CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations

February 2016

Supplemental Final Proposal on Work Stream 1 Recommendations

Structure:

- ★ **Core proposal** (55 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

Establishing an Empowered Community for Enforcing Community Powers

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.

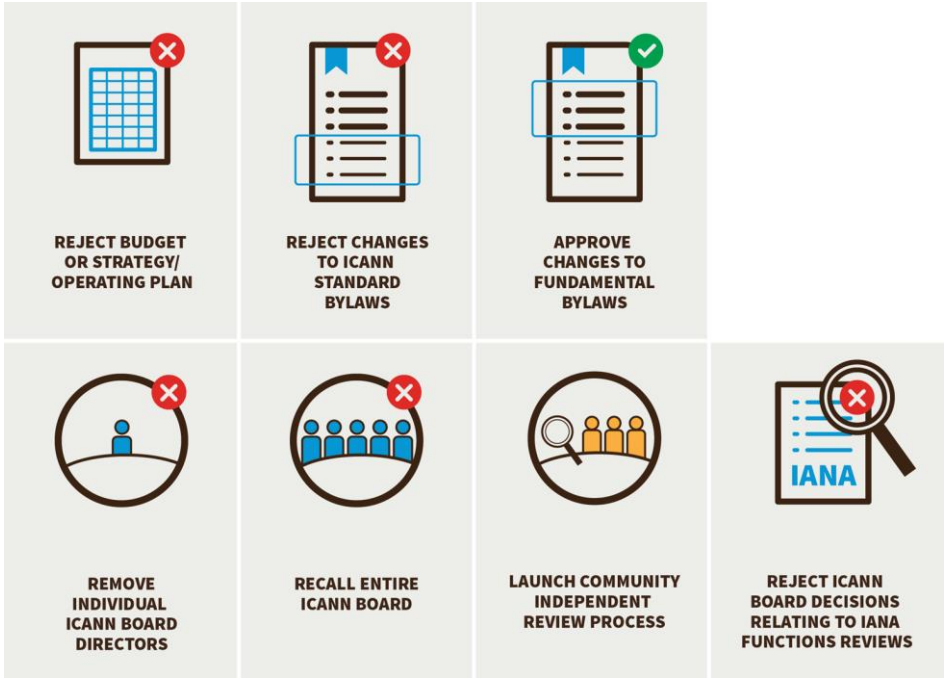
Inspection

- 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.

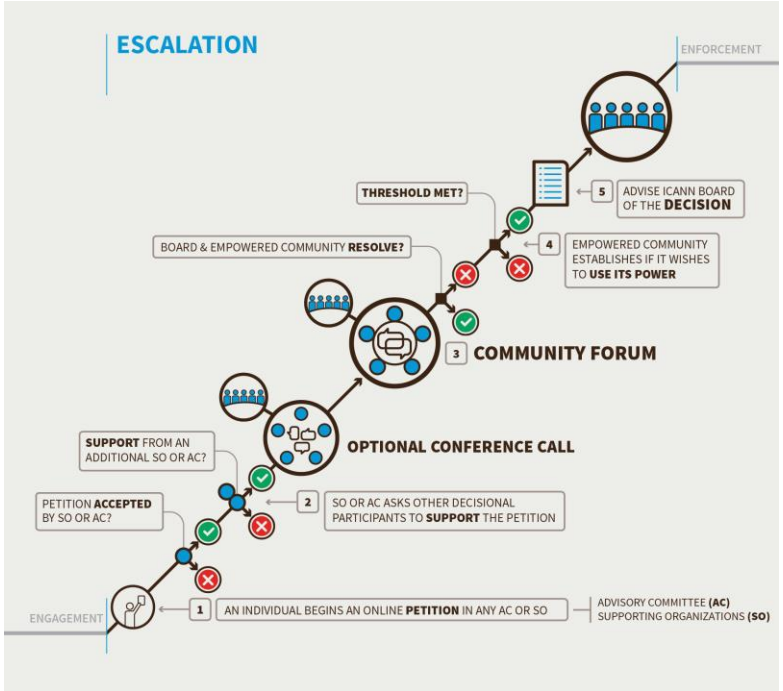
Ensuring Community Engagement in ICANN Decision-making: Seven New Community Powers

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.



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.

