CCWG-Accountability
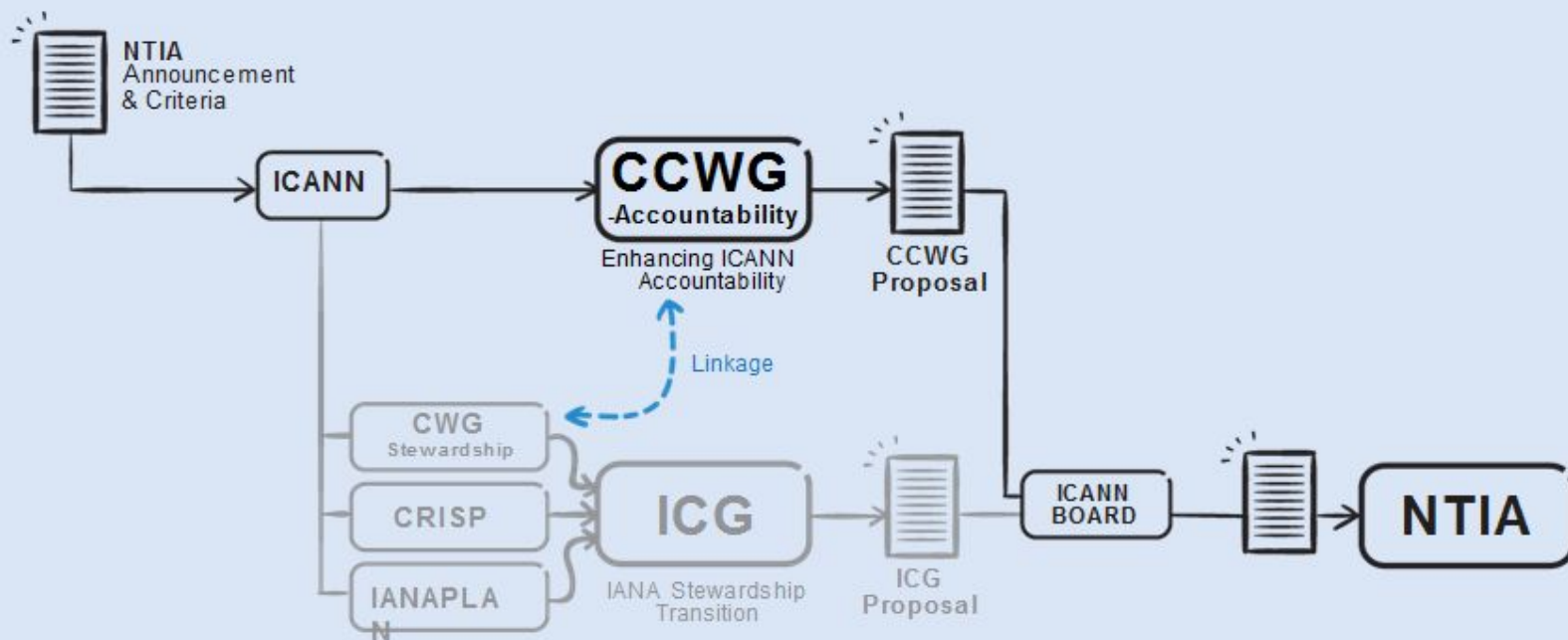
Formal Update on Progress
Made in and after Dublin

18 November 2015

IANA Stewardship transition overview

Background

Goal

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

Work Stream 1: 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: Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

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.

Building Blocks

1. THE PRINCIPLES

BYLAWS

CHANGES TO EXISTING

SOME BECOME **FUNDAMENTAL**

ADDING:
- NEW MECHANISMS
- AOC REVIEWS
- HUMAN RIGHTS

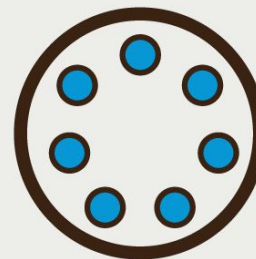## 2. INDEPENDENT APPEALS & REVIEW MECHANISMS

