Visual Summary

Cross Community Working Group (CCWG) Accountability

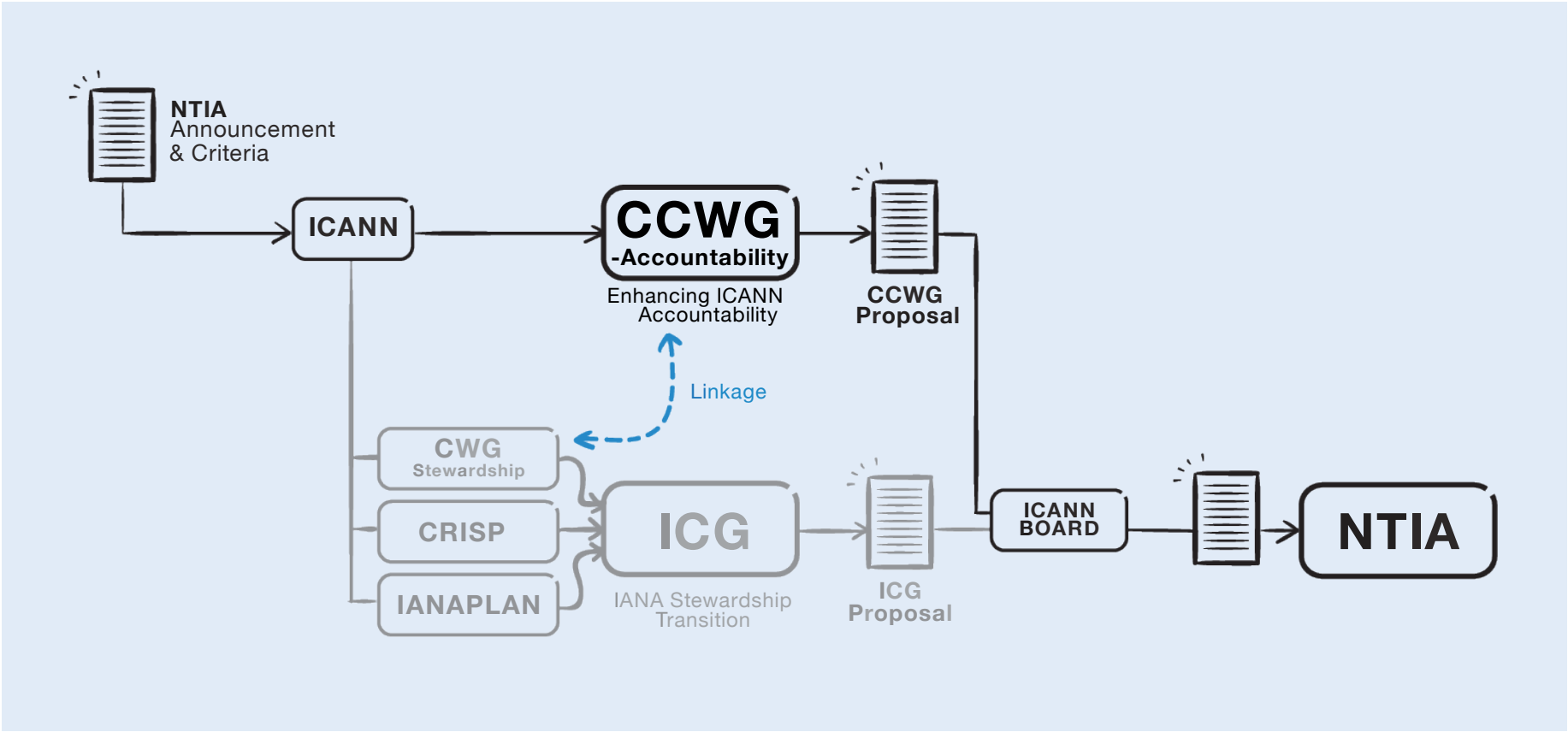
Work Steam 1 – 2nd Draft Proposal for Public Comment

25 August 2015 – ccTLD Webinars

This document is a summary interpretation of key points found in the proposal described above. The summaries and graphics here present the main recommendations found in the full proposal. This document may be updated based on revisions made to that proposal.

The Two-Track Parallel Process

Since the National Telecommunications and Information Administration (NTIA) announced their intent to transition stewardship of the IANA functions, the ICANN community has been working in a two-track parallel process. The ICG has finalized its Interim Draft IANA Stewardship Transition Proposal, and the CCWG-Accountability has finalized its 2nd Draft Proposal for Work Stream 1.