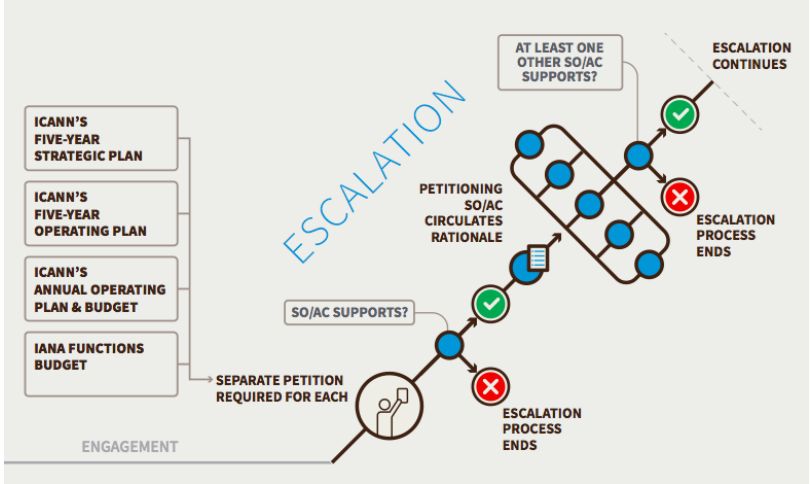
Required Thresholds for Escalation

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

Reject ICANN's Budget or Strategic/Operating Plans

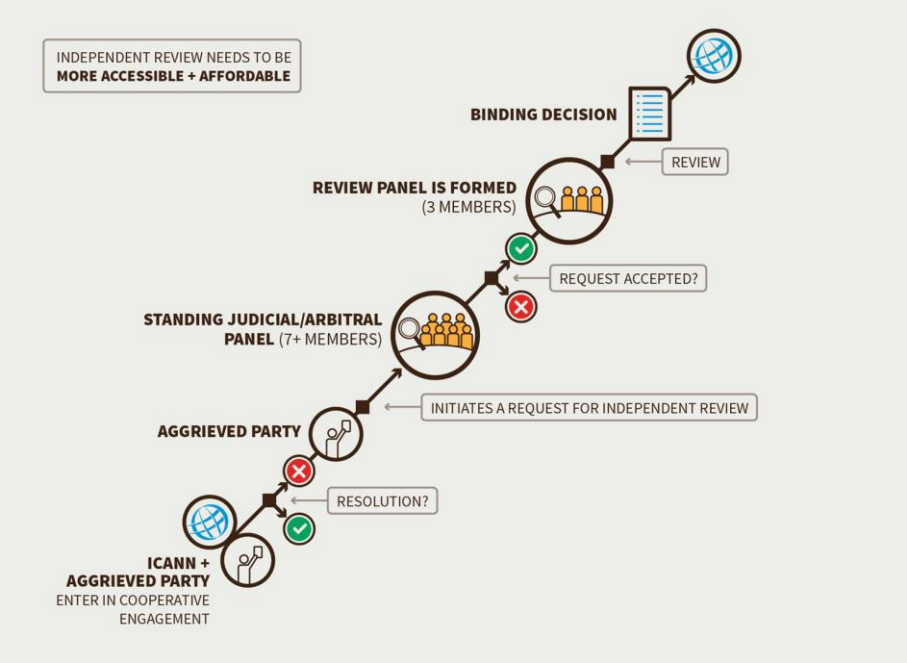
Additional steps specific to Rejecting ICANN's Budget, PTI budget or Strategic/Operating Plans

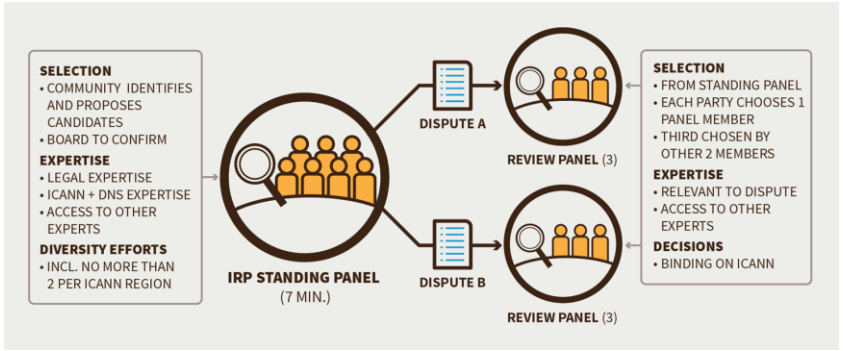
- ★ Separate petition required for each Budget or Plan being challenged.
- ★ Petitioning SO or AC required to provide rationale.
- ★ Should annual budget be rejected, caretaker budget will be enacted (details are work in progress).
- ★ Budget or Strategic/Operating plan could only be challenged if significant 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.



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)*

CWG-Stewardship Dependencies

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.

