

Visual Summary

Cross Community Working Group (CCWG) Accountability 2nd Draft Proposal for Public Comment

31 July 2015

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, but do not display all the options presented in it. This document may be updated based on revisions made to that proposal.

Overview

Goal

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

Lawyers' Comment:
This is not true. For example, GAC does not have representation

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 and each has representation on ICANN's Board of Directors. 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. Much of the CCWG-Accountability's efforts are focused on ensuring accountability of the Board of Directors (and ICANN staff) toward these stakeholders.

Accountability Mechanisms

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

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

Represents the primary decision-making body that the community holds accountable.



The Principles

Guarantee the core mission, commitments and values of ICANN through its bylaws (i.e. the Constitution).



Independent Appeals Mechanisms

Confers the power to review and provide redress, as needed (i.e. the judiciary).

The Empowered Community's Powers

The CCWG-Accountability **recommends the ICANN community be empowered with six 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 changes would require a higher vote.



4. Appoint & remove individual ICANN directors

The community organization that appointed a given director could end their term and trigger a reappointment 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).



6. Reconsider/reject board decisions regarding IANA reviews

This power would allow the community to consider decisions regarding IANA reviews and any separation process after they are approved by the Board (but before they come into effect) and reject them.

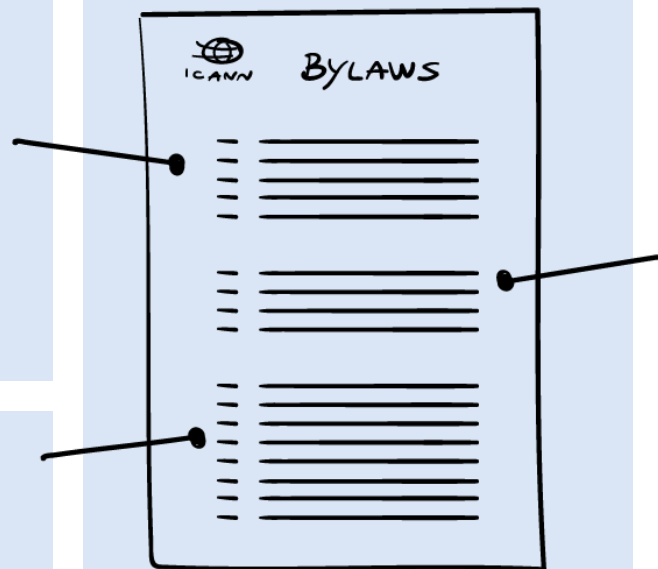
The Principles: ICANN's Mission, Commitments, and Values

ICANN's Bylaws are at the heart of its accountability. They obligate 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 clarifying the language to better describe what is in and out of scope regarding the DNS, and that ICANN's powers are "enumerated."

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.

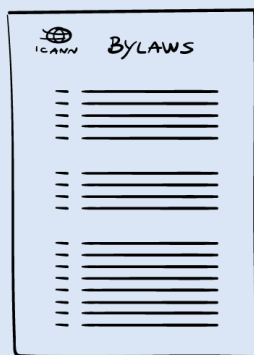
The Principles: Fundamental Bylaws

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.

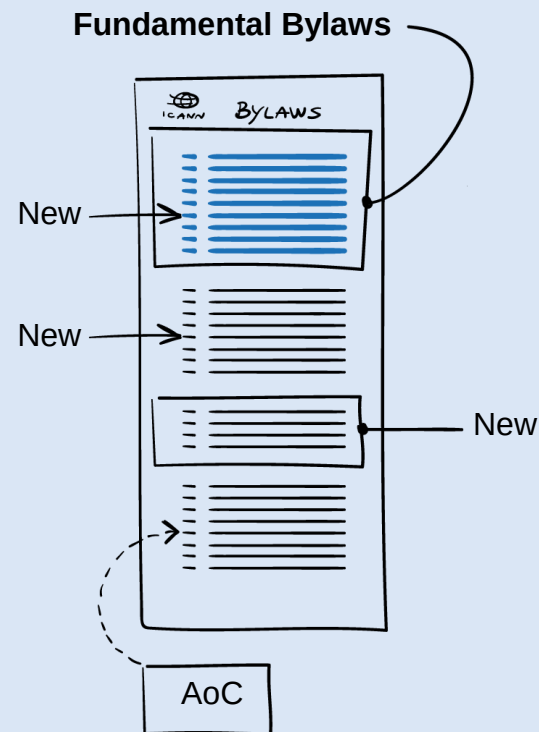
The CCWG-Accountability recommends that the following items have the status of **Fundamental Bylaws**:

1. The Mission / Commitments / Core Values
2. 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 [in this proposal]
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



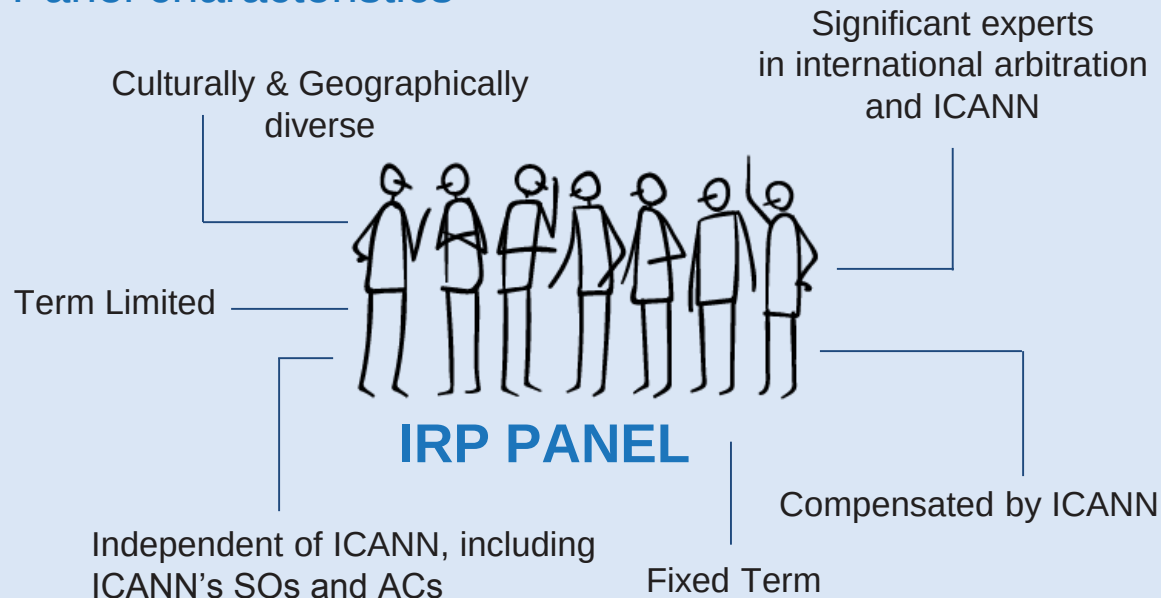
Appeals Mechanisms • Independent Review Process

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) of ICANN's Board may request an independent third-party review of that action.

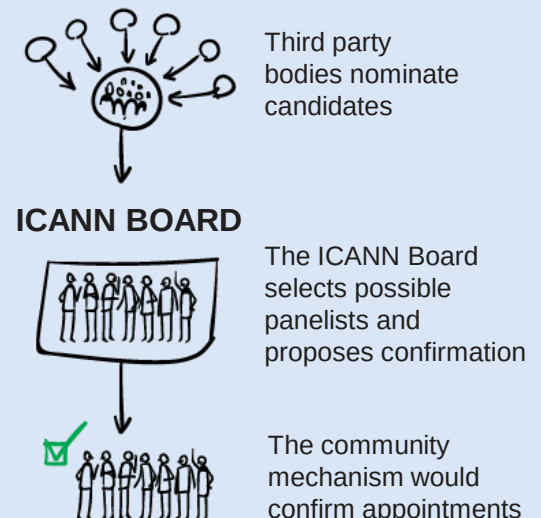
Independent Review Panel

The core of the recommendation is creating a new standing 7-member panel to serve as a fully independent ICANN dispute resolution function for the ICANN Community. Review decisions are reached by creating a 1- or 3-person panel from the standing 7-person panel. Possible decisions are that an action (or inaction) was or was not in violation of ICANN's Articles of Incorporation and/or Bylaws and/or established policies. Decisions of IRPs would be binding on ICANN, enforceable in civil court if the ICANN Board resists, but not subject to appeal in court (except on a very limited basis).