Overview

Goal

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

Scope

Work Stream 1 - Focuses on mechanisms enhancing ICANN's accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

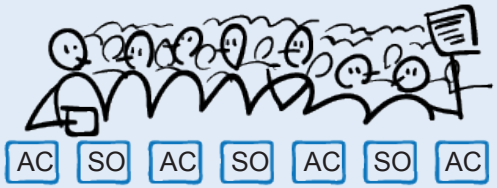
Work Stream 2 - Focuses on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

The ICANN Community & Board of Directors

The ICANN Community is organized in three Supporting Organizations (SOs) and four Advisory Committees (ACs), each represents key stakeholders. While the ICANN Board has the ultimate authority to approve or reject policy recommendations, Supporting Organizations are responsible for developing and making policy recommendations to the Board. Advisory Committees formally advise the ICANN Board on particular issues or policy areas. Most of the CCWG-Accountability's efforts are focused on ensuring accountability of the Board of Directors (and ICANN staff) toward these stakeholders, but the question of accountability of the community was also worked on.

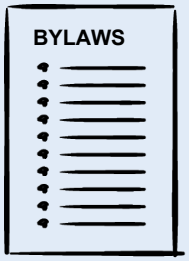
Current Accountability Framework

The CCWG-Accountability identified **four building blocks** that would form the mechanisms required to improve ICANN's accountability.



The ICANN Community
is organized in three Supporting Organizations (SOs) and four Advisory Committees (ACs).

ICANN Board
has the ultimate authority to approve or reject policy recommendations, developed by the SOs. ACs formally advise the ICANN Board on particular issues or policy areas.



The Principles
guarantee the mission, commitments and core values of ICANN through its Bylaws.

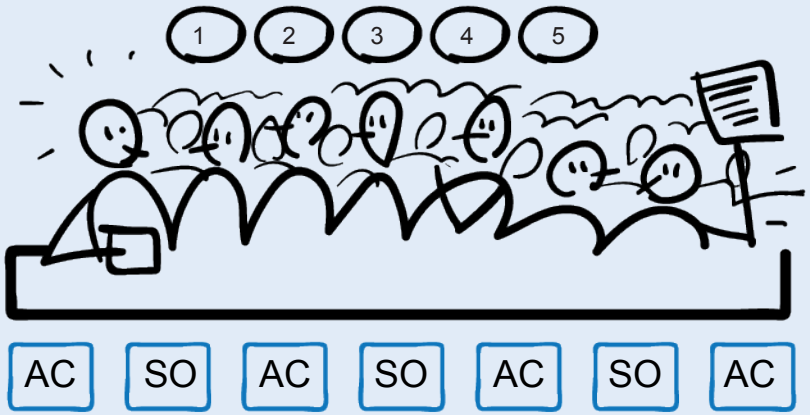
Independent Appeals Mechanisms
confers the power to review and provide redress, as needed.

Escalation Paths and the Status Quo

The CCWG-Accountability recommends **giving the multistakeholder community more governance powers**, as detailed below. These powers are intended to replace the backstop that the historic relationship with the U.S. Government provided.

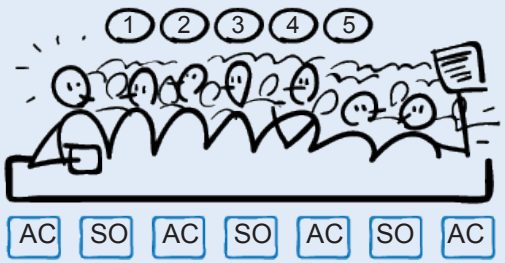
These powers are intended to provide recourse as part of an escalation path in case of substantial disagreement between the ICANN Board and the ICANN community**. They do not change or interfere with the day-to-day operations of ICANN.**

Additionally, these powers would **not impact** the status quo of **how the community operates** today, or introduce new risks to them.



Proposed Enhanced Accountability Mechanisms

The CCWG-Accountability has identified enhancements required to **those building blocks that would form the accountability mechanisms** required to improve ICANN's accountability.



REVIEW / REJECT

REMOVE / RECALL

STRUCTURAL REVIEW
As Community accountability

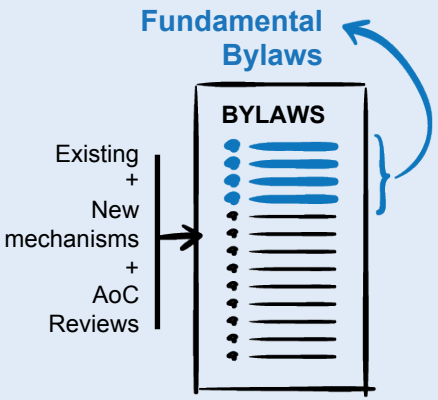
- BUDGET
- STRATEGY/OPS PLAN
- BYLAWS

The Empowered Community
refers to the powers that allow the community SOs & ACs to take action should ICANN breach the principles (i.e. the People).

