

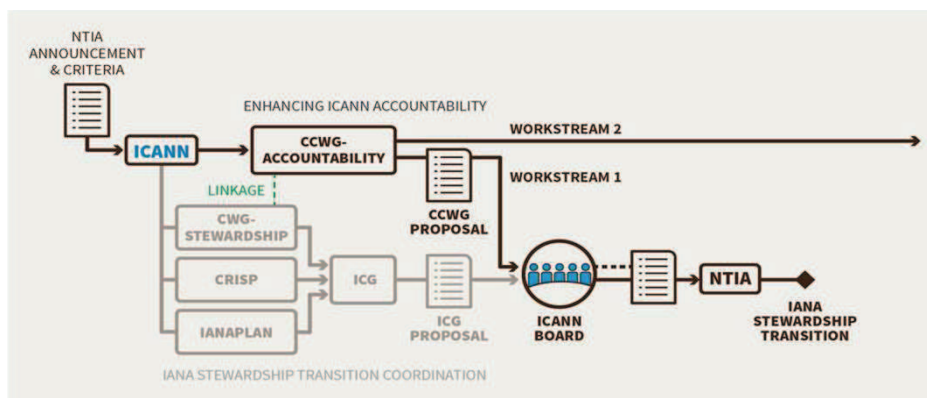
# CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations

RECOMMENDATION DESCRIPTIONS AND CHANGES SINCE THE THIRD  
DRAFT REPORT

MARCH 2016

## Overview

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.



## An Unprecedented Multistakeholder Effort

- **203 Members/Participants**
  - 31% North America
  - 28% Europe
  - 26% Asia/Asia Pacific
  - 8% Latin America/Caribbean
  - 7% Africa
- **111 Mailing list observers**
- **33,100+ Mailing list exchanges**
- **600+ Calls and meetings**
- **800+ Hours in meetings**

## Background

To address accountability concerns raised during initial discussions on IANA Stewardship Transition, 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.

**GOAL:** The CCWG-Accountability is expected to deliver proposals that would enhance ICANN's accountability towards all its stakeholders.

### **The CCWG-Accountability's work consists of two tracks:**

**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.

## Supplemental Final Proposal on Work Stream 1 Recommendations

### Structure:

- **Core Proposal (52 pages)**
- **15 Detailed annexes of proposed recommendations (including a summary)**
- **11 Appendices**

Translations to be provided in Arabic, Spanish, French, Russian Chinese and Portuguese.

See: <https://community.icann.org/x/iw2AAw>.

## CWG-Stewardship Dependencies

The Stewardship Transition proposal from names community is dependent on a set of accountability improvements.

The CWG-Stewardship has confirmed its conditions have been met.

- **ICANN and PTI Budget:** Community rights regarding the development and consideration of the ICANN and PTI 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, Customer Standing Committee and the Separation Process.
- **Fundamental Bylaws:** All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws.
- **Independent Review Panel:** Should be made applicable to IANA Functions and accessible by managers of top-level domains.
- **PTI Separation:** Review of ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

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

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The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce Community Powers called the **“Empowered Community.”**

### THE EMPOWERED COMMUNITY:

- Will be given the role of Sole Designator of ICANN’s Board Directors and will have the ability to enforce directly or indirectly the Community Powers.
- Will act as directed by participating SOs and ACs, which will be referred to as the “Decisional Participants.”
- Will have the rules by which it is governed constituted in ICANN’s Fundamental Bylaws.

## #1: Changes Since Third Draft Report

### ADDITION(S):

- Introduced additional suggestion by the ICANN Board regarding investigation right (audits), based on three Decisional Participants in the Empowered Community threshold.
- Compromise on Recommendation #11 required the creation of the “GAC carve-out.”

### CLARIFICATION(S):

- 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.
- Confirmed direction for implementation to avoid abusive claims.

## The “GAC carve-out”

The GAC 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.

## #4: Ensuring Community Engagement in ICANN Decision-Making: Seven New Community Powers

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).

*It is important to note that the powers, as well as the launch of a Separation Cross Community Working Group (as required by the CWG-Stewardship dependencies), can be enforced by using the community Independent Review Process or the Power to recall the entire Board.*



## #4: Changes Since Third Draft Report

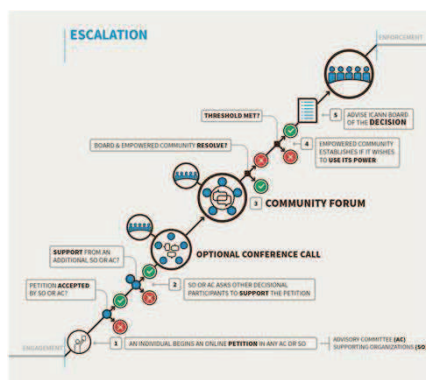
### ADDITION(S):

- Indemnification for removal of an ICANN Board Director greatly expanded.

