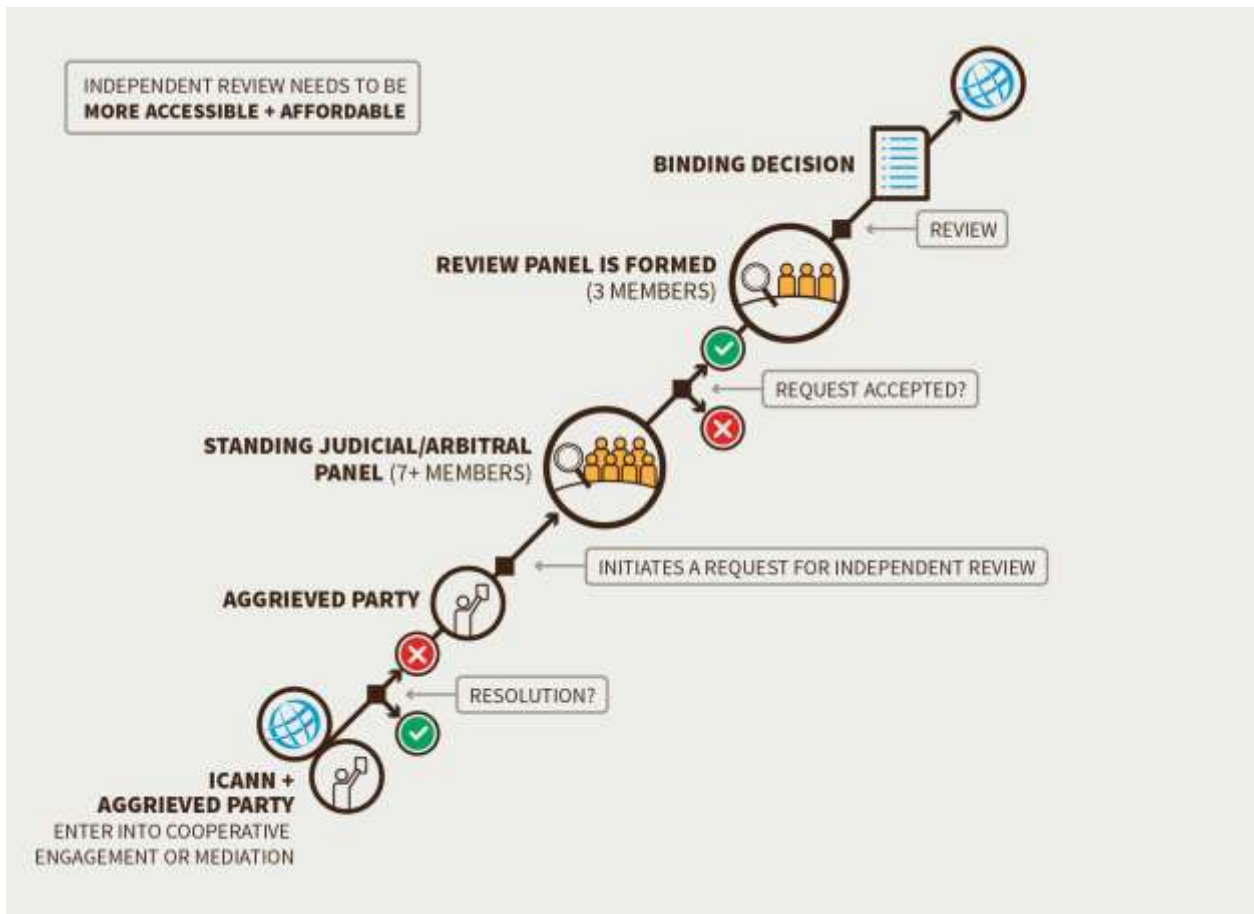
## 10 **Standing Panel**

11 The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought forward by individuals, entities, and/or the community who have been materially affected by ICANN’s action or inaction in violation of the Articles of Incorporation and/or Bylaws.

## 12 **Initiation of the Independent Review Process**

13 An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN’s Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in ICANN’s Articles of Incorporation or Bylaws.

14 When the Empowered Community has decided to pursue an IRP, the decision would be implemented by the chairs of the SOs and ACs who supported the proposal. The chairs of the SOs and ACs who supported the decision to file a community IRP would constitute a “Chairs Council” that would act subject to the direction of those SOs and ACs of the Empowered Community that supported the proposal. The Chairs Council would, by majority vote, act on behalf of the Empowered Community in taking any reasonably necessary ministerial steps to implement the decision to pursue the community IRP, and to delegate and oversee tasks related to the community IRP, including but not limited to, engagement of legal counsel to represent the Empowered Community in the community IRP, approval of court filings, or enforcement of a community IRP award in court if ultimately necessary.



## 15 Possible Outcomes of the Independent Review Process

16 An IRP would result in a declaration that an action/failure to act *complied* or *did not comply* with ICANN's Articles of Incorporation and/or Bylaws. To the extent permitted by law, IRP decisions shall be binding on ICANN.

- Decisions of a three-member Decisional Panel will be appealable to the full IRP Panel sitting en banc, based on a clear error of judgment or the application of an incorrect legal standard. The standard may be revised or supplemented by way of the IRP Subgroup process, which will be developed.
- This balance between the limited right of appeal and the limitation to the type of decision made is intended to mitigate the potential effect that one key decision of the panel might have on several third parties, and to avoid an outcome that would force the Board to violate its fiduciary duties.
- The limited right to appeal is further balanced by the seven Community Powers, relevant policy development processes, and advice from ACs, each as set forth in the Bylaws.
- IRP panelists shall consider and give precedential effect to prior decisions of other Independent Review Processes that address similar issues.
- Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff actions where a complainant can demonstrate each of the following factors:

- 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.
- Whichever:
  - A likelihood of success on the merits.
  - Sufficiently serious questions going to the merits.
  - A balance of hardships tipping decidedly toward the party seeking the relief.

17 **Standing**

- 18 Any person, group or entity “materially affected” by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress.
- 19 They must do so within a certain number of days (to be determined by the IRP Subgroup) after becoming aware of the alleged violation and how it allegedly affects them. The Empowered Community has standing to bring claims involving its rights under the Articles of Incorporation and ICANN Bylaws.
- 20 The ICANN Board’s failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected. Issues relating to joinder and intervention will be determined by the IRP Subgroup, assisted by experts and the initial Standing Panel, based on consultation with the community.

21 **Community Independent Review Process**

- 22 The CCWG-Accountability recommends giving the Empowered Community the right to present arguments on behalf of the Empowered Community to the IRP Panel (see Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Power). In such cases, ICANN will bear the costs associated with the Standing Panel as well as the Empowered Community’s legal expenses, although the IRP Subgroup may recommend filing or other fees to the extent necessary to prevent abuse of the process.

23 **Exclusions:**

24 **Challenges the result(s) of a Supporting Organization’s Policy Development Process (PDP)**

- 25 Notwithstanding the foregoing and notwithstanding any required threshold for launching a community IRP, no community IRP that challenges the result(s) of an SO’s PDP may be launched without the support of the SO that approved the policy recommendations from the PDP or, in the case of the result(s) of a Cross Community Working Group (CCWG) chartered by more than one SO, without the support of the SOs that approved the policy recommendations from that CCWG.

26 **Country Code Top-Level Domain Delegation/Redelegation**

27 In its letter dated 15 April 2015, the CWG-Stewardship indicated that “any appeals mechanism developed by the CCWG-Accountability should not cover country code top-level domain delegation/redelegation issues as these are expected to be developed by the country code top-level domain community through the appropriate processes.”

28 As requested by the CWG-Stewardship, decisions regarding country code top-level domain delegations or redelegations would be excluded from standing, until the country code top-level domain community, in coordination with other parties, has developed relevant appeals mechanisms.

### 29 **Numbering Resources**

30 The Address Supporting Organization (ASO) has likewise indicated that disputes related to Internet number resources should be out of scope for the IRP, since an existing dispute settlement mechanism already exists as part of the ICANN Address Supporting Organization Memorandum of Understanding<sup>1</sup>. As requested by the ASO, decisions regarding numbering resources would be excluded from standing.

### 31 **Protocol Parameters**

32 The Internet Architecture Board (IAB) has likewise indicated that disputes related to protocol parameters should be out of scope for the IRP, since an existing dispute settlement mechanism already exists as part of the ICANN / IANA - IETF MoU. As requested, decisions regarding resources for protocol parameters would be excluded from standing.

### 33 **Standard of Review**

34 The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of ICANN’s Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions. 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 of Incorporation and/or Bylaws and prior IRP decisions. 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.

35 With respect to PTI cases, the standard of review will be an independent assessment of whether there was a material breach of PTI obligations under the contract with ICANN, whether through action or inaction, where the alleged breach has resulted in material harm to the complainant.

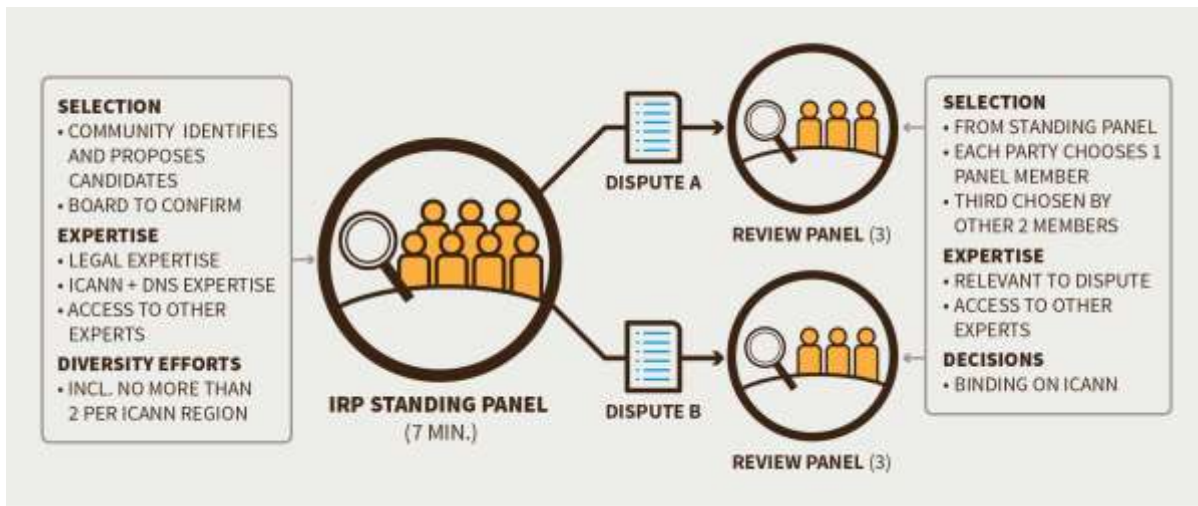
### 36 **Composition of Panel and Expertise**

37 Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration, is necessary. Panelists should either already possess expertise about the DNS and ICANN’s policies, practices, and procedures, or commit to develop an expertise through training, at a minimum, on the workings and management of the DNS. Panelists must have access to skilled technical experts upon request. In addition to legal expertise and a strong understanding of the DNS, panelists may confront issues where highly technical, civil society, business, diplomatic, and regulatory skills are needed. To the extent that

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<sup>1</sup> <https://archive.icann.org/en/aso/aso-mou-29oct04.htm>

individual Panelists have one or more of these areas of expertise, the process must ensure that this expertise is available upon request.



38 **Diversity**

39 English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).

40 **Size of Panel**

- Standing Panel: Minimum of seven panelists.
- Decisional Panel: Three panelists.

41 **Independence**

42 Panel 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. To ensure independence, term limits should apply (five years, no renewal), and post-term appointment to the ICANN Board, Nominating Committee, or other positions within ICANN will 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. Panelists will be supported by a clerk’s office that is separate from ICANN.

43 **Selection and Appointment**

44 The selection of panelists would follow a four-step process:

1. ICANN, in consultation with the community, will initiate a tender process for an organization to provide administrative support for the IRP, beginning by consulting the community on a draft tender document.

2. 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.
3. The community would nominate a slate of proposed panel members.
4. Final selection is subject to ICANN Board confirmation.

#### 45 **Recall**

46 Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by the IRP subgroup.

#### 47 **Settlement Efforts**

48 Reasonable efforts, as specified in a published policy, must be made to resolve disputes informally prior to/in connection with filing an IRP case.

49 Parties may cooperatively engage informally, but either party may inject an independent dispute resolution facilitator (mediator) after an initial Cooperative Engagement Process (CEP) meeting. Either party can terminate informal dispute resolution efforts (CEP or mediation) if, after a specified period, that party concludes in good faith that further efforts are unlikely to produce agreement.

50 The process must be governed by clearly understood and prepublished rules applicable to both parties and be subject to strict time limits. In particular, the CCWG-Accountability will review the CEP as part of Work Stream 2.

#### 51 **Decision-Making**

52 In each case, a three-member panel will be drawn from the Standing Panel. Each party will select one panelist, and those panelists will select the third. The CCWG-Accountability anticipates that the Standing Panel would draft, issue for comment, and revise procedural rules. The Standing Panel should focus on streamlined, simplified processes with rules that conform with international arbitration norms and are easy to understand and follow.

53 Panel 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. All decisions will be documented and made public, and will reflect a well-reasoned application of the standard to be applied.

#### 54 **Decisions**

55 Panel decisions would be determined by a simple majority. Alternatively, this could be included in the category of procedures that the IRP Panel itself should be empowered to set.

56 The CCWG-Accountability recommends that IRP decisions be precedential, meaning that IRP Panelists shall consider and give precedential effect to prior IRP decisions. By conferring precedential weight on panel decisions, the IRP can provide valuable guidance for future actions and inaction by ICANN decision-makers. It also reduces the chances of inconsistent treatment of



one claimant over another, based on the specific individuals making up the Decisional Panel in particular cases.

57 The CCWG-Accountability intends that if the panel determines that an action or inaction by the Board or staff is in violation of ICANN's Articles of Incorporation or Bylaws, then that decision is binding and the ICANN Board and staff shall be directed to take appropriate action to remedy the breach. However, the Panel shall not replace the Board's fiduciary judgment with its own judgment.

58 It is intended that judgments of a Decisional Panel or the Standing Panel would be enforceable in the court of the United States and other countries that accept international arbitration results.

## 59 **Accessibility and Cost**

60 The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries and the costs of technical experts), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example access to pro bono representation for community, non-profit complainants, and other complainants that would otherwise be excluded from utilizing the process.

61 The panel should complete work expeditiously, issuing a scheduling order early in the process and in the ordinary course, and 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.

## 62 **Implementation**

63 The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. 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. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes 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, the CCWG-Accountability proposes to subject the IRP to periodic community review.

## 64 **Transparency**

65 The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing the ICANN Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.

66 All IRP proceedings will be conducted on the record, in public, except for settlement negotiations or other proceedings which could materially and unduly harm participants if conducted in public, such as by exposing trade secrets or violating rights of personal privacy.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- The scope of the IRP will be restricted to the IANA naming functions for claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN.
- The scope of the IRP will include actions and inactions of PTI by way of the PTI Board being bound to ensure that PTI complies with its contractual obligations with ICANN in the Bylaws. ICANN’s failure to enforce material obligations will be appealable by way of the IRP as a Bylaws violation.
- The scope of the IRP will include claims that DIDP decisions by ICANN are inconsistent with ICANN’s Bylaws.
- Clarified that ICANN must modify Registry Agreements with gTLD Operators to expand scope of arbitration available thereunder to cover PTI service complaints.
- Exclusion: The IRP will not be applicable to protocols parameters.
- Exclusion: An IRP cannot be launched that challenges the result(s) of an SO’s policy development process (PDP) without the support of the SO that developed such PDP or, in the case of joint PDPs, without the support of all of the SOs that developed such PDP.
- Limitation: An IRP challenge of expert panel decisions is limited to a challenge of whether the panel decision is consistent with ICANN’s Bylaws.
- The legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN.

## 5. Stress Tests Related to this Recommendation

- ST3 & 4
- ST5, 6, 7, 8
- ST11
- ST14
- ST19, 20
- ST10, 16, 24
- ST13
- ST22
- ST23
- ST25
- ST26
- ST29, 30

## 6. How does this meet the CWG-Stewardship Requirements?

- 67 The recommendations as outlined above meet the CWG-Stewardship requirements by:
- Creating the IRP directly meets the requirement of the CWG-Stewardship for an IRP.
  - Excluding ccTLD delegation/re-delegation from the IRP.
  - As requested by the CWG-Stewardship, decisions regarding country code top-level domains delegations or re-delegations would be excluded from standing, until the country code top-level domains community, in coordination with other parties, has developed relevant appeals mechanisms.
  - Excluding Number Resources from the IRP. The ASO has indicated that disputes related to Internet Number Resources should be out of scope for the IRP. As requested by the ASO, decisions regarding numbering resources would be excluded from standing.

## 7. How does this address NTIA Criteria?

68 **Support and enhance the multistakeholder model.**

- By enhancing ICANN's appeals mechanisms and binding arbitration processes and further fortifying and expanding their remit, the community is further empowered.
- 

69 **Maintain the security, stability and resiliency of the Internet DNS.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

70 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

71 **Maintain the openness of the Internet.**

- The accountability measures help to mitigate the likelihood of problematic scenarios by ensuring that robust accountability mechanisms are in place.
- 

72 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A



# Annex 08 – Recommendation #8: Improving ICANN’s Request for Reconsideration Process

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## 1. Summary

- 01 Currently, any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction as provided for in [Article IV, Section 2 of ICANN's Bylaws](#).
- 02 The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, including:
  - Expanding the scope of permissible requests.
  - Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
  - Narrowing the grounds for summary dismissal.
  - Making the ICANN Board of Directors responsible for determinations on all requests (rather than a committee handling staff issues).
  - Making ICANN's Ombudsman responsible for initial substantive evaluation of the requests.
- 03 The CCWG-Accountability also proposes several enhancements to transparency requirements and firm deadlines in issuing of determinations, including:
  - Recordings/transcripts of Board discussion should be posted at the option of the requestor.
  - An opportunity to rebut the Board Governance Committee’s (BGC’s) final recommendation before a final decision by the ICANN Board should be provided.
  - Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.
- 04 ICANN’s Document and Information Disclosure Policy (DIDP) will be addressed in Work Stream 2. The CCWG-Accountability recommends that the policy should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.

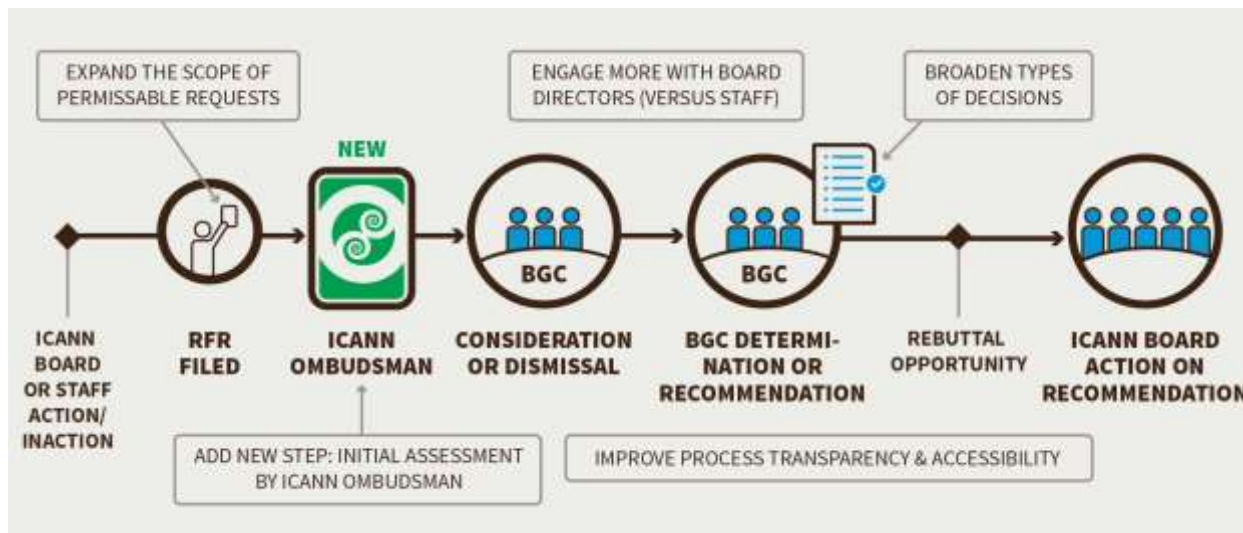
## 2. CCWG-Accountability Recommendations

- 05 Modify [Article IV, Section 2 of ICANN's Bylaws](#) to reflect the following changes:
  - Expanding the scope of permissible requests.
  - Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
  - Narrowing the grounds for summary dismissal.

- Requiring determinations on all requests to be made by the ICANN Board of Directors (rather than a committee handling staff issues).
- Requiring ICANN's Ombudsman to make the initial substantive evaluation of the requests.
- Requiring recordings/transcripts of Board discussion to be posted at the option of the requestor.
- Providing a rebuttal opportunity to the BGC's final recommendation before a final decision by the ICANN Board.
- Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

### 3. Detailed Explanation of Recommendations

- 06 The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, whereby the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff, and which is provided for in Article IV, Section 2 of ICANN's Bylaws.
- 07 The key reforms proposed include:
- The scope of permissible requests should be expanded to include Board/staff actions or inactions that contradict ICANN's Mission, Commitments, and/or Core Values and for reconciling conflicting/inconsistent "expert opinions."
  - The time for filing a Request for Reconsideration should be extended from 15 to 30 days.
  - The grounds for summary dismissal should be narrowed and the ICANN Board of Directors must make determinations on all requests (rather than a committee handling staff issues).
  - ICANN's Ombudsman should make the initial substantive evaluation of the requests to aid the BGC in its recommendation.
  - Requestors should be provided an opportunity to rebut the BGC's recommendation before a final decision by the entire ICANN Board.
  - More transparency requirements and firm deadlines should be added for issuing of determinations.



## 08 Standing

- 09 The CCWG-Accountability recommends amending "who" has proper standing to file a Request for Reconsideration to widen its scope by including Board/staff actions/inactions that contradict ICANN's Mission, Commitments, and/or Core Values (was only policies before). It is noted that under the existing ICANN Bylaws, paragraph 2 significantly reduces the rights purportedly granted in paragraph 1 of the Request for Reconsideration.
- 10 ICANN's Bylaws could be revised (added text in red below, text to be removed is in strike-through):
1. ICANN shall have in place a process by which any person or entity materially affected by an action **or inaction** of **the ICANN Board or staff** may request the review or reconsideration of that action **or inaction** by the Board.
  2. Any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction to the extent that he, she, or it has been adversely affected by:
    - a. One or **more ICANN Board or staff** actions or inactions that contradict established ICANN policy/policies, **its Mission, Commitments, and/or Core Values**; or
    - b. One or more actions or inactions of the ICANN Board/staff that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
    - c. One or more actions or inactions of the ICANN Board/staff that are taken as a result of the Board's reliance on false or inaccurate ~~material~~ **relevant** information.
- 11 Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability's external legal counsel and the ICANN legal team will draft final language for these revisions to the Bylaws.
- 12 In a letter dated 15 April 2015, the CWG-Stewardship request indicated, "As such, any appeal mechanism developed by the CCWG-Accountability should not cover Country Code Top Level Domain (ccTLD) delegation/redelegation issues as these are expected to be developed by the ccTLD community through the appropriate processes." As requested by the CWG-Stewardship, decisions regarding ccTLD delegations or redelegations would be excluded from standing until

relevant appeals mechanisms have been developed by the ccTLD community, in coordination with other interested parties.

- 13 Disputes related to Internet number resources, protocols and parameters are out of scope of the Request for Reconsideration process.

## 14 **Goals**

- 15 The CCWG-Accountability recommendations aim to:

- Broaden the types of decisions that can be re-examined to include Board/staff action/inaction that contradicts ICANN's Mission, Commitments, and/or Core Values (as stated in Bylaws/Articles) and for the purpose of reconciling conflicting/inconsistent expert panel opinions.
- Provide more transparency in the dismissal and reconsideration processes.
- Provide the Board Governance Committee (BGC) with the reasonable right to dismiss frivolous requests, but not solely on the grounds that the complainant failed to participate in a relevant policy development or Public Comment Period or that the request is vexatious or querulous.
- Propose to amend paragraph nine on BGC summary dismissal as follows:
  - The Board Governance Committee shall review each Request for Reconsideration upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Request for Reconsideration if:
    - (i) The requestor fails to meet the requirements for bringing a Reconsideration Request; or
    - (ii) It is frivolous, ~~querulous or vexatious~~(iii) ~~the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable.~~

The Board Governance Committee's summary dismissal of a Request for Reconsideration shall be **documented and promptly** posted on the website.

## 16 **Composition**

- 17 The CCWG-Accountability determined there is a need to rely less on the ICANN legal department (which holds a strong legal obligation to protect the corporation) to guide the BGC on its recommendations. More ICANN Board Director engagement is needed in the overall decision-making process.
- 18 Requests should no longer go to ICANN's lawyers (in-house or external legal counsel) for the first substantive evaluation. Instead, the Requests for Reconsideration should go to ICANN's Ombudsman, who will make the initial recommendation to the BGC because the CCWG-Accountability believes that the Ombudsman may have more of an eye for fairness to the community in reviewing requests. Note that the ICANN Bylaws charge the BGC with these duties, which means the BGC would utilize the Ombudsman instead of its current practice of using ICANN's lawyers to aid the BGC in its initial evaluation.
- 19 All final determinations of Requests for Reconsideration (other than requests that have been summarily dismissed by the BGC as discussed above) are to be made by the ICANN Board (not only requests about Board actions as is the current practice).



20 Amend paragraph 3:

3. The Board has designated the BGC to review and consider any such Request for Reconsideration. The BGC shall have the authority to:

- Evaluate requests for review or reconsideration.
- Summarily dismiss insufficient or frivolous requests.
- Evaluate requests for urgent consideration.
- Conduct whatever factual investigation is deemed appropriate.
- Request additional written submissions from the affected party or from other parties.
- ~~Make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors;~~
- Make a recommendation to the Board of Directors on the merits of the request, as necessary.

21 Delete paragraph 15, because the Board will make all final decisions regarding requests related to staff action/inaction.

## 22 **Decision-Making**

23 Transparency improvements are needed regarding the information that goes into the ICANN Board's decision-making process and the rationale for why decisions are ultimately taken. Recordings and transcripts should be posted of the substantive Board discussions at the option of the requestor.

24 A rebuttal opportunity to the BGC's final recommendation (although requestors cannot raise new issues in a rebuttal) needs to be provided before the full Board finally decides.

25 Hard deadlines to the process are to be added, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

26 It is proposed that the rules for a Request for Reconsideration be amended as follows:

*The Board Governance Committee (BGC) shall make a final recommendation to the Board with respect to a Request for Reconsideration within 30 days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the BGC's final recommendation to the Board shall be made within 90 days of receipt of the request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the request. The requestor may file a rebuttal to the recommendation of the BGC within 15 days of receipt of it, which shall also be promptly posted to ICANN's website and provided to the Board for its evaluation.*

*The Board shall not be bound to follow the recommendations of the BGC. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the BGC within 45 days of receipt of the recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this*

*timeframe must be identified and posted on ICANN's website. In any event, the Board's final decision shall be made within 135 days of receipt of the request. The final decision shall be promptly posted on ICANN's website.*

27 **Accessibility**

28 The CCWG-Accountability recommends that the time deadline for filing a Request for Reconsideration be extended from 15 to 30 days from when requestor learns of the decision/inaction, except as otherwise described below.

29 Amend paragraph 5 so that it reads:

5. All Requests for Reconsideration must be submitted to an email address designated by the BGC within 30 days after:
  - a) For requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale; or
  - b) For requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
  - c) For requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

30 **Due Process**

31 ICANN's DIDP is an important issue to be addressed in Work Stream 2 and should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.

32 All briefing materials supplied to the Board should be provided to the requestor so that they may know the arguments against them and have an opportunity to respond (subject to legitimate and documented confidentiality and privilege requirements).

33 Final decisions should be issued sooner. Changes will include an affirmative goal that final determinations of the Board should be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

34 Requestors should be provided more time to learn of action/inaction and to file the request.

35 Transparency improvements throughout the process are called for, including more complete documentation and prompt publication of submissions and decisions including their rationale.

## 4. Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"

- Conflicts in timing for Board approval addressed by changing 60 days to 75 days and the total of 120 days to 135 days.

## 5. Stress Tests Related to this Recommendation

- N/A

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 36 **Support and enhance the multistakeholder model.**

- By enhancing ICANN's appeals mechanisms and binding arbitration processes and further fortifying and expanding their remit, the community is further empowered.
- 

### 37 **Maintain the security, stability and resiliency of the Internet DNS.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

### 38 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

### 39 **Maintain the openness of the Internet.**

- The accountability measures help to mitigate the likelihood of problematic scenarios by ensuring that robust accountability mechanisms are in place.
- 

### 40 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A



# Annex 09 – Recommendation #9: Incorporating the Affirmation of Commitments in ICANN’s Bylaws

## 1. Summary

- 01 Based on stress test analysis, the CCWG-Accountability recommends incorporating the reviews specified in the Affirmation of Commitments, a 2009 bilateral agreement between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), into the ICANN Bylaws. This will ensure that community reviews remain a central aspect of ICANN’s accountability and transparency framework.
- 02 Specifically, the CCWG-Accountability proposes to:
  - Add the relevant ICANN Commitments from the Affirmation of Commitments into the ICANN Bylaws.
  - Add the four review processes specified in the Affirmation of Commitments to the ICANN Bylaws, including:
    - Ensuring accountability, transparency, and the interests of global Internet users.
    - Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws.
    - Preserving security, stability, and resiliency of the Domain Name System (DNS).
    - Promoting competition, consumer trust, and consumer choice.
- 03 In addition, to support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community’s needs.

## 2. CCWG-Accountability Recommendations



- 04 The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments (see information about Stress Test #14 in the “Detailed Explanation of Recommendations” section, below).
- 05 To ensure continuity of these key commitments, the CCWG-Accountability proposes the following two accountability measures:
- Preserve in the ICANN Bylaws any Relevant ICANN Commitments from the Affirmation of Commitments<sup>1</sup>
    - This includes Sections 3, 4, 7, and 8 of the Affirmation of Commitments. Sections 3, 4, 8a, and 8c would be included in the Core Values section of the ICANN Bylaws.
    - Part of the content of Section 8b of the Affirmation of Commitments (the part relating to the location of ICANN’s principal office), is already covered by ICANN Bylaws Article XVIII. Article XVIII is to be classified as a Standard Bylaw and is not to be moved into the Core Values section with material derived from Affirmation of Commitments Sections 8a and 8c.
    - Section 7 of the Affirmation of Commitments would be inserted as a new Section 8 in Article III, Transparency, of the ICANN Bylaws.
  - Bring the Four Affirmation of Commitments Review Processes into the ICANN Bylaws
    - The following four reviews will be preserved in the reviews section of the Bylaws:
      - Ensuring accountability, transparency, and the interests of global Internet users.
      - Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws.
      - Preserving security, stability, and resiliency of the DNS.
      - Promoting competition, consumer trust, and consumer choice.
- 06 After these elements of the Affirmation of Commitments are adopted in the ICANN Bylaws, the following should take place:
- ICANN and NTIA should mutually agree to terminate the Affirmation of Commitments.
  - New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned Affirmation of Commitments review should not be deferred simply because the new rules allow up to five years between review cycles. If the community prefers to do a review sooner than five years from the previous review, that is allowed under the new rules.
  - Through its Work Party IRP Implementation Oversight Team (WP-IRP IOT), the CCWG-Accountability will examine the suggestion to include a mid-term review of the Independent Review Process (IRP).
  - To support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community,

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<sup>1</sup> Sections 3, 4, 7, and 8 of the Affirmation of Commitments contain relevant ICANN commitments. The remaining sections in the Affirmation of Commitments are preamble text and commitments of the U.S. Government. As such, they do not contain commitments by ICANN, and cannot usefully be incorporated in the Bylaws.

ICANN staff, and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs.

- These operational standards should include issues such as: composition of Review Teams, Review Team working methods (meeting protocol, document access, role of observers, budgets, decision making methods, etc.), and methods of access to experts. These standards should be developed with the community and should require community input and review to be changed. The standards are expected to reflect levels of detail that are generally not appropriate for governance documents, and should not require a change to the Bylaws to modify. This is an implementation issue aligned with the need for review of the proposed Bylaws text developed by the CCWG-Accountability that has been provided as guidance to legal counsel.

07 A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws and will be classified as Fundamental Bylaws. Specifications will be based on the requirements detailed by the CWG-Stewardship. It is anticipated that the Bylaw drafting process will include the CWG-Stewardship.

### 3. Detailed Explanation of Recommendations

#### Background

The Affirmation of Commitments is a 2009 bilateral agreement between the U.S. Government and ICANN. After the IANA agreement is terminated, the Affirmation of Commitments will become the next target for termination since it would be the last remaining aspect of a unique U.S. Government role with ICANN.

Termination of the Affirmation of Commitments as a separate agreement would be a simple matter for a post-transition ICANN, since the Affirmation of Commitments can be terminated by either party with a 120-day notice. The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments in Stress Test #14, as described below.

08 <b>Stress Test #14:</b> ICANN or NTIA chooses to terminate the Affirmation of Commitments.	
09 Consequence(s): ICANN would no longer be held to the Affirmation of Commitments, including the conduct of community reviews and required implementation of Review Team recommendations.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
10 The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days' notice.	14 One proposed mechanism would give the Empowered Community standing to challenge a Board decision by referral to an IRP with the power to issue a binding decision. If ICANN cancelled the Affirmation
11 As long as NTIA controls the IANA contract,	

<p>ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>12 But as a result of the IANA Stewardship Transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain the Affirmation of Commitments.</p> <p>13 Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.</p>	<p>of Commitments, the IRP could enable reversal of that decision.</p> <p>15 Another proposed measure is to import Affirmation of Commitments provisions into the ICANN Bylaws, and dispense with the bilateral Affirmation of Commitments with NTIA. Bylaws would be amended to include Affirmation of Commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in paragraph 9.</p> <p>16 If ICANN's Board proposed to amend the AoC commitments and reviews that were added to the Bylaws, another proposed measure would empower the Empowered Community to veto that proposed Bylaws change.</p> <p>17 If any of the AoC commitments or review processes were classified as Fundamental Bylaws, changes would require approval by the Empowered Community.</p>
<p><b>CONCLUSIONS:</b></p> <p>18 Existing measures are inadequate after NTIA or ICANN terminates the IANA contract.</p>	<p>19 Proposed measures in combination are adequate.</p>

20 If the Affirmation of Commitments were to be terminated without a replacement, ICANN would no longer be held to these important affirmative commitments, including the related requirement to conduct community reviews. If this were allowed to occur, it would significantly diminish ICANN's accountability to the global multistakeholder community. This consequence is avoided by adding the Affirmation of Commitments reviews and commitments to ICANN's Bylaws.

21 **Objectives of the Recommendations**

22 Suggestions gathered during comment periods in 2014 on ICANN accountability and the IANA Stewardship Transition suggested several ways the Affirmation of Commitments reviews should be adjusted as part of incorporating them into the ICANN Bylaws:

- Ability to sunset reviews, amend reviews, and create new reviews.
- Community stakeholder groups should appoint their own representatives to Review Teams. Regarding composition and size of Review Teams, based on composition of prior Review Teams, 21 Review Team members from Supporting Organizations (SOs) and Advisory Committees (ACs) would be more than needed.
- Give Review Teams access to ICANN internal documents.



- Require the ICANN Board to consider approval and begin implementation of Review Team recommendations, including from previous reviews.

23 The CCWG-Accountability concluded that some Review Team recommendations could be rejected or modified by ICANN, for reasons such as feasibility, time, or cost. If the community disagreed with the Board’s decision on implementation, it could invoke a Request for Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP. In addition, the CCWG-Accountability independent legal counsel advised that the ICANN Bylaws could not require the Board to implement all Review Team recommendations because some could conflict with the Board’s fiduciary duties or other Bylaws obligations.

In Bylaws Article IV, a new section will be added for periodic review of ICANN Execution of Key Commitments, with an overarching framework for the way these reviews are conducted and then one subsection for each of the four current Affirmation of Commitments reviews.

24 **Recommended Changes to the ICANN Bylaws**

*Note: Legal counsel has not reviewed the proposed Bylaw revisions at this stage. The proposed language for Bylaw revisions is conceptual in nature; once there is consensus about direction, legal counsel will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.*

25 There are four areas of change required to the ICANN Bylaws to enshrine the Affirmation of Commitments reviews, as described below.