ICANN Board
has the ultimate authority to approve or reject policy recommendations, developed by the SOs. ACs formally advise the ICANN Board on particular issues or policy areas (i.e. the Executive).

Fundamental Bylaws

NEW



The Principles
guarantee the core mission, commitments and values of ICANN through its Bylaws (i.e. the Constitution).

NEW IRP

7+ MEMBER STANDING PANEL

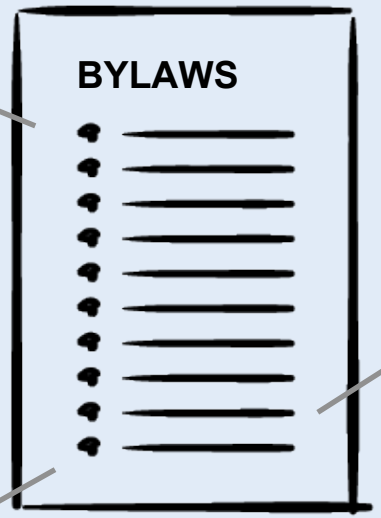
Independent Appeals Mechanisms
confers the power to review and provide redress, as needed (i.e. the Judiciary).

The Principles: ICANN's Mission, Commitments, and Values

ICANN's Bylaws are at the heart of its accountability. They require ICANN to act only within the scope of its limited mission, and to conduct its activities in accordance with certain fundamental principles. The CCWG-Accountability **proposes the following changes be made to the Bylaws**.

ICANN's **Mission Statement** describes the scope of the organization's activities. The CCWG-Accountability recommends better describing what is in and out of scope for ICANN to do, and to be clear that ICANN can't do anything that isn't specifically allowed in the Bylaws.

ICANN's **Core Values** guide the decisions and actions of ICANN. The CCWG-Accountability recommends dividing the existing Core Values provisions into "Commitments" and "Core Values."



ICANN's **Affirmations of Commitments** (AoC) requires a periodic review process conducted by the community that results in recommendations for improvement. The CCWG-Accountability proposes to bring aspects of the AoC and the AoC reviews into the ICANN Bylaws.

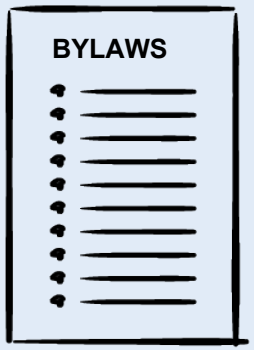
The Principles: Fundamental Bylaws

ICANN's Bylaws can generally be changed by resolution of the Board with a two-thirds majority. CCWG-Accountability **proposes revising ICANN's Bylaws to establish a set of Fundamental Bylaws**, which would hold special protections and can only be changed based on prior approval by the Community with a higher vote threshold.

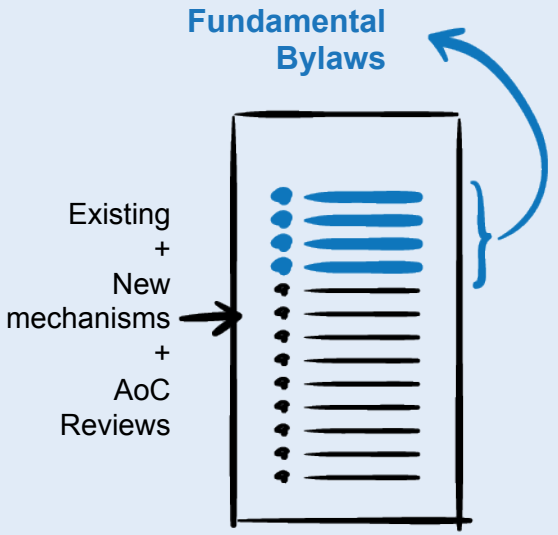
The CCWG-Accountability recommends that the following items be given the status of **Fundamental Bylaws**:

1. The Mission / Commitments / Core Values;
2. The framework for the Independent Review Process;
3. The manner in which Fundamental Bylaws can be amended
4. The Community Mechanism as Sole Member Model
5. The community powers to Reconsider/reject Budget or Strategy/Operating plans, Reconsider/reject Changes to ICANN Bylaws, Remove Individual ICANN Directors and Recall the Entire ICANN Board
6. The IANA Function Review and the Separation Process required by the CWG-Stewardship's proposal;
7. The Post-Transition IANA governance and Customer Standing Committee structures, also required by the CWG-Stewardship's proposal.