IMPROVED IRP

3. ICANN BOARD OF DIRECTORS

4. EMPOWERED ICANN COMMUNITY

5 COMMUNITY POWERS

5 community powers

REJECT BUDGET OR STRATEGY/ OPERATING PLAN

REJECT CHANGES TO ICANN STANDARD BYLAWS

APPROVE CHANGES TO FUNDAMENTAL BYLAWS

REMOVE INDIVIDUAL ICANN BOARD DIRECTORS

RECALL ENTIRE ICANN BOARD
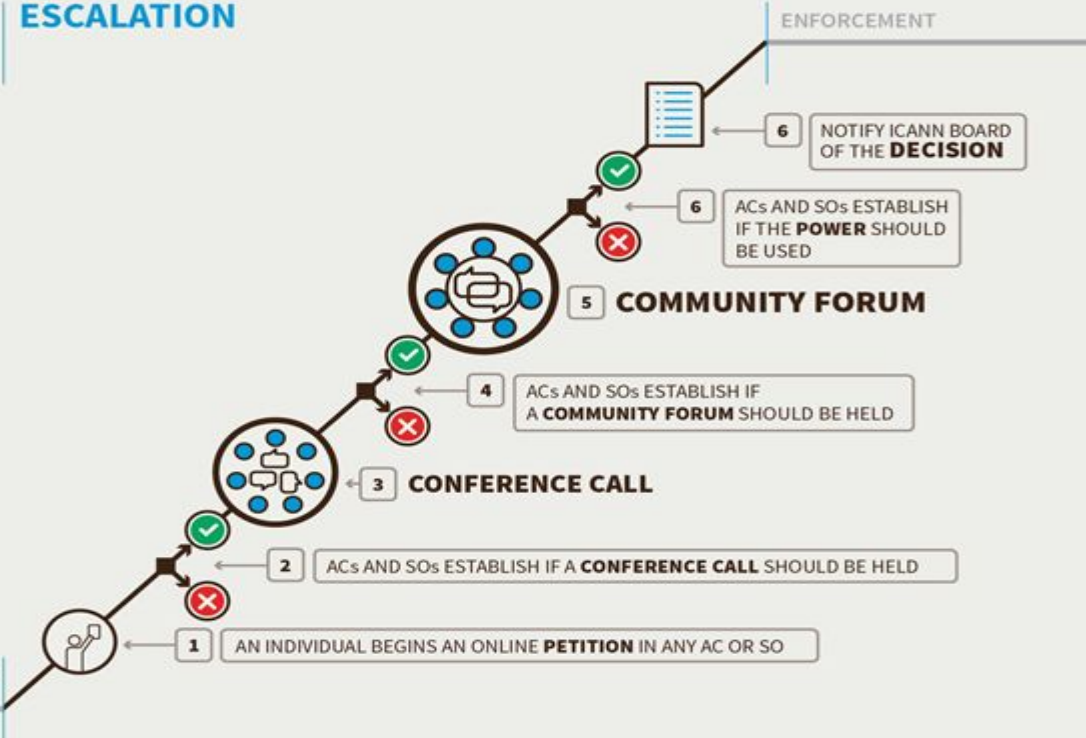
ccNSO Guidelines
Update based on Dublin discussions

Assessment of progress is related to the conclusions of the Dublin discussions in the ccNSO as reflected in Byron Holland's email on November 4th.

Need for community dialogue

Enforcement model

THE EMPOWERED ICANN COMMUNITY AS **SOLE DESIGNATOR**

5 COMMUNITY POWERS

## Concerns with a "Sole Member" model

Concerns were raised that the "Sole Member" model granted a significant number of powers under California law called "statutory rights." 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.

The "Sole Designator" model

To address these risks, the CCWG-Accountability now recommends using a "Sole Designator" model. The Sole Designator has only two powers under California law and those are the powers to appoint and remove ICANN Board members, including the entire Board. 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.