26 **Principle language to be added to Bylaws:**

ICANN Commitments in the Affirmation of Commitments	As expressed in the ICANN Bylaws
<p>27 3. This document affirms key commitments by the Department of Commerce (DOC) and ICANN, including commitments to:</p> <p>28 (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent;</p> <p>29 (b) preserve the security, stability, and resiliency of the DNS;</p> <p>30 (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and</p> <p>31 (d) facilitate international participation in DNS technical coordination.</p>	<p>32 Proposed revision to ICANN Core Values:</p> <p>33 Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making 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;</p> <p>34 Proposed Bylaw requiring Affirmation of Commitments review of Promoting Competition, Consumer Trust, and Consumer Choice:</p> <p>35 ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency,</p>

ICANN Commitments in the Affirmation of Commitments	As expressed in the ICANN Bylaws
	malicious abuse issues, sovereignty concerns, and rights protection.
<p>36 4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.</p>	<p>37 Proposed new Section 8 in Bylaws Article III Transparency:</p> <p>38 ICANN shall perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial or non-financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.</p>
<p>39 7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and Strategic and Operating Plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.</p>	<p>40 Proposed revision to ICANN Commitments:</p> <p>41 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets.</p> <p>42 Proposed revision to ICANN Core Values:</p> <p>43 Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is</p>

<b>ICANN Commitments in the Affirmation of Commitments</b>	<b>As expressed in the ICANN Bylaws</b>
	<p>used to ascertain the global public interest and that those processes are accountable and transparent;</p> <p>44 Proposed requirement for annual report, to be included in Bylaws section on required reviews:</p> <p>45 ICANN will produce an annual report on the state of improvements to Accountability and Transparency. 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.</p> <p>46 Proposed new Section 9 in Bylaws Article III Transparency:</p> <p>47 ICANN shall adhere to transparent and accountable budgeting processes, providing advance notice to facilitate stakeholder engagement in policy decision-making, fact-based policy development, cross community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and Strategic and Operating Plans.</p>

<b>ICANN Commitments in the Affirmation of Commitments</b>	<b>As expressed in the ICANN Bylaws</b>
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<b>ICANN Commitments in the Affirmation of Commitments</b>	<b>As expressed in the ICANN Bylaws</b>
<p>48 9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical Mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:</p>	<p>49 See next section for proposed Bylaws to preserve ICANN commitments to perform the Affirmation of Commitments regular reviews.</p>

50 The Bylaws will provide a framework for all periodic reviews.

51 The left-hand column of the following chart shows proposed Bylaws language for periodic reviews (subject to revision by legal counsel during actual drafting), with comments on the right:

<b>PROPOSED BYLAW TEXT</b>	<b>COMMENT</b>
<p>52 ICANN will produce an annual report on the state of improvements to Accountability and Transparency.</p> <p>53 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.</p>	<p>54 This is a new recommendation based on one in Accountability and Transparency Review Team 2 (ATRT2) and is more important as reviews are spread further apart.</p>
<p>55 Review Teams are established to include both a limited number of members and an open number of observers. Each SO and AC participating in the review may suggest up to seven prospective members for the 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, allocating at least three members from each participating SO and AC that suggests three or more prospective members. In addition, the ICANN Board may designate one Director as a member of the Review Team.</p>	<p>56 The Affirmation of Commitments has no specific requirements for the number of members from each SO and AC.</p> <p>57 The Affirmation of Commitments lets the Board and GAC Chairs designate Review Team members, and has no diversity requirement.</p>
<p>58 In the event a consensus cannot be found</p>	<p>59 While showing a preference for consensus,</p>

PROPOSED BYLAW TEXT	COMMENT
<p>among the members, a majority vote of the members may be taken. In this case, both a majority recommendation and a minority response should be provided in the final report of the Review Team.</p>	<p>a resolution procedure should be defined. It is important to avoid both tyranny of the majority and capture by a minority.</p>
<p>60 Review Teams may also solicit and select independent experts to render advice as requested by the Review Team, and the Review Team may choose to accept or reject all or part of this advice.</p>	<p>61 This was not stated in the Affirmation of Commitments, but experts have been appointed to advise some Affirmation of Commitments Review Teams.</p>
<p>62 Each Review Team may recommend termination or amendment of its respective review.</p>	<p>63 This is new. A recommendation to amend or terminate an existing review would be subject to public comment, and the Empowered Community would have power to reject a change to Standard Bylaws and approve a change to Fundamental Bylaws.</p>
<p>64 Confidential Disclosure to Review Teams: 65 To facilitate transparency and openness regarding ICANN's deliberations and operations, the Review Teams, or a subset thereof, shall have access to ICANN internal information and documents. If ICANN refuses to reveal documents or information requested by the Review Team, ICANN must provide a justification to the Review Team. If the Review Team is not satisfied with ICANN's justification, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request. 66 For documents and information that ICANN does disclose to the Review Team, ICANN may designate certain documents and information as not for disclosure by the Review Team, either in its report or otherwise. If the Review Team is not satisfied with ICANN's designation of non-disclosable documents or information, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the non-disclosure designation. 67 A confidential disclosure framework shall be published by ICANN. The confidential disclosure framework shall describe the process by which documents and information are classified, including a description of the levels of classification that</p>	<p>71 New ability to access internal documents, with non-disclosure provisions.</p>

PROPOSED BYLAW TEXT	COMMENT
<p>documents or information may be subject to, and the classes of persons who may access such documents and information.</p> <p>68 The confidential disclosure framework shall describe the process by which a Review Team may request access to documents and information that are designated as classified or restricted access.</p> <p>69 The confidential disclosure framework shall also describe the provisions of any non-disclosure agreement that members of a Review Team may be asked to sign.</p> <p>70 The confidential disclosure framework must provide a mechanism to escalate and/or appeal the refusal to release documents and information to duly recognized Review Teams.</p>	
<p>72 The draft report of the Review Team should describe the degree of consensus reached by the Review Team.</p>	<p>73 From public comments.</p>
<p>74 The Review Team should attempt to assign priorities to its recommendations.</p>	<p>75 Board requested prioritization of recommendations.</p>
<p>76 The draft report of the review will be published for public comment. The Review Team will consider such public comment and amend the review, as it deems appropriate before issuing its final report and forwarding the recommendations to the Board.</p>	
<p>77 The final output of all reviews will be published for public comment. The final report should include an explanation of how public comments were considered. Within six months of receipt of a recommendation, the Board shall consider approval and promptly either begin implementation or publish a written explanation for why the recommendation was not approved.</p>	<p>78 Affirmation of Commitments requires the Board to “take action” within six months. In practice, the Board has considered review recommendations and either approved or explained why it would not approve each recommendation.</p>

79 **Proposed Bylaws text for this Affirmation of Commitments review:**

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	NOTES

<p>80 <b>1. Accountability &amp; Transparency Review.</b></p> <p>81 The Board shall cause a periodic review of ICANN’s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders.</p>	<p>82 The commitment to do a review now becomes part of the ICANN Bylaws.</p> <p>83 The second part of this sentence (“its commitment to maintain...”) clarifies an ICANN commitment that would also become part of the Bylaws.</p>
<p>84 Issues that may merit attention in this review include:</p> <p>85 (a) assessing and improving ICANN Board governance, which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;</p>	<p>86 Public commenter suggested making this a suggestion instead of a mandated list of topics.</p>
<p>87 (b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;</p> <p>88 (c) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);</p> <p>89 (d) assessing the extent to which ICANN’s decisions are embraced, supported, and accepted by the public and the Internet community;</p> <p>90 (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and</p> <p>91 (f) assessing and improving the Independent Review Process.</p>	<p>92 Rephrased to avoid implying a review of GAC’s effectiveness.</p>
<p>93 The Review Team shall assess the extent to which prior Accountability and Transparency review recommendations have been implemented.</p>	<p>94 Affirmation of Commitments required ATRT to assess all Affirmation of Commitments reviews.</p>

95	The Review Team may recommend termination or amendment of other periodic reviews required by this section, and may recommend additional periodic reviews.	96	This is new. A recommendation to amend or terminate an existing review would be subject to public comment, and the Empowered Community would have power to reject a change to Standard Bylaws and approve a change to Fundamental Bylaws.
97	This Review Team should complete its review within one year of convening its first meeting.	98	New.
99	This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.	100	The Affirmation of Commitments required this review every three years.

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW		NOTES	
101	<b>2. Preserving Security, Stability, and Resiliency.</b>	108	The new ICANN Mission Statement will include the following revision to reflect the incorporation of this AoC review into the Bylaws:
102	The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS.	109	<b>In this role, with respect to domain names, ICANN's Mission is to coordinate the development and implementation of policies:</b>
103	In this review, particular attention will be paid to:	110	<b>- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and</b>
104	(a) security, stability, and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS;		
105	(b) ensuring appropriate contingency planning; and		
106	(c) maintaining clear processes.		
107	Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability, and resiliency of the Internet DNS, consistent with ICANN's limited technical Mission.		



111 The Review Team shall assess the extent to which prior review recommendations have been implemented.	112 Make this explicit.
113 This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.	114 Affirmation of Commitments required this review every three years.

<b>PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW</b>	<b>NOTES</b>
<p>115 3. Promoting Competition, Consumer Trust, and Consumer Choice.</p> <p>116 ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.</p>	117 This review includes a commitment that becomes part of the ICANN Bylaws, regarding future expansions of the TLD space.
<p>118 The Board shall cause a review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year.</p> <p>119 This review will examine the extent to which the expansion of gTLDs has promoted competition, consumer trust, and consumer choice, as well as effectiveness of:</p> <p>120 (a) the gTLD application and evaluation process; and</p> <p>121 (b) safeguards put in place to mitigate issues involved in the expansion.</p>	122 Re-phrased to cover future new gTLD rounds. "Batched" is used to designate a batch of applications, as opposed to continuous applications.
123 The Review Team shall assess the extent to which prior review recommendations have been implemented.	124 Make this explicit.
125 For each of its recommendations, this Review Team should indicate whether the recommendation, if accepted, must be implemented before opening subsequent rounds of gTLD expansion.	126 Board proposal, accepted by CCWG-Accountability as Option B in Dublin.

127 These periodic reviews shall be convened no less frequently than every five years, measured from the date the previous review was convened.	128 AoC also required this review 2 years after the 1st year review.
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<b>PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW</b>	<b>NOTES</b>
129 4. Reviewing effectiveness of WHOIS/future Registration Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.	130 Changed title to reflect likelihood that WHOIS will be replaced by new Registration Directory Services.
131 ICANN commits to enforcing its policy relating to the current WHOIS and any future Generic Top Level Domain (gTLD) Directory Service, subject to applicable laws, and working with the community to explore structural changes to improve accuracy and access to gTLD registration data, as well as consider safeguards for protecting data.  132 This review includes a commitment that becomes part of the ICANN Bylaws, regarding enforcement of the current WHOIS and any future gTLD Directory Service policy requirements.	133 This review includes a commitment that becomes part of the ICANN Bylaws, regarding enforcement of existing policy relating to WHOIS requirements, as proposed by the ICANN Board (1 September 2015).
134 The Board shall cause a periodic review to assess the extent to which WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement, promotes consumer trust, and safeguards data.	135 Per Board proposal (1 September 2015).
136 This review will consider the Organization for Economic Co-operation and Development (OECD) guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013.	137 New. A public comment submission noted that OECD guidelines do not have the force of law.

138 The Review Team shall assess the extent to which prior review recommendations have been completed, and the extent to which implementation has had the intended effect.	139 Per Board proposal (1 September 2015).
140 This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.	141 The Affirmation of Commitments required this review every three years.

142 **Bylaws to add an IANA Function Review and Special IANA Function Review:**

<b>IANA FUNCTION REVIEW AND SPECIAL IANA FUNCTION REVIEW</b>	
143	The CWG-Stewardship recommends that Post-Transition IANA's (PTI's) performance against the ICANN-PTI contract and the Statement of Work (SOW) be reviewed as part of the IANA Function Review (IFR). The IFR would be obliged to take into account multiple input sources including community comments, IANA Customer Standing Committee (CSC) evaluations, reports submitted by the PTI, and recommendations for technical or process improvements. The outcomes of reports submitted to the CSC, reviews, and comments received on these reports during the relevant time period will be included as input to the IFR. The IFR will also review the SOW to determine if any amendments should be recommended. The IFR mandate is strictly limited to evaluation of PTI performance against the SOW and does not include any evaluation relating to policy or contracting issues that are not part of the IANA Functions Contract between ICANN and PTI or the SOW. In particular, it does not include issues related to policy development and adoption processes, or contract enforcement measures between contracted registries and ICANN.
144	The first IFR is recommended to take place no more than two years after the transition is completed. After the initial review, the periodic IFR should occur at intervals of no more than five years.
145	The IFR should be outlined in the ICANN Bylaws and included as a Fundamental Bylaw as part of the work of the CCWG-Accountability and would operate in a manner analogous to an Affirmation of Commitments review. The members of the IANA Function Review Team (IFRT) would be selected by the SOs and ACs and would include several liaisons from other communities. While the IFRT is intended to be a smaller group, it will be open to participants in much the same way as the CWG-Stewardship is.
146	While the IFR will normally be scheduled based on a regular cycle of no more than five years in line with other ICANN reviews, a Special IANA Function Review (Special IFR) may also be initiated when CSC Remedial Action Procedures (as described in the CWG-Stewardship Proposal) are followed and fail to correct the identified deficiency and the IANA Problem Resolution Process (as described in the CWG-Stewardship Proposal) is followed and fails to correct the identified deficiency. Following the exhaustion of these escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process, and the IANA Problem Resolution Process and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SOs and ACs, the Special IFR could be triggered. In order to trigger a Special IFR, it would require a vote of both of the ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority).

147 The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IFR. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of the IANA Functions operation, including the CSC, but should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs. The results of the IFR or Special IFR will not be prescribed or restricted and could include recommendations to initiate a separation process, which could result in termination or non-renewal of the IANA Functions Contract between ICANN and PTI among other actions.

148 **Composition of Review Teams for various reviews to date:**

149 <b>ATRT1</b> (14 people; 12 from AC & SOs):	157 <b>ATRT2</b> (15 people; 11 from AC & SOs)
150 1 ALAC	158 2 ALAC
151 2 GAC	159 3 GAC
152 1 ASO	160 1 SSAC
153 3 ccNSO	161 1 ASO
154 5 GNSO	162 2 ccNSO
155 ICANN Board Chair or designee	163 2 GNSO
156 Assistant Secretary for NTIA	164 2 Experts
	165 ICANN Board Chairman or designee
	166 Assistant Secretary for NTIA
167 <b>SSR</b> (15 people; 12 from AC & SOs):	177 <b>WHOIS</b> (13 people; 9 from AC & SOs):
168 1 ALAC	178 2 ALAC
169 1 GAC	179 1 GAC
170 2 SSAC	180 1 SSAC
171 1 RSSAC	181 1 ASO
172 2 ASO	182 1 ccNSO
173 3 ccNSO	183 3 GNSO
174 2 GNSO	184 3 Experts/Law Enforcement
175 2 Experts	185 ICANN CEO or designated nominee
176 ICANN CEO or designee	

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- The AoC text for Competition, Consumer Trust & Consumer Choice review is reintroduced.
- All AoC reviews (and the IFR and Special IFR) should be incorporated into the Bylaws.

- The WP-IRP IOT will examine the suggestion to include a mid-term review of the IRP. The ATRT scope will be expanded to suggest a review of the IRP (paragraph 89).
- The representation and number of seats on Review Teams that relate to gTLD reviews will remain unchanged from the Third Draft Proposal (paragraph 54).
- The Board amendment on WHOIS/future Registration Directory Services policy (paragraph 127) should be included.
- The ICANN Articles of Incorporation address ICANN's state of incorporation (or corporate domicile), and the ICANN Bylaws (Article XVIII) address the separate issue of the location of ICANN's principal office. Article XVIII of the ICANN Bylaws will be classified as a Standard Bylaw (see paragraph 5).
- The Board suggestion regarding AoC reviews operational standards to be developed as part of implementation should be included on the understanding that Recommendation #9 would be respected and that this text would address implementation details only (see paragraph 8).
- CCWG-Accountability lawyers advised clarifying "diversity" in paragraph 54 regarding composition of AoC Review Teams. CCWG-Accountability notes that "diversity" considerations could include geography, skills, gender, etc., and that chairs of participating ACs and SOs should have flexibility in their consideration of factors in selecting Review Team members.
- CCWG-Accountability lawyers suggested "the group of chairs can solicit additional nominees or appoint less than 21 members to avoid potential overrepresentation of particular ACs or SOs if some nominate less than 3 members." The CCWG-Accountability proposed "up to 21", so it is not actually proposing a fixed number of Review Team members. "Fixed" has been replaced with "limited" in paragraph 54. CCWG-Accountability purposely allowed AC/SO chairs to select additional Review Team members from ACs/SOs that had offered more than 3 candidates. This is to accommodate ACs/SOs that had greater interest in a review, such as the GNSO, which would be the most concerned with reviews of new gTLDs and WHOIS/Directory Services. Therefore, the representation and number of seats on the Review Team will remain unchanged from the Third Draft Proposal.
- Replaced "participants" with "observers" in paragraph 54.

## 5. Stress Tests Related to this Recommendation

- ST9, 11, 17
- ST3, 4
- ST 14
- ST20, 22

## 6. How does this meet the CWG-Stewardship Requirements?

- The CWG-Stewardship has proposed an IFR and Special IFR that should be added to the ICANN Bylaws as a Fundamental Bylaw. The CCWG-Accountability's recommendations include this as part of the reviews to be added to the ICANN Bylaws.

## 7. How does this address NTIA Criteria?

### 186 **Support and enhance the multistakeholder model.**

- Reinforcing multistakeholder nature of the organization by incorporating into its principles the commitment to remaining a nonprofit, public benefit corporation that operates under transparent and bottom-up, multistakeholder policy development processes; includes business stakeholders, civil society, the technical community, academia, and end users; and seeks input from the public for whose benefit ICANN shall in all events act.
  - Reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process fully addresses this criterion.
- 

### 187 **Maintain the security, stability and resiliency of the Internet DNS.**

- Maintaining nonprofit public benefit corporation status and headquarters in the U.S.
  - Adding Bylaw requirement that ICANN produce an annual report on the state of improvements to Accountability and Transparency.
  - Publishing analyses of the positive and negative effects of its decisions on the public, including any financial or non-financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.
  - Including the commitment to preserve and enhance the neutral and judgment-free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Incorporating Affirmation of Commitments reviews into Bylaws and, in particular, the security, stability, and resiliency of the DNS review.
- 

### 188 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Transferring Affirmation of Commitments that ICANN preserve and enhance the neutral and judgment free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet as well maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet.

- Solidifying commitment to maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet. The criteria is also addressed through the Bylaw addition: ICANN will ensure that as it expands the TLD space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.
  - Visibility in finance and accountability reporting.
- 

189 **Maintain the openness of the Internet.**

- Convening a Community Forum where all would be welcome to participate as a potential step.
  - All are welcome to participate in the consultation process that organized to elaborate these key documents.
- 

190 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- Adding commitment to seek and support broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making 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.
  - Producing an annual report on the state of improvements to Accountability and Transparency and adhering to transparent and accountable budgeting processes, providing advance notice to facilitate stakeholder engagement in policy decision-making.
-

# Annex 10 – Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

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## 1. Summary

- 01 The CCWG-Accountability recommends addressing the accountability of Supporting Organizations (SOs) and Advisory Committees (ACs) in a two-stage approach:
- In Work Stream 1: Include the review of SO and AC accountability mechanisms in the independent structural reviews performed on a regular basis.
  - In Work Stream 2: Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.

## 2. CCWG-Accountability Recommendations

- 02 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.
- 03 The CCWG-Accountability recommends the following.

### 04 **Work Stream 1:**

- 05 Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.
- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
  - This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:

*The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

- The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work



Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

06 **Work Stream 2:**

07 Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.

- Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>1</sup>
- Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.
- Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

### 3. Detailed Explanation of Recommendations

08 As the community's power is enhanced, legitimate concerns have arisen regarding the accountability of the community (organized as SOs and ACs) in using those powers. In other words, “Who watches the watchers?”

09 In response to these concerns, the CCWG-Accountability:

- Identified the existing accountability mechanisms in place for SOs and ACs.
- Reviewed existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the First Public Comment Period.
- Built a list of steps to enhance SO and AC accountability that should be addressed in Work Stream 1 and Work Stream 2.

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<sup>1</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: *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 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 at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO, and all Supporting Organizations and Advisory Committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how his or her constituency addressed the issue, indicating what worked and didn't work. This could be followed 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.*

10 A review of existing ICANN documentation shows that the provisions that oblige SOs and ACs to be held accountable to their Constituents or the larger Internet community with regard to their actions, decisions, or advice, are limited in number and scope.

11 The reviewed documents were:

1. [ICANN Bylaws](#)

ICANN Bylaws state that each SO and AC shall establish its own charter and procedural documents. Further research needs to be done at the SO and AC level to verify existing accountability mechanisms put in place for each SO and AC.

It is also important to review whether SOs and ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example, it should be reviewed and discussed if Core Values should be applicable not only to the corporation's actions, but also to SO and AC activities.

2. [The Affirmation of Commitments](#)

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, should also apply to the SOs and ACs that form the wider ICANN organizational structure as defined in ICANN's Bylaws.

The identified mechanisms or criteria in the Affirmation of Commitments by which SOs and ACs should conduct their work in relation to the DNS are: paragraph 3 and paragraph 9.

3. [ATRT 1 Recommendations](#) and [ATRT 2 Recommendations](#)

The Accountability and Transparency Reviews have made no direct recommendations with regard to SO and AC transparency or accountability.

4. [Operational Rules and Procedures of the Various Supporting Organizations and Advisory Committees](#)

Having inventoried the existing mechanisms related to SO and AC accountability in light of the new responsibilities associated with the Work Stream 1 Proposals, it became clear that the current framework for SO and AC accountability needed to be enhanced.

The aim of the enhancements is to ensure that SOs and ACs are accountable not only to their current members but also to the wider communities that these bodies are designed to represent.

12 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.

13 The CCWG-Accountability recommends the following.

14 **Work Stream 1:**

- 15 Include the review of SO and AC accountability mechanisms in the independent periodic structural reviews that are performed on a regular basis.
- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
  - This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:  
*The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*
  - The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:  
*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*
- 16 **Work Stream 2:**
- 17 Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.
- Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>2</sup>
  - Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.
  - Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

## 4. Changes Made Since the Third Draft Proposal

- Added: The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following

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<sup>2</sup> See the short description of the mutual accountability roundtable provided by CCWG-Accountability Advisor Willie Currie in footnote 1, above.

among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

- In Work Stream 2 recommendations, added: Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.

## 5. Stress Tests Related to this Recommendation

- ST12
- ST33
- ST34

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 18 **Support and enhance the multistakeholder model.**

- Enhancements of ICANN's accountability are all enhancements to ICANN's overall multistakeholder model. Greater accountability of SOs and ACs to their members and stakeholders is a part of enhancing the wider multistakeholder model of ICANN.

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### 19 **Maintain the security, stability and resiliency of the Internet DNS.**

- N/A

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### 20 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A

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21 **Maintain the openness of the Internet.**

- N/A

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22 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.**

- The proposals for enhanced SO and AC accountability are based on mutual accountability enhancements, instead of accountability towards a government-led or intergovernmental organization. Governments are recognized as key stakeholders, especially in their role with regard to public policy.
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# Annex 11 – Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test #18)

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## 1. Summary

- 1 Currently, Governmental Advisory Committee (GAC) advice to the ICANN Board has special status as described in the ICANN Bylaws Article XI, Section 2:

*j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*
- 2 Stress Test #18 considers a scenario where ICANN's GAC would amend its operating procedures to change from consensus decisions (no objections) to majority voting for advice to the ICANN Board. Since the Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the ICANN Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice on public policy matters.
- 3 In addition, if the GAC lowered its decision threshold while also participating in the new Empowered Community (if the GAC chooses to so participate), some stakeholders believe that this could increase government influence over ICANN.
- 4 In order to mitigate these concerns, the CCWG-Accountability is recommending changes be made to the ICANN Bylaws relating to GAC advice.

## 2. CCWG-Accountability Recommendations

- 5 The CCWG-Accountability recommends that the following changes be made to the ICANN Bylaws Article XI, Section 2 (emphasis added):
- 6 *j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. **Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of***

**adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of 60% of the Board**, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

- 7 This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must “try to find a mutually acceptable solution,” as required in ICANN’s current Bylaws. This recommendation shall not create any new obligations for the ICANN Board to consider, vote upon, or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC advice.
- 8 The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection). When transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection.
- 9 The CCWG-Accountability recommends inserting a requirement that all ACs provide a rationale for their advice. A rationale must be provided for formal advice provided by an Advisory Committee to the ICANN Board. The Board shall have the responsibility to determine whether the rationale provided is adequate to enable determination of whether following that advice would be consistent with ICANN’s Bylaws.
- 10 To address concerns regarding GAC advice that is inconsistent with the ICANN Bylaws, the CCWG-Accountability recommends adding this clarification for legal counsel to consider when drafting Bylaws language:

*ICANN cannot take action - based on advice or otherwise – that is inconsistent with its Bylaws. While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. Any aggrieved party or the Empowered Community will have standing to bring claims through the IRP that the Board acted (or failed to act) in a manner inconsistent with the ICANN Articles of Incorporation or Bylaws, even if the Board acted on GAC advice.*

- 11 Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability’s external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

## 3. Detailed Explanation of Recommendations

### 12 Background

- 13 Stress Test #18 is related to a scenario where ICANN's GAC would amend its operating procedures to change from consensus decisions to majority voting for advice to the ICANN Board. Since the ICANN Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice. In addition, if the GAC lowered its decision threshold while also participating in the Empowered Community (if the GAC chooses to so participate), some stakeholders believe this could inappropriately increase government influence over ICANN.
- 14 The goal of the recommendation is also to reflect the principles, derived from the [GAC Dublin Communiqué](#), and agreed upon by the CCWG-Accountability when investigating further on Stress Test #18:
- The GAC may define its own rules.
  - The GAC is committed to working by consensus.
  - The GAC will not work on the basis of a simple majority for GAC advice.
  - The Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution.
  - GAC advice needs to provide clear direction and provide a rationale.

## Process and Considerations Leading Up to the Recommendation

- 15 The Second Draft Proposal drew a significant number of comments, with a majority in support of the proposed Bylaws change and with objections from several governments. After the close of the second round of public comments, other governments expressed their concerns regarding the proposed Bylaws change.
- 16 The CCWG-Accountability also received communication from the GAC after its Dublin meeting, as part of its communiqué, which stated:

*“The discussions on Stress Test #18 have helped the Governmental Advisory Committee to have a better understanding of the different views on the issue. In assessing the different rationales presented so far related to Stress Test #18, the Governmental Advisory Committee considered:*

- The need that each and every AC ensures that the advice provided is clear and reflects the consensus view of the Committee.
- The need that each and every AC should preserve its own autonomy in its definition of consensus.
- The value the Board attributes to receiving consensus advice.
- The recommendation of the Board-GAC Recommendation Implementation Working Group, as reiterated by the Accountability and Transparency Review Team 2 (ATRT2), to set the threshold for the ICANN Board to reject GAC advice to a 2/3 majority voting, consistent with the threshold established for rejection of Country Code Names Supporting Organization and Generic Names Supporting Organization Policy Development Process recommendations.”



- 17 Following the Second Public Comment Period, and the input received from the GAC Communiqué in Dublin, the CCWG-Accountability organized a specific Subgroup to:
- Assess existing options, and areas of agreement/disagreement.
  - Provide the full CCWG-Accountability with a brief summary of views and options.
  - Report to the CCWG-Accountability so that consensus can be assessed around how to respond to Stress Test #18, which identified the risk that GAC could change its decision-making rule and thereby require the ICANN Board to arbitrate among sovereign governments.
- 18 Within this Subgroup, the following conclusions were agreed upon:
- The GAC may define its own rules.
  - The GAC is committed to working by consensus.
  - The GAC will not work on the basis of a simple majority for GAC advice.
  - The Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution.
  - GAC advice needs to provide clear direction and provide a rationale.

19 **Alternative options considered and rejected**

20 Within this group, several options were introduced and considered.

21 Brazil introduced a proposal with the following Bylaw changes:

*[...] Where the ICANN Board is obliged to pay due deference to advice from Advisory Committees and where that advice, if not followed, requires finding mutually agreed solutions for implementation of that advice, the Advisory Committee will make every effort to ensure that the advice provided is clear and reflects the consensus view of the committee. In this context, each Advisory Committee has the right to determine its particular definition of consensus.” [...]*

*[...] Any Governmental Advisory Committee Advice approved by a Governmental Advisory Committee consensus may only be rejected by a vote of more than two-thirds (2/3) of the Board. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. [...]*

22 After discussions within the Subgroup, and concerns raised by some stakeholders that the Brazil proposal would create stronger obligations for the ICANN Board while not providing enough guarantees that the GAC decision-making would remain strongly focused on consensus, a proposal based on initial drafting by Denmark and enhanced by a group of European GAC members, was considered (emphasis added):

*“The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.*

*In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.*

*Any Governmental Advisory Committee advice approved by a **full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of two-thirds of the Board.***

*Any advice approved by the Governmental Advisory Committee by consensus with objections only from a very small minority of Governmental Advisory Committee members, may be rejected by a majority vote of the Board.*

*In both instances, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”*

- 23 Several stakeholders supported an amendment to this proposal to remove the words “Any advice approved by the Governmental Advisory Committee by consensus with objections only from a very small minority of Governmental Advisory Committee members, may be rejected by a majority vote of the ICANN Board.” It was met with support as well as resistance, with the argument that this would not address the concerns expressed during the Second Public Comment Period about the lack of flexibility regarding GAC decision-making procedures.
- 24 As some participants remained concerned about the introduction of the 2/3 decision-making threshold for the ICANN Board, a compromise proposal was introduced as such (emphasis added):

*“j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.*

*In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.*

*Governmental Advisory Committee **advice which enjoys broad support of Governmental Advisory Committee members in the absence of significant objection** may be rejected by a majority vote of the Board.*

*In this case, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution”.*

- 25 This compromise proposal was submitted to the CCWG-Accountability on 24 November 2015. After thorough discussion, while some stakeholders expressed their willingness to accept the proposal as a compromise, significant objections remained. The co-Chairs assessed that the level of support was insufficient to call rough consensus on this proposal.
- 26 When discussing the way forward within the CCWG-Accountability on 26 November 2015, the group took stock of the past discussions and noted the [statement by Larry Strickling of NTIA](#) from 25 November about Stress Test #18. A proposal was introduced jointly by Denmark and Keith Drazek (ICG Liaison).
- 27 After being unable to reach consensus on the two-thirds proposal, in January 2016 the CCWG-Accountability re-launched the discussions to identify a consensus position for Recommendation #11. In early February, the CCWG-Accountability concluded that the consensus position should include the clarifications made to the version of Recommendation #11 in the Third Draft Proposal (no new obligations, rationale and conformity with ICANN Bylaws) and change the 2/3 threshold to 60%. Additionally, as part of the compromise, an exception was added in

Recommendations #1 and #2 that the GAC, should it decide to be a Decisional Participant in the Empowered Community, would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice; however, the GAC would be able to participate in an advisory capacity in all other aspects of the escalation process.

28 **The Stress Test which encompasses this is now:**

29	<b>Stress Test #18:</b> Governments in ICANN’s Governmental Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board	
30	<b>Consequence(s):</b> Under current Bylaws, ICANN must consider and respond to Governmental Advisory Committee advice, even if that advice were not supported by consensus. A majority of governments could thereby approve Governmental Advisory Committee advice.	
	<b>EXISTING ACCOUNTABILITY MEASURES</b>	<b>PROPOSED ACCOUNTABILITY MEASURES</b>
31	Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for Governmental Advisory Committee advice.	35 The proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where
32	Today, Governmental Advisory Committee adopts formal advice according to its Operating Principle 47: <i>“consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.”</i>	Governmental Advisory Committee advice was supported by full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.
33	The Governmental Advisory Committee may at any time change its procedures instead of its present consensus rule.	36 The proposed accountability measure recognizes that the decision not to follow GAC consensus advice would require a 60% majority of the ICANN Board.
34	The requirement to try to find a mutually acceptable solution in the current Bylaws would then apply, not just for Governmental Advisory Committee consensus advice.	37 The Governmental Advisory Committee can still give ICANN advice at any time, with or without full consensus.
		38 Recognizing the general principle that an AC should have the autonomy to refine its Operating Procedures, the Governmental Advisory Committee could specify how objections are raised and considered.

39 **Why is the CCWG-Accountability Recommending This?**

40 Stress Test #18 was among the plausible scenarios that could test how and whether the ICANN community could challenge actions taken by the ICANN Board. The rationale to develop this stress test involves two factors:

1. ICANN community members were aware that some GAC members had expressed a desire to change the GAC's historical method of using consensus for its decision-making, where "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection." Moreover, it would take only a simple majority of GAC members to change its decision-making methods to a lesser standard.
  2. The CCWG-Accountability realized that ICANN's present Bylaws obligate the ICANN Board to try to find "a mutually acceptable solution" if it decided not to follow GAC advice. That level of required deference is unique to the GAC and not required for advice from other SOs and ACs. Importantly, the ICANN Board's obligation to seek a mutually acceptable solution applies to all GAC advice, even if that advice was not supported by GAC consensus or was opposed by a significant minority of GAC members.
- 41 For these reasons, the CCWG-Accountability added Stress Test #18 to the First Draft Proposal, and the Stress Test Working Party concluded that existing accountability measures were not adequate to let the community hold the ICANN Board accountable for its actions if the Board were obliged to seek a negotiated solution with the GAC.
- 42 In order to address Stress Test #18, the CCWG-Accountability proposed an amendment to the ICANN Bylaws regarding the ICANN Board's obligations with respect to GAC advice. The amendment would preserve the requirement for the ICANN Board to seek a mutually acceptable solution, but only for GAC advice that was supported by consensus among GAC members.
- 43 The GAC advice that is opposed by a significant minority of governments should not trigger the ICANN Board's obligation to enter bi-lateral negotiations with the GAC on a matter that affects the global Internet community. A negotiation between the ICANN Board and the GAC should be mandatory only for resolving differences between ICANN and governments, not to resolve differences among governments themselves.
- 44 As a corollary to the importance of consensus GAC advice, the proposal includes a requirement that the Board would need a 60% majority to decide not to follow consensus GAC advice.
- 45 To avoid any ambiguity, when transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection among GAC members.
- 46 The proposed Bylaws change is aligned with the practice presently used by the GAC, which uses the following consensus rule for its decisions:

*"Consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."*

- 47 The proposed Bylaws change recognizes that the GAC may, at its discretion, amend its [Operating Principle 47](#) regarding "Provision of Advice to the ICANN Board." Similar rules for consensus policy and advice are already present in the ICANN Bylaws, which require supermajority support for policy recommendations coming from GNSO and ccNSO.
- 48 The proposed Bylaws change for Stress Test #18 does not interfere with the GAC's method of decision-making. The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection).
- 49 If the GAC decided to adopt advice by methods other than a 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."

- 50 Moreover, ICANN would still have to explain why it chose not to follow GAC advice: “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”.
- 51 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 among GAC members.
- 52 It is important to note that although this was the only proposal that would allow the CCWG-Accountability to achieve consensus on this topic, it was not unanimously supported. A number of dissenters amongst members and participants thought this proposal was overly restrictive and discriminatory toward the GAC, while others thought that if the GAC wanted to keep its privileged AC status, then it should not be allowed to be a Decisional Participant.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Changed the 2/3rds threshold for the Board rejecting GAC consensus advice to 60%. As part of the compromise, this required changes in Recommendations #1 and #2 to implement a GAC “carve out”.

## 5. Stress Tests Related to this Recommendation

- Stress Test #18: Governments in ICANN’s GAC can amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board.

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

- NTIA gave specific requirements for this transition, including advice that Stress Test #18 is a direct test of the requirement to avoid significant expansion of the role of governments in ICANN decision-making. The proposed Bylaws change is therefore an important part of the Proposal.

- 
- By ensuring that the provision of GAC advice remains a consensus-driven decision, the Proposal provides a safeguard against the possibility of a large group of governments trying to overly influence the ICANN Board.
- 

- At the same time, the Proposal would enable the GAC, if it ever came to a point where a single government would abuse its ability to formally object to veto public policy advice, to amend its operating principles to address this contingency. The principles adopted would however be required to fit with the consensus requirement stated in the Bylaws.
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# Annex 12 – Recommendation #12: Committing to Further Accountability Work in Work Stream 2

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## 1. Summary

- 01 The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.
- 02 As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:
  - Considering improvements to ICANN’s standards for diversity at all levels.
  - Staff accountability.
  - Supporting Organizations and Advisory Committee accountability.
  - Improving ICANN’s transparency with a focus on:
    - Enhancements to ICANN’s existing Documentary Information Disclosure Policy (DIDP).
    - Transparency of ICANN’s interactions with governments.
    - Improvements to the existing whistleblower policy.
    - Transparency of Board deliberations.
  - Developing and clarifying a Framework of Interpretation for ICANN’s Human Rights commitment and proposed Draft Bylaw.
  - Addressing jurisdiction-related questions, namely: “Can ICANN’s accountability be enhanced depending on the laws applicable to its actions?” The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
  - Considering enhancements to the Ombudsman’s role and function.
- 03 The CCWG-Accountability expects to begin refining the scope of Work Stream 2 during the upcoming [ICANN55 Meeting](#) in March 2016. It is intended that Work Stream 2 recommendations will be published for comments by the end of 2016.
- 04 The community raised concerns that after the IANA Stewardship Transition, there may be a lack of incentive for ICANN to implement the proposal arising out of Work Stream 2. To prevent this scenario, the CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability Work Stream 2 recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. In a [letter](#) dated 13 November 2015, the ICANN

Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.