Current



Proposed



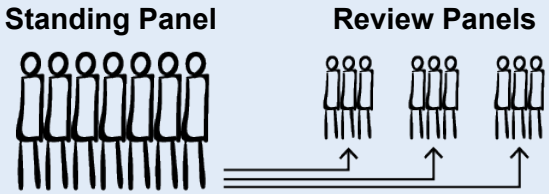
Appeals Mechanisms: Independent Review Process

The CCWG-Accountability **recommends significantly enhancing ICANN's existing Independent Review Process (IRP)**, whereby any person or entity materially affected by an action (or inaction) in breach of ICANN's Bylaws by ICANN's Board may request an independent third-party review of that action.

The core of the recommendation is to institute a **Standing Panel** to serve as a fully independent dispute resolution function for the ICANN Community. For each dispute, a smaller, 3-member **Review Panel** will be drawn from the Standing Panel.

The Role & Scope of the IRP

- Determine whether ICANN has acted (or has failed to act) in violation of its Bylaws
- Reconcile conflicting decisions in process specific "expert panels"
- Hear claims involving rights of the Sole Member
- Exception : ccTLD delegations and revocations



Standing Panel

Composition: 7 members (minimum).

Selection: ICANN to organize a community effort to identify and propose candidate members, Board to confirm.

Expertise: Significant legal expertise; expertise in the workings of ICANN and the DNS; access to other experts upon request.

Diversity: Reasonable efforts to achieve diversity, including no more than 2 panelists from an ICANN region.

Review Panels

Composition: 3 decision makers.

Selection: Selected from Standing Panel. 1 panel member chosen by each party, and those 2 members choose the 3rd member.

Expertise: Relevant to the dispute in question; access to other experts upon request.

Decisions: Are to be binding on ICANN (subject to appeal to full panel) to the extent permitted by law. Possible decisions are:
1) Action/inaction is/is not consistent with Bylaws
2) Substantive decision on Sole Member rights

Appeals Mechanisms: Request for Reconsideration

The CCWG-Accountability **proposes a number of key reforms to ICANN's Request for Reconsideration (RFR) process**, whereby any person or entity materially affected by an action (or inaction) of ICANN may request review or reconsideration of that action by the Board.

Key Reforms Proposed include:

Expanding the scope of permissible requests to include Board or staff actions or inactions that contradict ICANN's Mission, Commitments...

Exception : ccTLD delegations and revocations

Extending the time for filing a Request for Reconsideration from 15 to 30 days.

The grounds for summary dismissal have been narrowed and the ICANN Board of Directors must make determinations on all requests (rather than a committee handling staff issues).

Requiring ICANN Board of Directors to make determinations on all requests after receiving a recommendation from the Board Governance Committee (rather than the BGC deciding).

Tasking ICANN's Ombudsman with initial substantive evaluation of the requests to aid the Board Governance Committee in its recommendation.

Providing requesters an opportunity to rebut the Board Governance Committee's recommendation before a final decision by the entire Board.

Providing enhanced transparency requirements and firm deadlines in issuing determinations.

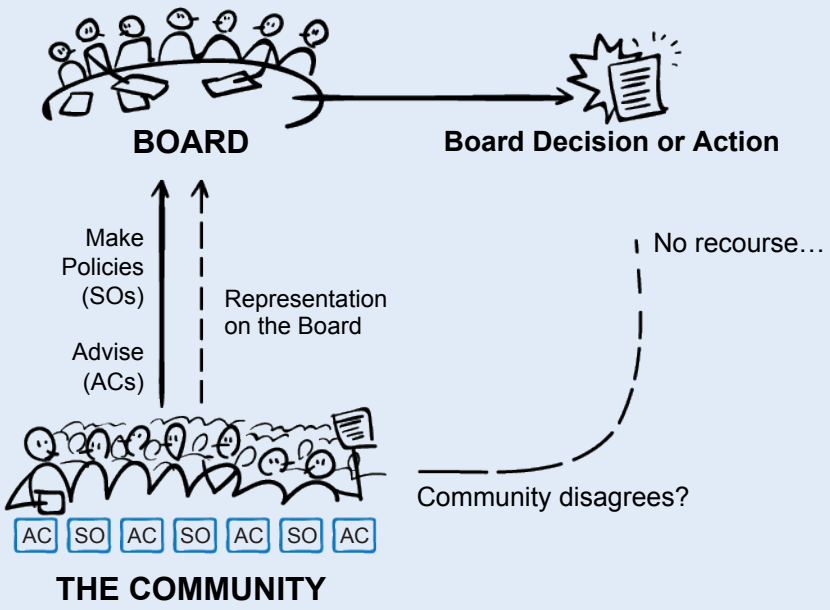
Community Mechanism as Sole Member Model