Removal of Individual Director - SO/AC Appointed
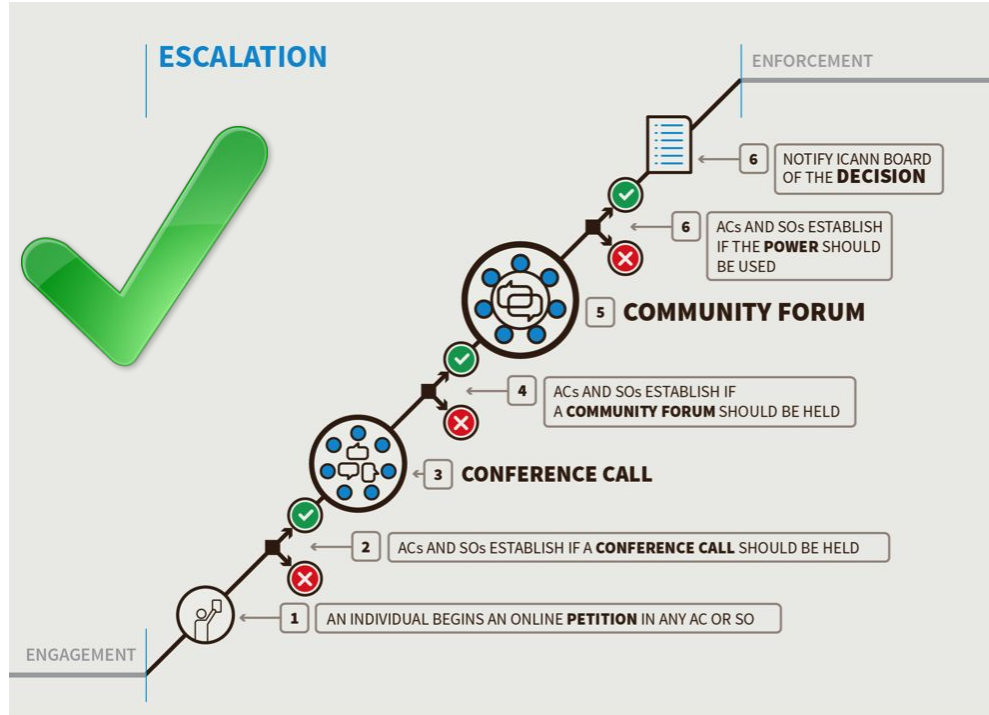
Additional steps specific to Removal of SO/AC Appointed Director

- ★ Chair of appointing SO/AC holds private call with Director
- ★ Process proceeds directly to Community Forum following Conference Call if parties have not resolved their differences
- ★ Community Forum Chair issues a formal call for comments
- ★ SO/ACs publish recommendations within 7 days
- ★ Input received is sent to the appointing SO or AC and posted publicly within 7 days
- ★ Decision to use power as an Empowered Community (7 days from the conclusion of the Comment period) is the responsibility of the nominating SO or AC only.
- ★ Appointing SO/AC responsible for naming replacement