## 2. CCWG-Accountability Recommendations

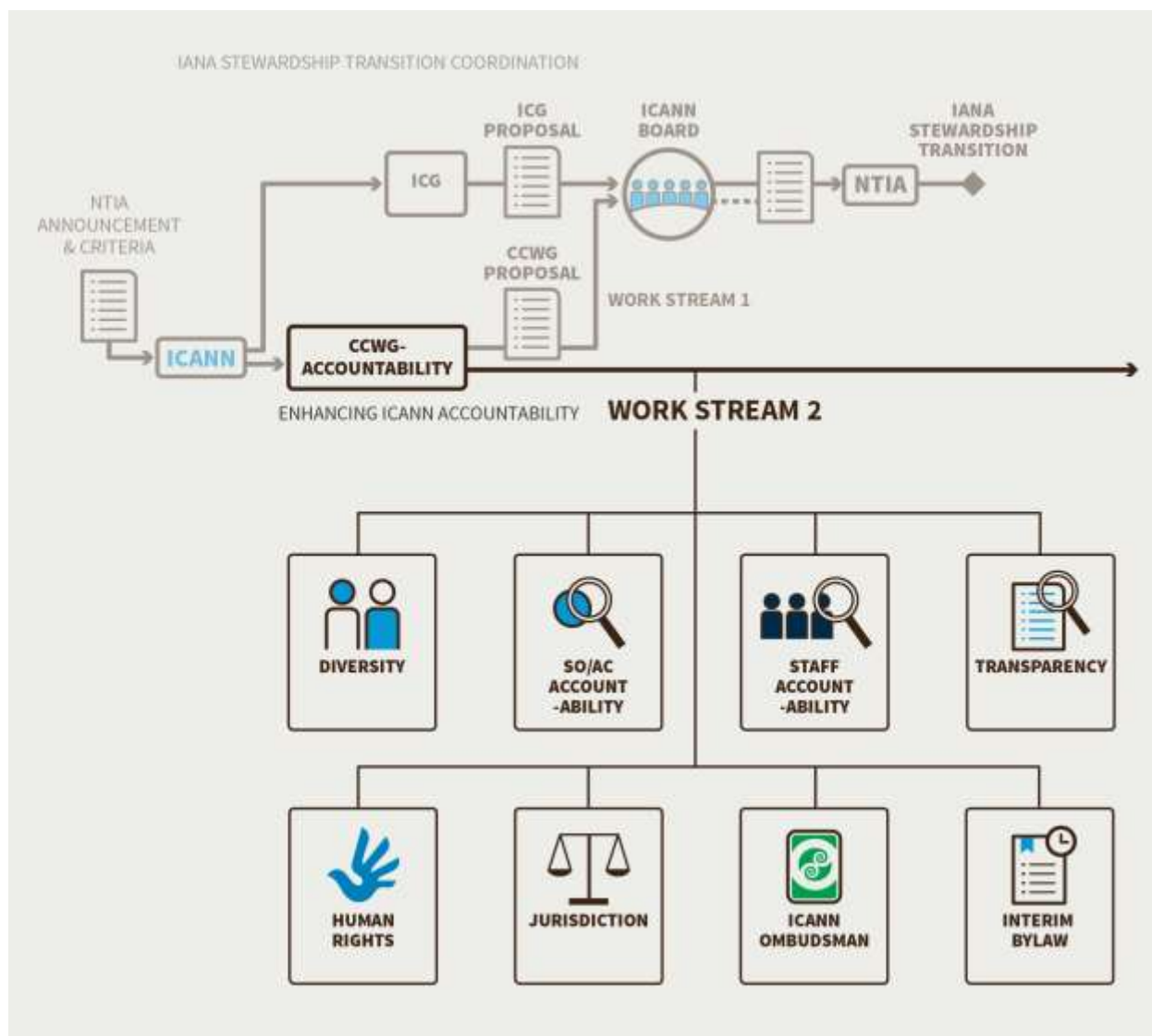
05 The CCWG-Accountability recommends that the Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. The Bylaw would task the group with creating further enhancements to ICANN's accountability limited to the Work Stream 2 list of issues:

- Considering improvements to ICANN's standards for diversity at all levels.
- Staff accountability.
- Supporting Organizations and Advisory Committee accountability.
  - Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
  - Evaluate the proposed "Mutual Accountability Roundtable" to assess viability.
  - Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.
  - Assess whether the IRP would also be applicable to SO and AC activities.
- Improving ICANN's transparency with a focus on:
  - Enhancements to ICANN's existing DIDP.
  - Transparency of ICANN's interactions with governments.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw.
- Addressing jurisdiction-related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
- Considering enhancements to the Ombudsman's role and function.

The CCWG-Accountability notes that further enhancements to ICANN accountability can be accommodated through the accountability review process (see Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees) or through specific, ad hoc, cross community working group initiatives.



### 3. Detailed Explanation of Recommendations



06 Commenters made the observation that general accountability requirements, such as diversity and Supporting Organization (SO) and Advisory Committee (AC) accountability, were not fully addressed. Specific criteria were developed for these two key parameters, as described below.

#### 07 Diversity

08 Comments received on prior drafts asked that concrete steps to ensure the diversity of the views, origins, and interests of the global Internet community be adequately represented through a multidimensional approach, specifically as the community becomes more empowered. While acknowledging the importance of diversity in the accountability mechanisms, commenters have

also expressed the view that any diversity requirement should not prevail over skills or experience requirements.

- 09 The CCWG-Accountability acknowledges the specific advice received from the Public Expert Group Advisors which stresses the importance of such diversity enhancements. Maximum participation and transparent deliberations by all affected stakeholders are necessary in order to capture the diversity of views that constitute the (global) public interest in a given instance.
- 10 In assessing diversity, the CCWG-Accountability identified that existing mechanisms were in place for entities constituting the ICANN ecosystem. Requirements stemming from the following initiatives and governance documents were evaluated:
- [ICANN Bylaws.](#)
  - [The Affirmation of Commitments.](#)
  - [ATRT 1 Recommendations.](#)
  - [ATRT 2 Recommendations.](#)
  - Documents from each of ICANN's SOs and ACs.
- 11 Analysis of the above documents determined that improvements are needed. During its discussions, the CCWG-Accountability considered a non-exhaustive list of criteria and sought input on the following suggestions:
- Expanding ATRT reviews into Accountability, Transparency, and Diversity reviews.
  - Establishing threshold regarding composition of each body.
  - Incorporating the Structural Reviews into Structural Accountability, Transparency, and Diversity Reviews of SOs and ACs, under the Board's supervision.
- 12 Comments received on the Second Draft Proposal revealed that incorporating the diversity component into Accountability and Transparency Reviews may overburden Review Teams. Therefore, the CCWG-Accountability recommends the following actions with the view to further enhancing ICANN's effectiveness in promoting diversity:
- Including diversity as an important element for the creation of any new structure, such as the Independent Review Process (IRP) – for diversity requirements for the panel – and the ICANN Community Forum.
  - Adding Accountability, Transparency, and Diversity reviews of SOs and ACs to structural reviews as part of Work Stream 2.
  - Performing, as part of Work Stream 2, a more detailed review to establish a full inventory of the existing mechanisms related to diversity for each and every ICANN group (including Stakeholder Groups, Constituencies, Regional At-Large Organizations, the Fellowship program, and other ICANN outreach programs). After an initial review of the current documents, it became clear that they do not address the full concerns raised by the wider community on the issue of diversity.
  - Identifying the possible structures that could follow, promote and support the strengthening of diversity within ICANN.
  - Carrying out a detailed working plan on enhancing ICANN diversity as part of Work Stream 2.

- Strengthening commitments to outreach and engagement in order to create a more diverse pool of ICANN participants, so that diversity is better reflected in the overall community and thus more naturally reflected in ICANN structures and leadership positions.

### 13 **Staff Accountability**

14 In general, management and staff work for the benefit of the community and in line with ICANN's purpose and Mission. While it is obvious that they report to and are held accountable by the ICANN Board and the President and CEO, the purpose of their accountability is the same as that of the organization:

- Complying with ICANN's rules and processes.
- Complying with applicable Bylaws.
- Achieving certain levels of performance, as well as security.
- Making their decisions for the benefit of the community and not in the interest of a particular stakeholder or set of stakeholders or ICANN the organization alone.

15 Having reviewed and inventoried the existing mechanisms related to staff accountability, areas for improvement include clarifying expectations from staff, as well as establishing appropriate redress mechanisms. The CCWG-Accountability recommends as part of its Work Stream 2:

- The CCWG-Accountability work with ICANN to develop a document that clearly describes the role of ICANN staff vis-à-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors.
- The CCWG-Accountability work with ICANN to consider a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by staff in relation to their interactions with all stakeholders, establish regular independent (internal and community) surveys and audits to track progress and identify areas that need improvement, and establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the Ombudsman enhancement item of Work Stream 2.

### 16 **Supporting Organizations and Advisory Committee Accountability**

17 As the community's power is enhanced, legitimate concerns have arisen regarding the accountability of the community (organized as SOs and ACs) in using new Community Powers, i.e., "who watches the watcher."

18 The CCWG-Accountability reviewed existing accountability mechanisms for SOs and ACs as well as governance documents (see above). Analysis revealed that mechanisms are limited in quantity and scope. Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that current mechanisms need to be enhanced in light of the new responsibilities associated with the Empowered Community.

19 The CCWG-Accountability recommends the following.

20 **As part of Work Stream 1:**

- Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews performed on a regular basis. These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, and Regional At-Large Organizations, etc.
- This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently states: “The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (1) whether that organization has a continuing purpose in the ICANN structure, and (2) if so, whether any change in structure or operations is desirable to improve its effectiveness.”

21 **As part of Work Stream 2:**

- Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
- Evaluate the proposed “Mutual Accountability Roundtable” to assess viability and, if viable, undertake the necessary actions to implement it.
- Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.
- Assess whether the IRP would also be applicable to SO and AC activities.

22 **Transparency**

23 Transparency is considered quintessential to the viability of community empowerment and its associated legal framework. As such, the CCWG-Accountability recommends reviewing the following to ensure appropriate safeguards are in place:

- Improving ICANN’s transparency with a focus on:
  - Enhancements to ICANN’s existing DIDP: The CCWG-Accountability sets an objective to review and update ICANN’s DIDP within two years, with the goal of justifying denials with a specific harm and limiting the scope of non-disclosure.
  - ICANN’s interactions with governments: The CCWG-Accountability is considering if ICANN should be required to compile and publicly post a quarterly report providing: the names of individuals acting on ICANN’s behalf who have been in contact with a government official; the names and titles of such government officials; and the date, nature, and purpose of those government contacts. In addition, it considers that a line item accounting of the amount ICANN spent on government engagement activities should be reported.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.

## Human Rights

24 To ensure that adding the proposed Human Rights Bylaw provision into the ICANN Bylaws does not lead to an expansion of ICANN's Mission or scope, the CCWG-Accountability will develop a Framework of Interpretation for Human Rights (FOI-HR) as a consensus recommendation in Work Stream 2 to be approved by the ICANN Board using the same process and criteria as for Work Stream 1 recommendations, and the Bylaw provision will not enter into force before the FOI-HR is in place. The CCWG-Accountability will consider the following as it develops the FOI-HR:

- Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.
- Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
- Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.
- Consider what effect, if any, this Bylaw would have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC).
- Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out.
- Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

## 25 **Jurisdiction**

26 Jurisdiction directly influences the way ICANN's accountability processes are structured and operationalized. The fact that ICANN is incorporated under the laws of the U.S. State of California grants the corporation certain rights and implies the existence of certain accountability mechanisms. It also imposes some limits with respect to the accountability mechanisms it can adopt.

27 The topic of jurisdiction is, as a consequence, very relevant for the CCWG-Accountability. ICANN is a nonprofit public benefit corporation incorporated in California and subject to applicable California state laws, applicable U.S. federal laws and both state and federal court jurisdiction. ICANN is subject to a provision in paragraph eight<sup>1</sup> of the Affirmation of Commitments, signed in 2009 between ICANN and the U.S. Government.

28 ICANN's Bylaws (Article XVIII) also state that its principal offices shall be in California.

29 The CCWG-Accountability has acknowledged that jurisdiction is a multi-layered issue and has identified the following "layers":

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<sup>1</sup> 8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) **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**; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.

- Place and jurisdiction of incorporation and operations, including governance of internal affairs, tax system, human resources, etc.
- Jurisdiction of places of physical presence.
- Governing law for contracts with registrars and registries and the ability to sue and be sued in a specific jurisdiction about contractual relationships.
- Ability to sue and be sued in a specific jurisdiction for action or inaction of staff and for redress and review of Board action or inaction, including as relates to IRP outcomes and other accountability and transparency issues, including the Affirmation of Commitments.
- Relationships with the national jurisdictions for particular domestic issues (ccTLDs managers, protected names either for international institutions or country and other geographic names, national security, etc.), privacy, freedom of expression.
- Meeting NTIA requirements.

30 At this point in the CCWG-Accountability's work, the main issues that need to be investigated within Work Stream 2 relate to the influence that ICANN's existing jurisdiction may have on the actual operation of policies and accountability mechanisms. This refers primarily to the process for the settlement of disputes within ICANN, involving the choice of jurisdiction and of the applicable laws, but not necessarily the location where ICANN is incorporated:

- Consideration of jurisdiction in Work Stream 2 will focus on the settlement of dispute jurisdiction issues and include:
  - Confirming and assessing the gap analysis, clarifying all concerns regarding the multi-layer jurisdiction issue.
  - Identifying potential alternatives and benchmarking their ability to match all CCWG-Accountability requirements using the current framework.
  - Consider potential Work Stream 2 recommendations based on the conclusions of this analysis.

31 A specific Subgroup of the CCWG-Accountability will be formed to undertake this work.

## 32 **Considering Enhancements to the Ombudsman's Role and Function**

33 Through the enhanced Request for Reconsideration process (see Recommendation #8: Improving ICANN's Request for Reconsideration Process), the CCWG-Accountability has given increased responsibility to the Ombudsman.

34 The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN's Office of Ombudsman must have a clear charter that reflects, supports, and respects ICANN's Mission, Commitments and Core Values, and must have sufficient authority and independence to ensure that it can perform these important roles effectively. As part of Work Stream 2, the CCWG-Accountability will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.

## 35 **Interim Bylaw**

- 36 The CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. The Interim Bylaw would task the group with creating further enhancements to ICANN's accountability related to the Work Stream 2 list of issues, according to process and procedures similar to those of Work Stream 1: openness to all participants, transparency of deliberations, public comment inputs.
- 37 This Interim Bylaw must be incorporated in the ICANN Bylaws as part of Work Stream 1, prior to the IANA Stewardship Transition. This Interim Bylaw has been proposed to address concerns that after the IANA Stewardship Transition, an absence of incentives may lead to the ICANN Board dismissing the CCWG-Accountability's proposed Work Stream 2 recommendations. However, in a [letter](#) dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.
- 38 Enshrining the commitment to Work Stream 2 as an Interim (transitional) Bylaw provides stronger guarantees compared to an approach that would rely on a Board resolution. A Board resolution could indeed be changed by the Board itself at any time, and the composition of the Board changes over time. Also, enshrining the process and conditions within a Bylaw (even if it is a transitional provision) triggers the ability for IRP challenge if the CCWG-Accountability or the Board did not comply with the process or conditions described in the Bylaw.
- 39 The language of this Interim Bylaw provision should provide that the CCWG-Accountability Work Stream 2 recommendations, when supported by full consensus or consensus as described in the CCWG-Accountability Charter, and endorsed by the Chartering Organizations, be considered in a similar status to Work Stream 1 recommendations. The ICANN Board's actions or inaction would be subject to challenge through enhanced Request for Reconsideration and Independent Review Processes.
- 40 The Interim Bylaw would be consistent with the language described in the CCWG-Accountability Charter, and explicitly mention the NTIA criteria as a reference for the recommendations, as well as the requirement that recommendations are based on consensus.
- 41 The Bylaw would also describe the process outlined in the ICANN Board's resolution of 16 October 2014 (see <https://www.ICANN.org/resources/board-material/resolutions-2014-10-16-en#2.d>), such as:
- The requirement for Work Stream 2 recommendations to be consensus recommendations, endorsed by the Chartering Organizations.
  - The requirement to initiate a specific dialogue in case the Board believes it is not in the global public interest to implement a recommendation, as well as the description of the steps of this dialogue.
  - The requirement of a 2/3 majority of the Board to determine that implementing a recommendation is not in the global public interest.

## 42 **Timeline**

- 43 The initial plan includes the following key milestones:
- March 2016 (ICANN55): Definition of scope of work and organization into subgroups.

- March 2016 to end of June 2016: Drafting of Proposals by Subgroup, under supervision by CCWG-Accountability.
- June 2016 till early October 2016: 40-day Public Comment Period, including discussions during ICANN56 and/or ICANN57.
- October – mid-January 2017: Refinement of Proposals by Subgroups, under supervision of the CCWG-Accountability or other CCWG as appropriate.
- Mid-January – March 2017: Second 40-day Public Comment Period, including discussions during ICANN58.
- By end of June 2017: Finalize Proposals and deliver to Chartering Organizations.
- Obtain approval and deliver Proposals to ICANN Board at ICANN59.

#### **4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Interim Bylaws clarifications to address Board’s concerns by highlighting that Work Stream 2 will be following similar rules as Work Stream 1: consensus recommendations, endorsement by Chartering Organizations, ability for the Board to engage in special dialogue, 2/3 threshold for such Board decision, etc.
- Edits to the documents will include focus on fact that Work Stream 2 deliberations will be open to all (similar to Work Stream 1).
- List of Work Stream 2 items is “limited to” instead of “related to.” A note is added that clarifies that further items beyond this list can be accommodated through regular review cycles, or specific CCWG-Accountability.
- Timeframe discussion: target dates are needed, but hard deadlines would not be appropriate or helpful.
- Agreed to incorporate Public Experts Group (PEG) Advisor input to strengthen the diversity requirement.
- Enhancing the Ombudsman role and function is confirmed as a Work Stream 2 item.
- Re-inserted staff accountability requirement.

#### **5. Stress Tests Related to this Recommendation**

- ST1
- ST2
- ST11



## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 44 **Support and enhance the multistakeholder model.**

- In-depth review of diversity and SO and AC accountability is planned for Work Stream 2.
  - Addition of an Interim Bylaw will secure Work Stream 2 towards enhancing the general accountability framework.
- 

### 45 **Maintain the security, stability and resiliency of the Internet DNS.**

- Accountability of SO and AC structures and their components will help ensure that one entity cannot singlehandedly change or block a process.
  - Addressing the question of applicable law for contracts and dispute settlements.
- 

### 46 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Analysis of transparency will help contribute to ensuring that visibility is given into operations of ICANN.
  - Development of a Framework of Interpretation for Human Rights Bylaw will help maintain limited scope of ICANN's Mission.
- 

### 47 **Maintain the openness of the Internet.**

- Consolidating, enhancing diversity and SO and AC accountability.
- 

### 48 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution**

- Transparency of interactions with governments is flagged as a topic to explore further.
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# Annex 13 – CWG-Stewardship Requirements of the CCWG-Accountability

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## 1. Summary and References to the CCWG-Accountability Proposal

- 01 The CCWG-Accountability Work Stream 1 recommendations address each of the CWG-Stewardship dependencies as follows:
- 02 The ability for the community to approve or veto the ICANN or IANA budget after it has been approved by the ICANN Board but before it comes into effect.  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 03 The ability for the community to appoint and remove ICANN Board Directors and to recall the entire ICANN Board.  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 04 The ability for the community to review and approve ICANN Board decisions with respect to recommendations resulting from an IANA Function Review (IFR) or Special IANA Function Review (Special IFR).  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 05 The ability for the community to approve amendments to ICANN's Fundamental Bylaws.  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 06 The creation of an IFR that is empowered to conduct periodic and special reviews of the IANA functions. IFR and Special IFR Reviews will be incorporated into the Affirmation of Commitments-mandated reviews set forth in the ICANN Bylaws.
- 07 See Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws.
- 08 The creation of a Customer Standing Committee (CSC) that is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the

Country Code Names Supporting Organization (ccNSO) and Generic Names Supporting Organization (GNSO). The ccNSO and GNSO should be empowered to address matters escalated by the CSC.

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

- 09 The empowerment of the Special IFR Review to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group (SCCWG) be established to review the identified issues and make recommendations.

See Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws.

- 10 An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions.

See Recommendation #7: Strengthening ICANN's Independent Review Process.

- 11 All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws.

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

- 12 Governance provisions related to PTI are to be incorporated into the ICANN Bylaws as Fundamental Bylaws.

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

## 2. Recommendations from the CWG-Stewardship Final Report

- 13 The CWG-Stewardship Final Proposal can be found at: <https://community.icann.org/x/aJ00Aw> (Section III.A.i. Proposed Post-Transition Structure).

- 14 The CWG-Stewardship proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) as described below. The co-chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations, if implemented as envisaged, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG-Accountability.

- 15 If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this CWG-Stewardship proposal will require revision. Specifically, the proposed legal structure and overall CWG-Stewardship proposal requires ICANN accountability in the following respects:

- 16 1. ICANN Budget and IANA Budget.

17 The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The CWG-Stewardship recommends that the IFO's comprehensive costs should be transparent and ICANN's operating plans and budget should include itemization of all IANA operations costs to the project level and below as needed. An itemization of IANA costs would include "Direct Costs for the IANA department", "Direct Costs for Shared resources" and "Support functions allocation". Furthermore, these costs should be itemized into more specific costs related to each specific function to the project level and below as needed. PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis. PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget. The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.

## 18 2. Community Empowerment Mechanisms

19 The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:

- a. The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;
- b. The ability to exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (i) ICANN Board decisions with respect to recommendations resulting from an IANA Function Review or Special IANA Function Review and (ii) the ICANN budget; and
- c. The ability to approve amendments to ICANN's "Fundamental Bylaws," as described below.

## 20 3. IANA Function Review

21 The creation of an IANA Function Review that is empowered to conduct periodic and special reviews of the IANA functions. IANA Function Reviews and Special IANA Function Reviews will be incorporated into the Affirmation of Commitments mandated reviews set forth in the ICANN Bylaws.

## 22 4. Customer Standing Committee

23 The creation of a Customer Standing Committee that is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the Country Code Names Supporting Organization and Generic Names Supporting Organization. The Country Code Names Supporting Organization and Generic Names Supporting Organization should be empowered to address matters escalated by the Customer Standing Committee.

## 24 5. Separation Process

- 25 The empowerment of the Special IANA Function Review to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group be established to review the identified issues and make recommendations.
- 26 **6. Appeals mechanism**
- 27 An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by Country Code Names Supporting Organization or Generic Names Supporting Organization after escalation by the Customer Standing Committee will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to country code top-level domains delegation and re-delegation, which mechanism is to be developed by the country code top-level domains community post-transition.
- 28 **7. Fundamental Bylaws**
- 29 All of the foregoing mechanisms are to be provided for in the ICANN bylaws as “Fundamental Bylaws.” A “Fundamental Bylaw” may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote).
- 30 **8. Post-Transition IANA (PTI)**
- 31 The CWG-Stewardship Final Proposal contemplates the formation of a PTI as a new legal entity. PTI will have ICANN as its sole member and PTI will therefore be a controlled affiliate of ICANN. As a result, the ICANN Bylaws will need to include governance provisions related to PTI, in particular as it relates to ICANN’s role as the sole member of PTI.

# Annex 14 – Meeting NTIA’s Criteria for the IANA Stewardship Transition

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- 1 On March 14, 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition stewardship of key Internet Domain Name System functions to the global multistakeholder community. NTIA also asked ICANN to convene an inclusive, global discussion that involved the full range of stakeholders to collectively develop a proposal for the transition.
- 2 To guide this global discussion, NTIA provided ICANN with a clear framework for the transition proposal. The CCWG-Accountability has outlined how its Work Stream 1 Recommendations to enhance ICANN’s accountability meet these requirements below:
- 3 **Support and enhance the multistakeholder model**
  - Decentralizing power within ICANN through an Empowered Community.
  - Solidifying consultation processes between the ICANN Board and Empowered Community into the ICANN Bylaws.
  - Establishing a Community Forum, in which all are welcome to participate, to ensure that all voices and perspectives are heard before execution of a Community Power.
  - Decision-making based on consensus.
  - Enhancing ICANN’s appeals mechanisms and binding arbitration processes to be more accessible and transparent.
  - Protecting representation of global public interest by engraving it into ICANN’s Mission, Commitments and Core Values; now considered a “Fundamental Bylaw.”
  - Ensuring that ICANN Board Directors can be held accountable to the Empowered Community through recall mechanisms.

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- 4 **Maintain the security, stability, and resiliency of the Internet DNS**
  - Accountability measures do not affect any operational activities of ICANN which could directly or indirectly affect the security, stability, and resiliency of the Internet DNS.
  - Maintain ICANN’s Bylaws commitment to the security, stability, and resiliency of the Internet DNS.
  - Binding IRP that allows users or the Empowered Community to challenge ICANN if it is not operating as per its Mission and Bylaws.
  - Revising ICANN’s Mission, Commitments and Core Values to prevent “mission creep” or expansion of the Mission beyond its original goals.
  - Implementing Fundamental Bylaws that require a higher threshold for approval by the Board.

- Accountability measures that require Empowered Community approval of changes to Fundamental Bylaws.
  - Accountability measures that allow the Empowered Community to reject Standard Bylaws changes that could affect security, stability, and resiliency of the Internet DNS.
  - Accountability measures which allow the Empowered Community to reject budgets and strategic/operating plans which could affect security, stability, and resiliency of the Internet while ensuring the protection of the Post-Transition IANA Functions Budget and the availability of a caretaker budget for ICANN activities.
  - Accountability measures which allow the Empowered Community to remove the Board if its actions threaten the security, stability, and resiliency of the Internet.
  - Bylaws changes which can require the review of Post-Transition IANA operations.
  - Bylaws changes which provide for the separation of Post-Transition IANA and the reallocation of IANA functions if the actions or inactions of Post-Transition IANA are threatening the security, stability, and resiliency of the Internet.
  - Accountability measures that allow the Empowered Community to force ICANN to accept IANA Function Review recommendations and the separation of Post-Transition IANA.
  - Reviews which will ensure the components of the community effectively represent the views of their stakeholders.
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5 **Meet the needs and expectation of the global customers and partners of the IANA services**

- Accountability recommendations implement all the requirements of the CWG-Stewardship.
  - Accountability recommendations do not affect ICANN’s day-to-day operational or policy development processes.
  - Accountability requirements allow for multiple paths to resolve issues before using Community Powers.
  - Legally enforceable powers.
  - Revising ICANN’s Mission, Commitments and Core Values to prevent “mission creep” or expansion of the mission beyond its original goals.
  - Adoption of stronger commitments to respect Human Rights by ICANN.
  - Effective accountability powers which are open to all parts of the community and require action by the Empowered Community.
  - Appeals mechanisms to be reviewed and improved. The Independent Review Process is strengthened by binding ICANN to IRP outcomes and by being more accessible to the community. The CCWG-Accountability also makes recommendations to have a more effective and transparent Reconsideration process.
  - Maintaining Bylaw Article XVIII, which states that ICANN has its principal office in Los Angeles, California, USA.
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6 Maintain the openness of the Internet

- Executing “stress tests” to assess the sufficiency of existing and proposed accountability mechanisms available to the ICANN community against plausible and problematic scenarios.
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.
- Establishing later commitments to:
  - Improving the accountability of ICANN’s Supporting Organizations and Advisory Committees.
  - Reviewing and updating ICANN’s Documentary Information Disclosure and Whistleblower policies.
  - Enhancing ICANN’s diversity standards.
  - Improving staff accountability.
- Reinforcing ICANN’s commitment to respect Human Rights in the ICANN Bylaws.
- Preserving policies of open participation in ICANN’s Supporting Organizations and Advisory Committees.

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7 NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board’s implementation of GAC consensus advice. This “carve out”, combined with the safeguards in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18), leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.
  - Enabling all interested stakeholders to join consultations through SOs and ACs or through the Community Forum.
  - Establishing a later commitment to investigating options for increasing the transparency of ICANN’s relationships with governments.
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# Annex 15 – Stress Testing

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## 1. Overview

- 1 An essential part of the CCWG-Accountability Charter calls for stress testing to evaluate proposed accountability enhancements.
- 2 ‘Stress Testing’ is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. In the financial industry for example ‘stress testing’ is routinely run to evaluate the strength of institutions.
- 3 The CCWG-Accountability Charter calls for stress testing of accountability enhancements in Work Streams 1 and 2. Among the deliverables listed in the charter is the following:

*Identification of contingencies to be considered in the stress tests: Review of possible solutions for each Work Stream including stress tests against identified contingencies.*

- 4 The purpose of the stress tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.
- 5 **The CCWG-Accountability ran a total of 37 Stress Test scenarios.**

## 2. Purpose and Methodology

### 6 **Methodology**

- 7 The CCWG-Accountability considered the following methodology for stress tests:
  - Analyze potential weaknesses and risks.
  - Analyze existing accountability mechanisms and their robustness.
  - Analyze additions and modifications to accountability mechanisms.
  - Describe how the proposed accountability measures would mitigate the risk of contingencies and enable the community to challenge ICANN actions taken in response to the contingencies.
- 8 The CCWG-Accountability Stress Test Work Party documented contingencies identified in prior public comment rounds. The Stress Test Work Party then prepared a draft document showing how these stress tests are useful in evaluating existing and proposed accountability measures.
- 9 The exercise of applying stress tests identified changes to the current ICANN Articles of Incorporation and Bylaws that might be necessary to enable the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

### 10 **Purpose**

- 11 The purpose of the stress tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.
- 12 The CCWG-Accountability Charter does not ask that probability estimates be assigned for contingencies. Probabilities are not needed to determine whether the community has adequate means to challenge ICANN's reactions to the contingency.
- 13 In its initial phases of work, the CCWG-Accountability gathered an [inventory](#) of contingencies identified in prior public comments. The Work Team responsible for this then consolidated the inventory into five 'stress test categories' as listed below, and prepared draft documents showing how these stress tests are useful to evaluate ICANN's existing, and CCWG-Accountability's proposed, accountability measures.

### 3. Stress Test Categories

#### 14 **I. Financial Crisis or Insolvency (Stress Tests #5, 6, 7, 8 and 9)**

- 15 **Scenario:** ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the Domain Name industry, or the general global economy. It could also result from a legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes Domain Name registrations obsolete.

#### 16 **II. Failure To Meet Operational Expectations (#1, 2, 11, 17, and 21)**

- 17 **Scenario:** ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation despite objections of stakeholders, such as those defined as '[Significantly Interested Parties](#)'.

#### 18 **III. Legal/Legislative Action (#3, 4, 19 and 20)**

- 19 **Scenario:** ICANN is the subject of litigation under existing or future policies, legislation, or regulation. ICANN attempts to delegate a new TLD, or re-delegate a non-compliant existing TLD, but is blocked by legal action.

#### 20 **IV. Failure Of Accountability (#10, 12, 13, 16, 18, 22, 23, 24 and 26)**

- 21 **Scenario:** Actions (or expenditure of resources) by one or more ICANN Board Directors, the President and CEO, or other Staff, are contrary to ICANN's Mission or Bylaws. ICANN is "captured" by one stakeholder segment, including governments via the GAC, which either is able to drive its agenda on all other stakeholders, or abuse accountability mechanisms to prevent all other stakeholders from advancing their interests (veto).

#### 22 **V. Failure Of Accountability To External Stakeholders (#14, 15 and 25)**

- 23 **Scenario:** ICANN modifies its structure to avoid obligations to external stakeholders, such as terminating the Affirmation of Commitments, terminating its presence in a jurisdiction where it faces legal action, or moving contracts or contracting entities to a favorable jurisdiction. ICANN delegates, subcontracts or otherwise, abdicates its obligations to a third party in a manner that is

inconsistent with its Bylaws or otherwise not subject to accountability. ICANN merges with or is acquired by an unaccountable third party.

#### 24 **Stress Tests Suggested by NTIA**

25 The CCWG-Accountability added four stress test items that were suggested by NTIA in Secretary Larry Strickling's [statement](#) issued on 16 June 2015:

- **NTIA-1:** Test preservation of the multistakeholder model if individual ICANN Supporting Organizations and/or Advisory Committees choose not to be Decisional Participants in the Empowered Community.
- **NTIA-2:** Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in a Supporting Organization and/or Advisory Committee.
- **NTIA-3:** Barriers to entry for new participants.
- **NTIA-4:** Unintended consequences of “operationalizing” groups that to date have been advisory in nature (e.g. Governmental Advisory Committee).

#### 26 **Stress Tests Related to Transition of the IANA Naming Functions Contract**

27 Note that several stress tests can specifically apply to the work of the CWG-Stewardship regarding transition of the IANA naming functions contract (see Stress Tests #1 & 2, 11, 17, 19, 20, 21, 25).

28 Across all of the Stress Test categories, this exercise demonstrates that CCWG-Accountability's Work Stream 1 recommendations significantly enhance the community's ability to hold the ICANN's Board and management accountable, relative to present accountability measures. For Stress Tests that explore risks of “capture” of an Advisory Committee or Supporting Organization, the proposed Community Powers preserve the ability for aggrieved parties to challenge and block ICANN actions based on inappropriate Advisory Committee or Supporting Organization behavior.

#### 29 **Stress Test #21 to be addressed by ccNSO**

30 Stress Test #21, regarding appeals of country code top-level domains revocations and assignments, has not been adequately addressed in either the CWG-Stewardship or CCWG-Accountability proposals. Instead, the Country Code Naming Related Functions is undertaking policy development work pursuant to the Framework of Interpretation approved in 2014.

## 4. Outcomes of Stress Testing

31 The following section gives a short overview of the stress test scenarios and outlines whether existing accountability measures and proposed accountability measures are adequate to mitigate the potential risks and enable the community to challenge ICANN actions taken in response to the scenarios.



## Stress test category I: Financial Crisis or Insolvency

<p>32 <b>Stress Test #5:</b> Domain industry financial crisis.</p> <p>33 <b>Stress Test #6:</b> General financial crisis.</p> <p>34 <b>Stress Test #7:</b> Litigation arising from private contract, e.g., breach of contract.</p> <p>35 <b>Stress Test #8:</b> Technology competing with DNS.</p>	
<p>36 <b>Consequence(s):</b> Significant reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN’s ability to operate; loss affecting reserves sufficient to threaten business continuity.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>37 ICANN could propose revenue increases or spending cuts, but these decisions are not subject to challenge by the ICANN community.</p> <p>38 The community has input in ICANN’s budgeting and the Strategic Plan.</p> <p>39 Registrars must approve ICANN’s variable registrar fees. If not, registry operators pay the fees.</p> <p>40 ICANN’s reserve fund could support operations in a period of reduced revenue. The reserve fund is independently reviewed periodically.</p>	<p>41 One proposed measure would empower the community to veto ICANN’s proposed operating plan and annual budget. This measure enables the community to block a proposal by ICANN to increase its revenues by adding fees on registrars, registries, and/or registrants.</p> <p>42 Another proposed measure is community challenge to a Board decision using a reconsideration request and/or referral to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a revenue or expenditure decision, the new IRP could reverse that decision.</p>
<p><b>CONCLUSIONS:</b></p> <p>43 Existing measures would be adequate, unless the revenue loss was extreme and sustained.</p>	<p>44 Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.</p>

45 <b>Stress Test #9:</b> Major corruption or fraud.	
46 <b>Consequence(s):</b> Major impact on corporate reputation, significant litigation and loss of reserves.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>47 ICANN has an annual independent audit that includes testing of internal controls designed to prevent fraud and corruption.</p> <p>48 ICANN maintains an anonymous hotline for employees to report suspected fraud.</p> <p>49 ICANN Board can dismiss the CEO and/or executives responsible.</p> <p>50 The community has no ability to force the Board to report or take action against suspected corruption or fraud.</p>	<p>51 One proposed measure is to empower the community to force ICANN's Board to consider a recommendation from an Accountability and Transparency Review Team (ATRT). An ATRT could make recommendations to avoid conflicts of interest. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>52 Another proposed measure would empower the community to veto ICANN's proposed annual budget. This measure enables blocking a budget proposal that is tainted by corruption or fraud.</p> <p>53 If ICANN's Board were involved, or if the Board did not act decisively in preventing corruption or fraud (e.g., by enforcing internal controls or policies), a proposed measure empowers the community to remove individual directors or recall the entire Board.</p>
<p><b>CONCLUSIONS:</b></p> <p>54 Existing measures would not be adequate if litigation costs or losses were extreme and sustained.</p>	<p>55 Proposed measures are helpful, but might not be adequate if litigation costs and losses were extreme and sustained.</p>

## 7.6 Stress test category II: Failure to Meet Operational Expectations

56	<b>Stress Test #1:</b> Change authority for the root zone ceases to function, in part or in whole.		
57	<b>Stress Test #2:</b> Delegation authority for the root zone ceases to function, in part or in whole.		
58	<b>Consequence(s):</b> Interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.		
EXISTING ACCOUNTABILITY MEASURES		PROPOSED ACCOUNTABILITY MEASURES	
59	Under the present IANA functions contract, NTIA can revoke ICANN's authority to perform IANA functions and re-assign this role to different entity/entities.	61	The CWG-Stewardship proposal includes various escalation procedures to prevent degradation of service, as well as a framework (operational) for the transition of the IANA function.
60	After NTIA relinquishes the IANA functions contract, this measure will no longer be available.	62	The CWG-Stewardship proposes that IANA naming functions be legally transferred to a new Post-Transition IANA entity (PTI) that would be an affiliate controlled by ICANN.
		63	The CWG-Stewardship proposes a multistakeholder IANA Function Review (IFR) to conduct reviews of PTI. Results of IFR are not prescribed or restricted and could include recommendations to initiate a separation process which could result in termination or non-renewal of the IANA Functions Contract with PTI, among other actions.
		64	The CWG-Stewardship proposes the ability for the multistakeholder community to require, if necessary and after other escalation mechanisms and methods have been exhausted, the selection of a new operator for the IANA functions.
		65	Suggestions for Work Stream 2: Require annual external security audits and publication of results, and require certification per international standards (ISO 27001) and publication of results.



<p><b>CONCLUSIONS:</b></p> <p>66 Existing measures would be inadequate after NTIA terminates the IANA contract.</p>	<p>67 Proposed measures are, in combination, adequate to mitigate this contingency.</p>
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68 <b>Stress Test #11:</b> Compromise of credentials.	
69 <b>Consequence(s):</b> Major impact on corporate reputation, significant loss of authentication and/or authorization capacities.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>70 Regarding compromise of internal systems:</p> <p>71 Based upon experience of the recent security breach, it is not apparent how the community holds ICANN management accountable for implementation of adopted security procedures.</p> <p>72 It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report.</p> <p>73 Regarding DNS security:</p> <p>74 Beyond operating procedures, there are credentials employed in DNSSEC.</p> <p>75 ICANN annually seeks SysTrust Certification for its role as the Root Zone KSK manager.</p> <p>76 The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities.</p> <p>77 Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.</p>	<p>78 Regarding compromise of internal systems:</p> <p>79 The proposed IRP measure could challenge ICANN's Board or management for any action or inaction that conflicts with Bylaws. An IRP challenge might therefore be able to force ICANN to conduct an after-action report and disclose it to the community.</p> <p>80 Through the IRP measure, the community might also be able to force ICANN management to execute its stated security procedures for employees and contractors.</p> <p>81 Regarding DNS security:</p> <p>82 One proposed measure empowers the community to force ICANN's Board to consider a recommendation arising from an Affirmation of Commitments Review such as Security Stability and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>83 A proposed Bylaws change would require ICANN's Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could challenge that Board decision with an IRP.</p> <p>84 Suggestions for Work Stream 2:</p> <p>85 · Require annual external security audits and publication of results.</p> <p>86 · Require certification per standards (ISO 27001) and publication of results.</p>
CONCLUSIONS:	
87 Existing measures would not be adequate.	88 Proposed measures, in combination, would

	be helpful to mitigate effects of this scenario. Work Stream 2 suggestions could add risk prevention measures.
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89 **Stress Test #17:** ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by the technical community or other stakeholder groups.