Many corporate structures and legal mechanisms have been thoroughly explored for organizing the community and enabling it to have enforceable powers, which generally requires "legal personhood" in any jurisdiction. **The CCWG-Accountability is recommending the Community Mechanism as Sole Member Model.**

The Community Mechanism in which SOs/ACs participate jointly to exercise their community powers would be built into ICANN's Bylaws and be the Sole Member of ICANN. Decisions of the SOs/ACs per the Community Mechanism would directly determine exercise of the rights of the Community Mechanism as Sole Member (CMSM).

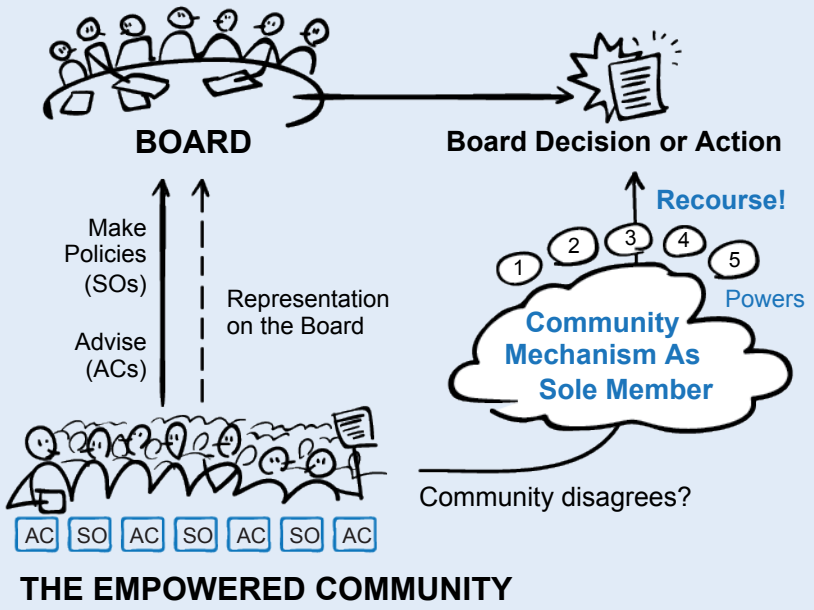
Current

If the community disagrees with a Board decision or action, they have no recourse to challenge it.



Proposed

If the community disagrees with a Board decision or action, they can challenge it exercising their powers through the CMSM.



The Empowered Community's Powers

The CCWG-Accountability **recommends the ICANN community be empowered with five distinct powers**.

1. Reconsider/reject Budget or Strategy/Operating Plan
This power would give the community the ability to consider strategic/operating plans and budgets after they are approved by the Board (but before they come into effect) and reject them.

2. Reconsider/reject changes to ICANN "Standard" Bylaws
This power would give the community the ability to reject proposed Bylaws changes after they are approved by the Board but before they come into effect.

3. Approve changes to "Fundamental" Bylaws
This power would form part of the process set out for agreeing any changes of the "Fundamental" Bylaws. It requires that the community would have to give positive assent to any change, a co-decision process between the Board and the community and that such changes would require a higher vote.

4. Remove individual ICANN Board Directors
The community organization that appointed a given director could end their term and trigger a replacement process. The general approach, consistent with the law, is that the appointing body is the removing body.

5. Recall entire ICANN Board
This power would allow the community to cause the removal of the entire ICANN Board. (expected to be used only in exceptional circumstances).

CMSM Model: Exercising Powers

How does the community exercise its powers? The exercising of different community powers may include unique steps relevant to a given power, but the general process is as follows.

CAUSE

ICANN Board or Board Member action causing significant concern to members of the community.

1 PETITION

A petition by at least one SO or AC (depending on the power) starts the formal discussion and decision-making about whether to exercise a community power.

Generally a **maximum period of fifteen days** from the announcement of the decision that might trigger the power's use.