Reject ICANN's Budget or Strategic/Operating Plans
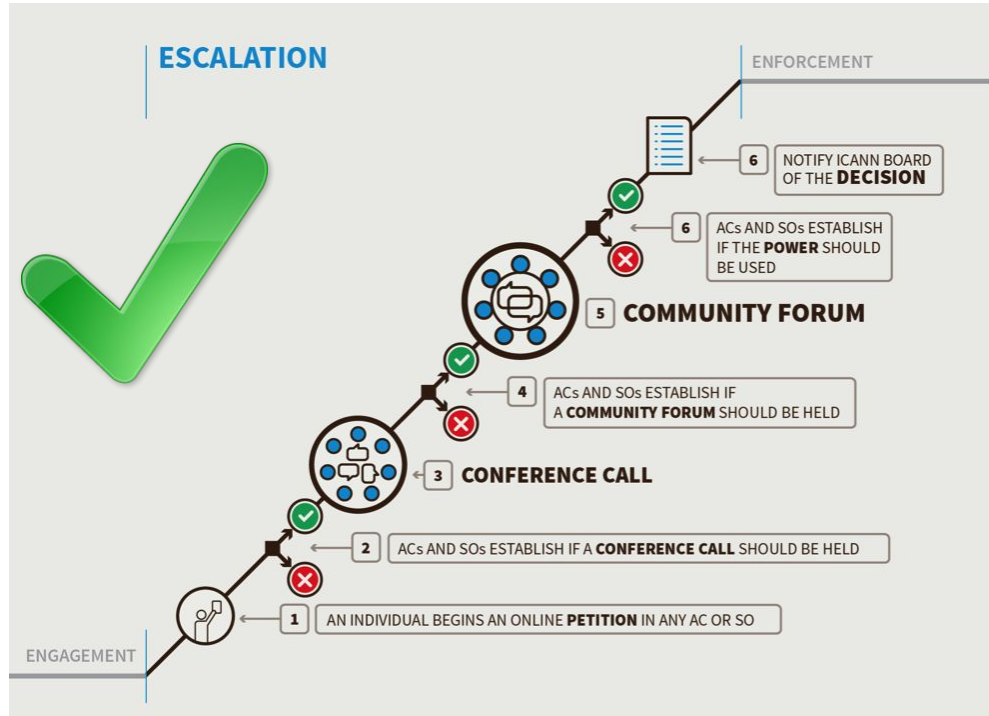
Additional steps specific to Rejecting ICANN's Budget or Strategic/Operating Plans

★ 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 TBD)
★ 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

Independent Review Process

SELECTION
- COMMUNITY IDENTIFIES AND PROPOSES CANDIDATES
- BOARD TO CONFIRM

EXPERTISE
- LEGAL EXPERTISE
- ICANN + DNS EXPERTISE
- ACCESS TO OTHER EXPERTS

DIVERSITY EFFORTS
- INCL. NO MORE THAN 2 PER ICANN REGION

IRP STANDING PANEL
(7 MIN.)

DISPUTE A

REVIEW PANEL (3)

DISPUTE B

REVIEW PANEL (3)

SELECTION
- FROM STANDING PANEL
- EACH PARTY CHOOSES 1 PANEL MEMBER
- THIRD CHOSEN BY OTHER 2 MEMBERS

EXPERTISE
- RELEVANT TO DISPUTE
- ACCESS TO OTHER EXPERTS

DECISIONS
- BINDING ON ICANN

★ **Exclusion of ccTLD delegations and revocations**

CWG-Stewardship Dependencies

ICANN Budget: Community rights regarding the development and consideration of the ICANN Budget

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

Revised Mission, Core Values & Commitments

CLARIFY ICANN'S MISSION AND CORE VALUES:
- REINFORCE THE SCOPE
- REPLACE OUTDATED REFERENCES
- CLARIFY ICANN'S ROLE

BYLAWS

Work in Progress

The CCWG-Accountability recommends:

★ Clarifying that ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve it's Mission

★ Updating the ICANN mission statement to clearly set forth ICANN's role with respect to names, numbers, root servers, and protocol port and parameters

The CCWG Accountability is continuing discussions on contract enforcement and regulation, in particular as relates to comments from the Second Draft Proposal.

Human Rights

- ★ Draft Bylaw text
- ★ Framework of interpretation to be developped in Work Stream 2
- ★ Bylaw proposed for adoption as part of Work Stream 1 will be used for a limited period of time only, up until the Framework of Interpretation is published

"Within its mission and in its operations, ICANN will respect internationally recognized human rights. This commitment does not in any way create an obligation for ICANN, or any entity having a relationship with ICANN, to protect or enforce human rights beyond what may be required by applicable law. In particular, this 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."

Bylaw Change Approval

PDP induced Bylaw change discussion :

★ An example has been raised where policymaking and the bylaws veto power might clash. Here is the scenario:

★ The outcome of a PDP within an SO could mean that some consequential changes to the ICANN bylaws were needed to implement its recommendations.

★ PDP is core policy making and should not be subject to community veto.

★ If the PDP *did* require bylaws changes, and those changes *were* subject to the veto, then in effect the community veto would apply to policymaking.

Proposals being discussed in CCWG to address the issue.