90 **Consequence(s):** DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
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<p>91 In 2013-14, the community demonstrated that it could eventually prod ICANN management to attend to risks identified by SSAC. For example: dotless domains (SAC 053); security certificates and name collisions such as .mail and .home (SAC 057)</p> <p>92 NTIA presently gives clerical approval for each delegation to indicate that ICANN has followed its processes. NTIA could delay a delegation if it finds that ICANN has not followed its processes. It is not clear if that would/could have been a finding if ICANN attempted to delegate a new TLD such as .mail or .home.</p>	<p>93 One proposed measure is to empower the community to force ICANN’s Board to consider recommendations from an Affirmation of Commitments Review such as a Review of Security, Stability, and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>94 A proposed Bylaws change would require ICANN Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could challenge that Board decision with an IRP.</p>
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<p><b>CONCLUSIONS:</b></p> <p>95 Existing measures were adequate to mitigate the risks of this scenario.</p>	<p>96 Proposed measures enhance community’s power to mitigate the risks of this scenario.</p>
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<p>97 <b>Stress Test #21:</b> A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager.</p> <p>98 However, the IANA functions manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a designated manager.</p> <p>99 But the IANA functions manager does not document that: significantly interested parties agree; that other stakeholders had a voice in selection; the designated manager has demonstrated required capabilities; there are not objections of many significantly interested parties.</p> <p>100 This stress test examines the community’s ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place.</p>	<p>101 <b>Consequence(s):</b> Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.</p>
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>102 Under the present IANA contract with NTIA, the IANA Department issues a boiler-plate report to the ICANN Board, which approves this on the Consent Agenda and forwards to NTIA, which relies on the Board’s certification and approves the revocation, delegation or transfer.</p> <p>103 There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN’s certification that process was followed properly.</p> <p>104 See GAC Principles for delegation and administration of ccTLDs. GAC Advice published in 2000 and updated in 2005 specifically referenced to Sections 1.2 &amp; 7.1.</p> <p>105 See Framework of Interpretation, 20-Oct-2014.</p>	<p>106 From the CWG-Stewardship final proposal: “CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and re-delegations in the IANA Stewardship Transition proposal.”</p> <p>107 From CWG-Stewardship co-chair correspondence on 15-Apr-2015: “As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes.”</p> <p>108 Regarding CCWG-Accountability proposed measures:</p> <p>109 One proposed CCWG-Accountability measure could give the community standing to request Reconsideration of management’s decision to certify the ccTLD change. Would require a standard of review that is more specific than amended ICANN Mission, Commitments and Core Values.</p> <p>110 Another proposed CCWG-Accountability mechanism is community challenge to a Board decision, referring it to an Independent Review Panel (IRP) with the</p>

	<p>power to issue a binding decision. If ICANN took action to revoke or assign management responsibility for a ccTLD, the IRP mechanism might be enabled to review that decision. Would require a standard of review.</p>
<p><b>CONCLUSIONS:</b>                  111 Existing measures would not be adequate.</p>	<p>112 Proposed measures do not adequately empower the community to address this scenario. ccNSO is developing policy pursuant to the Framework of Interpretation.</p>

## 7.7 Stress test category III: Legal/Legislative Action

113 <b>Stress Test #3:</b> Litigation arising from existing public policy, e.g., antitrust suit. In response, ICANN Board would decide whether to litigate, concede, settle, etc.	
114 <b>Consequence(s):</b> Significant interference with existing policies and/or policy development relating to relevant activities.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>115 The community could develop new policies that respond to litigation challenges.</p> <p>116 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use the IRP.</p> <p>117 Reconsideration looks at process but not the substance of a decision.</p> <p>118 ICANN must follow orders from courts of competent jurisdiction.</p>	<p>119 After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:</p> <p>120 The community could develop new policies that respond to litigation challenges.</p> <p>121 Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws (including Mission, Commitments and Core Values) and ICANN's established policies.</p> <p>122 However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator.</p> <p>123 Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.</p> <p>124 An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p>
CONCLUSIONS:	
125 Existing measures are inadequate.	126 Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.



<p>127 <b>Stress Test #4:</b> New regulations or legislation.</p> <p>128 For example, a government could cite anti-trust or consumer protection laws and find unlawful some rules that ICANN imposes on TLDs. That government could impose fines on ICANN, withdraw from the GAC, and/or force ISPS to use a different root, thereby fragmenting the Internet.</p> <p>129 In response, ICANN’s Board would decide whether to litigate, concede, settle, etc.</p>	
<p>130 <b>Consequence(s):</b> Significant interference with existing policies and/or policy development relating to relevant activities.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>131 The community could develop new policies that respond to new regulations.</p> <p>132 An ICANN Board decision on how to respond to the regulation (litigate or change policy/implementation) could not be challenged by the community at-large, which lacks standing to use the IRP.</p> <p>133 Reconsideration looks at the process but not the substance of a decision.</p> <p>134 ICANN must follow orders from courts of competent jurisdiction.</p>	<p>135 After ICANN’s Board responded to the regulation (litigate or change policy/implementation), the community would have several response options:</p> <p>136 The community could develop new policies that respond to the regulation.</p> <p>137 Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN’s established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.</p> <p>138 An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p>
CONCLUSIONS:	
<p>139 Existing measures are inadequate.</p>	<p>140 Proposed measures would be an improvement but might still be inadequate.</p>



<p>141 <b>Stress Test #19:</b> ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.</p> <p>142 In response, the ICANN Board would decide whether to litigate, concede, settle, etc.</p>	
<p>143 <b>Consequence(s):</b> The entity charged with root zone maintenance could face the question of whether to follow ICANN's re-delegation request or to follow the court order.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>144 Under the present agreement with NTIA, the entity performing root zone maintenance is protected from lawsuits since it is publishing the root per a contract with the US Government.</p> <p>145 However, the IANA Stewardship Transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits.</p> <p>146 A separate consideration:</p> <p>147 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.</p> <p>148 Reconsideration looks at the process but not the substance of a decision.</p> <p>149 ICANN must follow orders from courts of competent jurisdiction.</p>	<p>150 ICANN could indemnify the root zone maintainer against liability, so long as the RZM was performing under the scope of contract and not in breach.</p> <p>151 While it would not protect the root zone maintainer from lawsuits, one proposed mechanism is community challenge of ICANN decision to re-delegate. This challenge would take the form of a Reconsideration or IRP. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.</p> <p>152 After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the decision could be challenged via Reconsideration or IRP, based on the standard of review in the Bylaws. However, it is highly unlikely that the community could cause ICANN to reopen a settlement reached with a third party, or act contrary to a court decision.</p>
CONCLUSIONS:	
<p>153 Existing measures are not adequate.</p>	<p>154 Proposed measures are adequate to allow the community to challenge and reject</p>

	certain decisions of ICANN Board and management.
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<p>155 <b>Stress Test #20:</b> A court order is issued to block ICANN’s delegation of a new TLD, because of a complaint by existing TLD operators or other aggrieved parties.</p> <p>156 For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string.</p> <p>157 In response, the ICANN Board would decide whether to litigate, concede, settle, etc.</p>	
<p>158 <b>Consequence(s):</b> ICANN’s decision about how to respond to court order could bring liability to ICANN and its contract parties.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>159 Before delegation, the community lacked standing to object to string similarity decisions. Reconsideration requests look at the process but not at substance of the decision.</p> <p>160 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use an IRP.</p> <p>161 Reconsideration looks at the process but not the substance of a decision.</p> <p>162 ICANN must follow orders from courts of competent jurisdiction, and may consider such factors as the as cost of litigation and insurance.</p>	<p>163 Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation.</p> <p>164 A future new gTLD Guidebook could give the community standing to file objections.</p> <p>165 Remedial: After the ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:</p> <p>166 One measure would give the community standing to file for Reconsideration or an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN’s established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. The IRP could assess ICANN’s response to the court decision, although it would not alter the court’s decision.</p> <p>167 One proposed measure empowers the community to force ICANN’s Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, Consumer Trust, Choice, and Competition. An ICANN Board decision</p>

	against those recommendations could be challenged with a Reconsideration and/or IRP.
<b>CONCLUSIONS:</b> 168 Existing measures would be inadequate.	169 Proposed measures would be an improvement but might still be inadequate.

## 7.8 Stress test category IV: Failure of Accountability

<p>170 <b>Stress Test #10:</b> Chairman, CEO, or Officer acting in a manner inconsistent with the organization’s mission.</p> <p>171 <b>Stress Test #24:</b> An incoming Chief Executive institutes a “strategic review” that arrives at a new, extended mission for ICANN. Having just hired the new CEO, the Board approves the new mission / strategy without community consensus.</p>	
<p>172 Consequence(s): The community ceases to see ICANN as the community’s mechanism for limited technical functions, and views ICANN as an independent, sui generis entity with its own agenda, not necessarily supported by the community. Ultimately, the community questions why ICANN’s original functions should remain controlled by a body that has acquired a much broader and less widely supported Mission. This creates reputational problems for ICANN that could contribute to capture risks.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>173 As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand its scope too broadly.</p> <p>174 The Community has some input in ICANN budgeting and the Strategic Plan, and could register objections to plans and spending on extending ICANN’s Mission.</p> <p>175 California’s Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California’s Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.</p>	<p>176 One proposed measure empowers the community to veto ICANN’s proposed strategic plan or annual budget. This measure could block a proposal by ICANN to increase its expenditure on extending its Mission beyond what the community supported.</p> <p>177 Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, consistent with the fiduciary duties of the directors. The IRP decision would be based on a standard of review in the amended Mission Statement, including “ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission”.</p>
CONCLUSIONS:	
<p>178 Existing measures are inadequate after NTIA terminates the IANA contract.</p>	<p>179 Proposed measures in combination are adequate.</p>

180 <b>Stress Test #12:</b> Capture of ICANN processes by one or several groups of stakeholders.	
181 <b>Consequence(s):</b> Major impact on trust in multistakeholder model, prejudice to other stakeholders.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>182 Regarding capture by governments, the GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN Bylaws (Article XI, Section 2, item 1j) nonetheless require the Board to try “to find a mutually acceptable solution”.</p> <p>183 The community has no standing to challenge a Board decision to accept GAC advice, thereby allowing GAC to capture some aspects of ICANN policy implementation.</p> <p>184 Regarding internal capture by stakeholders within an AC or SO, see Stress Test 33.</p>	<p>185 CCWG-Accountability proposals for community empowerment rely upon consensus among ACs/SOs, requiring a minimum threshold of support and no more than one AC/SO objecting. These consensus requirements are an effective prevention of capture by one or a few groups.</p> <p>186 Each AC/SO/SG may need improved processes for accountability, transparency, and participation that are helpful to prevent capture from those outside that community. These improvements may be explored in WS2.</p>
CONCLUSIONS:	
187 Existing measures would be inadequate.	188 Proposed measures would be adequate.

189 <b>Stress Test #13:</b> One or several stakeholders excessively rely on accountability mechanism to “paralyze” ICANN.	
190 <b>Consequence(s):</b> Major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>191 Current redress mechanisms might enable one stakeholder to block implementation of policies. But these mechanisms (IRP, Reconsideration, Ombudsman) are expensive and limited in scope of what can be reviewed.</p> <p>192 There are no present mechanisms for a ccTLD operator to challenge a revocation decision.</p>	<p>193 CCWG-Accountability proposals for community empowerment rely upon consensus among ACs/SOs participating in the Empowered Community as Decisional Participants, requiring a minimum threshold of support and no more than one AC/SO objecting. These consensus requirements are an effective prevention of paralysis by one AC/SO.</p> <p>194 Proposed CCWG-Accountability redress mechanisms (Reconsideration and IRP) are more accessible and affordable to individual stakeholders, increasing their ability to block implementation of policies and decisions. However, proposed Reconsideration and IRP enhancements include the ability to dismiss frivolous or abusive claims and to limit the duration of proceedings.</p>
CONCLUSIONS:	
195 Existing measures seem to be adequate.	196 Improved access to Reconsideration and IRP could allow individuals to impede ICANN processes, although this risk is mitigated by dismissal of frivolous or abusive claims.

<p>197 <b>Stress Test #16:</b> ICANN engages in programs not necessary to achieve its limited technical Mission. For example, ICANN uses fee revenue or reserve funds to expand its scope beyond its technical Mission, giving grants for external causes.</p>	
<p>198 <b>Consequence(s):</b> ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>199 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 the IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain the IANA contract with NTIA.</p> <p>200 The community was not aware of the ICANN Board’s secret resolution to initiate negotiations to create NetMundial. There was no apparent way for the community to challenge/reverse this decision.</p> <p>201 The community has input in ICANN budgeting and the Strategic Plan.</p> <p>202 Registrars must approve ICANN’s variable registrar fees, though Registrars do not view this as an accountability measure.</p> <p>203 California’s Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California’s Attorney General could intervene where misuse or mispending of substantial charitable assets is alleged.</p>	<p>204 One proposed measure is empowering the community to veto ICANN’s proposed strategic plan and budget. This measure could block a proposal by ICANN to increase its expenditure on initiatives the community believed were beyond ICANN’s limited Mission. However, the entire ICANN budget would have to be rejected since there is no proposal for line-item veto.</p> <p>205 Another proposed mechanism is a challenge to a Board decision, made by an aggrieved party or the community as a whole. This would refer the matter to an IRP with the power to issue a binding decision. If ICANN made a commitment or expenditure outside the annual budget process, the IRP mechanism enables reversal of that decision.</p> <p>206 Another proposal is to amend ICANN Bylaws to prevent the organization from expanding its scope beyond ICANN’s amended Mission, Commitments and Core Values.</p> <p>207 If ICANN’s Board proposed to amend/remove these Bylaws provisions, another measure would empower the community to veto a proposed Standard Bylaws change. For Fundamental Bylaws or the Articles of Incorporation, the Board would need to adopt changes by a 3/4 supermajority, and the community must approve the changes adopted by the Board before they could become legally effective.</p>
<p><b>CONCLUSIONS:</b></p>	



208 Existing measures are inadequate.	209 Proposed measures in combination may be adequate.
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210 <b>Stress Test #18:</b> Governments in ICANN’s Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board.	
211 <b>Consequence(s):</b> Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve Governmental Advisory Committee advice.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>212 Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for Governmental Advisory Committee advice.</p> <p>213 Today, GAC adopts formal advice according to its Operating Principle 47: “<i>consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</i>”<sup>[1]</sup></p> <p>214 The Governmental Advisory Committee may at any time change its procedures instead of its present consensus rule.</p> <p>215 The requirement to try to find a mutually acceptable solution in the current Bylaws would then apply, not just for Governmental Advisory Committee consensus advice.</p>	<p>216 The proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where Governmental Advisory Committee advice was supported by full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</p> <p>217 The proposed accountability measure recognizes that the decision not to follow GAC consensus advice would require a 60% majority of the ICANN Board.</p> <p>218 The Governmental Advisory Committee can still give ICANN advice at any time, with or without full consensus.</p> <p>219 Recognizing the general principle that an AC should have the autonomy to refine its Operating Procedures, the Governmental Advisory Committee could specify how objections are raised and considered.</p>
CONCLUSIONS:	
220 Existing measures are inadequate.	221 Proposed measures are adequate.

222 **Stress Test #22:** ICANN Board fails to comply with Bylaws and/or refuses to accept the

<sup>1</sup> ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>

decision of a redress mechanism constituted under the Bylaws.	
223 <b>Consequence(s):</b> Community loses confidence in multistakeholder structures to govern ICANN.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>224 As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to ignore Bylaws or an IRP decision. But as a result of the IANA Stewardship Transition, ICANN would no longer need to follow its Bylaws in order to retain the IANA contract with NTIA.</p> <p>225 Aggrieved parties can ask for Reconsideration of Board decisions, but this is currently limited to questions of whether process was followed.</p> <p>226 Aggrieved parties can file an IRP, but decisions of the panel are not binding on ICANN.</p> <p>227 California’s Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California’s Attorney General could intervene where misuse or mispending of substantial charitable assets is alleged.</p>	<p>228 One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged.</p> <p>229 Another proposed measure empowers the community to force ICANN’s Board to consider a recommendation arising from an Affirmation of Commitments Review such as an Accountability and Transparency Review. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>230 One proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to comply with its Articles of Incorporation, Bylaws or policies, the proposed IRP enables a reversal of that decision.</p> <p>231 If the ICANN Board were to ignore binding IRP decisions, the Empowered Community could seek enforcement in any court respecting international arbitration results.</p> <p>232 Another proposed measure empowers the community to recall the entire ICANN Board.</p>
<p><b>CONCLUSIONS:</b></p> <p>233 Existing measures are inadequate.</p>	<p>234 Proposed measures in combination are adequate because the community has power to recall the Board.</p>

<p>235 <b>Stress Test #23:</b> ICANN uses RAA or Registry contracts to impose requirements on third parties, outside the scope of ICANN Mission. (e.g. registrant obligations.)</p> <p>236 Affected third parties, not being contracted to ICANN, have no effective recourse.</p> <p>237 Contracted parties, not affected by the requirements, may choose not to use their ability to</p>
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<p>challenge ICANN’s decision.</p> <p>238 This issue occurs in policy development, implementation, and compliance enforcement.</p>	
<p>239 <b>Consequence(s):</b> ICANN may be seen as a monopoly leveraging power in one market (domain names) into adjacent markets.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>240 During policy development, affected third parties may participate and file comments.</p> <p>241 Affected third parties may file comments on proposed changes to registry and registrar contracts.</p> <p>242 Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies.</p> <p>243 Affected third parties (e.g. registrants and users) have no standing to challenge ICANN’s management and Board on how it has implemented approved policies.</p> <p>244 If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.</p>	<p>245 A proposed measure to empower an aggrieved party (e.g. registrants and users) to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, based on standard for review in the amended Mission, Commitments and Core Values, or in established policies.</p> <p>246 Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision.</p> <p>247 That IRP decision would be based on a standard of review in the amended Mission statement, including “ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission. ”</p>
<b>CONCLUSIONS:</b>	
<p>248 Existing measures are inadequate.</p>	<p>249 Proposed measures would be adequate.</p>

<p>250 <b>Stress Test #26:</b> During implementation of a properly approved policy, ICANN staff substitutes their preferences and creates processes that effectively change or negate the policy developed. Whether staff does so intentionally or unintentionally, the result is the same.</p>	
<p>251 Consequence(s): Staff capture of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>252 The reconsideration review mechanism allows for appeal to the Board of staff actions that contradict established ICANN policies. However, reconsideration looks at the process but not the substance of a decision.</p> <p>253 An ICANN Board decision could not be challenged by the community at-large, which lacks standing to use the IRP.</p>	<p>254 A proposed measure would allow the Empowered Community to challenge a Board decision by reconsideration or referral to an IRP with the power to issue a binding decision. The standard of review would look at the revised ICANN Bylaws, including Core Values requiring "open, transparent and bottom-up, multistakeholder policy development processes".</p>
CONCLUSIONS:	
<p>255 Existing measures are inadequate.</p>	<p>256 Proposed measures would be adequate.</p>

## Stress test category V: Failure of Accountability to External Stakeholders

257 <b>Stress Test #14:</b> ICANN or NTIA chooses to terminate the Affirmation of Commitments.	
258 Consequence(s): ICANN would no longer be held to the Affirmation of Commitments, including the conduct of community reviews and required implementation of review team recommendations.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>259 The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days notice.</p> <p>260 As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>261 But as a result of the IANA Stewardship Transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain the Affirmation of Commitments.</p> <p>262 Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.</p>	<p>263 One proposed mechanism would give the Empowered Community standing to challenge a Board decision by referral to an IRP with the power to issue a binding decision. If ICANN cancelled the Affirmation of Commitments, the IRP could enable reversal of that decision.</p> <p>264 Another proposed measure is to import Affirmation of Commitments provisions into the ICANN Bylaws, and dispense with the bilateral Affirmation of Commitments with NTIA. Bylaws would be amended to include Affirmation of Commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in paragraph 9.</p> <p>265 If ICANN's Board proposed to amend the AoC commitments and reviews that were added to the Bylaws, another proposed measure would empower the community to veto that proposed Bylaws change.</p> <p>266 If any of the AoC commitments were designated as Fundamental Bylaws, changes would require approval by the Empowered Community.</p> <p>267</p>
CONCLUSIONS:	
268 Existing measures are inadequate after NTIA or ICANN terminates the IANA contract.	269 Proposed measures in combination are adequate.

<p>270 <b>Stress Test #15:</b> ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN’s failure to enforce contracts, or other actions.</p>	
<p>271 <b>Consequence(s):</b> Affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>272 As long as NTIA controls the IANA contract, ICANN could risk losing IANA functions if it were to move in order to avoid legal jurisdiction.</p> <p>273 Paragraph 8 of the Affirmation of Commitments requires ICANN to remain headquartered in the US, but the Affirmation of Commitments can be terminated by ICANN at any time.</p> <p>274 As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>275 ICANN is incorporated as a California nonprofit public benefit corporation, and Article XVIII of ICANN Bylaws provides that ICANN’s “principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America.”. But the ICANN Board alone can change the Articles and the Bylaws, and can approve a dissolution or merger of the corporation, and the community has no binding power to block the changes.</p>	<p>276 Under the Articles of Incorporation, ICANN has been formed as a California nonprofit public benefit corporation. Unless dissolved or merged into another entity, it will remain as such and will be subject to California law and regulatory oversight, regardless of where it maintains a physical presence.</p> <p>277 Article XVIII of ICANN Bylaws provides that ICANN’s “principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America.”</p> <p>278 If ICANN’s Board proposed to amend the Articles of Incorporation or sell or otherwise dispose of all or substantially all of ICANN’s assets, the action would require supermajority Board approval (3/4) as well as approval by the Empowered Community.</p> <p>279 If Bylaws Article XVIII were designated as a Fundamental Bylaw, changes to ICANN’s principal office would similarly require supermajority Board approval (3/4) as well as approval by the Empowered Community.</p> <p>280 Any change to the Standard Bylaws could be vetoed by the Empowered Community.</p>
CONCLUSIONS:	
<p>281 Existing measures are inadequate once NTIA terminates IANA contract.</p>	<p>282 Proposed measures improve upon existing measures, and may be adequate.</p>

<p>283 <b>Stress Test #25:</b> ICANN delegates or subcontracts its obligations under a future IANA functions operator agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.</p>	
<p>284 <b>Consequence(s):</b> Responsibility for fulfilling the IANA functions could go to a third party that was subject to national laws that interfered with its ability to execute IANA functions.</p>	
<p><b>EXISTING ACCOUNTABILITY MEASURES</b></p>	<p><b>PROPOSED ACCOUNTABILITY MEASURES</b></p>
<p>285 The present IANA contract (link) at C.2.1 does not allow ICANN to sub-contract or outsource its responsibilities to a 3rd party without NTIA’s consent.</p> <p>286 NTIA could exert its control over ICANN’s decision as long as it held the IANA contract but would not be able to do so after it relinquishes the IANA contract.</p> <p>287 Nor would NTIA’s required principles for transition be relevant after transition occurred.</p>	<p>288 The CWG-Stewardship “recommends that an ICANN Fundamental Bylaw be created to define a separation process that can be triggered by a Special IFR if needed.” There is no allowance in the CWG-Stewardship proposal to allow ICANN to sub-contract or outsource its IANA responsibilities to a 3rd party other than to PTI. If a separation process were initiated a new IANA functions operator could be selected only with involvement of the empowered community.</p> <p>289 The CCWG-Accountability is proposing to empower the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to follow Bylaws requirements to have the community define public interest, the IRP enables a reversal of that decision. The standard of review would look at the revised ICANN Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p> <p>290 Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.</p>
<p><b>CONCLUSIONS:</b></p>	
<p>291 Existing measures would not be adequate after NTIA relinquishes the IANA contract.</p>	<p>292 Proposed measures are adequate to allow the community to challenge ICANN decisions in this scenario.</p>



- 293 After publication of the CCWG-Accountability first draft proposal, new stress tests were suggested in the CCWG-Accountability discussion list and in the public comments received. Below are new stress tests added for publication in the CCWG-Accountability's second draft proposal.
- 294 Stress Tests were suggested by a scenario that might give ultimate authority to a state-based American court and allow it to make binding and precedent setting decisions about the interpretation of ICANN's mission. Two stress tests (27 and 28) were designed for this scenario.

<p>295 <b>Stress Test #27:</b> Board refuses to follow community recommendation, triggering a “member” to sue ICANN in the California courts.</p> <p>296 For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation but the ICANN Board decides to reject the recommendation.</p>	
<p>297 <b>Consequence(s):</b> Gives ultimate authority to an American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN’s mission.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>298 This scenario assumes that ICANN converts to a model where members acquire statutory rights to pursue relief in California courts.</p> <p>299 Member access to court relief is not available under ICANN’s present structure.</p>	<p>300 CCWG’s proposal does not create member status for the Empowered Community. The CCWG-Accountability proposal does not give any of the ACs or SOs the power to force ICANN’s Board to accept and implement the ATRT recommendation. This is intentional, since the ICANN Board could cite cost or feasibility in deciding not to implement part of a Review Team recommendation.</p> <p>301 If the ICANN Board refused to implement the ATRT recommendation, the Empowered Community could challenge the Board decision with an IRP. An IRP panel of 3 international arbitrators (not a Court) could hold that the ATRT recommendation does not conflict with “substantive limitations on the permissible scope of ICANN’s actions”. The IRP decision cancels the Board decision to reject the ATRT recommendation. Any court recognizing arbitration results could enforce the IRP decision.</p> <p>302 If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options:</p> <p>303 The Empowered Community could recall the Board.</p> <p>304 The Empowered Community could block the very next budget or operating plan if it did not include the ATRT recommendation.</p>
CONCLUSIONS:	
<p>305 Not applicable to ICANN’s existing</p>	<p>306 If a court were asked to enforce an IRP</p>

<p>accountability measures.</p>	<p>ruling, it would examine whether IRP procedures were properly followed and whether those procedures comply with fundamental notions of due process, but the court would not interpret ICANN's mission. Proposed measures are therefore adequate.</p>
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<p>307 <b>Stress Test #28:</b> Board follows community recommendation, but is reversed by IRP decision, triggering a “member” to sue ICANN in California courts.</p> <p>308 For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation. ICANN Board decides to accept the recommendation, believing that it does not conflict with ICANN’s limited Mission Statement in the amended Bylaws</p>	
<p>309 <b>Consequence(s):</b> Gives ultimate authority to an American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN’s mission.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>310 This scenario assumes that ICANN converts to a model where members acquire statutory rights to pursue relief in California courts.</p> <p>311 Member access to court relief is not available under ICANN’s present structure.</p>	<p>312 CCWG’s proposal does not create member status for the Empowered Community. An aggrieved party or the Empowered Community could challenge Board’s decision with an IRP. An IRP panel (not a court) could determine that the ATRT recommendation does conflict with “substantive limitations on the permissible scope of ICANN’s actions”. The IRP panel could thereby cancel the Board decision to accept and implement the ATRT recommendation.</p> <p>313 If the Board ignored the IRP ruling and continued to implement its earlier decision, parties to the IRP could ask courts to enforce the IRP decision. Judgments of the IRP Panel would be enforceable in any court that accepts international arbitration results.</p> <p>314 If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options:</p> <p>315 The Empowered Community could recall the Board.</p> <p>316 The Empowered Community could block the very next budget or operating plan if it did not include the ATRT recommendation.</p>
CONCLUSIONS:	
<p>317 Not applicable to ICANN’s existing accountability measures.</p>	<p>318 If a court were asked to enforce an IRP ruling, it would examine whether IRP procedures were properly followed and whether those procedures comply with fundamental notions of due process, but the</p>

	court would not interpret ICANN’s mission. Proposed measures are therefore adequate.
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319 Public commenters requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.

<p>320 <b>Stress Test #29:</b> (Similar to #23) ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations.</p> <p>321 ICANN also insists that legacy gTLD operators adopt the new gTLD contract on renewal.</p>	
<p>322 <b>Consequence(s):</b> ICANN’s enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing Mission and Core Values.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>323 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>324 Affected registrants may file comments on the proposed gTLD contract renewals.</p> <p>325 Affected registrants could challenge ICANN’s termination decisions with Reconsideration or IRP, but could not cite Mission and Core Values, because the current IRP only considers whether ICANN followed process.</p>	<p>326 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>327 The proposed IRP allows any aggrieved party to challenge ICANN’s enforcement actions, resulting in a binding decision. An IRP challenge could assert that an RAA provision was not the result of consensus policy and/or violates ICANN’s Mission Statement, Commitments and Core Values in amended Bylaws.</p> <p>328 The new IRP standard of review would look at revised ICANN Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p>
CONCLUSIONS:	
<p>329 Existing measures would not be adequate to challenge ICANN enforcement decision.</p>	<p>330 Proposed measures would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of contract terms and consensus policies</p>

331 <b>Stress Test #30:</b> (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.	
332 <b>Consequence(s):</b> ICANN’s enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing Mission and Core Values.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>333 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>334 Affected registrars could challenge ICANN’s termination decisions with Reconsideration or IRP, but could not cite Mission and Core Values, because the current IRP only considers whether ICANN followed process.</p> <p>335 Affected registrants and users have no standing to use IRP to challenge ICANN decision.</p>	<p>336 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>337 The proposed IRP allows any aggrieved party to challenge ICANN’s enforcement actions, resulting in a binding decision. An IRP challenge could assert that RAA provision was not the result of consensus policy and/or violates the Mission, Commitments and Core Values in amended Bylaws.</p> <p>338 The IRP standard of review would look at revised ICANN Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p>
CONCLUSIONS:	
339 Existing measures might be adequate for a registrar, but would not be adequate for a registrant to challenge ICANN enforcement decision.	340 Proposed measures would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of contract terms and consensus policies

341 Several individuals requested evaluation of a stress test scenario where the individual designated by an AC/SO failed to follow their AC/SO instructions when communicating AC/SO decisions for any of the Community Powers proposed by CCWG-Accountability.

342 <b>Stress Test #31:</b> “Rogue” voting, where an AC/SO vote on a community power is not exercised in accord with the express position of the AC/SO.	
343 <b>Consequence(s):</b> Decisions on exercising a community power would be challenged as invalid, and the integrity of decisions could be questioned more broadly.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
344 AC/SO community powers are not available under ICANN’s Bylaws.	<p>345 An AC/SO could develop internal processes to ensure that any vote communicated would match the AC/SO decision instructions.</p> <p>346 If an AC/SO vote communicator voted against the instructions of their AC/SO, the decision rules for Empowered Community could specify procedures to invalidate a vote:</p> <p>347 If any elected AC/SO officer is aware that the person designated to communicate the AC/SO vote did not follow AC/SO instructions, an AC/SO officer could publicize this issue to ICANN staff and to all other AC/SO communities.</p> <p>348 After notice, the results of the Empowered Community’s exercise of a Community Power would be set aside, pending correction of the problem by the AC/SO. Correction might involve giving more explicit instructions to the vote communicator, or replacing the person in that role.</p> <p>349 After the problem has been remedied, another round of decision would occur.</p>
<b>CONCLUSIONS:</b>	
350 Not applicable to ICANN’s existing accountability measures.	351 Proposed measures would be adequate to avoid “rogue voting” problems.



352 There are four stress test items suggested in NTIA Secretary Larry Strickling’s statement of 16-Jun-2015 ([link](#)):

353 **NTIA-1:** Test preservation of the multistakeholder model if individual ICANN ACs/SOs choose not to be Decisional Participants in the Empowered Community.

354 **NTIA-2:** Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an AC/SO.

355 **NTIA-3:** Barriers to entry for new participants.

356 **NTIA-4:** Unintended consequences of “operationalizing” groups that to date have been advisory in nature (e.g. GAC)

Each of these NTIA stress tests is shown below.

<p>357 <b>Stress Test #32:</b> (NTIA-1) Several ACs/SOs choose not to be Decisional Participants in the Empowered Community that is responsible for exercising Community Powers (e.g., blocking budget, blocking strategic/operating plan, blocking changes to Bylaws, approving changes to Fundamental Bylaws, recalling Board members)</p>	
<p>358 <b>Consequence(s):</b> ICANN’s multistakeholder model would be in question if multiple stakeholders did not participate in Community Powers.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>359 AC/SO community powers are not available under ICANN’s Bylaws.</p>	<p>360 In the true spirit of ICANN’s multistakeholder model, CCWG proposes inviting all ACs/SOs to exercise Community Powers. The only restriction would be if the GAC decided to be a Decisional Participant in the Empowered Community, in which case it would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice. The GAC would, however, be able to participate in an advisory capacity in all other aspects of the escalation process.</p> <p>361 The SSAC and RSSAC said they don’t intend to be Decisional Participants in the Empowered Community. That does not remove these ACs from ICANN’s multistakeholder process. The SSAC and RSSAC would continue advising the Board and community on matters relevant to them. Other ACs/SOs can ask for SSAC/RSSAC</p>

	<p>advice before they exercise Community Powers.</p> <p>362 The SSAC and RSSAC could later decide to become Decisional Participants in the Empowered Community as set forth in the Bylaws, or request Bylaws amendments to enable this.</p> <p>363 If fewer than 3 ACs/SOs participate as Decisional Participants in an Empowered Community decision process, the minimum thresholds for consensus would not be reached.</p> <p>364</p>
<p><b>CONCLUSIONS:</b></p> <p>365 Not applicable to ICANN's existing accountability measures.</p>	<p>366 ICANN's multistakeholder model would be preserved, even if multiple ACs/SOs decided not to exercise the new community powers.</p>

<p>367 <b>Stress Test #33:</b> (NTIA-2) Participants in an AC/SO could attempt to capture an AC/SO, by arranging over-representation in a working group, in electing officers, or making a decision.</p>	
<p>368 <b>Consequence(s):</b> Internal capture, whether actual or perceived, would call into question ICANN’s credibility in applying the multistakeholder model.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>369 ICANN’s Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption.</p> <p>370 ACs/SOs can revise their charters and operating procedures if they see the need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments.</p> <p>371 If a ‘captured’ AC/SO sent advice /policy to the Board, it is not clear how disenfranchised AC/SO members could challenge the Board decision to follow that advice/policy.</p>	<p>372 ICANN’s Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption.</p> <p>373 ACs/SOs can revise their charters and operating procedures if they see a need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments.</p> <p>374 If a ‘captured’ AC/SO sent advice /policy to the Board, a disenfranchised AC/SO could challenge the Board decision to follow that advice/policy, using reconsideration or IRP. The standard of review would be ICANN’s Articles of Incorporation and amended Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p>
CONCLUSIONS:	
<p>375 Existing accountability measures are not likely to be adequate.</p>	<p>376 Proposed accountability measures would be adequate, provided that the Bylaws requirement for open, transparent, bottom-up, multistakeholder process is interpreted by the Board and IRP panelists to include assessment of how decisions were reached in an AC or SO.</p>

<p>377 <b>Stress Test #34:</b> (NTIA-3) Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.</p>	
<p>378 <b>Consequence(s):</b> Barriers to entry, whether actual or perceived, would call into question ICANN’s credibility in applying the multistakeholder model.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>379 ICANN’s Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.</p> <p>380 Affirmation of Commitments requires period reviews of Accountability and Transparency, including “(d) assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community;”</p> <p>381 ICANN’s Ombudsman might help new entrants to join ACs/SOs.</p>	<p>382 ICANN’s Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.</p> <p>383 Affirmation of Commitments requires periodic reviews of Accountability and Transparency, including “(d) assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community;”</p> <p>384 ICANN’s Ombudsman might help new entrants to join ACs/SOs.</p> <p>385 CCWG proposes a new Core Value in ICANN’s Bylaws requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p> <p>386 This would be the standard of review for IRPs that could be brought by anyone encountering barriers to entry to an AC/SO.</p>
CONCLUSIONS:	
<p>387 Existing accountability reviews can help erode barriers to entry, though not in real-time.</p>	<p>388 Proposed changes to Core Values and IRP could provide faster solutions to barriers encountered by new entrants.</p>

<p>389 <b>Stress Test #35:</b> (NTIA-4) Unintended consequences of “operationalizing” groups that formerly only gave advice to the ICANN Board (for example, the GAC).</p>	
<p>390 <b>Consequence(s):</b> An AC that previously gave only advice on a narrow scope of issues could affect decisions on Community Powers that extend beyond that narrow scope.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>391 Advisory Committees (ACs) have no community powers or decisional rights under ICANN’s Bylaws.</p> <p>392 That said, ICANN has given significant deference to GAC advice in the new gTLD program, resulting in significant effects on operations for new gTLD registries and registrars.</p>	<p>393 In the true spirit of ICANN’s multistakeholder model, CCWG proposes inviting all ACs/SOs to participate in decisions about exercising community powers.</p> <p>394 All ACs can thereby expand beyond their present advisory roles. To address concerns that the GAC could gain undue influence over ICANN, CCWG notes proposed changes that reduce GAC’s ability to affect ICANN operations:</p> <p>395 Per Stress Test 18 and the proposed Bylaws change, the Board would be obligated to try to “find a mutually acceptable solution” for GAC consensus advice (i.e., approved “by general agreement in the absence of any formal objection”). Moreover, should the GAC decide to be a Decisional Participant in the Empowered Community, it would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice, although the GAC would be able to participate in an advisory capacity in all other aspects of the escalation process.</p> <p>396 Proposed Core Values require “open, transparent and bottom-up, multistakeholder policy development processes”. This would allow the community to challenge an ICANN decision to implement any GAC advice that was not supported by the bottom-up process.</p> <p>397 In Core Value #5, CCWG proposes adding that policy development must be “led by the private sector”.</p> <p>398 In Core Values, CCWG restricts ICANN’s</p>

	<p>scope of activities.</p> <p>399 The new IRP gives the community ability to overturn a Board decision to implement GAC advice that goes against the Mission and Core Values in the amended Bylaws. A carve-out is proposed for community decision-making, to avoid having the GAC block a community challenge to Board action based upon GAC advice.</p> <p>400 For the Affirmation of Commitments reviews, the GAC Chair would no longer approve/appoint review team members.</p>
<p><b>CONCLUSIONS:</b></p> <p>401 Existing accountability measures have already given Advisory Committees significant influence over ICANN operations.</p>	<p>402 Proposed accountability measures would treat ACs as multi-equal stakeholders in exercising Community Powers, while also reducing the GAC’s ability to affect ICANN operations.</p>

- 403 The ICANN Board sent a letter on 20-Jun-2015 with 156 questions regarding impact and implementation testing of CCWG proposals. ([link](#)) Two questions included requests for stress testing the CCWG proposal for a membership-based model:
- 404 What unintended consequences may arise from empowering (e.g., approval rights, etc.) entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members or the community as a whole and have stress tests been conducted for each of these consequences?
- 405 What are the risks associated with empowering members to bring lawsuits against ICANN, each other and other parties and have stress tests been conducted for reach of these situations?
- 406 Both scenarios are addressed in Stress Test 36:

<p>407 <b>Stress Test #36:</b> Unintended consequences arising from empowering entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members, or the community as a whole.</p>	
<p>408 <b>Consequence(s):</b> An entity could exercise statutory powers accorded to members under California law, and pursue legal actions that would harm interests of the ICANN community.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>409 ACs and SOs have no joint community powers or decisional rights under ICANN's Bylaws.</p> <p>410 ICANN's Bylaws do not recognize any members as defined under California Nonprofit Public Benefit Corporation law.</p>	<p>411 CCWG proposes that each AC and SO may participate in the decision process on whether to exercise an enumerated Community Power (except for the GAC, with respect to the exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice). No other individuals or entities could exercise these powers. Exercise of these powers requires consensus, which prevents any one AC/SO from advancing its interests against the interests of the broader community.</p> <p>412 CCWG proposes to have the Empowered Community be given the role of sole designator of ICANN's Directors and will have the ability to enforce directly or indirectly the Community Powers. A designator does not acquire all of the statutory powers of a member under California law.</p> <p>413 Only the Empowered Community would have legal status and statutory right of a designator and would be given rights under the Bylaws to exercise Community Powers. Consequently, legal action would only be brought if supported by the ACs and SOs participating in the Empowered Community, and a high threshold of consensus is required.</p> <p>414 Individuals and entities – including ACs and SOs – would not become designators and would not be directly given any rights under the Bylaws to exercise Community Powers. They could not acquire statutory rights given to members or designators under California</p>



	law.
<b>CONCLUSIONS:</b> 415 Not applicable to ICANN's existing accountability measures.	416 Proposed Empowered Community measures are adequate to avoid this scenario.