Panel characteristics



Panel member selection process



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:

Standing

The expansion of the scope of permissible requests to include Board/staff actions or inactions that contradict established policy, ICANN's Mission, Commitments, or Core Values.

Goals

Broaden the types of decisions, provide more transparency in the dismissal process and provide the Board with reasonable right to dismiss frivolous requests.

Composition

More Board member engagement, less legal department.

Decision-Making

Transparency improvements, rebuttal opportunity.

Accessibility

The extension of the time for filing a Request for Reconsideration from 15 to 30 days.

Lawyers' Comment:
"Standing" refers to who may bring a claim; consider changing this heading to "Scope" or "Coverage". Standing should not be confused with scope of claims that may be heard.

Lawyers' Comment:
What dismissal process? Not sure what this refers to. If it refers to the Board dismissing claims, revise to clarify.

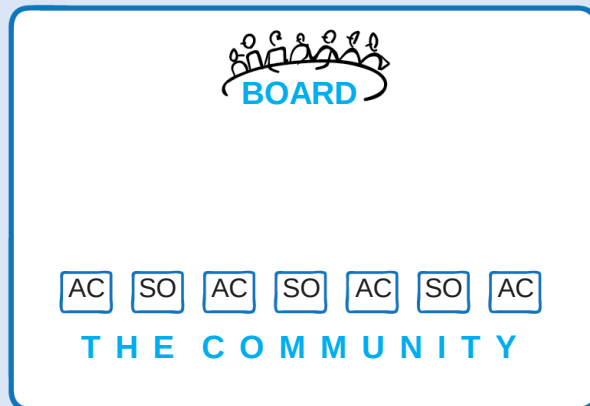
Community Mechanism as Sole Member Model

Numerous legal structures, or mechanisms, have been explored for organizing the community to have enforceable powers, which generally requires “legal personhood” in California (and other jurisdictions). The CCWG-Accountability is **recommending the Sole Member Model**.

The Community Mechanism in which SOs/ACs participate to exercise their community powers would be the Sole Member of ICANN. Decisions of the SOs/ACs in the Community Mechanism would directly determine exercise of the rights of the Community Mechanism as Sole Member (CMSM). ICANN Bylaws would establish CMSM as the Sole Member of ICANN with legal personhood and describe the composition and powers of the CMSM.

CURRENT

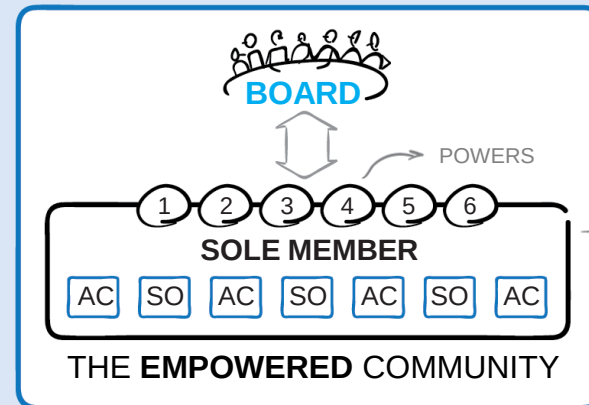
Supporting
Organizations
&
Advisory
Committees



ICANN

Lawyers' Comment: Suggest this diagram indicate that currently, some SOs and ACs directly (and indirectly through NomCom) appoint directors.