2 DISCUSSION

The whole community – **all** SOs and ACs – discusses the proposed use of the power, online and/or through a proposed ICANN community forum.

This Discussion Period lasts for **fifteen days**, starting the day after a valid petition has been received.

3 DECISION

SOs and ACs that have voting rights in the Community Mechanism cast their votes to decide whether the power is used or not.

This Decision Period lasts for **fifteen days**, starting the day after the conclusion of the discussion period.

OUTCOME

ICANN Board acts in accordance with the community's decision.

Notable exceptions to this three-step process are for the powers to remove an ICANN director appointed by an SO/AC (where there is an initiating trigger vote in the SO/AC to start consideration of the process) or to co-approve changes to Fundamental Bylaws (where its use is automatically triggered by any proposal for changes to Fundamental Bylaws). To Recall the Entire ICANN Board requires two SOs or ACs (at least one of which is an SO) to sign a petition.

Example: Reconsider/reject changes to ICANN "Standard" Bylaws

How does the community exercise its powers? The exercising of different community powers may include unique steps relevant to a given power, but the general process is as follows.

CAUSE

The Board amends Standard Bylaws in ways that the community does not support.

1 PETITION

To trigger the process of the use of this community power, a petition of one SO or AC is received.

Indicated by signature following the decision of a **simple majority** (enough votes to exceed 50%) of that SO or AC's governing body.

2 DISCUSSION

The whole community – **all** SOs and ACs – discusses the proposed use of the power, online and/or through a proposed ICANN community forum.

A mixture of formal and informal discussion, advice and consideration – within the forum and informally within the SOs and ACs.

3 DECISION

SOs and ACs cast their votes to decide whether the power is used or not. The chair of each SO/AC is responsible for communicating the votes of the SO/AC to the ICANN Board.

To succeed, a veto would require a **2/3** level of support in the Community Mechanism.

OUTCOME

The Board absorbs the feedback, makes adjustments, and proposes a new set of amendments to the Bylaws as per its usual processes.

This power does not allow the community to re-write a Board-proposed Bylaw change: it is a rejection process where the Board gets a clear signal that the ICANN community is not supportive.

Example: Recalling the Entire ICANN Board

How does the community exercise its powers? The exercising of different community powers may include unique steps relevant to a given power, but the general process is as follows.

CAUSE

A set of problems have become so entrenched that the community wishes to signal its lack of confidence in the Board.

1 PETITION

A petition of at least two of the SOs or ACs, at least one of which must be an SO, is received.

Indicated by signature following the decision of a **simple majority** (enough votes to exceed 50%) of that SO or AC's governing body.

2 DISCUSSION

The whole community – **all** SOs and ACs – discusses the proposed use of the power, online and/or through a proposed ICANN community forum.

A mixture of formal and informal discussion, advice and consideration – within the forum and informally within the SOs and ACs.

3 DECISION

SOs and ACs cast their votes to decide whether the power is used or not. The chair of each SO/AC is responsible for communicating the votes of the SO/AC to the ICANN Board.

75% of all the votes available within the CMSM would have to be cast in favor of recall for the recall to be effective.

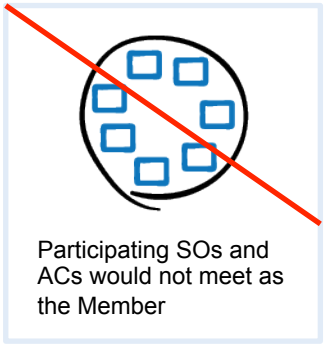
OUTCOME

The interim board replaces the ICANN Board (except for the president)

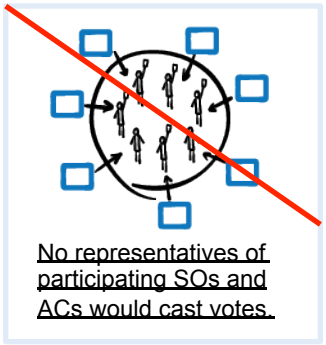
Influence in the Community Mechanism

The CCWG-Accountability considered the decision weights of the various parts of the community. The table on the right sets out the voting distribution proposed by the CCWG-Accountability.