417 After publication of the CCWG-Accountability second draft proposal, one new stress test was suggested in public comments received. ELIG (a law firm) suggested stress testing on a “deadlock” over approving changes to Fundamental Bylaws, and blocking changes to regular Bylaws: “We believe that it would be helpful to also explain the details of the legislation procedures in case of a deadlock during the amendment/enactment of a Bylaw.” See Stress Test 37 below.

418 <b>Stress Test #37:</b> The Empowered Community blocks a Board-proposed change to a regular Bylaw, or withholds its approval of a Board-proposed change to a Fundamental Bylaw.	
419 <b>Consequence(s):</b> A “deadlock” between the ICANN Board and the Empowered Community, where the Board-proposed Bylaws change is not enacted.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>420 ICANN’s present Bylaws allow the Board alone to amend Bylaws: “the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.”</p> <p>421 There is no requirement for community consultation or public comment for Bylaws changes.</p> <p>422 There is no present power for the community to block or approve Bylaws changes.</p>	<p>423 The Empowered Community is intentionally given the power to block a Board-adopted change to a Standard Bylaw.</p> <p>424 In addition, the Empowered Community is intentionally given the power to withhold its approval of a Board-adopted change to a Fundamental Bylaw.</p> <p>425 Such outcomes might be characterized as “deadlock” by advocates of the Bylaws change. But this would reflect the consensus decision of ACs/SOs representing the community that ICANN is designed to serve.</p> <p>426 This outcome would motivate the Board to understand the concerns of the community over proposed Bylaws changes. The Board could then persuade the community that its concerns were unfounded, or modify its proposed Bylaws change to accommodate concerns expressed.</p>
CONCLUSIONS:	
427 Existing accountability mechanisms prevent “deadlock” because the community has no power to affect Board-proposed Bylaws changes.	428 Proposed community powers enable “deadlock” over Board-proposed Bylaws changes, but only if that is the consensus decision of the community.

# Appendix A – Documenting Process of Building Consensus

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- 01 The Supplemental Final Proposal on Work Stream 1 Recommendations was developed in a bottom-up, multistakeholder approach, which included multiple “readings” of each recommendation. Each draft was posted publicly and open to comment by CCWG-Accountability members and participants.
- 02 To finalize its report, the CCWG-Accountability established a structured process to ensure input was being accurately discussed and reflected, as appropriate. Step 1 consisted in circulating key discussion items to the list based on public comment received. Following a first reading held on a call, the CCWG-Accountability leadership would circulate conclusions of the first reading along with edits to prepare for the second reading. This process would conclude with the distribution of second reading conclusions. Additional readings and discussions were scheduled and continued on the list depending on difficulties in reaching consensus. Documents prepared for readings can be found [here](#).
- 03 Following the final reading and legal review, finalized recommendations were sent to the CCWG-Accountability for a 48-hour period to note any errors, comments, or statements for the record.
- 04 [The CCWG-Accountability is pleased to provide its Chartering Organizations with the enhancements to ICANN's accountability framework it has identified as essential to happen or be committed to before the IANA Stewardship Transition takes place \(Work Stream 1\) for consideration and approval as per its Charter.](#)
- 05 The Supplemental Proposal on Work Stream 1 Recommendations is the result of extensive work by the CCWG-Accountability’s 28 members, 172 participants and a team of highly qualified legal advisors over the past year, which included over 221 calls or meetings, three public consultations and more than 13,900 email messages. It represents a carefully crafted balance between key requirements, specific legal advice and significant compromises by all who participated. It also includes diligent attention to the input received through the public comment proceedings.
- 06 The final proposal has received the consensus support of the CCWG-Accountability. Minority viewpoints were recorded through 17:00 UTC on 25 February 2016<sup>1</sup>. These viewpoints are provided below for Chartering Organization consideration.
- 07 **Minority statements are published in the order in which they were received.**

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<sup>1</sup> The co-Chairs of the CCWG-Accountability gave members a final opportunity to revise, retract or add minority statements to the Supplemental Final Report based on a compromise reached on the morning of 23 February 2016. A revised Appendix A was published and distributed to Chartering Organizations on 25 February 2016.

## Minority Statements

08 **Minority Statement by Eberhard W Lisse**

09 **CCWG-Accountability Member, ccNSO**

10 Dear Co-Chairs

11 I am Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain (“ccTLD”) Manager of .NA. I created .NA and have 24 years uninterrupted service and corresponding experience as the ccTLD Manager for .NA.

12 I am appointed by ICANN’s country code Names Supporting Organization (“ccNSO”) as a Member to the Cross Community Working Group on Enhancing ICANN Accountability (“CCWG Accountability”).

13 The CCWG Accountability submits a “Final Proposal on Work Stream 1 Recommendations” (“Final Proposal”) which in terms of its Charter (“Charter”) must focus on

*[...] mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.*

14 The Final Proposal does **not** do so.

15 Accordingly I do not agree with and hereby formally record my Objection to the Final Proposal:

1. I still have serious concerns regarding the proposed increase to the powers of Advisory Committees (“AC”) and their proposed elevation to similar status and powers as Supporting Organizations (“SO”).
2. The Final Proposal is entirely silent on accountability measures for ICANN relating to its dealing with ccTLD managers.  
This omission is fatal.
3. I still have very strong concerns about the way the CCWG Accountability has dealt with ICANN’s Accountability to Human Rights.

The Final Report must state, at a minimum, that:

*Within its mission and in its operations, ICANN will respect fundamental human rights, inter alia the exercise of free expression, free flow of information, due process and the right to property*

without **any** qualifications.

4. The questions
  - under what statutory powers this transfer will occur,
  - what in fact it is that is transferred, and
  - what is not transferred

remain unanswered.

And they **must** be answered in order for any transfer of the functions and/or the root zone<sup>2</sup> to occur.

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<sup>2</sup> see also [http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-09-22 CEG Cruz Goodlatte Issa to GAO \(Report on ICANN Oversight Transfer\).pdf](http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-09-22%20CEG%20Cruz%20Goodlatte%20Issa%20to%20GAO%20(Report%20on%20ICANN%20Oversight%20Transfer).pdf), last accessed 2016-02-24

5. I have previously placed on record my observations regarding the legitimacy of the way in which the CCWG has conducted itself during its deliberations which has been, more often than not, in violation of its own Charter.

The latest example, occasioning this revision of this Minority report, previously submitted 2016-02-16, is so egregious that it requires some detail:

- (a) The ICANN Board voiced objections against a provision (74) in Recommendation #2 (on which Consensus had been reached), **after** the Final Proposal had been completed.
- (b) Two of the Co-Chairs (in the absence of the third) then re-opened the deliberations culminating in a teleconference on 2016-02-23 where they put the issue to a vote when no Consensus was reached either way.
- (c) Besides that the Charter is **not** silent on voting it is noteworthy that the Co-Chairs permitted the ICANN Staff Liaison, and 11 ICANN Board Members (two of which were not even registered<sup>3</sup> as Participants to the CCWG Accountability (Ms Hemrajani and Mr Chehadé) to vote on the issue.
- (d) The Co-Chairs then sent out an email stating that, as a broad majority had been in favor of removing the contentious provision, the provision was removed from the Final Proposal.
- (e) I have been unable to find “*Broad Majority*” in the Charter, only “*Full Consensus*” and “*Consensus*”, from which follows anything else is “*No Consensus*”.
- (f) The now Really Final Proposal was then transmitted to the Charting Organizations, without any period of Public Comment, nor waiting for updates to the existing Minority Statements or new Minority Statements being submitted, which was to be done within 48 hours.

I renew my Objection against this exclusionary process.<sup>4</sup>

6. The entire proposal has been cobbled together in extreme haste.

We (the representative Members of the CCWG) have been subjected to an arbitrary, self-imposed and entirely unrealistic timetable and deadline.

7. Regrettably, the Final Proposal bears the fruit of this extreme haste.

It is overly complex, hard to understand even by many of the members and participants of the CCWG Accountability themselves. During the telephone conference on 2016-02-23<sup>5</sup> it took 22 minutes just to give a summary of the issue at hand.

8. The **drastic** shortening of public comment periods is another example of the apparently intentional exclusivity of the process.

Even if the previous fatal flaws did not exist, this would, in itself, be fatal to the legitimacy of the CCWG process and the Final Proposal.

Fortunately the Final Proposal, if any, can still be subjected to a proper public comment period.

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<sup>3</sup> <https://community.icann.org/pages/viewpage.action?pageId=50823968>, last accessed 2016-02-24

<sup>4</sup> I renew my Objection to the previous “Draft Recommendations” from 2015-06-03, the “Draft Proposal” from 2015-07-30 and the “Third Draft Proposal” from 2015-12-02 and incorporate them by reference herein.

<sup>5</sup> 5a to 5f on this page

9. I submit that the Final Proposal simply adds additional layers of bureaucracy without achieving much, if anything.
10. The IANA transition involves novel and unsettled questions that may impact the interests of a wide array of entities. This includes both the public and private sector and engages both domestic US and international interests.

The CCWG Accountability should be result driven and provide its considered views on the important issues presented by the transition in a more reasoned and full discussion instead of rushing to produce something to meet a self-imposed deadline for which there is simply no justification.

11. Repeatedly the NTIA found it necessary to advise, and did so in no uncertain terms, that the CCWG was not meeting the terms of reference set by the NTIA.

I submit that the Final Proposal still does not meet these.

12. I note Minority Statements by the Appointed Members Olga Cavalli (GAC), Tijani Ben Jemaa (ALAC), Izumi Okutani (ASO), and Robin Gross (GNSO) and join Ms Gross' Minority Statement.

I need to point out that the Charter foresees Minority Statements only in cases of disagreement. One Appointed Member of each Chartering Organization disagreeing is **not** a small minority.

It follows that the Final Proposal does **not** have Consensus.

- 16 I **strongly** urge ccTLD Managers to reject this Final Proposal and the NTIA not to accept it as is.
- 17 I submit this Minority Statement to be added to the Final Proposal as required by the Charter.



- 18 Eberhard W Lisse

19 **Minority Statement by Olga Cavalli**

20 **CCWG-Accountability Member, GAC**

21 Dear co-chairs,

22 After many months of hard work, CCWG has delivered a final proposal to be accepted by the community and then submitted to the ICANN board and NTIA. The negotiations leading to the delivery of this proposal have been very intense, and sometimes disappointing. More specifically, the attempts of some stakeholders to take advantage of the IANA transition in order to reduce the ability of governments to be part of the – to be enhanced – community, have jeopardized the success of the overall process, and more broadly, have put at risk our trust in what has brought us all here in the first place: the multi-stakeholder approach.

23 **The role of governments in the multi-stakeholder community**

24 The idea that governments threaten the multi-stakeholder community or benefit from a “special status” in the current ICANN structure is a misconception:

- Governments only have an advisory role in ICANN, through the Governmental Advisory Committee (GAC), whereas other constituencies exercise a decisional role, for instance through the drafting of policy recommendations.
- Governments do not participate in the ICANN Nominating Committee (NomCom) for the selection of ICANN’s leadership positions in the Board, ccNSO, GNSO and ALAC, unlike other AC/SOs within ICANN.
- Governments do not participate to the ICANN board, whereas all other AC/SOs can elect members of the board, directly and through the Nominating Committee. GAC can only appoint a non-voting liaison to the board.
- The ICANN board can easily reject GAC advice, even if the advice was approved without any formal objection. If “the ICANN board determines to take an action that is not consistent with the Governmental Advisory Committee advice” and fails to “find a mutually acceptable solution” (an obligation which does not only apply to GAC advice<sup>6</sup>), then the only obligation of the board is to “state in its final decision the reasons why the Governmental Advisory Committee advice was not followed”<sup>7</sup>. On the other hand, a PDP approved by 66% of GNSO can only be rejected by a 2/3 majority of the board<sup>8</sup>.

25 On the contrary, we believe that governments are an essential part of the community:

- GAC is the most geographically diverse entity in the community. This element should not be underestimated, given that the internationalization of ICANN has been a recurring issue since its inception in 1998.
- Governments bring a unique perspective on public policy issues and remain the most legitimate stakeholders when it comes to protecting public interest.

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<sup>6</sup> *ICANN Bylaws, Annex B, Section 15.b*: “The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN. (...)The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”

<sup>7</sup> *ICANN Bylaws, Article XI, Section 2*.

<sup>8</sup> *ICANN Bylaws, Annex A, Section 9*: “Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN.”

- An ICANN with no or very little governmental involvement would be even more subject to a risk of capture by special interests or narrow corporate interests.

26 **Proposed solutions to the so-called Stress-Test 18 leading to changes in Recommendation 1, 2 and 11**

27 In particular, we are extremely disappointed by and object to the latest “compromise” solution regarding Stress Test 18-related issues, which led to changes in Recommendations 1, 2 and 11.

28 According to the “CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations”, Stress Test 18 “considers a scenario where ICANN’s GAC would amend its operating procedures to change from consensus decisions (no objections) to majority voting for advice to the ICANN Board”. In this scenario, GAC would therefore align its decision-making process to what is already the rule for ALAC, GNSO and CCNSO. However, some CCWG participants seem to believe that preventing GAC from adopting the decision making process used by other stakeholders is necessary to make ICANN more accountable.

29 Many rationales were circulated to justify Stress Test 18-related measures, including ones that involved NTIA. However, the proposed solutions to the issues raised by Stress Test 18 were never part of the initial conditions required for the acceptance of the IANA transition by NTIA. In March 2014, when NTIA announced the transition, four principles were singled out:

- Support and enhance the multi-stakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services;
- Maintain the openness of the Internet.

30 In its press release, NTIA also stated it would “not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution”. To our knowledge, the current ICANN structure does not qualify as a government-led organization, especially since the governments only have an advisory role, through the Governmental Advisory Committee. Therefore, status quo would meet the NTIA requirements.

31 Despite the strong concerns of many governments regarding the proposed solutions to Stress Test 18, and their doubts about the impact of such solutions on ICANN’s accountability, **GAC has agreed to a consensus package** during the Dublin meeting, as reflected in the Dublin GAC Communiqué, **showing its willingness to reach a compromise** in order to achieve the IANA transition. This compromise was based, inter alia, on a 2/3 threshold for the ICANN board to reject GAC advice and on the preservation of GAC’s autonomy in defining consensus.

32 Recommendation 11 of the 3rd CCWG report proposed a very narrow definition of consensus, as “general agreement in the absence of any formal objection”, which represented a major shift from the principles agreed in the GAC Dublin communiqué, therefore triggering the rejection of Recommendation 11 by some GAC members. However, the 3rd draft report proposed a 2/3 threshold for the board to reject GAC consensus advice, aligned with the GAC Dublin Communiqué.

33 The “compromise” solution proposed in the “CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations” published in February is as follows:

- Maintain a very narrow definition of consensus as “the absence of any formal objection”;
- Set the threshold for board rejection of GAC full consensus advice at 60% instead of 2/3;



- Limit the ability of GAC to participate in the empowered community mechanisms if they aim at challenging the board’s implementation of GAC advice – this proposal has never been discussed in CCWG before, and hardly relates to the initial issues raised by Stress Test 18.
- 34 We fail to understand how these new proposals address the concerns expressed by many GAC members in the public comment period, for instance relatively to the ability of one government to block a draft advice approved by an overwhelming majority of governments. Even though consensus should remain the GAC’s ultimate objective, the requirement to reach full consensus for each and every issue considered might lead, in some cases, to paralysis. Any hypothetical advice reflecting less than full consensus (including 100% minus one - which in our view would be basically as representative as full consensus) could indeed be dismissed by a simple majority vote of the board. As a result, the ability of GAC to participate to a discussion considered as relevant by most of its members would be very limited and decisions could theoretically be made without any significant GAC input. To prevent this, we believe governments shall not be bound by one single rule of decision-making, particularly if potentially controversial topics are to be considered
- 35 We note that GAC is once again asked to lower its ability to be involved in the post-IANA transition ICANN. Regarding the ability of GAC to participate in the empowered community mechanisms, we believe such a decision should be carefully reviewed and should not be imposed under pressure in a very short timeframe. More specifically:
- We do not understand why the “two bites at the apple” problem should only apply to GAC, and not to all SO/ACs which could participate in a community power challenging the board’s implementation of their advice or policy recommendation.
  - It is GAC’s sole responsibility to determine if it wishes to participate in a decisional capacity to the community mechanisms.
  - It would be contradictory to limit GAC’s ability to participate to the community powers only to those cases involving public policy / legal aspects, while preventing GAC to participate to community powers involving the board’s implementation of its advice.
- 36 Governments have shown impressive flexibility and tried to reach a compromise in many ways, as reflected in the Dublin GAC communiqué. However, only the demands of part of the community representatives were met, at the expense of GAC; therefore, rather than “compromise”, “winner takes all” would actually be a more accurate description of what is proposed in the CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations.
- 37 Olga Cavalli
- 38 This statement is supported by the governments of Argentina, Benin, Brazil, Chile, Commonwealth of Dominica, France, Guinea, Mali, Nigeria, Paraguay, Peru, Portugal, Russian Federation, The Democratic Republic of Congo, Uruguay, Venezuela

39 **Minority Statement by Tijani BEN JEMAA**

40 **CCWG-Accountability Member, ALAC**

41 As a CCWG-Accountability member, I would like to make this minority statement regarding Recommendation 2 (Adjusting the threshold of support to exercise the community powers) and Recommendation 6 (Human Rights):

42 **Rec 2, Para 73:**

43 With 5 SO/ACs composing the empowered community, we are told that we don't represent the whole Internet community. With less, our representativeness will be seriously affected. So, reducing the threshold in case of the community becomes composed of less than 5 SO/ACs is not acceptable, not only because of the representativeness, but also because we will exercise the community powers with only 2 SO/ACs supporting the decision for most of them. Less than 5 SO/ACs will make the whole accountability process to be reviewed.

44 **Rec 6:**

45 I express my concern that in the proposed text, it is not made clear that the ICANN obligation to respect Human Rights covers the issues included in the ICANN mission only and not be expended to cover other aspects such as the content.

46 Tijani BEN JEMAA

47 **Minority Statement by Izumi Okutani**

48 **CCWG-Accountability Member, ASO**

49 The ASO notes that the Internet Numbering Community is not relying on the CCWG-ACCT WS1 proposal to fulfill our expectations of ICANN accountability. Instead we will rely primarily on a contractual agreement (or “SLA”) between the RIRs and ICANN, as defined within the CRISP and ICG proposals, to provide the required accountability mechanisms.

50 In order to serve this purpose, the proposed SLA must be in place at the time of the IANA Transition. However, the agreement contains “condition precedent” language such that, even if it is signed immediately, it will only come into effect when ICANN is actually released from its related duties under the NTIA contract.

51 Negotiation of the Numbers Community SLA is nearly complete, and we expect to reach agreement in the near future. We propose to then promptly sign the agreed SLA with ICANN, in the same timeframe as implementation of the CCWG recommendations. By having both components in place at that time, we will be satisfied that all ICANN accountability matters are properly resolved.

52 Best Regards,

53 Izumi on behalf of the ASO

54 **Minority Statement by Robin Gross**

55 **CCWG-Accountability Member, GNSO**

56 **Dissenting Opinion of Individual Member Robin Gross on the Issue of GAC Over-Empowerment, Marginalization of Supporting Organizations**

57 While the majority of recommendations included in the CCWG-Accountability Report for Work Stream 1 mark significant and laudable improvements for ICANN's accountability processes, the proposal remains flawed in one important respect: it would allow for fundamental changes to the nature of ICANN's Governmental Advisory Committee (GAC) by endorsing its inclusion in the Empowered Community as a Decisional Participant. If the GAC chooses to become a Decisional Participant, it would transform its traditional function in ICANN from an "advisory" role to a "decisional" role over ICANN's policies, operations, and corporate governance matters. Additionally, the proposal raises the threshold in ICANN's bylaws for its Board to refuse to follow GAC consensus advice, in a separate concession to the GAC that has enhanced its power in ICANN's corporate structure relative to the other Advisory Committees and Supporting Organizations.

58 The proposal to elevate the GAC is a mistake for a number of different reasons.

59 The first concern is the opaque nature of the GAC. GAC is under no obligation to be transparent or bottom-up in its deliberations nor its operation. It has no obligation nor practice of upholding ICANN's legal duty under its bylaws and articles to act openly, transparently, and in a bottom-up multi-stakeholder manner. Empowering a nontransparent constituent body in such a way risks conflicting with other provisions in ICANN's articles and bylaws which promise open, transparent, equitable, and bottom-up decision making and operations as ICANN carries out its duty and mission.

60 The second concern is that empowering the GAC goes against the express wishes of the majority of the ICANN community. Specifically, when previously proposed in 2014, the community overwhelmingly rejected increasing the Board threshold required to reject GAC advice, yet that is exactly what this proposal does.<sup>9</sup> Similar objections were voiced in public comments to the various CCWG-Accountability proposals, which raised significant concerns about the threshold for Board rejection of GAC advice. For many concerned commentators, the distinction between a Board threshold of 50%-60%-66% is a "distinction without a difference", because it is the underlying principle at stake of limiting governmental control over the Internet via ICANN. A positive element of the CCWG-Accountability proposal is that it provides greater certainty and clarity regarding the definition of GAC's deferential "consensus advice". However the community should not be forced to concede greater power to GAC over ICANN's governance in exchange for that needed clarity and certainty over the kind of GAC advice requiring deferential Board treatment. It is a "trade-off" the community should not have to make for ICANN accountability improvements and a timely IANA transition to be able to go forward.

61 Third, GAC participation in the Empowered Community is controversial in the ICANN community and within the GAC itself. Providing the GAC an equal vote to the Supporting Organizations and the At Large Advisory Committee over ICANN's governance would grant the GAC new, greatly enhanced authority in ICANN's decision-making process and governance structure. While the "GAC carve-out" which disallows GAC from voting on board decisions taken as a result of GAC consensus advice, is an improvement in a narrow and specific instance, it does not address the underlying problem of providing national governments with a decisional role over ICANN's governance. Nor would it limit the ability of GAC to participate in decisions to remove board

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<sup>9</sup> <https://www.icann.org/public-comments/bylaws-amend-gac-advice-2014-08-15-en>

- members, reject budgets and strategic plans, decide IANA separation questions, or any of the other new community powers granted to the Empowered Community under this proposal.
- 62 Importantly, GAC has not stated that it wants this fundamental change in its role or that it wants this increase in power over ICANN's Board. On the contrary, GAC stated it could not come to consensus on those controversial recommendations in the CCWG proposal. Unfortunately, a small minority of vocal GAC representatives participating in the CCWG-Accountability discussions took advantage of the community's desire for a speedy IANA transition and were able to hold the accountability reform process hostage in order to obtain greater power over ICANN's governance than what GAC has under ICANN's existing corporate structure.
- 63 Finally, enhancing the power of governments in ICANN puts U.S. support for the transition in jeopardy. If the U.S. Congress or NTIA objects to this proposal, it is dead on arrival. The U.S. Congress and NTIA have sent a number of clear signals that governmental influence should not be expanded in the IANA transition process.<sup>10</sup> By proposing to increase the influence of governments over ICANN as CCWG-Accountability has done, it invites rejection from precisely the parties who must sign-off on it and places the entire transition at risk.
- 64 The CCWG-Accountability proposal includes a number of important and long over-due accountability reforms including improvements to ICANN's Independent Review Process (IRP), Reconsideration Request process, board removal rights, and a noteworthy bylaws commitment to respect human rights in ICANN's operation, among other truly laudable accountability reform measures. However, the long-term harm to a free and open Internet from the proposal's shifting the traditional balance of power over ICANN in favor of governments and away from the Supporting Organizations and the private sector is a monumental mistake.

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<sup>10</sup> At ICANN #51 in Los Angeles 2014, U.S. Secretary of Commerce Penny Pritzker stated that the U.S. would oppose at every turn "proposals to put governments in charge of Internet governance". Also, U.S. Senator John Thune and U.S. Senator Marco Rubio, letter to Dr. Stephen Crocker, Chairman ICANN Board of Directors, July 31, 2014, <https://www.icann.org/en/system/files/correspondence/thune-rubio-to-crocker-31jul14-en.pdf> (emphasis added):

"First, ICANN must prevent governments from exercising undue influence over Internet governance. In April we led 33 Senators in a letter to NTIA regarding the IANA transition. We wrote that "[r]eplacing NTIA's role with another governmental organization would be disastrous and we would vigorously oppose such a plan. ICANN should reduce the chances of governments inappropriately inserting themselves into apolitical governance matters. Some ideas to accomplish this include: not permitting representatives of governments to sit on ICANN's Board, limiting government participation to advisory roles, such as through the Government Advisory Committee (GAC), and amending ICANN's bylaws to only allow receipt of GAC advice if that advice is proffered by consensus. *The IANA transition should not provide an opportunity for governments to increase their influence.*"

# Appendix B: Charter

To download a PDF version of the Charter document, see [here](#).

## Cross Community Working Group (CCWG) Charter

<b>WG NAME:</b>	<b>CROSS COMMUNITY WORKING GROUP ON ENHANCING ICANN ACCOUNTABILITY</b>	
<b>Section I: Cross Community Working Group Identification</b>		
<b>Chartering Organizations:</b>	ASO, GAC, ccNSO, ALAC, GNSO, SSAC	
<b>Charter Approval Date:</b>	The CCWG charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the charter: <ul style="list-style-type: none"><li>• GNSO on 13 November 2014</li><li>• ALAC on 18 November 2014</li><li>• ccNSO on 20 November 2014</li><li>• GAC on 8 December 2014</li><li>• ASO on 9 December 2014</li><li>• SSAC on 9 July 2015</li></ul>	
<b>Name of WG Chair(s):</b>	Mathieu Weill, Thomas Rickert, León Sanchez	
<b>CCWG Workspace URL:</b>	<a href="https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability">https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability</a>	
<b>CCWG Mailing List:</b>	accountability-cross-community@icann.org	
<b>Resolutions adopting the charter:</b>	Title:	
	Ref # & Link:	
<b>Section II: Problem Statement, Goals &amp; Objectives and Scope</b>		
<i>Problem Statement</i>		
The National Telecommunications and Information Administration (NTIA) has requested		

that ICANN “convene a multistakeholder process to develop a plan to transition the U.S. government stewardship role” with regard to the IANA Functions and related root zone management. In making its announcement, the NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model
- Maintain the security, stability, and resiliency of the Internet DNS
- Meet the needs and expectation of the global customers and partners of the IANA services
- Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

During discussions around the transition process, the community raised the broader topic of the impact of the change on ICANN's accountability given its historical contractual relationship with the United States and NTIA. Accountability in this context is defined, according to the [NETmundial multistakeholder statement](#), as the existence of mechanisms for independent checks and balances as well as for review and redress.

The concerns raised during these discussions around the transition process indicate that the existing ICANN accountability mechanisms do not yet meet stakeholder expectations. Recent statements made by various stakeholders suggest that current accountability mechanisms need to be reviewed and, if need be, improved, amended, replaced, or supplemented with new mechanisms (see for instance ATRT recommendations) in light of the changing historic contractual relationship with the U.S. Government. Considering that the NTIA has stressed that it is expecting community consensus regarding the transition, a failure to meet stakeholder expectations with regards to accountability may create a situation where NTIA does not accept the IANA transition proposal as meeting its conditions. Thus reviewing ICANN's accountability mechanisms was considered to be crucial for the transition process.

### *Goals and Objectives*

The CCWG-Accountability is expected to deliver proposals that would enhance ICANN's accountability towards all stakeholders.

The term stakeholder should be considered for the CCWG-Accountability in its wider acceptance, for instance by relying on the definition provided by the [European Framework for Quality Management \(EFQM\)](#): a person, group or organization that has a direct or indirect stake or interest in the organization because it can either affect the organization or be affected by it. This includes but is not limited to all ICANN SOs and ACs.

The goal is for the transition proposal regarding the IANA functions to be communicated to NTIA in a timeframe which is consistent with the expiration date of the current IANA Functions Contract, which is set at 30th September 2015. The CCWG-Accountability will therefore work as expeditiously as possible to identify those mechanisms that must be in place or committed to before the IANA Stewardship Transition in light of the changing historical contractual relationship with the U.S. Government (Work Stream 1) and those mechanisms for which a timeline for implementation may extend beyond the IANA

## Stewardship Transition (Work Stream 2).

In order to facilitate evaluation and adoption of its proposals, the CCWG-Accountability is expected to provide a detailed description on how its proposals would provide an adequate level of resistance to contingencies (“stress tests”), within the scope of each Work Stream.

Further, Work Stream 1 may identify issues that are important and relevant to the IANA stewardship transition but cannot be addressed within this time frame, in which case, there must be mechanisms or other guarantees that can ensure that the work would be completed in a timely manner as soon as possible after the transition.

## *Scope*

The CCWG-Accountability will investigate accountability mechanisms regarding all of the functions provided by ICANN.

In the discussions around the accountability process, the CCWG-Accountability will proceed with two Work Streams:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;
- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

The CCWG-Accountability will allocate issues to Work Stream 1 and Work Stream 2. Some issues may span both Work Streams.

Suggested questions to be considered as part of Work Stream 1 include, but are not limited to:

- What would be the impact of NTIA’s transition of the IANA Functions Contract in ensuring ICANN’s accountability and what potential accountability concerns could this cause?
- What enhancements or reforms are required to be implemented or committed to before the NTIA Stewardship Transition?
- If the implementation of enhancements or reforms are to be deferred, how can the community be assured they will be implemented?
- How will these enhancements or reforms be stress-tested?
- What enhancements or reforms must be committed to before the NTIA Stewardship Transition, but could be implemented after.
- How will these enhancements or reforms be stress-tested?
- Suggested questions to be considered as part of Work Stream 2 include, but are not limited to:
- What enhancements or reforms can be addressed after the NTIA Stewardship Transition?
- If there are enhancements or reforms that can be addressed after NTIA disengages, what new or existing processes ensure they will be addressed and implemented?



- How will these enhancement or reforms be stress-tested?
- Suggested questions to be considered as part of both Work Stream 1 and 2 include, but are not limited to:
- What mechanisms are needed to ensure ICANN’s accountability to the multi-stakeholder community once NTIA has disengaged from its stewardship role?
- What enhancements or reforms are needed to ICANN’s existing accountability mechanisms?
- What new accountability reforms or mechanisms are needed?
- If accountability enhancements and reforms are made through changes to ICANN’s Articles of Incorporation or By-Laws, how can the community be assured that those changes will be permanent, or not subject to unilateral amendment by the ICANN Board at a later date?

Other topics within scope of the work of the CCWG-Accountability include, but are not limited to [ATRT2 Recommendation 9, and more specifically 9.2.](#)

**Link with scope of Cross Community Working Group (CWG) to Develop an IANA Stewardship Transition Proposal on Naming Related Functions, and other groups developing the IANA Stewardship Transition proposal:**

This process on Enhancing ICANN Accountability is taking place alongside a parallel and related process on the transition of the stewardship of the IANA functions through the CWG to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (hereinafter CWG-Stewardship). The CWG-Stewardship’s scope is focused on the arrangements required for the continuance of IANA functions in an accountable and widely accepted manner after the expiry of the IANA Functions Contract. Accountability for the administration of the IANA functions (i.e., implementation and operational accountability) is not within the scope of the CCWG-Accountability as it is being dealt with by the CWG-Stewardship. Nevertheless, the two processes are interrelated and interdependent and should appropriately coordinate their work.

Other groups’ (i.e. the numbers and protocol parameters communities, as outlined in the ICG Request for Proposals) proposals are intended to cover accountability issues related to the IANA Stewardship Transition, as well as issues already being considered by RIRs and IETF communities related in their respective areas in their engagement with ICANN. These issues are outside of scope of the CCWG-Accountability. The CCWG-Accountability will communicate with these groups to ensure that the CCWG-Accountability does not cover issues going beyond its scope.

**Section III: Deliverables, Timeframes, and Reporting**

***Deliverables***

In working towards its deliverables, the CCWG-Accountability will, as a first step, establish and adopt a high-level work plan and tentative associated schedule, which should be publicly available. Both work plan and associated schedule, should take into account and be on activities under Work Stream 1 and Work Stream 2, and align the timelines for Work Stream 1 with the CWG-Stewardship and ICG timelines. In addition, the work plan and schedule should include time frames and methods for public

consultation and expected date for submission of Draft Proposal(s) and Final Proposal(s) and revisions thereof for Work Stream 1 and 2, and should establish an expected date for submission of a Board Reports. In those cases where there are incompatibilities, these should be informed to the CWG-Stewardship and/or ICG and discuss ways to address the incompatibilities.

In the course of its work the CCWG-Accountability should update and refine its work plan and schedule regularly, and make the amended work plan and associated schedule publicly available.

The following non-exhaustive list of areas of work shall guide the working group in establishing a work plan. The CCWG-Accountability may add additional tasks at its sole discretion:

- Review of the guidelines given in this charter
- A definition/description of what differentiates a Work Stream 1 issue from a Work Stream 2 issue
- Identify which issues to go into Work Stream 1 and which issue to go into Work Stream 2
- Provide timeline of key dates and target date of proposal(s) for each Work Stream
- Review of existing accountability mechanisms, including a review of their efficiency based on prior work such as ATRT reviews and proposals for changes, enhancements, and additional mechanisms
- Identification of contingencies to be considered in the stress tests
- Analysis of core issues based on the current situation analysis, in relation to the CCWG-Accountability's goal and the IANA Stewardship Transition
- Identification of priorities to focus work on such issues with highest potential to enhance ICANN's accountability
- Review and analyze statements, responses and questions provided by the U.S. Department of Commerce
- Review of possible solutions for each Work Stream including stress tests against identified contingencies. The CCWG-Accountability should consider the following methodology for stress tests
  - Analysis of potential weaknesses and risks
  - Analysis existing remedies and their robustness
  - Definition of additional remedies or modification of existing remedies
  - Description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies
  - CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition.

Examples of individual items to be looked at may include:

- Affirmation of Commitments (see <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>)
- Expert Panel (ASEP) as one basis for its discussions
- 2013 Report of the Accountability & Transparency Review Team (see <https://www.icann.org/en/about/aoc-review/atrt/final-recommendations-31dec13->

[en.pdf](#))

- Operation and Viability of current Reconsiderations process
- Operation and Viability of the CEP (cooperative engagement process) within the Independent Review
- Independent Review Process (IRP) criteria
- Possible solutions including
- Input received in relation to solutions as part of earlier public comment periods (see <https://www.icann.org/en/system/files/files/proposed-solutions-25aug14-en.pdf>)
- Input received in CCWG-Accountability comment periods

### ***Reporting***

The co-chairs of the CCWG-Accountability will brief the chartering organizations on a regular basis as well as their representatives on the ICG (particularly in relation to Work Stream 1).

## **Section IV: Membership, Staffing and Organization**

### ***Membership Criteria***

Membership in the CCWG-Accountability, and in sub-working groups should these be created, is open to members appointed by the chartering organizations. To facilitate scheduling meetings and to minimize workloads for individual members, it is highly recommended that individual members participate in only one sub-working group, should sub-working groups be created. Each of the chartering organizations shall appoint a minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures. Best efforts should be made to ensure that individual members:

- Have sufficient expertise to participate in the applicable subject matter (see for example <https://www.icann.org/resources/pages/enhancing-accountability-faqs-2014-08-22-en#12> for areas identified for expertise);
- Commit to actively participate in the activities of the CCWG-Accountability on an ongoing and long-term basis; and
- Where appropriate, solicit and communicate the views and concerns of individuals in the organization that appoints them.

In appointing their members, the chartering organizations should note that the CCWG-Accountability's decision-making methodologies require that CCWG-Accountability members act by consensus, and that polling will only be used in rare instances and with the recognition that such polls do not constitute votes.

Chartering organizations are encouraged to use open and inclusive processes when selecting their members for this CCWG-Accountability. Best efforts should also be made to ensure that the CCWG-Accountability and any sub-working groups, if created, have representation from each of ICANN's five regions.

In addition, the CCWG-Accountability will be open to any interested person as a participant. Participants may be from a chartering organization, from a stakeholder group not represented in the CCWG-Accountability, or may be self-appointed. Participants will be able to actively participate in and attend all CCWG-Accountability meetings, work groups and sub-work groups. However, should there be a need for a consensus call or decision, such consensus call or decision will be limited to CCWG-Accountability members appointed by the chartering organizations.

All members and participants will be listed on the CCWG-Accountability's Wiki. The mailing list of CCWG-Accountability will be publicly archived. All members and participants in this process are required to submit a Statement of Interest (SOI) following the procedures of their chartering organization or, where that is not applicable the GNSO procedures may be followed or alternatively a statement should be provided which at a minimum should include name, whether the participant is representing a certain organization or company as part of his/her participation in this effort, areas of specific interest in relation to this effort, material relationship with other parties affected by ICANN and primary country of residence.