SO/AC Accountability

- ★ Recommend including review of Supporting Organizations' and Advisory Committees' accountability mechanisms as part of Work Stream 1
- ★ Reviews be incorporated into existing periodic Structural Reviews
- ★ Structural Reviews are intended to review the performance and operation of ICANN SO/ACs.
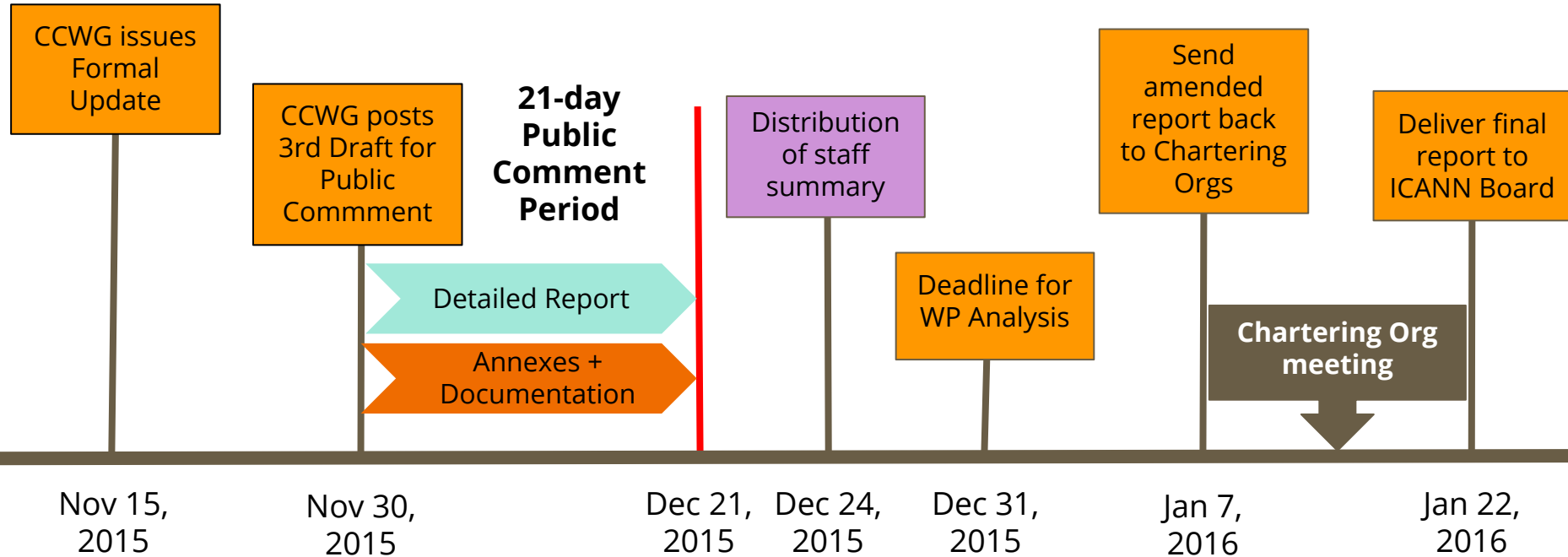
Stress Test 18

★ At time of publication of the formal update, discussions of these details are still underway

★ ST18 subgroup set up to:
  ○ Assess existing options, areas of agreement / disagreement
  ○ Provide full CCWG with short, clear summary of views and options
  ○ Report to the CCWG so that consensus can be assessed around the ST18 proposal

★ ST18 wiki page - https://community.icann.org/display/acctcrosscomm/ST-18+Subgroup

Current CCWG-Accountability Timeline

CCWG issues Formal Update

CCWG posts 3rd Draft for Public Commment

21-day Public Comment Period

Detailed Report

Annexes + Documentation

Distribution of staff summary

Deadline for WP Analysis

Send amended report back to Chartering Orgs

Chartering Org meeting

Deliver final report to ICANN Board

Nov 15, 2015

Nov 30, 2015

Dec 21, 2015

Dec 24, 2015

Dec 31, 2015

Jan 7, 2016

Jan 22, 2016

All dates are tentative*