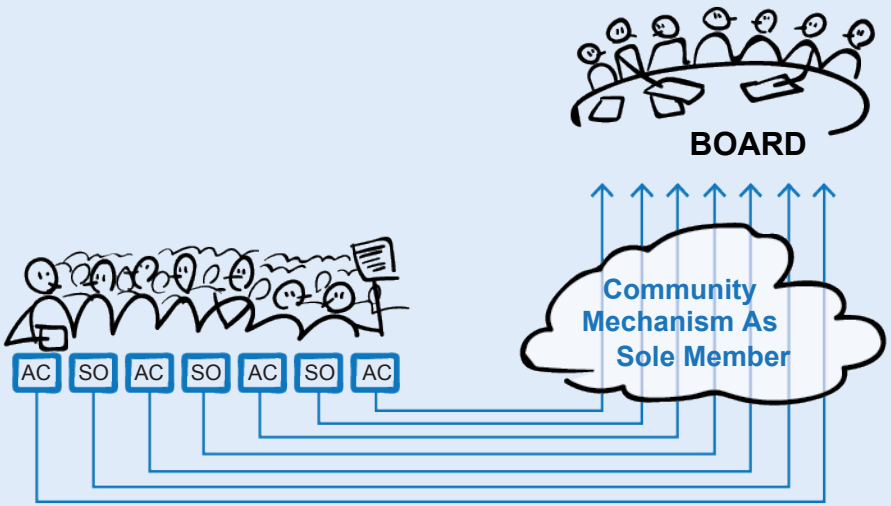
The SOs/ACs that participate in voting in the Sole Member would do so according to a set of rules described in the ICANN Bylaws that would be created specifically for this purpose. Each SO/AC would be responsible for defining their processes for voting under these rules. The chair of each SO/AC would be responsible for communicating the votes or decisions of the SO/AC to the ICANN Board. This pass-through of cumulative votes and decisions would become the act of the Sole Member.



Participating SOs and ACs would not meet as the Member



No representatives of participating SOs and ACs would cast votes.



Note: GAC, SSAC and RSSAC have not yet decided whether to participate.

SO or AC	# of Votes
Address Supporting Organization (ASO)	5
Generic Names Supporting Organization (gNSO)	5
Country Code Names Supporting Organization (ccNSO)	5
Governmental Advisory Committee (GAC)	5
At-Large Advisory Committee (ALAC)	5
Security and Stability Advisory Committee (SSAC)	2
Root Server System Advisory Committee (RSSAC)	2

Stress Tests

An essential part of the CCWG-Accountability Charter requires **stress testing of the recommended accountability enhancements**. The purpose of these stress tests is 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.

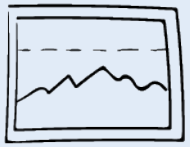
I

Financial Crisis or Insolvency

II

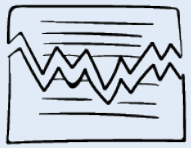
Failure to Meet Operational Obligations

III



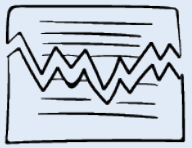
Legal/ Legislative Action

IV



Failure of Accountability

V



Failure of Accountability to External Stakeholders

The exercise of applying stress tests identified changes to ICANN Bylaws that might be necessary to allow the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

Work Streams & Implementation

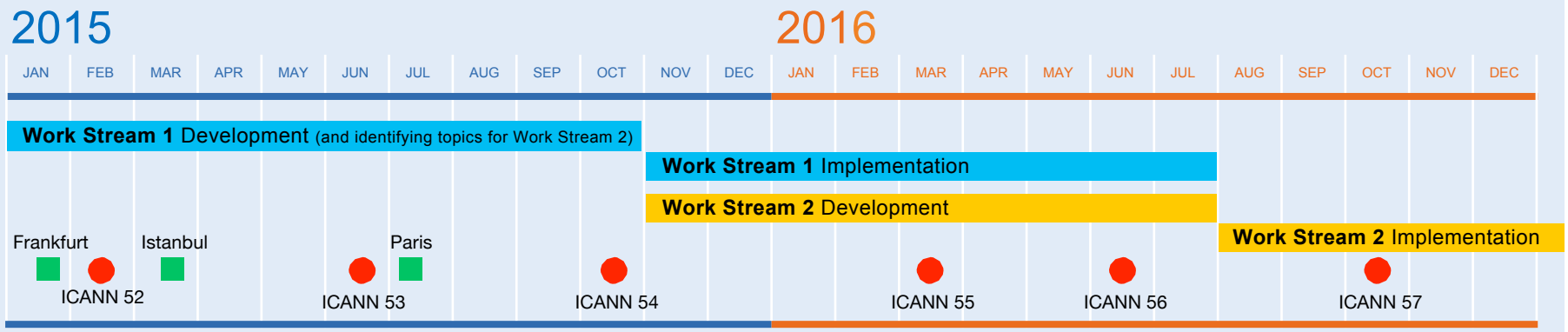
The CCWG-Accountability's work is **organized in two Work Streams**. Work Stream 1 changes **must be implemented or committed to before any transition of IANA Stewardship from NTIA can occur**.