Volunteer co-chairs appointed by the chartering organizations, should a chartering organization decide to appoint a co-chair to the CCWG-Accountability, will preside over CCWG-Accountability deliberations and ensure that the process is bottom-up, consensus-based and has balanced multistakeholder participation. ICANN is expected to provide day-to-day project administration and secretariat support and, upon request of the CCWG-Accountability co-chairs, professional project facilitators or expert assistance.

In addition to the working relationship between groups developing the IANA Stewardship Transition proposal which is detailed in a subsequent section, the CCWG-Accountability will include a liaison from the ICANN Board, who would be an active member of the CCWG-Accountability, bringing the voice of the Board and Board experience to activities and deliberations. The CCWG-Accountability will also include an ICANN Staff representative to provide input into the deliberations and who is able to participate in this effort in the same way as other members of the CCWG-Accountability. Should there be a need for any consensus call(s), neither the Board liaison nor the Staff representative would participate in such a consensus call.

### ***Group Formation, Dependencies and Dissolution***

Each of the chartering organizations shall appoint members to the CCWG-Accountability in accordance with their own rules and procedures.

### ***Working Relationship With the ICG, the CWG, and Other Groups Developing the IANA Stewardship Transition Proposal***

The co-chairs of the CCWG-Accountability will discuss and determine, along with representatives of the ICG, the CWG-Stewardship, and other groups developing the IANA Stewardship proposal, the most appropriate method of sharing information and communicating progress and outcomes, particularly in relation to Work Stream 1. This could, for example, be done through regular Chairs calls. In particular, the co-chairs will agree the method by which the final Work Stream 1 deliverable of the CCWG-

Accountability, the “Enhanced ICANN Accountability Related to the IANA Stewardship Transition Proposal” will be provided from the CCWG-Accountability to the ICG and CWG-Stewardship. The delivery of this Work Stream 1 Proposal is expected to occur following approval of the ICANN Board as outlined in Section V of this charter (see also <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>).

### *Expert Advisors*

In addition to input from the community, the CCWG-Accountability is expected to solicit and consider the input from the up to seven Advisors selected by the [Public Experts Group \(PEG\)](#) to provide independent advice, research and identify best practices, at an early stage of its deliberations. In addition to input that is specifically solicited by the CCWG-Accountability, the CCWG-Accountability is also expected to give due consideration to any additional advice or input that the Advisors provide as part of the CCWG-Accountability deliberations. The Advisors are expected to contribute to the dialogue similar to other CCWG-Accountability participants. However, should there be a need for any consensus call(s), the Advisors would not participate in such a call.

In addition to the advisors selected by the PEG, the CCWG-Accountability may also identify additional advisors or experts to contribute to its deliberations in a similar manner as the Advisors selected by the PEG. Should additional costs be involved in obtaining input from additional advisors or experts, prior approval must be obtained from ICANN. Such a request for approval should at a minimum include the rationale for selecting additional advisors or experts as well as expected costs.

The CCWG-Accountability should integrate one Accountability and Transparency Review Team (ATRT) past participant to bring perspective and avoid duplication of work. Should there be a need for any consensus call(s), the ATRT Expert would not participate in such a consensus call (unless the ATRT Expert is also selected as a member by one of the chartering organizations).

### *Staffing and Resources*

The ICANN Staff assigned to the CCWG-Accountability will fully support the work of the CCWG-Accountability as requested by the co-chairs, including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate by the CCWG-Accountability. ICANN will provide access to relevant experts and professional facilitators as requested by the CCWG-Accountability Chairs. ICANN staff, in a coordinated effort with the CCWG-Accountability, will also ensure that there is adequate outreach to ensure that the global multistakeholder community is aware of and encouraged to participate in the work of the CCWG-Accountability.

Staff assignments to the Working Group: ICANN will provide sufficient staff support to support the activities of the CCWG-Accountability.

The CCWG-Accountability is encouraged to identify any additional resources beyond the staff assigned to the group it may need at the earliest opportunity to ensure that such resources can be identified and planned for.

## Section V: Rules of Engagement

### *DECISION-MAKING METHODOLOGIES*

In developing its Proposal(s), work plan and any other reports, the CCWG-Accountability shall seek to act by consensus. Consensus calls should always make best efforts to involve all members (the CCWG-Accountability or sub-working group). The Chair(s) shall be responsible for designating each position as having one of the following designations:

- a) Full Consensus - a position where no minority disagrees; identified by an absence of objection
- b) Consensus – a position where a small minority disagrees, but most agree

In the absence of Full Consensus, the Chair(s) should allow for the submission of minority viewpoint(s) and these, along with the consensus view, shall be included in the report.

In a rare case, the chair(s) may decide that the use of a poll is reasonable to assess the level of support for a recommendation. However, care should be taken in using polls that they do not become votes, as there are often disagreements about the meanings of the poll questions or of the poll results.

Any member who disagrees with the consensus-level designation made by the Chair(s), or believes that his/her contributions are being systematically ignored or discounted should first discuss the circumstances with the relevant sub-group chair or the CCWG-Accountability co-chairs. In the event that the matter cannot be resolved satisfactorily, the group member should request an opportunity to discuss the situation with the Chairs of the chartering organizations or their designated representatives.

#### **SO and AC support for the Draft Proposal(s)**

Following submission of the Draft Proposal(s), each of the chartering organizations shall, in accordance with their own rules and procedures, review and discuss the Draft Proposal(s) and decide whether to adopt the recommendations contained in it. The chairs of the chartering organizations shall notify the co-chairs of the WG of the result of the deliberations as soon as feasible.

#### **Supplemental Draft Proposal**

In the event that one or more of the participating SO's or AC's do(es) not adopt one or more of the recommendation(s) contained in the Draft Proposal(s), the Co-Chairs of the CCWG-Accountability shall be notified accordingly. This notification shall include at a minimum the reasons for the lack of support and a suggested alternative that would be acceptable, if any. The CCWG-Accountability may, at its discretion, reconsider, post for public comments and/or submit to the chartering organizations a Supplemental Draft Proposal, which takes into accounting the concerns raised.

Following submission of the Supplemental Draft Proposal, the chartering organizations shall discuss and decide in accordance with its own rules and procedures whether to adopt the recommendations contained in the Supplemental Draft Proposal. The Chairs of the chartering organizations shall notify the Co-Chairs of the CCWG-Accountability of

the result of the deliberations as soon as feasible.

### **Submission Board Report**

After receiving the notifications from all chartering organizations as described above, the Co-Chairs of the CCWG-Accountability shall, within 10 working days after receiving the last notification, submit to the Chair of the ICANN Board of Directors and Chairs of all the chartering organizations the CCWG-Accountability Board Report, which shall include at a minimum:

- a) The (Supplemental) Proposal as adopted by the CCWG-Accountability; and
- b) The notifications of the decisions from the chartering organizations
- c) Documentation of the process that was followed, including, but not limited to documenting the process of building consensus within the CCWG-Accountability and public consultations.

In the event one or more of the chartering organizations do(es) not support (parts of) the (Supplemental) Proposal(s), the Board Report shall also clearly indicate the part(s) of the (Supplemental) Final Proposal(s) which are fully supported and the parts which not, and which of the chartering organizations dissents, to the extent this is feasible.

Board consideration and interaction with CCWG-Accountability and chartering organizations

It is assumed that after submission of the Board Report, the ICANN Board of Directors will consider the Proposal(s) contained in this Report in accordance with the process outlined in its resolution of 16 October 2014 (see <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>):

*Resolved (2014.10.16.17), the Board commits to following the following principles when considering the Cross Community Working Group Recommendations on Enhancing ICANN Accountability and Governance:*

- 1. These principles apply to consensus-based recommendations from the Cross Community Working Group on Enhancing ICANN Accountability and Governance.*
- 2. If the Board believes it is not in the global public interest to implement a recommendation from the Cross Community Working Group on Enhancing ICANN Accountability and Governance (CCWG Recommendation), it must initiate a dialogue with the CCWG. A determination that it is not in the global public interest to implement a CCWG Recommendation requires a 2/3 majority of the Board.*
- 3. The Board must provide detailed rationale to accompany the initiation of dialogue. The Board shall agree with the CCWG the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*
- 4. The CCWG will have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.*
- 5. If a recommendation is modified through the CCWG, it is returned back to the Board for further consideration. The CCWG is to provide detailed rationale on*

*how the modification addresses the concerns raised by the Board.*

6. *If, after modification, the Board still believes the CCWG Recommendation is not in the global public interest to implement the CCWG Recommendation, the Board may send the item back to the CCWG for further consideration, again requiring a 2/3 vote of the Board for that action. Detailed rationale for the Board's action is again required. In the event the Board determines not to accept a modification, then the Board shall not be entitled to set a solution on the issue addressed by the recommendation until such time as CCWG and the Board reach agreement.*

Before submitting a modified recommendation to the ICANN Board of Directors, as envisioned under 5. of the Board resolution, the CCWG-Accountability will submit a Draft Supplemental Board Report to the chartering organizations containing:

- a) The modified recommendations, and associated detailed rationale,
- b) The Board decision, and associated detailed rationale
- c) The recommendation as contained in the Board Report

Following submission of the Draft Supplemental Board Report, the chartering organizations shall discuss and decide in accordance with their own rules and procedures whether to adopt the modified recommendations contained in the report. The Chairs of the chartering organizations shall notify the co-chairs of the CCWG-Accountability of the result of the deliberations as soon as feasible.

After receiving the notifications from all chartering organizations, the co-Chairs of the CCWG-Accountability shall, within 10 working days after receiving the last notification, submit to the Chair of the ICANN Board of Directors and Chairs of all the chartering organizations the CCWG-Accountability Supplemental Board Report, which shall include at a minimum:

- a) The modified recommendations, and associated detailed rationale.
- b) The notifications of the decisions from the chartering organizations.
- c) Documentation of the process that was followed, including, but not limited to documenting the process of building consensus within the CCWG-Accountability and consultations with the chartering organizations.

If, in accordance with 6., the Board determines not to accept a modified recommendation, the CCWG-Accountability shall follow the procedure regarding the Supplemental Board Report, as just described, to reach agreement with the Board.

## ***MODIFICATION OF THE CHARTER***

In the event this charter does not provide guidance and/or the impact of the charter is unreasonable for conducting the business of the CCWG-Accountability, the co-chairs have the authority to determine the proper actions. Such action may, for example, consist of a modification to the Charter in order to address the omission or its unreasonable impact, in which case the Co-Chairs may propose such modification to the chartering organizations. A modification shall only be effective after adoption of the amended Charter by all chartering organizations, in accordance with their own rules and procedures.



### ***PROBLEM/ISSUE ESCALATION & RESOLUTION PROCESSES***

All participants are expected to abide by the [ICANN Expected Standards of Behavior](#).

The co-chairs are empowered to restrict the participation of someone who seriously disrupts the working group. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place; in extreme circumstances, this requirement may be bypassed. This restriction is subject to the right of appeal as outlined above.

In the event that no consensus is reached by the CCWG-Accountability, the co-chairs of the CCWG-Accountability will submit a Report to the chartering organizations. In this Report the co-chairs shall document the issues that are considered contentious, the process that was followed and will include suggestions to mitigate prevention of consensus. If, after implementation of the mitigating measures consensus can still not be reached, co-chairs shall prepare a Final Report documenting the processes followed, including requesting suggestions for mitigating the issues that are preventing consensus from the chartering organizations. The Final Report will be submitted to the ICANN Board and the chartering organizations requesting closure of the CCWG-Accountability by the chartering organizations.

### ***CLOSURE & WORKING GROUP SELF-ASSESSMENT***

The CCWG-Accountability will consult with their chartering organizations to determine when it can consider its work completed. The CCWG-Accountability and any sub-working groups shall be dissolved upon receipt of the notification of the Chairs of the chartering organizations or their designated representatives.

# Appendix C – Background & Methodology

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This section includes an overview of the Enhancing ICANN Accountability process, and its foundation in the IANA Stewardship Transition.

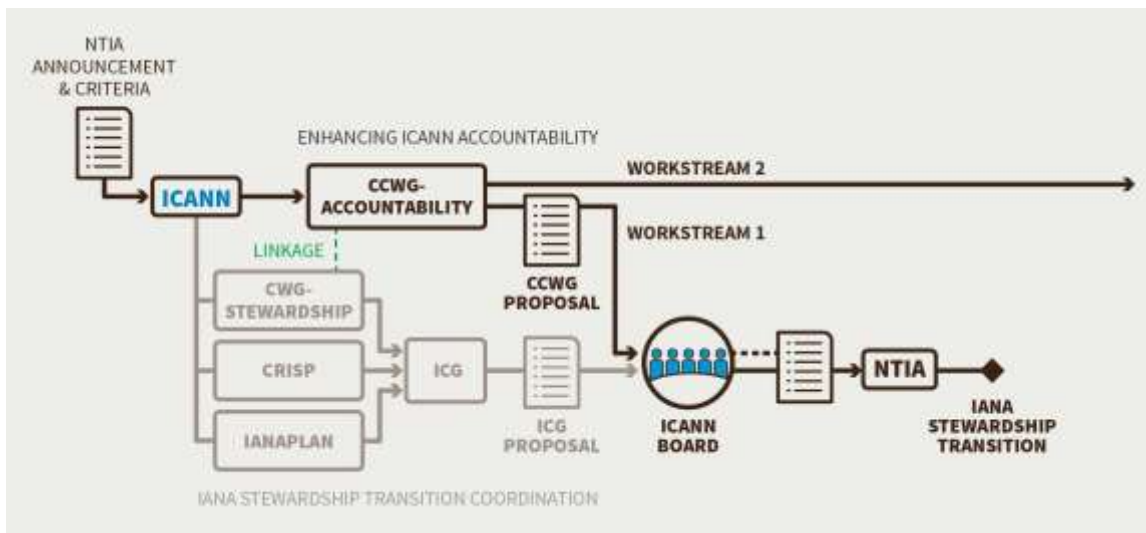
## Background On The IANA Stewardship Transition

- 1 On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked ICANN to convene a multistakeholder process to develop a proposal for the transition.
- 2 In making its announcement, NTIA specified that the transition proposal must have broad community support and meet the following principles:
  - Support and enhance the multistakeholder model;
  - Maintain the security, stability, and resiliency of the Internet DNS;
  - Meet the needs and expectation of the global customers and partners of the IANA services;
  - Maintain the openness of the Internet.
- 3 NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.
- 4 The IANA Stewardship Transition Coordination Group (ICG) was formed in July 2014 to assemble and deliver through the ICANN Board to NTIA a transition proposal consistent with the key principles outlined in the NTIA announcement. The ICG is made up of 30 individuals representing 13 communities of both direct and indirect stakeholders of the IANA functions. Direct stakeholders are "direct customers" of the IANA functions, e.g. top-level domain registry operators, while indirect stakeholders are all those who benefit from performance of the IANA functions, e.g., businesses and end users.
- 5 In September 2014, the ICG published a Request for Proposals to the three communities. The three operational communities with direct operational or service relationships with the IANA functions i.e. Domain Names, Number Resources and Protocol Parameters were asked to provide a formal response to the ICG regarding its community's use of the IANA functions, its existing, pre-transition arrangements, proposed post-transition oversight and accountability arrangements, and any anticipated transition implications.
- 6 Each of the three operational communities formed working groups to develop a proposal:
  - **Domain Names:** Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship)
  - **Number Resources:** Consolidated Regional Internet Registries IANA Stewardship Proposal Team (CRISP Team); and

- **Protocol Parameters:** IANAPLAN Working Group (IANAPLAN WG)
- 7 In January 2015, the ICG received a proposal from the Protocol Parameters community and a proposal from the Numbering Resources community; the Domain Names community finalized its proposal for the ICG in June 2015.
  - 8 Following submissions from the three communities, the ICG assessed the respective outputs and assembling a complete proposal for the transition. Following a 30-day public comment period that ended on September 8 2015, the ICG received more than 150 comments from a wide variety of stakeholders all over the world. The majority of the comments expressed support for the proposal. In some cases that support was qualified by suggestions, questions, and criticism that the ICG is working hard to synthesize and address as appropriate.
  - 9 Following discussions at ICANN54 in Dublin in October 2015, the ICG announced that it finalized the IANA Stewardship Transition Proposal, with one exception of the conditionality between the CWG-Stewardship portion of the proposal and the ICANN-level accountability mechanisms currently under development in the CCWG-Accountability. Before sending this proposal to the NTIA via the ICANN Board, the ICG will secure confirmation from the CWG-Stewardship that its accountability requirements have been met.

## Introduction To The Enhancing ICANN Accountability Process

- 10 As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to propose reforms that would see ICANN realize a level of accountability to the global multistakeholder community that is satisfactory in the absence of its historical contractual relationship with the U.S. Government. This contractual relationship has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.
- 11 Informed by community discussions held in March 2014 at ICANN's public meeting in Singapore, ICANN published a proposed process on Enhancing ICANN Accountability, with an opportunity for public dialogue and community feedback from 6 May – 27 June 2014, in addition to the comments received during the dedicated Enhancing ICANN Accountability session held on 26 June 2014 at the ICANN 50 meeting in London. The comments related to the development of the process were considered in the refinement of the second iteration of the process published on 14 August 2014. In response to community requests for additional time to review proposals and post questions and comments, ICANN provided an additional 21-day comment period from 6-27 September 2014.
- 12 The final Revised Enhancing ICANN Accountability: Process and Next Steps includes considering how ICANN's broader accountability mechanisms should be strengthened in light of the transition, including a review of existing accountability mechanisms such as those within the ICANN Bylaws and the Affirmation of Commitments.



## Formation of the CCWG-Accountability

- 13 Following public comment periods and discussions on accountability, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened, designed and approved by a Drafting Team composed of five ICANN community groups. Further information, including document drafts and meeting transcripts of the Drafting Team that developed the CCWG-Accountability Charter (see Appendix B), is available on the CCWG-Accountability Wiki site.
- 14 The CCWG-Accountability Charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the Charter:
  - Generic Names Supporting Organization (GNSO) on 13 November 2014
  - At-Large Advisory Committee (ALAC) on 18 November 2014
  - Country Code Names Supporting Organization (ccNSO) on 20 November 2014
  - Governmental Advisory Committee (GAC) on 8 December 2014
  - Address Supporting Organization (ASO) on 9 December 2014
  - Security and Stability Advisory Committee (SSAC) on 6 July 2015

## Composition of the CCWG-Accountability

The CCWG-Accountability consists of 201 people, organized as 28 members, appointed by and accountable to the CCWG-Accountability chartering organizations, 173 participants, who participate as individuals, and 109 mailing list observers. Each of the Chartering Organizations may appoint a minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures.

15 **THE CCWG-ACCOUNTABILITY ALSO INCLUDES:**

- 1 ICANN Board liaison who brings the voice of the Board and Board experience to activities and deliberations;
  - 1 ICANN staff representative who provides input into the deliberations;
  - 1 former ATRT member who serves as a liaison and brings perspective and ensures that there is no duplication of work;
  - ICG members who participate in the CCWG-Accountability, including 2 who serve as liaisons between the two groups.
- 16 Seven Advisors have also been appointed by a Public Experts Group (PEG) to contribute research and advice, and to bring perspectives on global best practices to enrich the CCWG-Accountability discussion, all while engaging with a broader network of accountability experts from around the world.
- 17 The CCWG-Accountability is open to all: anyone interested in the work of the CCWG-Accountability can join as a participant or observer. Participants may be from a chartering organization, from a stakeholder group or organization not represented in the CCWG-Accountability or currently active within ICANN, or self-appointed. For those who are merely interested to monitor the CCWG-Accountability conversations, there is the possibility to sign up as a mailing list "observer" which offers read-only access to the mailing list.
- 18 The group first met in December 2014 and has held weekly meetings since. It operates in a transparent environment: its mailing-lists discussions, meeting archives, drafts and correspondence are documented on a [public wiki space](#).

19 **Work Streams**

- 20 Per the CCWG-Accountability Charter, the work of the CCWG-Accountability would proceed in two Work Streams defined as follows:
- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition
  - **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition

## Methodology

- 21 This section describes the methodology through which the CCWG-Accountability developed and completed the Work Stream 1 proposal.

22 **Defining Requirements for Work Stream 1**

- 23 The primary goal of the CCWG-Accountability is to deliver proposals that would enhance ICANN's accountability towards all stakeholders. The first step in achieving this goal was to understand and describe the status quo. To do this efficiently, the CCWG-Accountability established four initial Work Areas:

- **Work Area 1:** Existing Accountability Mechanisms (including the Affirmation of Commitments reviews on accountability)
- **Work Area 2:** Review Input from Public Comment and Categorize Items into Work Streams 1 & 2 (Work Stream 1 & Work Stream 2)
- **Work Area 3:** Review Issues Identified by CWG-Stewardship
- **Work Area 4:** Identify Contingencies (especially in relation to Work Stream 1)

24 The four areas were populated with volunteer CCWG-Accountability members and participants who had dedicated mailing lists and wiki spaces to advance their work.

## 25 **Work Area 1: Inventory of Existing Accountability Mechanisms**

26 One of the first deliverables within the CCWG-Accountability was an inventory of existing accountability mechanisms on 15 December 2014, delivered just one week after the CCWG-Accountability first met. The inventory was the starting point of CCWG-Accountability's discussions, about which ICANN accountability mechanisms should be enhanced to address the risks the group had identified, and where gaps would remain and the group would need to develop new mechanisms to mitigate against those risks.

## 27 **Work Area 2: Assessment of Comments to Date**

28 Another area of initial CCWG-Accountability work focused on a review of the collection of comments received during the development of the Enhancing ICANN Accountability process and assessed whether they were issues to address as part of Work Stream 1 or Work Stream 2. The group categorized the comments based on the following rationale:

- Work Stream 1 is designated for accountability enhancement mechanisms that must be in place or committed to, before IANA transition occurs.
- Work Stream 1 mechanisms are those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.
- All other consensus items could be in Work Stream 2, provided the mechanisms in Work Stream 1 are adequate to force implementation of Work Stream 2 items despite resistance from ICANN management and Board.

29 In addition to categorizing the comments, the ATRT Expert reviewed the comments and noted, where relevant, a reference to ATRT recommendations. Work Area 2 was complete as of 15 January 2015.

## 30 **Work Area 3: Interrelation with the CWG-Stewardship Work**

31 The CCWG-Accountability also reviewed the accountability elements identified by the CWG-Stewardship. In light of the clear linkage between the works of the two groups, the CWG-Stewardship and CCWG-Accountability Co-Chairs agreed that it would be valuable for the CWG-Stewardship to provide the CCWG-Accountability with a list of issues it identified during its

deliberations where the work of both groups may overlap. A robust collaboration was built between the two groups including leadership coordination call and exchange of letters.

32 In January 2015, the CCWG-Accountability extensively discussed the CWG-Stewardship list of issues, offered input and indicated that these avenues of work would be one of the focuses of CCWG-Accountability attention.

33 While the work was completed in March 2015, the collaboration was maintained throughout the end of their respective mandates.

#### 34 **Work Area 4: Stress Test and Contingencies Work Party**

35 A final area of focus was on the identification the main stress tests and contingencies that the CCWG-Accountability would use to test the proposed mechanisms and solutions, once elaborated.

36 The goal of this group was to identify the main contingencies that CCWG-Accountability should use to test proposed mechanisms and solutions once they are elaborated. The group defined contingencies as consisting of:

- An event (threat) to the IANA Functions Contract;
- Its consequence, such as creating significant interference with existing policy or the policy development processes; and
- What contingency plan, if any, is known to exist.

37 21 broad scenarios were initially identified, including for example, the impact of financial crisis in the domain name industry, capture by one or more stakeholders, and termination of the Affirmation of Commitments. A full list is available from the Work Area 4 webpage.

38 The group also received inputs from the ICANN Board Risk Committee on enterprise-wide risks identified within ICANN, as an input to its work. Furthermore, details of strategic risks that ICANN may face are identified in "ICANN Strategic Plan for fiscal years 2016-2020".

39 This work continues through the **Stress Tests Work Party (ST-WP)**: During the Istanbul Meeting of the CCWG, bundled the stress testing into 5 Categories (Financial Crisis or Insolvency, Failure to meet Operational Obligations, Legal / Legislative Actions, Failure in Accountability and Failure in Accountability to External Stakeholders) ; Post Istanbul, the ST-WP continued with regular review of the existing Stress Tests and continued with its identification of stress tests and their application. In reviewing the first public comment, there were an additional nine stress tests identified and included in the 2nd draft for public comment. Section 10 of this proposal details the 'to date' and ongoing work of the Stress Test Work Party.

#### 40 **Restructuring into Work Parties**

41 The Frankfurt face-to-face meeting on 19-20 January 2015 was a key turning point for the CCWG-Accountability: the group moved from an assessment phase into a development phase. As part of this development phase, the CCWG-Accountability mapped out Work Stream 1 requirements leading to a restructure of the group into Work Parties.

42 Work Party 1 and Work Party 2 were formed following the Frankfurt meeting in January 2015:

- Work Party 1: Community Empowerment (WP1) was formed to consider proposed is considering powers for the community to hold ICANN to account, and to develop a consensus on the most appropriate mechanisms to allow the community to exercise these

powers. WP1 will set out the necessary changes that would be required (e.g. Bylaws changes) to deliver these. Powers and mechanisms were defined as follows:

- Powers are actions the community should be able to take to maintain and improve ICANN's accountability;
  - Mechanisms are the structures or processes by which the community exercises its powers.
- Work Party 2: Review and Redress (WP2) was tasked with considering enhancements to existing accountability mechanisms and the creation of new accountability mechanisms to allow for review and redress for those affected by ICANN's failure to carry out its mission statement, and to hold ICANN accountable for carrying out its mission in compliance with agreed-upon standards. Work Party 2 articulated the following principles to guide its work:
    - Ensure that ICANN actions relate to issues that are within its stated mission and require ICANN to act consistent with clearly articulated principles;
    - Ensure that the ICANN Board can be held to its Bylaws;
    - Ensure that ICANN carries out its mission consistent with a binding statement of values/principles;
    - Prevent scope/mission creep through bylaws changes, policy, policy implementation, contracts and/or other mechanisms.
- 43 Work Party 3 Emerging Issues (WP3) was formed in July 2015 and tasked with reviewing the feedback received in the first public comment period (May-June 2015) with regards to issues flagged by the community as not being already addressed by the discussions and the draft proposal published by the CCWG-Accountability. Three topics were identified as emerging from feedback after the first public comment period:
- Enhancement of SO/AC accountability as the first draft document was perceived to be centered in Board accountability only.
  - Enhancement of Staff accountability so that the mechanisms being discussed might also be applicable to Staff's action or inaction.
  - Enhancement of diversity within ICANN and especially with regards to that of the newly created bodies being proposed.
- 44 Work Party 4 Human Rights (WP4) was created in August 2015 following extensive discussions within the CCWG-Accountability on inclusion of a potential Human Rights commitment into ICANN's Mission and Bylaws.
- 45 Work Party – IRP Implementation Oversight Team (WP-IOT) began its activities in January 2016. The Team responsible for reviewing the outcome produced by the legal counsel on IRP and to report back to the CCWG-Accountability. Its activities will be maintained as the group moves to Work Stream 2. It is composed of CCWG-Accountability experts in the field as well as representatives from the CCWG-Accountability's legal counsel and ICANN.
- 46 In addition, a Stress Test 18 Work Party (ST18-WP) was convened in November 2015 to draft consensus text on a proposed Bylaw to address Stress Test 18 (regarding the ICANN Board's consideration of advice from the Government Advisory Committee (GAC)). See Annex 11 – Board Obligations with regards to Governmental Advisory Committee Advice (Stress Test 18) for more information.



47 All Work Parties operated in a transparent environment, conducting their work on publicly archived mailing lists, on recorded calls and documenting progress and drafts on a [public wiki](#). Conclusions reached by Work Parties were confirmed by the full CCWG-Accountability.

## 48 **Building Blocks**

49 In February 2015, the CCWG-Accountability identified four building blocks that would form the accountability mechanisms required to improve accountability.

### 50 **Drawing a state analogy:**

- Empowered community refers to the powers that allow the community i.e. the people to take action should ICANN breach the principles.
- Principles form the Mission, Commitments and Core Values of the organization i.e. the Constitution.
- ICANN Board represents the executive entity the community may act against, as appropriate.
- Independent Review Mechanisms, i.e. the judiciary, confers the power to review and provide redress, as needed.

51 The accountability framework was compared to a cookbook populated with recipes for which the CCWG-Accountability would need to identify ingredients. A distinction was made between triggered actions i.e. triggered by the community and non-triggered i.e. part of a normal ICANN processes. The CCWG-Accountability developed a set of criteria to frame discussions.

52 From its building blocks, the CCWG-Accountability defined requirements that it established as a roadmap to follow during its discussions. The 12 recommendations embody the requirements.

## **Legal Advice**

53 The CCWG-Accountability engaged two law firms to receive expertise on feasibility of its proposed frameworks and mechanisms, Adler & Colvin and Sidley Austin LLP. The legal advice was key to the CCWG-Accountability in formulating its recommendations.

54 The CCWG-Accountability Legal Subteam's rules of engagement and working methodologies are described in Appendix C.

55 After a successful first phase lead by the Legal Subteam, and in response to the need for increased agility in the interaction between the external lawyers and the working parties, it was decided that the Legal Subteam should be dissolved in order to provide a more agile and direct interaction with the independent counsel. Rules of engagement changed: the Co-Chairs are in charge of certifying the assignments for the lawyers, but the rest of the general procedural rules stand and all interactions with counsel continue to be recorded on the [public wiki](#).

## **Definitions & Scoping**

56 The CCWG-Accountability scoped out and elaborated a problem statement along with definitions to help refine its understanding of the task it was entrusted with. The group endeavored to produce a definition of what accountability is, listed transparency, consultation, review mechanisms and redress mechanisms as criteria of accountability mechanisms.

- 57 As a general concept, the group proposed that accountability encompassed processes whereby an actor answers to others for the effects on them of its actions and omissions. For the CCWG-Accountability, then, accountability involves the processes whereby ICANN answers to its stakeholders for the impacts on those stakeholders of ICANN's decisions, policies and programs.
- 58 The group proposed that accountability is comprised four dimensions:
- 1) **Transparency** means that an actor (ICANN) is answerable to its stakeholders by being open and visible to them.
  - 2) **Consultation** means that the actor (ICANN) continually takes input from and explains its positions to the stakeholders.
  - 3) **Review** means that the actor's actions, policies and programs are subject to outside monitoring and evaluation.
  - 4) **Redress** means that the accountable actor makes compensations for any harms of its actions and omissions, for example, by means of policy changes, institutional reforms, resignations, financial reparations, etc.
- 59 Independence and checks and balances were identified as two key qualities of any accountability mechanism. The group defined "checks and balances mechanisms" as a series of mechanisms put in place to adequately address the concerns from the various interested parties in the discussion and decision process, as well as to ensure that the decision is made in the interest of all stakeholders. The group investigated two different non-exclusive views in order to assess independence: independence of persons participating in the decision process, and independence of a specific accountability mechanism with regards to other mechanisms.
- 60 The group flagged to whom should ICANN be accountable as an important component, and assembled a list of stakeholders which distinguished between affected parties and parties affecting ICANN. The following principles were agreed to guide the activities of the CCWG-Accountability:
- ICANN accountability requires that it comply with its own rules and processes (part of "due process", as a quality of fairness and justice);
  - ICANN accountability requires compliance with applicable legislation, in jurisdictions where it operates;
  - ICANN should be accountable to achieving certain levels of performance as well as security;
  - ICANN should be accountable to ensure that its decisions are for the benefit of the public, not just in the interests of a particular set of stakeholders or ICANN the organization.

# Appendix D – Engagement and Participation Summaries: Documenting Public Consultations

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- 1 Throughout the development of its Work Stream 1 Recommendations, the CCWG-Accountability has sought feedback, confirmations and input from the Internet’s global multistakeholder community. The channels through which consultation was conducted include (but are not limited to):
  - Organizing and providing engagement sessions at ICANN meetings
  - Relaying regular updates to Supporting Organizations and Advisory Committees through membership representation
  - Holding multi-lingual webinars
  - Posting versions of the Work Stream 1 Recommendations for public comment (described in more depth below)
- 2 This outreach plan was carefully developed to ensure that the work to enhance ICANN’s accountability was being adequately considered by the entire ICANN community. In addition, the CCWG-Accountability posted blogs, communiqués and multilingual videos to document its progress and establish resources for further engagement.
- 3 The CCWG-Accountability organized two public comment periods that were key in defining and refining its Work Stream 1 recommendations:
  - **First Public Comment Period (4 May-12 June 2015)**

The CCWG-Accountability requested community feedback on its Initial Draft Proposal for Public Comment of the enhancements to ICANN’s accountability it had identified as essential or necessary to take place or be committed to before the IANA Stewardship Transition to help improve its proposal and inform next steps. A set of [focused questions](#) were provided to help guide the feedback the CCWG-Accountability would need for next steps.

    - Contributions received in response to this call for input can be read [here](#).
    - A staff summary of the comments received can be found [here](#).
  - **Second Public Comment Period (3 August-12 September 2015)**

Similar to the first Public Comment Period, the second call for input was released to seek confirmation of the CCWG-Accountability’s Work Stream 1 Recommendations and identify levels of support and any outstanding concerns with the mechanisms developed. Framing questions and a summary of changes between the first and second reports were provided to facilitate community’s reading of the report.

    - Contributions received in response to this call for input can be read [here](#).
    - Work Party and staff summaries of this second call for input can be read [here](#).

- **Third Public Comment Period (30 November-21 December 2015)**

The CCWG-Accountability sought the six Chartering Organizations’ support for their Work Stream 1 recommendations in this Draft Proposal. Although relaying comments through a Chartering Organization was the recommended approach, individuals were also welcome to submit comments separately. A survey was issued to frame the input received and established the level of support for each recommendation. Comments and suggestions were also encouraged. Similar to the Second Public Comment, summaries of changes between the first and second reports were provided to facilitate community’s reading of the report.

- Contributions received in response to this call for input can be read [here](#).
- Work Party and staff summaries of this third call for input can be read [here](#).

Following the release of the [staff report](#) and the [summary of public comments](#), the CCWG-Accountability determined that the majority of revisions needed to the Third Draft Report would relate to specificities of implementation rather than content. As such, the group determined that an additional public comment period would not be necessary before approval by the Chartering Organizations.

To incorporate necessary changes, the CCWG-Accountability developed a “Supplemental” Final Report, developed through an open and transparent process. This Supplemental Final Report was distributed on 23 February 2016, and is to be considered by the six Chartering Organizations for approval and submission to the ICANN Board.