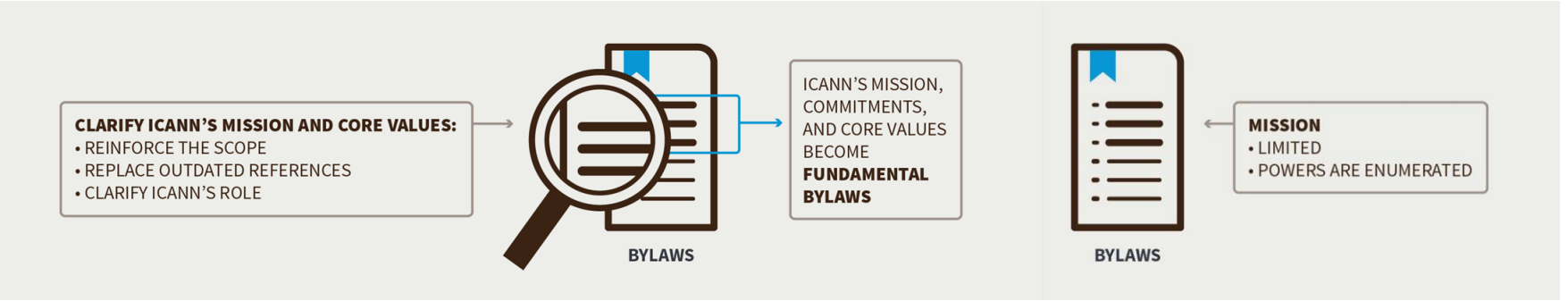
Independent Review Panel: Should be made applicable to IANA Functions and accessible by managers of top-level domains.

PTI Separation: Review of ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

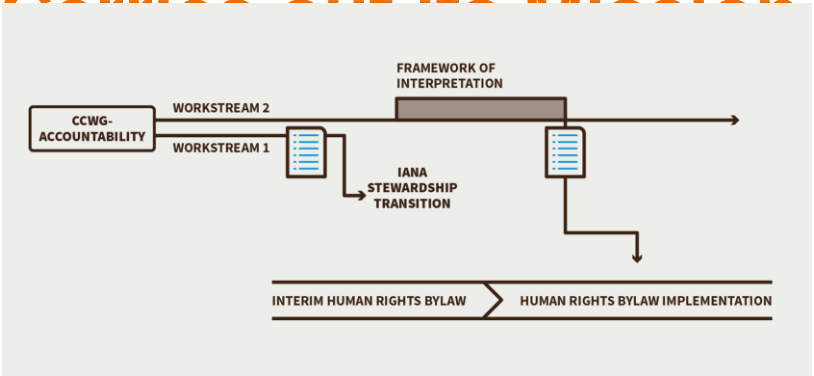
Changing Aspects of ICANN's Mission, Commitments and Core Values

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.



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."

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.

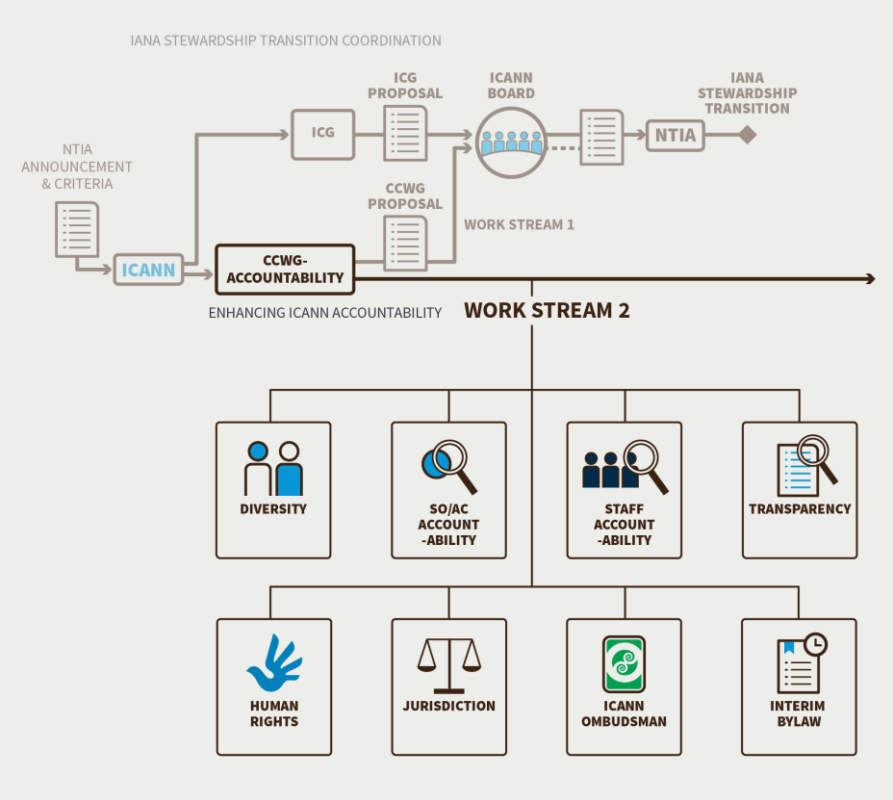
In Work Stream 2: Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.

Board Obligations with regards to Governmental Advisory Committee Advice (Stress Test 18)

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.*

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.