Possible tracks for implementation of Work Stream 1:

- Revising Mission, Commitments and Core Values
- Establishing Fundamental Bylaws
- Completing the IRP enhancements
- Establishing Community empowerment mechanism and incorporation of the community Powers into the Bylaws
- Incorporating the AoC reviews into the Bylaws
- Completing the Reconsideration Process enhancements

Elements considered for Work Stream 2:

- Refining the **operational details** of WS1 proposals
- Further assessing enhancements to **government participation** in ICANN
- Considering the issue of **jurisdiction**
- Enhancing **SO/AC accountability**
- Instituting a **culture of transparency** within the ICANN organization
- Considering improvements to **diversity** in all its aspects at all levels of the organization
- Defining the modalities of how ICANN integrates **human rights** impact analyses, within its mission



Linkage with the CWG-Stewardship

The CCWG-Accountability recognizes that continued and close engagement with the CWG-Stewardship is essential. **Key aspects of the CWG-Stewardship proposal are considered to be conditional on the output of the CCWG-Accountability**.

CWG-Stewardship Requirement	CCWG-Accountability Proposal	Requirement met?
ICANN Budget Community rights regarding the development and consideration.	Recommended community power: *Reconsider/reject budget or strategy/ operating plan*	✓
ICANN Board Community rights regarding the ability to appoint / remove members, and to recall the entire Board.	Recommended community powers: *Appoint & remove individual ICANN directors, Recall entire ICANN board*	✓
ICANN Bylaws Incorporation of the following into ICANN's Bylaws: IANA Function Review, Customer Standing Committee, and the Separation Process.	Recommended to be included as ICANN Bylaws.	✓
Fundamental Bylaws All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws.	Recommended to be included as ICANN Bylaws.	✓
Independent Review Panel Should be made applicable to IANA Functions and accessible by TLD managers.	Will be applicable, except for ccTLD delegations / revocations and numbering decisions.	✓

Next steps

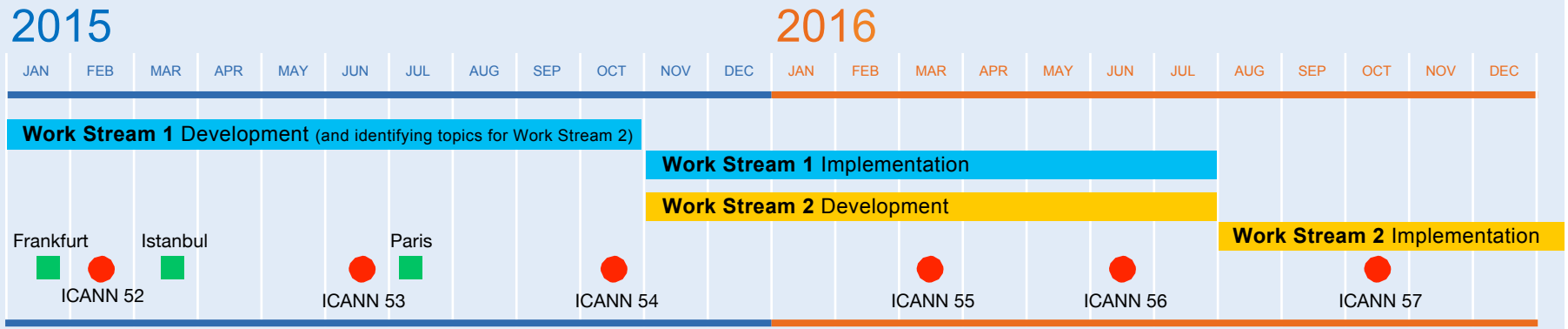
The CCWG-Accountability's public comment is open until **12 sept 2015, 23.59 UTC**

Questions raised :

- Do you agree that the CCWG-Accountability proposal enhances ICANN's accountability?
- Are there elements of this proposal that would prevent you from approving its transmission to Chartering Organizations?
- Does this proposal meet the requirements set forward by the CWG-Stewardship?

Next steps :

Submission of final report for Chartering organizations consideration during Icann 54 (Dublin)

ccNSO meeting in Dublin will dedicate significant time to this effort, using a similar meeting structure as for the CWG proposal (total of 5-6 hours) including :

- Informational
- Discussion
- Seeking support from community
- Council discussion