## Appendix D -- Engagement and Participation Statistics: Summary

Statistics as of 9 February 2016

### CCWG-Accountability

<b>Members/Participants:</b>	<b>200</b>
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	In Attendance	Hours	Total Working Hours
Meeting #1	51	1.75	89.25
Meeting #2	27	2	54
Meeting #3	34	2	68
Meeting #4	42	1.75	73.5
Meeting #5	63	2	126
Meeting #6	35	2	70
Meeting #7 Session 1	41	2	82
Meeting #7 Session 2	48	2	96
Meeting #7 Session 3	47	1.5	70.5
Meeting #7 Session 4	44	1.75	77
Meeting #8 Session 1	39	2	78
Meeting #8 Session 2	48	2	96
Meeting #8 Session 3	48	1	48
Meeting #8 Session 4	48	1	48
Meeting #9	40	1.75	70
Meeting #10	42	1.25	52.5
Meeting #11 (ICANN 52)	35	3	105
Meeting #12 (ICANN 52)	45	3	135
Meeting #13	37	2	74
WP1 Meeting #1	16	1.25	20
Meeting #14	39	2	78
WP1 Meeting #2	20	1.5	30
WP2 Meeting #1	14	1	14
WP2 Meeting #2	17	1	17
Meeting #15	44	2	88
WP1 Meeting #3	24	1.5	36
WP2 Meeting #3	18	1	18
Meeting #16	37	2	74
Legal SubTeam Meeting #2	13	1.5	19.5
Stress Tests SubTeam Meeting #1	13	1.25	16.25
WP1 Meeting #4	20	1.5	30
Legal SubTeam Meeting #3	8	0.5	4
Legal SubTeam Meeting #4	9	0.75	6.75
Meeting #17	43	2	86
Stress Tests SubTeam Meeting #2	7	1.75	12.25
Legal SubTeam Meeting #5	9	0.5	4.5

WP1 Meeting #5	23	1.5	34.5
Legal SubTeam Meeting #6	6	1	6
F2F Istanbul - Day 1 Session 1	45	1.5	67.5
F2F Istanbul - Day 1 Session 2	50	2	100
F2F Istanbul - Day 1 Session 3	57	2	114
F2F Istanbul - Day 1 Session 4	57	1.5	85.5
F2F Istanbul - Day 2 Session 1	47	2	94
F2F Istanbul - Day 2 Session 2	49	1.75	85.75
F2F Istanbul - Day 2 Session 3	57	2	114
F2F Istanbul - Day 2 Session 4	50	2	100
WP2 Meeting #4	20	1.5	30
Legal SubTeam Meeting #7	10	1	10
Meeting #20	40	2	80
Legal SubTeam Meeting #8	27	1	27
WP1 Meeting #6	15	1.25	18.75
Legal SubTeam Meeting #9	16	0.75	12
Meeting #21	47	1	47
Stress Tests SubTeam Meeting #3	11	1	11
Legal SubTeam Meeting #10	27	2.5	67.5
WP1 Meeting #7	29	1.5	43.5
WP1 Meeting #8	16	1.75	28
WP1 Meeting #9	26	0.75	19.5
Meeting #22	55	2	110
Stress Tests SubTeam Meeting #4	9	1	9
Legal SubTeam Meeting #11	21	1.75	36.75
WP1 Meeting #10	25	2	50
WP1 Meeting #11	20	2	40
Meeting #23	58	2	116
Legal SubTeam Meeting #12	18	2	36
Legal SubTeam Meeting #13	22	1	22
Meeting #24 (Intensive Work Days)	35	2	70
Meeting #25 (Intensive Work Days)	42	1	42
Meeting #26 (Intensive Work Days)	43	3	129
Meeting #27 (Intensive Work Days)	39	2	78
Meeting #28 (Intensive Work Days)	45	1	45
Meeting #29 (Intensive Work Days)	45	3	135
Meeting #30	37	2	74
Stress Tests SubTeam Meeting #5	26	2	52
Meeting #31	29	2	58
Meeting #32	40	2	80
Meeting with the Board	56	1.5	84
Meeting #33	28	2	56
Meeting #34	40	2	80
Meeting #35	39	2	78
Meeting #36	35	3	105
Meeting #37	32	1	32

Leadership and Lawyers #1	4	1	4
Stress Tests SubTeam Meeting #6	6	1.5	9
Stress Tests SubTeam Meeting #7	5	1.5	7.5
WP1 Meeting #12	13	2	26
WP2 Meeting #5	7	0.75	5.25
WP2 Meeting #6	10	1.5	15
WP1 Meeting #13	10	1.5	15
WP1 Meeting #14	10	1.75	17.5
Stress Tests SubTeam Meeting #8	4	1	4
Working Session 1 (ICANN53)	56	10	560
Meeting with the Board (ICANN53)	21	1	21
Working Session 2 (ICANN53)	46	3	138
Working Session 3 (ICANN53)	44	1.5	66
Meeting #38	32	2	64
WP1 Meeting #15	15	1	15
Leadership and Lawyers #2	2	1	2
WP1 Meeting #16	18	1.5	27
WP3 Meeting #1	28	1	28
Meeting #39	41	2	82
Stress Tests SubTeam Meeting #9	10	1	10
WP1 Meeting #17	11	2	22
WP3 Meeting #2	25	1.5	37.5
WP2 Meeting #7	9	1.5	13.5
WP3 Meeting #3	15	1	15
WP1 Meeting #18	12	2	24
WP3 Meeting #4	29	1.5	43.5
WP2 Meeting #8	14	1.5	21
WP1 Meeting #19	15	2	30
Meeting #40	41	2	82
WP3 Meeting #5	20	1	20
Stress Tests SubTeam Meeting #10	5	1	5
F2F Paris - Day 1 Session 1	74	2	148
F2F Paris - Day 1 Session 2	74	1.5	111
F2F Paris - Day 1 Session 3	76	2	152
F2F Paris - Day 1 Session 4	78	3	234
F2F Paris - Day 2 Session 1	71	1.75	124.25
F2F Paris - Day 2 Session 2	72	2	144
F2F Paris - Day 2 Session 3	69	1.5	103.5
F2F Paris - Day 2 Session 4	70	3.25	227.5
WP2 Meeting #9	17	1.5	25.5
Meeting #43	28	2	56
WP2 Meeting #10	12	1.5	18
WP3 Meeting #6	13	1.5	19.5
WP1 Meeting #20	17	2	34
Meeting #44	42	2	84
WP2 Meeting #11	14	1.5	21

WP1 Meeting #21	21	2	42
Meeting #45	51	2	102
WP1 Meeting #22	16	1.5	24
Meeting #46	48	2	96
Meeting #47	37	2	74
Meeting #48	39	2	78
Meeting #49	35	2	70
Meeting #50	34	2	68
WP4 Meeting #1	8	1	8
Meeting with the Advisors	30	1	30
Briefing to the Board	36	1.5	54
Meeting #51	44	2	88
WP4 Meeting #2	12	1	12
Board Dialogue Call	45	3	135
Meeting #52	38	2	76
WP4 Meeting #3	14	1	14
WP1 Meeting #23	17	2	34
Meeting #53	34	2	68
WP4 Meeting #4	9	1	9
Meeting #54	54	2	108
F2F Los Angeles - Day 1 (Meeting #55)	75	10	750
F2F Los Angeles - Day 2 (Meeting #56)	68	10	680
Meeting #57	64	2	128
WP1 Meeting #24	21	1.5	31.5
WP2 Meeting #12	15	2	30
WP4 Meeting #5	14	1.5	21
WP1 Meeting #25	23	2	46
WP2 Meeting #13	11	2	22
Meeting #58	45	2	90
WP1 Meeting #26	26	2	52
WP1 Meeting #27	23	1.5	34.5
WP1 Meeting #28	24	1.5	36
WP1 Meeting #29	24	2	48
WP1 Meeting #30	34	1.5	51
Stress Tests Meeting #11	13	1	13
Stress Tests Meeting #12	10	1	10
ST18 WG Meeting #1	26	1	26
ST18 WG Meeting #2	22	1	22
ST18 WG Meeting #3	28	1.5	42
WP3 Meeting #7	11	1	11
WP3 Meeting #8	14	1	14
WP4 Meeting #6	10	1.5	15
WP4 Meeting #7	12	1.5	18
WP4 Meeting #8	19	1.5	28.5
WP4 Meeting #9	19	1.5	28.5
Legal SubTeam Meeting #14	16	2	32



Legal SubTeam Meeting #15	9	1	9
Meeting #59	56	2.25	126
Meeting #60 ICANN54	83	8.5	705.5
Meeting #61 ICANN54	73	3.5	255.5
Meeting #62 ICANN54	80	2.75	220
Meeting #63 ICANN54	75	2	150
Meeting #64	47	1	47
Meeting #65	44	2	88
Meeting #66	51	1.5	76.5
Meeting #67	34	1.5	51
Meeting #68	55	2	110
SubTeam Breakout Session ICANN54	55	3.5	192.5
F2F Dublin - Meeting #61	73	4.5	328.5
F2F Dublin - Meeting #62	80	3	240
F2F Dublin - Meeting #63	75	2.5	187.5
Meeting #64	47	2	94
WP4 Meeting #8	19	1.5	28.5
WP1 Meeting #29	24	2	48
WP4 Meeting #9	19	1.5	28.5
WP1 Meeting #30	34	2	68
Meeting #65	44	2	88
Meeting #66	51	2	102
Meeting #67	34	2	68
ST-18 Meeting #1	26	1	26
Meeting #68	55	2	110
ST-18 Meeting #2	22	1	22
ST-18 Meeting #3	28	1.5	42
WP1 Meeting #31	10	2	20
WP1 Meeting #32	7	2	14
ST-18 Meeting #4	36	1.5	54
Meeting #69	53	2	106
Meeting #70	64	2	128
Meeting #71	50	2	100
Meeting #72	40	2	80
Meeting #73	55	2	110
Meeting #74	63	3	189
Meeting #75	61	3	183
WP2 Meeting #15	40	1	40
Meeting #76	56	3	168
Meeting #77	52	3	156
WP-IOT Meeting #1	12	1	12
Meeting #78	67	3	201
Meeting #79	67	3	201
Meeting #80	68	3	204
Meeting #81	66	3	198
Meeting #82	59	2	118

Rec #11 Meeting	52	1.5	78
Rec #11 Meeting	56	1.5	84
Meeting #83	65	2	130

<b>Total Working Hours</b>	<b>17368.25</b>		
<b>Total Calls/Meetings</b>	<b>221</b>		
<b>Total Meeting Hours</b>	<b>419.75</b>		

**Mailing List Archives**

**accountability-cross-community**

August	2
September	10
November	4
December	338
January	651
February	357
March	640
April	684
May	502
June	547
July	1141
August	234
September	824
October	1411
November	1249
December	643
January	1091
February	541

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**10869**

**ccwg-accountability1**

December	39
January	25
February	7
June	1
July	1
September	1
October	2
December	1

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**77**

**ccwg-accountability2**

December	33
January	24
February	1
December	1

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**59**

**ccwg-accountability3**

December	7
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January	11
February	4
December	1

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**23**

**ccwg-accountability4 (ST-WP)**

December	25
January	62
February	20
March	26
April	24
May	7
June	9
July	10
September	1
October	12

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**196**

**ccwg-accountability5 (Legal)**

January	5
February	35
March	53
April	345
May	70
June	26
July	3
August	1
September	18
October	16
November	60

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**632**

**wp1 (Comm. Empowerment)**

February	54
March	137
April	149
May	5
June	56
July	242
August	12
September	30
October	191
November	60

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**936**

**wp2 (Review/Redress)**

February	27
March	50
April	49
May	1

	June	35
	July	232
	October	42
	November	3
		<b>439</b>
<b>wp2-compactmission</b>		
	March	59
	April	10
		<b>69</b>
<b>wp2-ombudsman</b>		
	March	5
	April	4
	June	5
		<b>14</b>
<b>wp2-reconsideration</b>		
	March	12
	April	6
		<b>18</b>
<b>wp2-independentreview</b>		
	March	51
	April	32
	May	1
	June	1
		<b>85</b>
<b>wp3 (Emerging Issues)</b>		
	July	75
	October	9
		<b>84</b>
<b>wp4 (Human Rights)</b>		
	August	70
	September	40
	October	149
	November	27
	December	10
		<b>296</b>
<b>ST18</b>		
	November	105
		<b>105</b>

<b>Total Mailing List Exchanges</b>	<b>13902</b>
<b>Number of Mailing Lists</b>	<b>15</b>

# Appendix E: Work Area 1 Outcome

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## Inventory of Existing ICANN Accountability Mechanisms

### ICANN Bylaws and Bylaws-Mandated Redress Mechanisms

ICANN Bylaws specifically provide four avenues for review:

- **Reconsideration Process (Art. IV, Sec. 2):** mechanism to challenge staff action taken against ICANN policies, or Board actions taken without consideration of material information or based upon false or inaccurate information.
- **Independent Review Process (IRP) (Art. IV, Sec. 3):** allows for claims that the ICANN Board acted in a manner inconsistent with its Bylaws or Articles of Incorporation to be considered by an independent panel of neutrals.
- **Organizational Reviews (Art. IV, Sec. 4):** As required by the Bylaws, periodic reviews of the performance and operation of each Supporting Organization, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee are organized to determine whether that organization has a continuing purpose in the ICANN structure, and, if so, whether any change in structure or operations is desirable to improve its effectiveness. These regular reviews allow an examination of the continuing efficacy of ICANN's component entities.
- **Office of the Ombudsman (Art. V):** reviews claims of unfairness by ICANN or its constituent entities. The Ombudsman framework is consistent with international standards. Office of Ombudsman publishes on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns.

### Policy Consideration Requirements: Bylaws-Based Advisory Mechanisms

Bylaws define ICANN's relationships to its component entities, including its Supporting Organizations (GNSO, ccNSO, and ASO) and Advisory Committees (SSAC, GAC, ALAC, and RSSAC). The Bylaws include detailed requirements for how the Board considers community-developed policies and receives advice. Some of these relationships are further defined through more detailed documentation, such as the Memorandum of Understanding with the Address Supporting Organization.

### Affirmation Of Commitments

Signed with the United States Department of Commerce (DoC) on 30 September 2009, the Affirmation of Commitments contains joint commitments relating to ICANN's technical coordination role of the Internet Domain Name System. The commitments uphold the multi-stakeholder model, commit to operate in a transparent manner and in the global public interest, and, among other things, to undertake community-led, regular reviews relating to accountability and transparency as well as on three other

fundamental organizational objectives. More information about the Accountability and Transparency Reviews are outlined below.

## Headquarters

ICANN, as a California Not-for-Profit Public Benefit Corporation, is obligated to follow the laws of the State of California. ICANN is also subject to both California and U.S. laws and regulations regarding ICANN's tax-exempt, public benefit status, which each require ICANN to act in furtherance of its stated public benefit purposes. These laws, as well as the laws of other places where ICANN has a presence, carry with them obligations. For example, under law, all ICANN Directors hold a fiduciary duty to act in the best interests of ICANN, and not for their own personal (or business) benefit. ICANN has the ability to sue and be sued for its actions and to be held responsible in a court of proper jurisdiction for its dealings with the global community.

## Accountability and Transparency Review Teams 1 and 2 Recommendations

Periodic assessments of ICANN's progress toward ensuring accountability, transparency and the interests of global Internet users are undertaken by community-led Review Teams. The first accountability and transparency review, conducted in 2010 by the Accountability and Transparency Review Team 1 (ATRT1), resulted in a set of recommendations. A second review was launched in 2013 - in compliance with the Affirmation of Commitments timeframe. Pursuant to the Affirmation of Commitments, the Second Accountability and Transparency Review Team (ATRT2) assessed the extent to which the ICANN board and staff implemented the recommendations arising of the ATRT1, in addition to the core scope, and issued a set of recommendations.

## Contractual Requirements

ICANN enters into a variety of contractual arrangements through which it takes on obligations. While meeting these requirements are a matter of contractual compliance for ICANN, at times the contracts also include broader accountability requirements as well. Some of these contracts include:

- The IANA Functions Contract with the NTIA, which incorporates, for example, a customer complaint resolution process at c.2.9.2.g as well as requirements for how ICANN is to consider delegation requests for ccLTDs (C.2.9.2.c) and gTLDs (C2.9.2.d).
- Registry Agreements and Registrar Accreditation Agreements (see <https://www.icann.org/resources/pages/agreements-policies-2012-02-25-en> and <https://www.icann.org/resources/pages/registries/registries-agreements-en>) Through these agreements, there are escalation paths set out in the event of disagreement between ICANN and the Registry or Registrar, in each case leading to the ultimate reference to arbitration if needed
  - Both Registry and Registrar Contracts include a requirement to follow “Consensus Policies”, which are policies developed through the ICANN multistakeholder process and approved with high thresholds of support. Most commercial contracts do not include the ability to insert new

obligations in this way, and so the requirements on the ICANN Board and the ICANN community in developing and approving these policies are high and must be followed.

- The consensus policies may only cover specific issues that are specified within the agreements, and may not touch on other specific areas (such as pricing terms). Historically, this has been referred to as the “picket fence” around where ICANN could mandate registry and registrar compliance with obligations that are not specifically included within the contracts.
- Detailed topics subject to "Consensus Policy" are defined in the gTLD Registry and Registrar Agreements.

## **ICANN Board of Directors Documentation**

Documents relating to the Board of Directors include briefing materials, resolutions, preliminary reports and minutes. Since 2010, the ICANN Board has provided a rationale for its decisions, which are published in both Resolutions and Minutes. All resolutions of the Board are tracked in a searchable tool, with information on how the mandate within each resolution was achieved. The Board also makes public how it addresses the advice it receives from the Advisory Committees, with both a GAC Register of Advice as well as the new Advice tracking tool.

## **General ICANN Operational Information**

Financial information includes an annual budgeting process developed with community input, the posting of quarterly financial reports (following the practice of listed companies), as well as the annual posting of ICANN's Audited Financial Statements, and the annual Form 990 tax filing. For tracking of ICANN's operational activities, information about current projects across the organization is posted. ICANN also maintains the Documentary Information Disclosure Policy (DIDP) for members of the public to request the release of information within ICANN that is not already publicly available.

## **ICANN Board Selection Process**

The selection of voting Board Directors occurs through different community processes. The Nominating Committee appoints eight Directors, ICANN's Supporting Organizations appoint six Directors (specifically, the Address Supporting Organization the Country-Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO) each appoint two Directors), and the At-Large Community appoints one Director. Directors serve staggered terms enabling some annual renewal of the Board. Mechanisms for the removal of Directors and Non-Voting liaisons are described in ICANN Bylaws. The President and CEO of ICANN, who is appointed by the Board, also serves a Board member.

# Appendix E: Work Area 2 Outcome

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## Input Gathered from the Community: Required Community Powers

As indicated in Section 2, the CCWG-Accountability reviewed the collection of public comments received during the development of the Enhancing ICANN Accountability process and categorized them as Work Stream 1 and Work Stream 2. Work Stream 1 mechanisms were defined as those that, when in place or committed to, would provide the community with confidence that any accountability mechanisms necessary to enhance ICANN's accountability within the timeframe of the IANA Stewardship Transition would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

### The mechanisms were divided into three sections:

1. **Mechanisms giving the ICANN community ultimate authority over the ICANN corporation:** Most of these were initially designated as Work Stream 1, since community Members need the leverage of the IANA Stewardship Transition to obtain these Bylaws changes.
2. **Mechanisms to restrict actions of the ICANN Board of Directors and management of the ICANN corporation:** Most of these were initially designated as Work Stream 2, since the Members could reverse ICANN Board or management decisions if Members are empowered in Work Stream 1 (see 1 above).
3. **Mechanisms to prescribe actions of the ICANN corporation:** Most of these were initially designated as Work Stream 2, since the Members could reverse ICANN Board or management decisions if Members are empowered in Work Stream 1 (above). For example, a bottom-up consensus process to change ICANN bylaws might be rejected by the ICANN Board, but the Members could then reverse that decision and force the change.

In addition, the CWG-Stewardship co-Chairs detailed, in a correspondence dated 15 April 2015, the expectations from their group with regards to CCWG-Accountability Work Stream 1 recommendations. These expectations are:

- **ICANN budget:** The CWG supports the ability for the community to “veto” a budget;
- **Community empowerment mechanisms:** The CWG-Stewardship will be relying on the community empowerment and accountability mechanisms that the CCWG-Accountability is currently considering and developing as a part of Work Stream 1. In particular, mechanisms such as: the ability to review ICANN Board decisions relating to periodic or ad-hoc reviews of the IANA functions undertake through the IANA Review Function (PRF or possibly IRF); the ability to approve or reject board decisions on PRF as well as the related creation of a stakeholder



community / member group in order ensure the ability to trigger these kinds of abilities;

- **Review and redress mechanisms:** The CWG-Stewardship would like to have the assurance that an IANA Periodic Review (or related ad-hoc review) could be incorporated as part of the Affirmation of Commitments mandated reviews integration into ICANN's Bylaws.
- **Appeal mechanisms (especially with regard to ccTLD related issues):** The CWG-Stewardship recommends that the CCWG-Accountability be mindful of the recommendations of the CWG-Stewardship in relation to an appeals mechanism for ccTLDs in delegation and re-delegation. The CWG-Stewardship has conducted a survey among the ccTLDs as part of the work of our Design Team B, and the results led to a recommendation which notes that ccTLDs may decide to develop their own appeals mechanism regarding re/delegation at a later date (post-transition). As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes. However, the CWG-Stewardship does want to emphasize the importance and need for an appeal mechanism to cover any other issues that may involve IANA, and notes that this is option is expected to be specifically called out as one of the possible escalation mechanisms<sup>1</sup> in the draft transition proposal.

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<sup>1</sup> As a note of clarification, the CWG-Stewardship has been referring previously to this appeals mechanism as IAP (Independent Appeals Panel) but understands that the CCWG-Accountability is referring to this mechanism as Independent Review Mechanism (IRP), which would also include the option for appeal. As such the CWG-Stewardship will be updating its references.

## Appendix F – Legal Counsel

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- 1 The CCWG-Accountability engaged two external law firms to provide advice and counsel on their Work Stream 1 Recommendations.
  - **Adler & Colvin** is the primary source of advice on California corporate governance and nonprofit corporate law, unincorporated association law, and charitable trust law.
  - **Sidley Austin LLP** advises on corporate governance, international law and jurisdiction issues, alternate dispute resolution issues, antitrust, and other topics as deemed appropriate. Sidley Austin serves as the coordinating law firm.
- 2 During initial engagement, the CCWG-Accountability created a Legal Subteam to coordinate the work of the firms. Methodology of the Legal Subteam can be found below for full reference.
- 3 Following the release of the Initial Draft Report in May 2015, the Legal Subteam was disbanded and the relationship with the law firms was redesigned. Moving forward, the CCWG-Accountability Co-Chairs, not the Legal Subteam, were designated as direct points of contact with the firms and given the authority to review and certify legal requests from the group. This new method of engagement allowed for more direct consultation between the leadership and improved ability to track costs.
- 4 All legal requests and responses are [documented](#) on the CCWG-Accountability Wiki.

### Rules of Engagement

- 5 The Legal Subteam put together the following set of rules of engagement to frame the legal counsel's work and cooperation between law firms.
- 6 **Law firms' coordination**
- 7 Sidley Austin will be the coordinating firm. Both firms are expected to work on the different issues assigned to them but Sidley Austin will coordinate how the complementary and collaborative work will be developed by the firms. It is of the essence for the success of the group to avoid having duplicate work that may impact in duplicate billable hours.
- 8 Private coordination meetings between lawyers would be acceptable and desirable. Information should flow freely between law firms.
- 9 **Legal advice**
- 10 While recognizing that Sidley Austin will be coordinating the work of both law firms with the aim of having a harmonized voice, law firms should state any differing views they may have on any particular issue where this difference happens. Furthermore, should this difference in views happen, each law firm will be required to provide the rationale for its differing view.
- 11 During face-to-face meetings/calls, high-level legal advice should come in real time in reply to anyone raising a question within the Charter's scope.

- 12 Lawyers' involvement with Work Parties of the CCWG-Accountability is key as it is the Work Parties that are building the proposals that will be subject to public comment. Therefore, the Legal Subteam and the law firms should be able to provide these Work Parties with the tools they need to build feasible and legally viable proposals.
- 13 The law firms analyzed different templates of powers and mechanisms and provided advice on whether those powers and mechanisms are legally viable in the first place and if not, which would be the alternatives. The law firms have also advised on how these mechanisms and powers may be implemented in a holistic view of the accountability enhancement process.

## Legal Subteam Methodology

- 14 When the Legal Subteam was active, the following methodology and working methods applied:

### 15 **Legal Subteam and law firms' coordination**

- 16 Law firms report to the CCWG-Accountability and receive instructions from the Legal Executive Subteam only. Legal Executive Subteam Members include: León Sánchez (lead); Athina Fragkouli; Robin Gross; David McAuley; Sabine Meyer; Edward Morris; Greg Shatan and Samantha Eisner (support).
- 17 Should there be the need for a call between the available members of the Legal Executive Subteam and any of the law firms in order to address urgent matters without the ability to setup a public call, it will always be required to provide proper debrief to the open list in a timely fashion. This method will be exceptional.
- 18 A single mailing list will be used. Legal Subteam members who are not listed in the Legal Executive Subteam have viewing rights to help streamline communications. Posting privileges should carry request privileges.
- 19 The mailing list remains open to any observers.
- 20 Activities and requests will be documented on the [dedicated CCWG-Accountability wiki page](#).

### 21 **Mailing list**

- 22 All formal requests, including follow-up clarifications, are made in writing and communicated through the public mailing list [ccwg-accountability5@icann.org](mailto:ccwg-accountability5@icann.org) ([Public archives](#)).

### 23 **Conference calls**

- 24 All weekly calls are to be recorded, transcribed and archived in the [public CCWG-Accountability wiki](#).
- 25 Legal Subteam and law firms coordination call will be held on Wednesdays: 14:00-15:00 UTC  
Legal Subteam only - 15:00-16:00 UTC Legal Subteam and lawyers.
- 26 Calls are open to anyone.

27 **Requests for advice**

- 28 No individual outside the Legal Executive Subteam should send requests to law firms.
- 29 Law firms are to alert the Legal Executive Subteam of any requests made by individuals outside the Legal Executive Subteam.
- 30 Only tasks assigned by memorandum will be subject for lawyers work. It is important that both law firms continue to follow the calls of the CCWG-Accountability and the discussion in the mailing lists as there might be important topics or questions raised over the different discussions that might provide context to the assignments made by the Legal Subteam.
- 31 Questions will continue to be gathered and compiled in a single document by the Legal Subteam to keep track of the different concerns and questions raised within the larger group and they will be triaged in order to then be assigned formally to the lawyers.
- 32 On each assignment, the Legal Subteam will do its best effort to provide as much context as possible to better guide the lawyers on the needs that the particular assignment is trying to address.
- 33 Requests for legal advice should be numbered consecutively for reference purposes.
- 34 All requests are archived in [the public CCWG-Accountability wiki](#).

## Appendix G – Legal Documents

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- 1 In their role as counsel to the CCWG-Accountability the law firms Sidley Austin and Adler & Colvin have provided a number of memoranda, charts, and legal reviews of report text. In this Appendix, the group presents key advice – presented in documents, emails, and on audio during CCWG-Accountability meetings – that was essential in the process of producing the Final Report and each of its interim draft iterations. These are presented below in a compiled version from each of the prior drafts.
- 2 There were over one hundred requests for advice submitted to the CCWG-Accountability’s Legal Counsel, all of which were mapped in a table on the [public CCWG-Accountability wiki](#).

### Key Advice – Final Report (18 February 2016)

- [Indemnification and Advancement of Expenses](#) – 10 February 2016
- [Memo on Questions Relating to GAC Decision-Making](#) – 9 February 2016
- [Assessment on Bylaw language \(“duly taken into account”\)](#) – 25 January 2016
- [Litigation Risk and Bylaws Provisions on Human Rights](#) – 14 January 2016
- [Memo on Director Independence](#) – 16 December 2015

### Key Advice – Third Draft Report (30 November 2015)

- [Sole Designator/Community Enforcement Vehicle Implementation](#) – 6 November 2015
- [Community Enforcement Vehicle Implementation](#) – 2 November 2015
- [Comparison of Enforcement Mechanisms between Models](#) – 16 October 2015
  - [Summary Comparison of Enforcement Mechanisms between Models](#) – 16 October 2015
  - [Three-Column Summary Comparison of Enforcement Mechanisms between Models](#) – 16 October 2015
- [Community Powers with Opportunity for Future Governance Review](#) – 16 October 2015
- [Current Corporate Status of ICANN under California Law](#) – 12 October 2015

## Key Advice – Second Draft Report (3 August 2015)

- [Chart of Mandatory Statutory Member Rights Relevant to the Community Mechanism as Sole Member](#) – 30 July 2015
- [Options for Board Replacement in the Event of Full Board Recall](#) – 18 July 2015
- [Empowered SO/AC Membership & Designator Models with Community Mechanism as Sole Member Model](#) – 17 July 2015
- [Description and Comparison of Empowered SO/AC Membership and Designator Model](#) – 07 July 2015
- [Updated Legal Assessment: Revised Summary Chart and Governance Chart](#) – 16 June 2015
- [Use of Unincorporated Associations in ICANN Governance](#) – 03 May 2015
- [Overview of Community Powers](#) – 24 April 2015
- [Response to Questions Re: Unincorporated Associations](#) – 23 April 2015
- [Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart](#) – 23 April 2015
- [Updated Sidley Austin, Adler & Colvin Joint Preliminary Analysis](#) – 10 April 2015

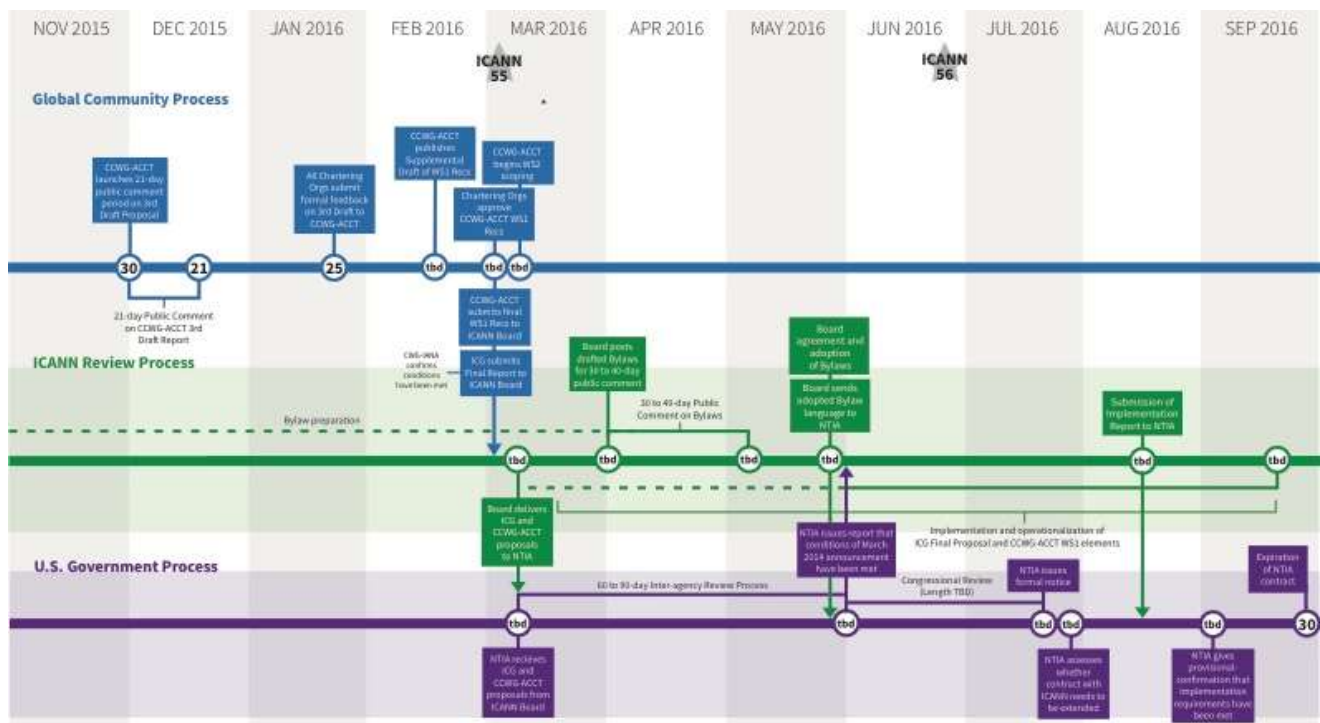
## Key Advice – First Draft Report (4 May 2015)

- [Use of Unincorporated Associations in ICANN Governance](#) – 03 May 2015
- [Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart](#) – 23 April 2015
- [Legal Assessment: Proposed Accountability Mechanisms Preliminary Response to Legal Subteam Templates \(Work Stream 2\)](#) – 20 April 2015
- [Legal Scoping Document](#) – 19 March 2014

# Appendix H – Bylaws Drafting Process & Implementation Timeline

- 1 The CCWG-Accountability views the oversight of Work Stream 1 implementation as a key obligation of the group. The final Work Stream 1 accountability changes will have to be implemented or committed to before the IANA Stewardship Transition can occur. Implementation efforts are being coordinated through ICANN, with several concurrent tracks, some of which will require multiple public comment periods.
- 2 The implementation plan of the CCWG-Accountability Draft Proposal on Work Stream 1 Recommendations is outlined in this section.

## Timeline



- 3 A detailed IANA Stewardship Transition and Enhancing ICANN Accountability timeline is available [here](#).
- 4 To ensure timely implementation, the CCWG-Accountability has initiated a Bylaws drafting process (in coordination with ICANN) to incorporate the requirements of the CCWG-Accountability proposal into the ICANN Bylaws. This includes incorporating the Affirmation of Commitments reviews and the CWG-Stewardship dependencies, as appropriate. Once a draft of the ICANN Bylaws is completed, it will be posted for public comment. ICANN Board approval and adoption of the Bylaws will take place after the public comment process has been completed and after the National Telecommunications and Information Administration completes its review of the proposals.

- 5 It is expected that the National Telecommunications and Information Administration will complete its review process in approximately 60-90 days. The adoption of the ICANN Bylaws is expected to occur shortly after completion of this review.

## Implementation Plan

- 6 A significant number of CCWG-Accountability Work Stream 1 recommendations involve updating the ICANN Bylaws. With exception of enhancements to the Independent Review Process,<sup>1</sup> most of the Work Stream 1 recommendations will be implemented through changes to the ICANN Bylaws.
- 7 As a result, the CCWG-Accountability and ICANN have developed a Bylaws drafting process based on the following requirements:
  - All final decisions about Bylaws proposed to the ICANN Board would be approved by the CCWG-Accountability and/or the relevant CCWG-Accountability subgroup.
  - The CCWG-Accountability's decisions and those of its subgroups would be informed by external legal advice.
  - ICANN legal staff provides legal advice to the ICANN Board.
  - The drafting process will be based on a collaborative effort between the CCWG-Accountability's legal counsel, ICANN legal staff, and the CCWG-Accountability.

## Bylaw Drafting Process

1. Specifications for revised Bylaws will be developed based on the CCWG-Accountability's final proposal.
2. The CCWG-Accountability will be responsible for approving the specification and initiating the Bylaws drafting process.
3. Initial Bylaws drafting and refining based on the specification will be undertaken by ICANN legal staff in collaboration with the CCWG-Accountability's legal counsel.
4. For initial draft review, the relevant CCWG-Accountability subgroup, supported by both ICANN legal staff and the CCWG-Accountability's legal counsel, will review the draft to ensure it meets the specification and intent of the CCWG-Accountability. The CCWG-Accountability subgroup will be responsible for approving the review.
5. The CCWG-Accountability's legal counsel will conduct a review to assess compliance with the specification and ensure the absence of any unintended consequences. ICANN legal staff may also review.
6. The CCWG-Accountability subgroup will review the advice and will make adjustments as necessary. The draft Bylaws and advice will be shared with the CCWG-Accountability and with the ICANN Board.

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<sup>1</sup> Operationalization of the Independent Review Process enhancements beyond the relevant Bylaw changes will include selecting panelists, establishing the secretariat for the panel, and defining the rules of procedure.



7. The full CCWG-Accountability members and participants will be responsible for deciding on any conflict of interpretation, and will be responsible for approving the Bylaw change for inclusion in a proposal that the draft be presented for public comment. In the situation where there is a conflict of interpretation, the full CCWG-Accountability will send the draft Bylaw back to the CCWG-Accountability subgroup and legal counsel for further refinement.
8. The ICANN Board has final approval of the Bylaws, using its community-focused processes including a public comment period.

# Affirmation of Commitments

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1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce ("DOC") and the Internet Corporation for Assigned Names and Numbers ("ICANN"), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (DNS)<sup>1</sup>, globally by a private sector led organization, the parties agree as follows:
2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet's success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet's underlying infrastructure - the DNS - is required to ensure interoperability.
3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.
4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.
5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of new generic top level domain names (gTLDs) or is an expression by DOC of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.

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<sup>1</sup> For the purposes of this Affirmation the Internet's domain name and addressing system (DNS) is defined as: domain names; Internet protocol addresses and autonomous system numbers; protocol port and parameter numbers. ICANN coordinates these identifiers at the overall level, consistent with its mission.

6. DOC also affirms the United States Government's commitment to ongoing participation in ICANN's Governmental Advisory Committee (GAC). DOC recognizes the important role of the GAC with respect to ICANN decision-making and execution of tasks and of the effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the Internet DNS.

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) 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; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:

9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair

of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

9.2 Preserving security, stability and resiliency: ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate

issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN will organize a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, as well as experts, and representatives of the global law enforcement community, and global privacy experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

10. To facilitate transparency and openness in ICANN's deliberations and operations, the terms and output of each of the reviews will be published for public comment. Each review team will consider such public comment and amend the review as it deems appropriate before it issues its final report to the Board.

11. The DOC enters into this Affirmation of Commitments pursuant to its authority under 15 U.S.C. 1512 and 47 U.S.C. 902. ICANN commits to this Affirmation according to its Articles of Incorporation and its Bylaws. This agreement will become effective October 1, 2009. The agreement is intended to be long-standing, but may be amended at any time by mutual consent of the parties. Any party may terminate this Affirmation of Commitments by providing 120 days written notice to the other party. This Affirmation contemplates no transfer of funds between the parties. In the event this Affirmation of Commitments is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. All obligations of the DOC under this Affirmation of Commitments are subject to the availability of funds.

FOR THE NATIONAL  
TELECOMMUNICATIONS  
INFORMATION ADMINISTRATION:

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Name: Lawrence E. Strickling  
Title: Assistant Secretary for  
Communications and Information

Date: September 30, 2009

FOR THE INTERNET CORPORATION  
AND FOR ASSIGNED NAMES AND  
NUMBERS:

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Name: Rod Beckstrom  
Title: President and CEO

Date: September 30, 2009

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# Glossary

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See also <https://www.icann.org/resources/pages/glossary-2014-02-03-en>.