### CLARIFICATION(S):

- Budget rejection for PTI significantly updated.
- Caretaker budget expanded.
- Escalation steps amended to match process in Recommendation #2.
- Scope of community IRP modified to match Recommendation #7.
- 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.

## #2: Empowering the Community through Consensus: Engage, Escalate, Enforce



In an effort to prevent disagreements between the community and ICANN Board, the CCWG- Accountability is recommending that ICANN be required to engage with the community on any key decisions it is considering such as Budgets or changing Bylaws.

Should disagreements arise, the CCWG- Accountability is proposing a series of procedures that ensure all sides have the chance to discuss any disagreements and have multiple opportunities to resolve issues before having to resort to the powers of the Empowered Community.

## #2: Required Thresholds for Escalation Processes

Required Community Powers	Should a conference call be held?	Should a Community Forum be convened?	Is there consensus support to exercise a Community Power?
1. Reject a proposed Operating Plan/Strategic Plan/Budget	2 AC/SOs support blocking	3 AC/SOs support blocking	4 support rejection, and no more than 1 objection
2. Approve changes to Fundamental Bylaws and Articles of Incorporation	2 AC/SOs support approval	3 AC/SOs support approval	4 support approval, and no more than 1 objection
3. Reject changes to regular Bylaws	2 AC/SOs support blocking	2 AC/SOs support blocking	3 support rejection, and no more than 1 objection
4a. Remove an individual Board Director appointed by a Supporting Organization or Advisory Committee	Majority within the appointing AC/SO	Majority within appointing AC/SO	Invite and consider comments from all SO/ACs. 3/4 majority within the appointing AC/SO to remove their director
4b. Remove an individual Board Director appointed by the Nominating Committee	2 AC/SOs support	2 AC/SOs support	3 support, and no more than 1 objection.
5. Recall the entire Board of Directors	2 AC/SOs support	3 AC/SOs support	4 support, and no more than 1 objection
6. Initiate a binding Independent Review Process	2 AC/SOs support	2 AC/SOs support	3 support, and no more than 1 objection. Require mediation before IRP begins
7. Reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of Post-Transition IANA separation	2 AC/SOs support	3 AC/SOs support	4 support, and no more than 1 objection

## #2: Reject ICANN's Budget or Strategic/Operating Plans

### Additional steps specific to Rejecting ICANN's Budget, PTI budget or Strategic/Operating Plans.

- Separate petition required for each Budget or Plan being challenged.
- Petitioning SO or AC required to provide rationale.
- Should annual budget be rejected, caretaker budget will be enacted (details are work in progress).
- Budget or Strategic/Operating plan could only be challenged if significant issue(s) brought up in the Engagement Phase not addressed prior to approval.
- IANA Functions Budget to be considered as a separate budget i.e. two distinct processes:
  - Use of power to reject the ICANN Budget would have no impact on the IANA Budget, and a rejection of the IANA Budget would have no impact on the ICANN Budget.

## #2: Changes Since Third Draft Report

### ADDITION(S):

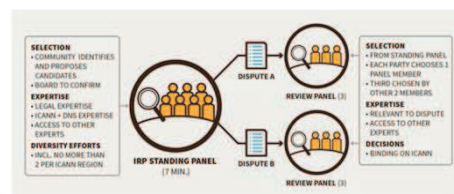
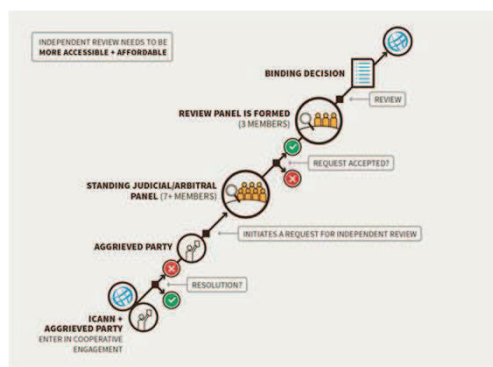
- Implemented the compromise for Recommendation #11 that the threshold requirements would be modified.

### CLARIFICATION(S):

- 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.
- 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.

## #7: Enhanced Independent Review Process

The overall purpose of the Independent Review Process is to ensure that any ICANN action or inaction does not exceed the scope of its limited technical mission and complies with both its Articles of Incorporation and Bylaws.



Exclusion of ccTLD delegations and revocations and numbering decisions, protocols and parameters as well as challenges the result(s) of a Supporting Organization's policy development process (PDP).



## #7: Changes Since Third Draft Report

### ADDITION(S):

- 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.
- 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.

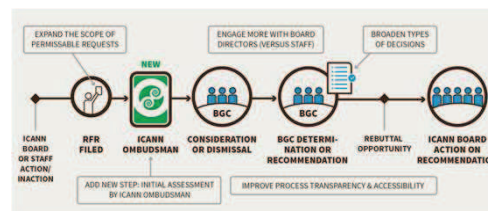
### CLARIFICATION(S):

- 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.
- The legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN.

## #8: Improving ICANN's Request for Reconsideration Process

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. The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process:

- 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



## #8: Changes Since Third Draft Report

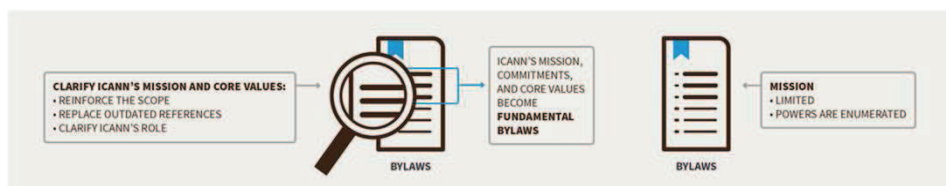
### CLARIFICATION(S):

- Conflicts in timing for Board approval addressed by changing 60 days to 75 days and the total of 120 days to 135 days.

## #5: Changing Aspects of ICANN's Mission, Commitments and Core Values

### The CCWG-Accountability recommends:

- Clarifying that ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission
- Updating the ICANN Mission statement to clearly set forth ICANN's role with respect to names, numbers, root servers, and protocol and parameters
- 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.



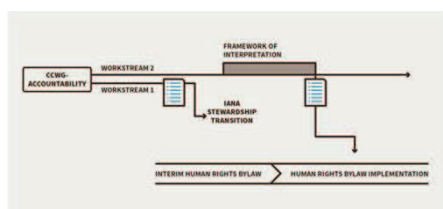
## #5: Changes Since Third Draft Report

### CLARIFICATION(S):

- Clarified role of ICANN with regards to Numbering Resources and Protocol Parameters.
- Several clarifications provided with regards to ICANN's ability to enter into contracts, while not regulating content.
- For space considerations the full 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.

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## #6 Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries out its Mission



- Bylaw proposed for adoption will not be fully executed until the Framework of Interpretation is developed
- Framework of interpretation to be developed in Work Stream 2
- Draft Bylaw text (below):

*“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.”*

## #6: Changes Since Third Draft Report

### CLARIFICATION(S):

- 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.

## #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

**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.

## #10: Changes Since Third Draft Report

### ADDITION(S):

- 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.

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## #11: Board Obligations with regards to Governmental Advisory Committee Advice

### Proposed amendments to 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. **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.*

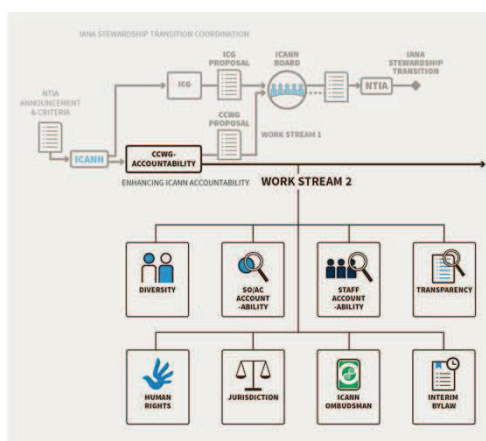
## #11: Changes Since Third Draft Report

### CLARIFICATION(S):

- Changed the 2/3 threshold for the Board rejecting GAC consensus advice to 60%.
- Recommendations #1 and #2 were amended to implement a GAC “carve out” in situations where the empowered community is challenging the board’s implementation of GAC advice.

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## Committing to Further Accountability Work in Work Stream 2



As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms and processes and to refine the operational details associated with some of its recommendations for Work Stream 1.

It is intended that Work Stream 2 will be completed by the end of 2016.

## #12: Changes Since Third Draft Report

### ADDITION(S):

- Re-inserted staff accountability requirement.

### CLARIFICATION(S):

- 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.
- 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." 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.

## Timeline and Next Steps