<b>ADVISORY COMMITTEE (AC)</b>	<p>An Advisory Committee (“AC”) is a formal advisory body made up of representatives from the Internet community to advise ICANN on a particular issue or policy area. Several Advisory Committees are mandated by the ICANN Bylaws and others may be created as needed. Advisory Committees currently have no legal authority to act for ICANN, but report their findings and make recommendations to the ICANN Board.</p> <p>See also: <a href="https://www.icann.org/resources/pages/governance/bylaws-en/#XI">https://www.icann.org/resources/pages/governance/bylaws-en/#XI</a>.</p>
<b>AFFIRMATION OF COMMITMENTS (AoC)</b>	<p>The Affirmation of Commitments (“AoC”) is the 2009 agreement between ICANN and the NTIA under which ICANN reaffirmed its commitment to accountability and transparency, DNS security and stability, competition and consumer choice, international participation, periodic community reviews, and related activities. As part of the IANA Stewardship Transition, ICANN’s commitments under the AoC and the AoC Reviews will be incorporated into the ICANN Bylaws, and the AoC itself will be terminated.</p>
<b>AFFIRMATION OF COMMITMENTS REVIEWS (AoC REVIEWS)</b>	<p>The AoC Reviews are periodic community reviews required under the AoC to assess and report on ICANN's progress toward 1) ensuring accountability and transparency (see ATR below), 2) preserving security, stability and resiliency of the DNS, 3) promoting competition, consumer trust and consumer choice, and 4) enforcing WHOIS policy. As part of the IANA Stewardship Transition, the AoC Reviews will be incorporated into the ICANN Bylaws.</p>
<b>AT-LARGE ADVISORY COMMITTEE (ALAC)</b>	<p>The At-Large Advisory Committee (“ALAC”) is a body within the ICANN structure responsible for considering and providing advice on the activities of ICANN as they relate to the interests of individual Internet users (the "At-Large" community). Following the IANA Stewardship Transition, ALAC will participate as a Decisional Participant in the Empowered Community.</p> <p>See also: <a href="http://www.atlarge.icann.org/">http://www.atlarge.icann.org/</a>.</p>
<b>ADDRESS SUPPORTING ORGANIZATION</b>	<p>The Address Supporting Organization (“ASO”) advises the ICANN Board of Directors on policy issues relating to the allocation and management of IP addresses. Following the IANA Stewardship Transition, the ASO</p>

<b>(ASO)</b>	<p>will participate as a Decisional Participant in the Empowered Community.</p> <p>See also: <a href="https://aso.icann.org/">https://aso.icann.org/</a>.</p>
<b>ACCOUNTABILITY AND TRANSPARENCY REVIEW (ATR)</b>	<p>The Accountability and Transparency Review (“ATR”) is a periodic review required under the AoC to assess and report on ICANN’s progress toward ensuring accountability and transparency and to provide recommendations to enhance accountability and transparency activities throughout ICANN. As part of the IANA Stewardship Transition, the ATR and the other AoC Reviews will be incorporated into the ICANN Bylaws.</p>
<b>ACCOUNTABILITY AND TRANSPARENCY REVIEW TEAM (ATRT)</b>	<p>Each Accountability and Transparency Review is carried out by an Accountability and Transparency Review Team (“ATRT”).</p>
<b>BOARD GOVERNANCE COMMITTEE (BGC)</b>	<p>The Board Governance Committee (“BGC”) is an ICANN Board committee currently responsible for conducting periodic evaluations of the performance of the ICANN Board and each of its members.</p>
<b>BOTTOM-UP PROCESS</b>	<p>A fundamental principle of ICANN's decision-making process is that policy analysis and decisions progress from a stakeholder level (made up of directly affected parties, Internet users, companies and anyone else who wishes to participate in the process) to the ICANN Board level. This “bottom-up process” provides the opportunity for open and equal participation at all levels, as practical and possible.</p>
<b>COUNTRY-CODE NAMES SUPPORTING ORGANIZATION (ccNSO)</b>	<p>The Country-Code Names Supporting Organization (“ccNSO”) is a body within the ICANN structure created for and by ccTLD managers. The ccNSO provides a forum for ccTLD managers to meet and discuss topical issues of concern to ccTLDs from a global perspective. The ccNSO provides a platform to nurture consensus, technical cooperation and skill building among ccTLDs and facilitates the development of voluntary best practices for ccTLD managers. It is also responsible for developing and recommending global policies to the ICANN Board for a limited set of issues relating to ccTLDs, such as the introduction of Internationalized Domain Name ccTLDs (“IDN ccTLDs”). Membership in the ccNSO is open to all ccTLD managers responsible for managing an International Organization for Standardization (“ISO”) 3166 ccTLD. Following the IANA Stewardship Transition, the ccNSO will participate as a Decisional Participant in the Empowered Community.</p>



	See also: <a href="http://ccnso.icann.org/">http://ccnso.icann.org/</a> .
<b>COUNTRY CODE TOP-LEVEL DOMAIN (ccTLD)</b>	A country code top-level domain (“ccTLD”) is an Internet top-level domain generally used or reserved for a country, a sovereign state, or a dependent territory.  See also: <a href="http://www.iana.org/cctld/cctld.htm">http://www.iana.org/cctld/cctld.htm</a> .
<b>CROSS COMMUNITY WORKING GROUP ON ENHANCING ICANN ACCOUNTABILITY (CCWG-ACCOUNTABILITY)</b>	The Cross Community Working Group on Enhancing ICANN Accountability (“CCWG-Accountability”) was convened to design a proposal that ensures that ICANN's accountability and transparency commitments to the global Internet community are maintained and enhanced following the transition of the U.S. Government’s stewardship of the IANA functions.  See also: <a href="https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability">https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability</a> .
<b>COMMUNITY POWERS</b>	As part of the IANA Stewardship Transition, the following seven Community Powers will be vested in the Empowered Community, through Fundamental Bylaws, to enable the multi-stakeholder Internet community to hold ICANN accountable for its actions (or failure to act): <ul style="list-style-type: none"> <li>• The power to reject ICANN budgets, IANA budgets or ICANN strategic/operating plans;</li> <li>• The power to reject changes to ICANN's Standard Bylaws;</li> <li>• The power to approve changes to ICANN's Fundamental Bylaws or Articles of Incorporation, and to approve ICANN's sale or other disposition of all or substantially all of ICANN's assets;</li> <li>• The power to appoint and remove individual ICANN Board Directors;</li> <li>• The power to recall the entire ICANN Board of Directors;</li> <li>• The power to launch a binding community IRP or a non-binding Request for Reconsideration; and</li> <li>• The power to reject ICANN Board decisions relating to reviews of the IANA functions, including the triggering of any PTI separation process for the IANA naming functions.</li> </ul>
<b>COOPERATIVE ENGAGEMENT PROCESS</b>	As specified in Article IV, Section 3, of the ICANN Bylaws, prior to initiating an IRP, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought before the IRP Panel. It is contemplated that this “cooperative engagement process” will be initiated prior to the requesting party incurring any costs in the

	<p>preparation of a request for independent review. Cooperative engagement is expected to be between ICANN and the requesting party, without the participation of legal counsel.</p> <p>See also: <a href="https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf">https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf</a>.</p>
<b>CONSENSUS</b>	<p>Consensus is a form of decision-making employed by various SOs within ICANN. The method for establishing whether a “consensus” has been reached may differ among SOs. For example, the following method is used in the GNSO:</p> <p>“Full consensus” - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus.</p> <p>“Consensus” - when only a small minority disagrees, but most agree.</p> <p>When the GAC provides consensus advice to the ICANN Board this is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</p>
<b>CONSOLIDATED RIR IANA STEWARDSHIP PROPOSAL (CRISP) TEAM</b>	<p>The Consolidated RIR IANA Stewardship Proposal (“CRISP”) Team was established by the Internet number community through the RIRs to produce a proposal for IANA activities related to the allocation of blocks of Internet Number Resources, the IANA Number Registries, administration of the special-purpose "IN-ADDR.ARPA" and "IP6.ARPA" DNS zones, and other related registry management tasks.</p> <p>See also: <a href="https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team">https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team</a>.</p>
<b>CONSTITUENCY GROUP</b>	<p>A Constituency Group is a group of stakeholders united around a particular common interest or perspective.</p>
<b>CUSTOMER STANDING COMMITTEE (CSC)</b>	<p>As part of the IANA Stewardship Transition, a Customer Standing Committee (“CSC”) will be established to perform the operational oversight previously performed by the NTIA as it relates to the monitoring of performance of the IANA naming functions. The CSC structure will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>CROSS COMMUNITY WORKING GROUP TO DEVELOP AN IANA STEWARDSHIP TRANSITION PROPOSAL ON NAMING RELATED</b>	<p>The Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (“CWG-Stewardship”) was convened to produce a consolidated transition proposal for the elements of the IANA Stewardship Transition that directly affect the Internet naming community.</p> <p>See also: <a href="https://community.icann.org/x/37fhAg">https://community.icann.org/x/37fhAg</a>.</p>

<b>FUNCTIONS (CWG- STEWARDSHIP)</b>	
<b>DECISIONAL PARTICIPANTS</b>	<p>Following the IANA Stewardship Transition, the following five ICANN SOs and ACs will participate as the Decisional Participants in the Empowered Community: ALAC, ASO, ccNSO, GNSO and GAC (if the GAC chooses to do so). The Empowered Community will act at the direction of its Decisional Participants to exercise and enforce the Community Powers vested in the multi-stakeholder Internet community as part of the transition of the NTIA's stewardship of the IANA functions. The GAC, however, will not be able to participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge a decision by the ICANN Board to implement GAC consensus advice. In such cases, the GAC will still be able to participate in an advisory capacity in the other aspects of the escalation process, but not as a decision-maker.</p>
<b>DIRECTORS</b>	<p>ICANN's Board Directors are natural persons who direct the activities and affairs of ICANN as a California nonprofit public benefit corporation and have fiduciary duties with respect to exercise of corporate power. Directors are distinguished from observers and liaisons, who can attend ICANN Board meetings but cannot vote.</p> <p>See also: <a href="https://www.icann.org/resources/pages/governance/bylaws-en/#VI">https://www.icann.org/resources/pages/governance/bylaws-en/#VI</a>.</p>
<b>DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP)</b>	<p>ICANN's Documentary Information Disclosure Policy ("DIDP") is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. A principal element of ICANN's approach to transparency and information disclosure is the identification of a comprehensive set of materials that ICANN makes available on its website as a matter of course.</p>
<b>DOMAIN NAME SYSTEM (DNS)</b>	<p>The Domain Name System ("DNS") helps users find their way around the Internet. Every computer on the Internet has a unique address – just like a telephone number – which is a rather complicated string of numbers. It is called its IP address. IP addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a mnemonic device that makes addresses easier to remember.</p>
<b>EMPOWERED COMMUNITY</b>	<p>The Empowered Community will be formed as a California unincorporated association through the ICANN Bylaws and will have the power as the sole designator under California law to appoint and remove individual Directors or to recall the entire Board of Directors and take</p>

	<p>other action as directed by the community to enforce Community Powers. The Empowered Community and the rules by which it will be governed will be constituted in ICANN's Fundamental Bylaws.</p>
<p><b>ICANN FIVE-YEAR OPERATING PLAN</b></p>	<p>ICANN's <a href="#">Five-Year Operating Plan</a> is a means of planning and executing portfolios of ICANN activities that align with the strategic objectives and goals articulated in ICANN's Five-Year <a href="#">Strategic Plan</a>. This operating plan links strategic objectives and goals with ICANN's Annual Operating Plan and Budget, setting out planned outcomes (key success factors), means of measuring progress (key performance indicators), operational risks, dependencies and resources needed to accomplish goals.</p>
<p><b>ICANN FIVE-YEAR STRATEGIC PLAN</b></p>	<p>ICANN's Five-Year Strategic Plan articulates ICANN's vision and long-term strategic goals, which are developed through a collaborative, bottom-up, multistakeholder process.</p>
<p><b>FUNDAMENTAL BYLAWS</b></p>	<p>As part of the IANA Stewardship Transition, ICANN's Bylaws will be classified as either Standard Bylaws or Fundamental Bylaws. The Fundamental Bylaws will be those Bylaws that are integral to ICANN's organization, purpose and accountability to the global Internet community. As such, the threshold of Board approval required for changes to Fundamental Bylaws will be higher than that required for changes to Standard Bylaws. If the ICANN Board proposes any change to the Fundamental Bylaws, the proposal will require approval from three-fourths (3/4) of all of the Directors on the Board and the affirmative consent of the Empowered Community in order for the change to take legal effect.</p>
<p><b>GOVERNMENTAL ADVISORY COMMITTEE (GAC)</b></p>	<p>The Governmental Advisory Committee ("GAC") is an Advisory Committee comprising appointed representatives of national governments, multi-national governmental organizations and treaty organizations, and distinct economies. Its function is to advise the ICANN Board on matters of concern to governments. The GAC operates as a forum for the discussion of government interests and concerns, including consumer interests. As an Advisory Committee, the GAC currently has no legal authority to act for ICANN, but reports its findings and recommendations to the ICANN Board. Following the IANA Stewardship Transition, the GAC will participate as a Decisional Participant in the Empowered Community if it chooses to do so, except in instances where the Empowered Community exercises a Community Power to challenge a decision by the ICANN Board to implement GAC consensus advice.</p> <p>See also:  <a href="https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee">https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee</a></p>

<b>GENERIC NAMES SUPPORTING ORGANIZATION (GNSO)</b>	<p>The Generic Names Supporting Organization (“GNSO”) is the successor to the responsibilities of the Domain Name Supporting Organization (“DNSO”) that relate to the generic top-level domains. The GNSO has six constituencies, as follows: the commercial and business constituency, the gTLD registry constituency, the Internet service provider constituency, the non-commercial users constituency, the registrar’s constituency, and the IP constituency. Following the IANA Stewardship Transition, the GNSO will participate as a Decisional Participant in the Empowered Community.</p> <p>See also: <a href="http://gns0.icann.org/en/">http://gns0.icann.org/en/</a>.</p>
<b>GENERIC TOP-LEVEL DOMAIN (gTLD)</b>	<p>A generic top-level domain (“gTLD”) is one of the categories of TLDs maintained by the IANA department of ICANN for use in the Domain Name System of the Internet. It is visible to Internet users as the suffix at the end of a domain name.</p>
<b>INTERNET ASSIGNED NUMBERS AUTHORITY (IANA)</b>	<p>ICANN has been performing the Internet Assigned Numbers Authority (“IANA”) functions on behalf of the global Internet community since 1998. The IANA functions include the maintenance of the registry of technical Internet protocol parameters, the administration of certain responsibilities associated with Internet DNS root zone, and the allocation of Internet numbering resources. See also: <a href="http://www.iana.org/">http://www.iana.org/</a>.</p>
<b>IANA FUNCTIONS BUDGET</b>	<p>The IANA Functions Budget is currently part of ICANN’s Annual Operating Plan and Budget. As part of the IANA Stewardship Transition, the IANA Functions Budget will be prepared and considered as a separate ICANN budget.</p>
<b>IANA FUNCTIONS CONTRACT</b>	<p>As part of the IANA Stewardship Transition, ICANN will enter into an IANA Functions Contract including a Statement of Work with PTI pursuant to which PTI will perform the IANA naming functions.</p>
<b>IANA FUNCTION REVIEW (IFR)</b>	<p>Following the IANA Stewardship Transition, periodic IANA Function Reviews (“IFRs”) of the performance of the IANA naming functions against the contractual requirements set forth in the IANA Functions Contract and Statement of Work will be carried out by an IANA Function Review Team. The procedures of IFRs will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>IANA STEWARDSHIP TRANSITION</b>	<p>ICANN has been performing the IANA functions under contract with the NTIA. In March 2014, the NTIA announced its intent to transition the NTIA’s stewardship of the IANA functions to the global Internet community (the “IANA Stewardship Transition”) and requested proposals from the ICANN multistakeholder community for that transition.</p>

<p><b>IANA STEWARDSHIP TRANSITION COORDINATION GROUP (ICG)</b></p>	<p>The IANA Stewardship Transition Coordination Group (“ICG”) was formed to coordinate the development of a proposal among the communities affected by the transition of NTIA’s stewardship of the IANA functions. The creation of the ICG was initiated and facilitated by ICANN, and the membership of the ICG has been defined by the Internet communities participating in it. The group’s sole deliverable is a proposal to the NTIA recommending a transition plan of NTIA’s stewardship of the IANA functions to the global Internet community, consistent with the key principles outlined in the NTIA announcement on March 14, 2014.</p> <p>See also: <a href="https://www.icann.org/en/stewardship/">https://www.icann.org/en/stewardship/</a>.</p>
<p><b>IANAPLAN WORKING GROUP</b></p>	<p>The IETF established the IANAPLAN Working Group to produce a proposal for the transition of the NTIA’s stewardship of the IANA functions related to maintaining the codes and numbers contained in a variety of Internet protocols developed by the IETF.</p> <p>See also: <a href="http://www.ietf.org/iana-transition.html">http://www.ietf.org/iana-transition.html</a>.</p>
<p><b>INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)</b></p>	<p>The Internet Corporation for Assigned Names and Numbers (“ICANN”) is a California nonprofit public benefit corporation that operates internationally and has responsibility for IP address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions. ICANN has been performing the IANA functions under contract with the NTIA; however, in March 2014, the NTIA announced its intent to transition the NTIA’s stewardship of the IANA functions and requested proposals from the ICANN multistakeholder community for that transition.</p> <p>As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition in the registration of domain names; to achieving broad representation of global Internet communities; and to coordinating the development and implementation of policies consistent with its Mission through bottom-up, consensus-based, multistakeholder processes.</p> <p>See also: <a href="https://www.icann.org/">https://www.icann.org/</a>.</p>
<p><b>ICANN ANNUAL OPERATING PLAN AND BUDGET</b></p>	<p>ICANN’s Annual Operating Plan and Budget currently includes the IANA Functions Budget. As part of the IANA Stewardship Transition, the IANA Functions Budget will be prepared and considered as a separate ICANN budget.</p>

<b>ICANN ARTICLES OF INCORPORATION</b>	<p>ICANN's Articles of Incorporation are the instrument under which ICANN was incorporated as a California nonprofit public benefit corporation. They define fundamental aspects of ICANN's organization and purpose and are ICANN's highest-level governing document. As such, following the IANA Stewardship Transition, the threshold of Board and Empowered Community approval required for changes to ICANN's Articles of Incorporation will be the same as that required for changes to Fundamental Bylaws.</p>
<b>ICANN BYLAWS</b>	<p>Subject to ICANN's Articles of Incorporation and applicable law, ICANN's Bylaws define the framework and rules for governance and operations within ICANN. As part of the IANA Stewardship Transition, ICANN's Bylaws will be classified as either Standard Bylaws or Fundamental Bylaws. The threshold of Board approval required for changes to the Fundamental Bylaws will be higher than the threshold of approval required for changes to the Standard Bylaws, and any proposed changes to Fundamental Bylaws will also require the approval of the Empowered Community for the change to take legal effect. Following Board approval of a change to the Standard Bylaws, the Empowered Community will have an opportunity to reject the change before it takes legal effect. Public consultations will be required on all proposed changes to ICANN Bylaws (Standard or Fundamental).</p>
<b>COMMUNITY FORUM</b>	<p>Following the IANA Stewardship Transition, to exercise and enforce Community Powers, the Empowered Community will first need to satisfy the appropriate escalation process for the particular Community Power. A Community Forum for interested stakeholders will be a component of the escalation process for the Community Powers (except with respect to the power to appoint Directors and the power to remove certain individual Directors). This discussion phase will provide a forum for the petitioning Decisional Participant(s) to share the rationale for, and answer questions about, the proposed use of a Community Power, and the discussion and information sharing among interested stakeholders will help the Empowered Community reach well-considered conclusions about exercising its new powers.</p>
<b>INTERNET ENGINEERING TASK FORCE (IETF)</b>	<p>The Internet Engineering Task Force ("IETF") is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. It is open to any interested individual. The IETF develops Internet standards and in particular the standards related to the Internet Protocol Suite (TCP/IP).</p> <p>See also: <a href="https://www.ietf.org/">https://www.ietf.org/</a></p>
<b>INDEPENDENT REVIEW PROCESS</b>	<p>ICANN's Independent Review Process ("IRP") is an appeals process that provides for independent third-party review of ICANN Board actions or inaction alleged by an affected party to be inconsistent with ICANN's</p>

<b>(IRP)</b>	Articles of Incorporation or Bylaws. As part of the IANA Stewardship Transition, the existing IRP will be strengthened to ensure that it is more accessible and transparent, and the scope of the IRP will be expanded to include claims relating to ICANN staff actions/inaction, certain PTI actions/inaction, expert panel decisions and DIDP decisions. The IRP Panel will also hear claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in ICANN's Articles of Incorporation or Bylaws. IRP Panel decisions will be binding and enforceable in any court that recognizes international arbitration results. These enhancements to the IRP will be set forth in ICANN's Fundamental Bylaws.
<b>INDEPENDENT REVIEW PROCESS PANEL (IRP PANEL)</b>	The Independent Review Process Panel ("IRP Panel") is an independent standing judicial/arbitral panel charged with reviewing and resolving claims brought by affected parties through the IRP.
<b>INTERNET PROTOCOL (IP)</b>	Internet Protocol ("IP") is the communications protocol underlying the Internet, which allows networks of devices to communicate over a variety of physical links. Each device or service on the Internet has at least one IP address that uniquely identifies it from other devices or services on the Internet. An IP address is the numerical address and DNS naming uses user-friendly names to locate the devices and services.
<b>MULTI-STAKEHOLDER APPROACH</b>	<p>The "multistakeholder approach" is an organizational framework or structure for governance and policymaking which aims to bring together all stakeholders to collaborate and participate in the dialogue, decision-making and implementation of solutions to identified problems or goals.</p> <p>The multistakeholder approach at ICANN is comprised of a diverse set of stakeholders with an interest in Internet numbering, naming and protocols from around the world who have organized into various Supporting Organizations, Constituent Groups and Advisory Committees, and agree to operate in an open, bottom-up, consensus-driven, and transparent manner.</p>
<b>NETMUNDIAL PRINCIPLES</b>	<p>The NETmundial meeting, which took place in Sao Paulo, Brazil on 23-24 April 2014, was the first multistakeholder-designed event to focus on the future of Internet governance. NETmundial identified a set of common principles and important values that contribute to an inclusive, multistakeholder, effective, legitimate, and evolving Internet governance framework, and recognized that the Internet is a global resource which should be managed in the public interest.</p> <p>See also: <a href="http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf">http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf</a>.</p>



<b>NOMINATING COMMITTEE (NOMCOM)</b>	<p>The Nominating Committee (“NomCom”) is an independent ICANN committee tasked with selecting eight members of the ICANN Board of Directors, five members of the ALAC, three members of the GNSO, and three members of the ccNSO.</p> <p>See also: <a href="https://www.icann.org/resources/pages/nomcom-2013-12-13-en">https://www.icann.org/resources/pages/nomcom-2013-12-13-en</a>.</p>
<b>U.S. DEPARTMENT OF COMMERCE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA)</b>	<p>The U.S. Department of Commerce National Telecommunications and Information Administration (“NTIA”) is the Executive Branch agency that is principally responsible for advising the President of the United States on telecommunications and information policy issues. NTIA maintains a contract with ICANN for the technical coordination of the Internet's domain name and addressing system. In March 2014, NTIA announced its intent to transition out of its contractual role with respect to the IANA functions and requested proposals from the ICANN multistakeholder community for that transition.</p> <p>See also: <a href="http://www.ntia.doc.gov/">http://www.ntia.doc.gov/</a>.</p>
<b>OMBUDSMAN</b>	<p>The ICANN Ombudsman investigates and addresses complaints brought by members of the ICANN community who believe that the ICANN Board, staff or an ICANN constituent body has treated them unfairly. The Ombudsman must maintain neutrality and independence and facilitate fair, impartial and timely resolution of community complaints . See also: <a href="https://www.icann.org/resources/pages/accountability/ombudsman-en">https://www.icann.org/resources/pages/accountability/ombudsman-en</a>.</p>
<b>POLICY DEVELOPMENT PROCESS (PDP)</b>	<p>The Policy Development Process (“PDP”) is a set of formal steps, as defined in the ICANN Bylaws, to guide the initiation, internal and external review, timing and approval of policies needed to coordinate the global Internet's system of unique identifiers.</p>
<b>POST-TRANSITION IANA ENTITY (PTI)</b>	<p>As part of the IANA Stewardship Transition, a new Post-Transition IANA entity (“PTI”) will be created to provide the IANA functions after the transition of oversight responsibilities from the NTIA. PTI will take the form of a California nonprofit public benefit corporation, and ICANN will be its sole member. PTI’s governance structure will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>PRIVATE SECTOR</b>	<p>The “private sector” includes businesses, not-for-profit bodies, individual persons, non-governmental organizations, civil society and academic institutions.</p>
<b>REGIONAL AT-LARGE ORGANIZATIONS</b>	<p>The At-Large community is structured into five Regional At-Large Organizations (“RALOs”). These organizations serve as the communication forum and coordination point to promote and assure the</p>

<b>(RALOs)</b>	participation of regional Internet user communities within ICANN activities as well as enhance knowledge and capacity building.
<b>RECONSIDERATION PROCESS</b>	The Reconsideration Process is an internal ICANN appeals mechanism through which affected parties may request that certain actions or inaction of the ICANN Board of Directors or staff be submitted to the ICANN Board for review or reconsideration. As part of the IANA Stewardship Transition, there will be several enhancements to the Reconsideration Process including expanding the scope of permissible Requests for Reconsideration and extending the time period during which an affected party may file a Request for Reconsideration .
<b>REGISTRAR</b>	Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of the registrars that have been accredited by ICANN appears in the Directory of ICANN-Accredited Registrars( <a href="https://www.icann.org/registrar-reports/accredited-list.html">https://www.icann.org/registrar-reports/accredited-list.html</a> ).
<b>REGISTRY</b>	A "registry" is the authoritative, master database of all domain names registered in each Top-Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from TLDs anywhere in the world. Internet users don't interact directly with the registry operator; users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-accredited registrar.
<b>REVIEW MECHANISM</b>	A "review mechanism" is a process to assess how a decision or policy is being put in place. ICANN has a series of review mechanisms mandated in its Bylaws to ensure its accountability and transparency.
<b>REGIONAL INTERNET REGISTRY (RIR)</b>	There are currently five Regional Internet Registries ("RIRs"): AfriNIC, APNIC, ARIN, LACNIC and RIPE NCC. These not-for-profit organizations are responsible for distributing and managing IP addresses on a regional level to Internet service providers and local registries.
<b>ROOT SERVERS</b>	The "root servers" contain the IP addresses of all the TLD registries – both the global registries such as .com, .org, etc. and the 244 country-specific registries such as .fr (France), .cn (China), etc. This is critical information. If the information is not 100% correct or if it is ambiguous, it might not be possible to locate a key registry on the Internet. In DNS parlance, the information must be unique and authentic.
<b>ROOT SERVER SYSTEM</b>	The Root Server System Advisory Committee ("RSSAC") advises the ICANN community and the ICANN Board on matters relating to the

<b>ADVISORY COMMITTEE (RSSAC)</b>	<p>operation, administration, security, and integrity of the Internet's root server system.</p> <p>See also: <a href="https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en">https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en</a>.</p>
<b>ROOT ZONE</b>	<p>The “root zone” is the central directory for the DNS, which is a key component in translating readable host names into numeric IP addresses.</p> <p>See also: <a href="http://www.iana.org/domains/root/files">www.iana.org/domains/root/files</a>.</p>
<b>SEPARATION PROCESS</b>	<p>A “separation process” means any process pursuant to which PTI may or will cease to perform the IANA naming functions under the IANA Functions Contract.</p>
<b>SPECIAL IFR</b>	<p>Following the IANA Stewardship Transition, Special IFRs may be initiated outside of the cycle for regular periodic IFRs to address certain deficiencies or issues relating to the performance of the IANA naming functions when the prescribed escalation mechanisms have been exhausted. The procedures for Special IFRs will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>SUPPORTING ORGANIZATIONS (SOs)</b>	<p>The Supporting Organizations (“SOs”) are the three specialized policy developments bodies that currently provide the ICANN Board of Directors with policy recommendations on issues relating to domain names (GNSO and ccNSO) and IP addresses (ASO).</p>
<b>SPONSOR</b>	<p>A Sponsor is an organization which is delegated some defined ongoing policy-formulation authority regarding the manner in which a particular sponsored TLD is operated. The sponsored TLD has a charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.</p>
<b>SECURITY AND STABILITY ADVISORY COMMITTEE (SSAC)</b>	<p>The Security and Stability Advisory Committee (“SSAC”) is the President's standing committee on the security and stability of the Internet's naming and address allocation systems. Their charter includes a focus on risk analysis and auditing. SSAC consists of approximately 20 technical experts from industry and academia as well as operators of</p>

	<p>Internet root servers, registrars, and TLD registries.</p> <p>See also: <a href="https://www.icann.org/groups/ssac">https://www.icann.org/groups/ssac</a>.</p>
<b>STAKEHOLDER</b>	<p>A “stakeholder” is any individual or group affected by the actions of ICANN. Stakeholders at ICANN include ccTLD registries; gTLD registries and registrars; regional Internet registries who manage the regional distribution of Internet number resources including IP address and Autonomous System Numbers; the thirteen root name server operators; commercial interests, including those representing large and small businesses, intellectual property interests and providers of Internet and other communications services; non-commercial interests, including non-commercial users and not-for-profit organizations; governmental interests, including national governments, multi-national governmental organizations and treaty organizations, and distinct economies; technical experts from industry and academia; and Internet users worldwide.</p>
<b>STAKEHOLDER GROUPS</b>	<p>ICANN “stakeholder groups” represent a wide variety of individuals that compose the ICANN community. Stakeholder groups function as caucuses and are intended to facilitate the creation of new constituencies as well as self-growth and expansion.</p>
<b>STANDARD BYLAWS</b>	<p>As part of the IANA Stewardship Transition, ICANN’s Bylaws will be classified as either Standard Bylaws or Fundamental Bylaws. The threshold of Board approval required for changes to Fundamental Bylaws will be higher than that required for changes to Standard Bylaws. If the ICANN Board proposes any change to the Standard Bylaws, the proposal will require approval from two-thirds (2/3) of all of the Directors on the Board. Following Board approval, the Empowered Community will have an opportunity to reject a change to the Standard Bylaws before the change takes legal effect.</p>
<b>STRESS TEST</b>	<p>A “stress test” is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. Stress tests have been used to analyze how certain ICANN and DNS ecosystem risks or contingencies can be mitigated by applying the accountability mechanisms available to the CCWG-Accountability.</p>
<b>TOP-LEVEL DOMAIN (TLD)</b>	<p>Top-Level Domains (“TLDs”) are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (rightmost) “.”, such as “net” in “www.example.net”. The administrator for a TLD controls what second-level names are recognized in that TLD. The administrators of the “root domain” or “root zone” control what TLDs are recognized by the DNS. Commonly used TLDs include .com, .net, .edu, .jp, .de, etc.</p>

<b>WORK STREAMS (WS)</b>	CCWG-Accountability Work Stream 1 (WS1) has focused on mechanisms to enhance ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition. Work Stream 2 (WS2) is focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.
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# Appendix K – Co-Chairs’ Special Appreciation of Staff and Rapporteur Efforts

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- 1 Developing the CCWG-Accountability Work Stream 1 Recommendations has been an unprecedented effort by the whole multistakeholder community. While we are proud of the tremendous, high-quality contributions and stamina dedicated by the volunteers, we would like to take this opportunity to give particular credit to a group of highly motivated, dedicated, patient and friendly individuals, without whom we could not have achieved the finalization of our report: *ICANN support Staff and CCWG Rapporteurs.*
  
- 2 **Thanks to our core Staff team:**
  - Brenda Brewer,
  - Alice Jansen,
  - Grace Abuhamad,
  - Hillary Jett,
  - Bernard Turcotte,
  - Adam Peake, and
  - Karen Mulberry.
  
- 3 **Thanks to the Rapporteurs:**
  - Becky Burr,
  - Cheryl Langdon Orr,
  - Steve DelBianco, and
  - Jordan Carter.
  
- 4 Also, we have benefited from flawless meeting support, always accommodating graciously our last minute requests. Thanks to Nancy Lupiano and the meetings team.
  
- 5 We are also grateful for the support and advice we received to prepare communications and correspondences from ICANN Communications department, as well as the outstanding graphics prepared by XPLANE.
  
- 6 From the daunting task of taking notes across hundreds of meeting hours to drafting to the incorporation of the various comments, Staff did all the heavy lifting across our four reports, as well as during and after the three public comment periods. They lived up to the very high transparency standards and always managed to deliver quality outcomes in the short times available. They have embodied the notion of accountability every minute. Beyond our appreciation of their efforts, we actually admired the skills, dedication and commitment from

Bernard Turcotte, Alice Jansen, Grace Abuhamad, Brenda Brewer, Hillary Jett, Karen Mulberry and Adam Peake. This appreciation also extends to the writers and other support teams who provided extra support during stretch times.

- 7 Finally, it is worth mentioning that beyond skills, beyond professional commitment, Work Stream 1 has been a wonderful team effort. Not only has our support Staff gained our deepest respect and appreciation, but they have also earned our trust and friendship, which we consider to be the greatest asset of all for the work that remains ahead of us.
- 8 León Sanchez, Thomas Rickert and Mathieu Weill
- 9 CCWG Accountability Co-chairs

# IANA STEWARDSHIP TRANSITION & ENHANCING ICANN ACCOUNTABILITY

Two parallel processes, supported by a globally diverse, inclusive and extensive multistakeholder dialogue

## MAJOR WORKING GROUP EFFORTS

**800+**  
Working Hours in Meetings

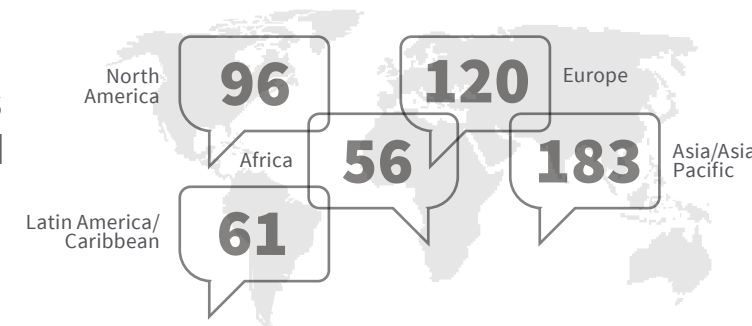
**33,100+**  
Total Mailing List Exchanges

**600+**  
Total Calls/Meetings

## A SUPPORTING GLOBAL DISCUSSION

**More than 1,100**  
\* 590+ Webinars

Events around the world where the IANA transition was discussed, debated, organized and planned  
Between March 2014 and March 2016



## ICG + CCWG ACCOUNTABILITY

### ICG

**30**  
Members

Number Resources CRISP Team  
**15**  
Members  
= 3 Members x 5 RIRs

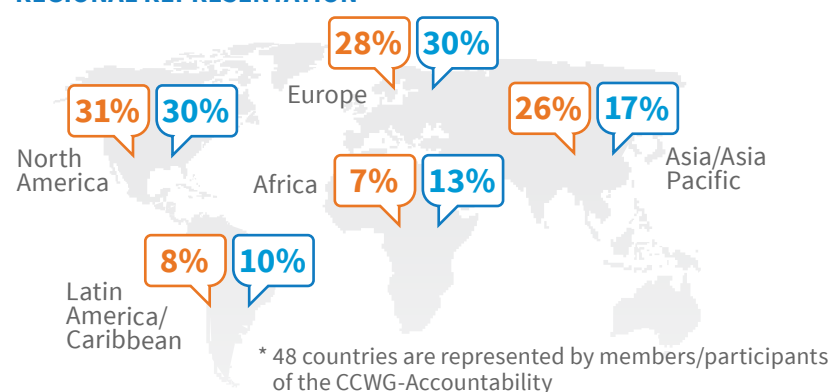
Protocol Parameters IANAPLAN  
**2,250**  
Mailing List Exchanges

Domain Names CWG-Stewardship  
**153**  
Members & Participants  
**152**  
Calls and Meetings

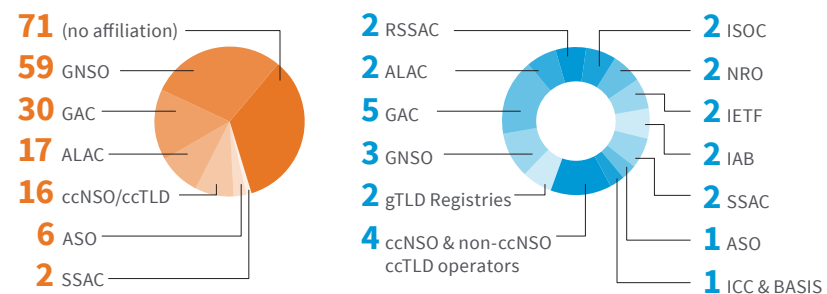
### CCWG-Accountability

**203** Total Participants  
**28** Members  
**175** Participants  
**111** Mailing List Observers

#### REGIONAL REPRESENTATION



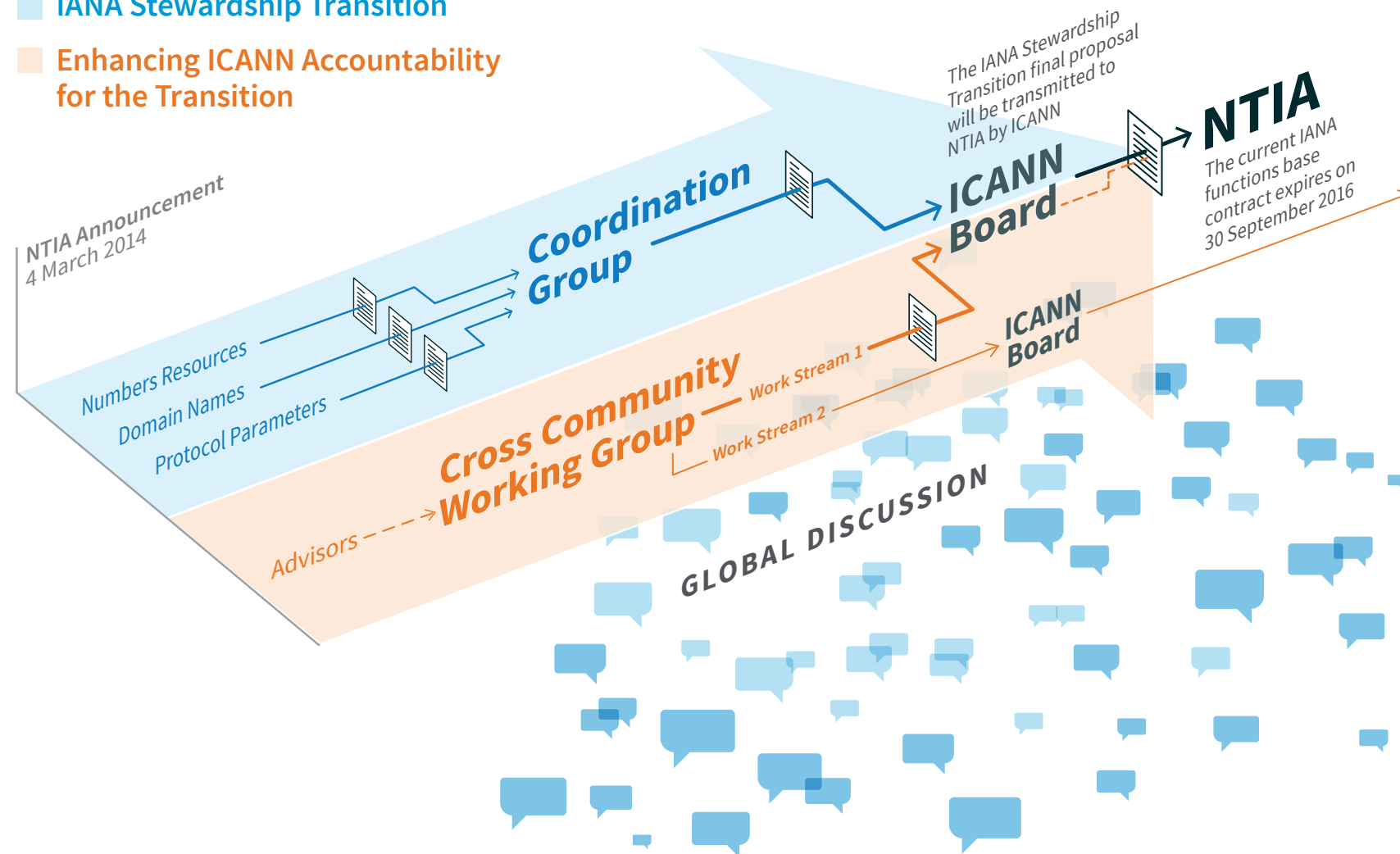
#### ORGANIZATIONAL STAKEHOLDER REPRESENTATION



## THE TWO PARALLEL PROCESSES

### IANA Stewardship Transition

### Enhancing ICANN Accountability for the Transition





# IANA STEWARDSHIP TRANSITION TIMELINE