PROPOSED



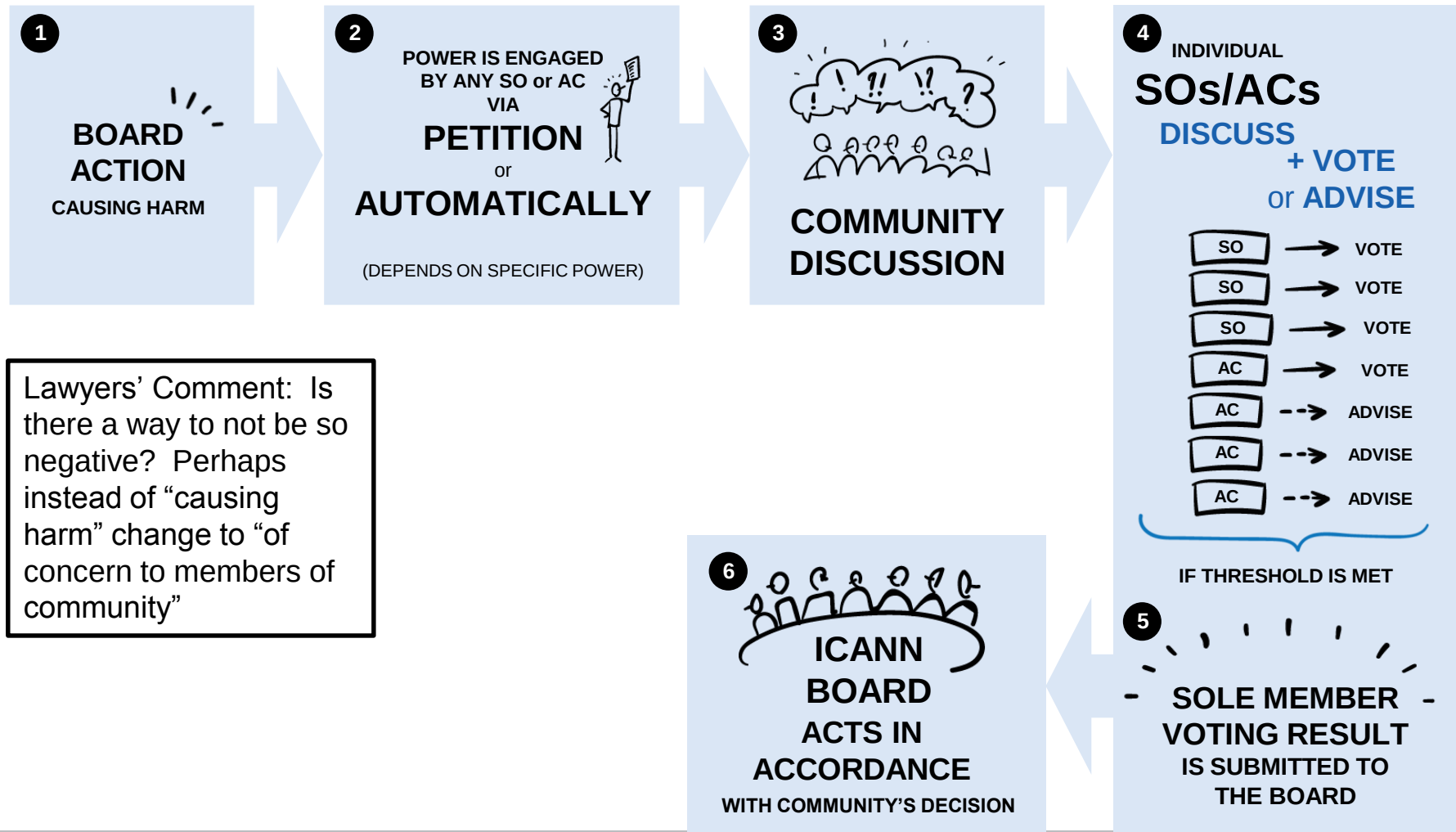
SOs + ACs
acting as
**SOLE
MEMBER
of ICANN**
(= Legal
Personhood)

ICANN

Lawyers' Comment: Should show that not all will necessarily vote—some SOs and ACs may decide to participate in a solely advisory capacity

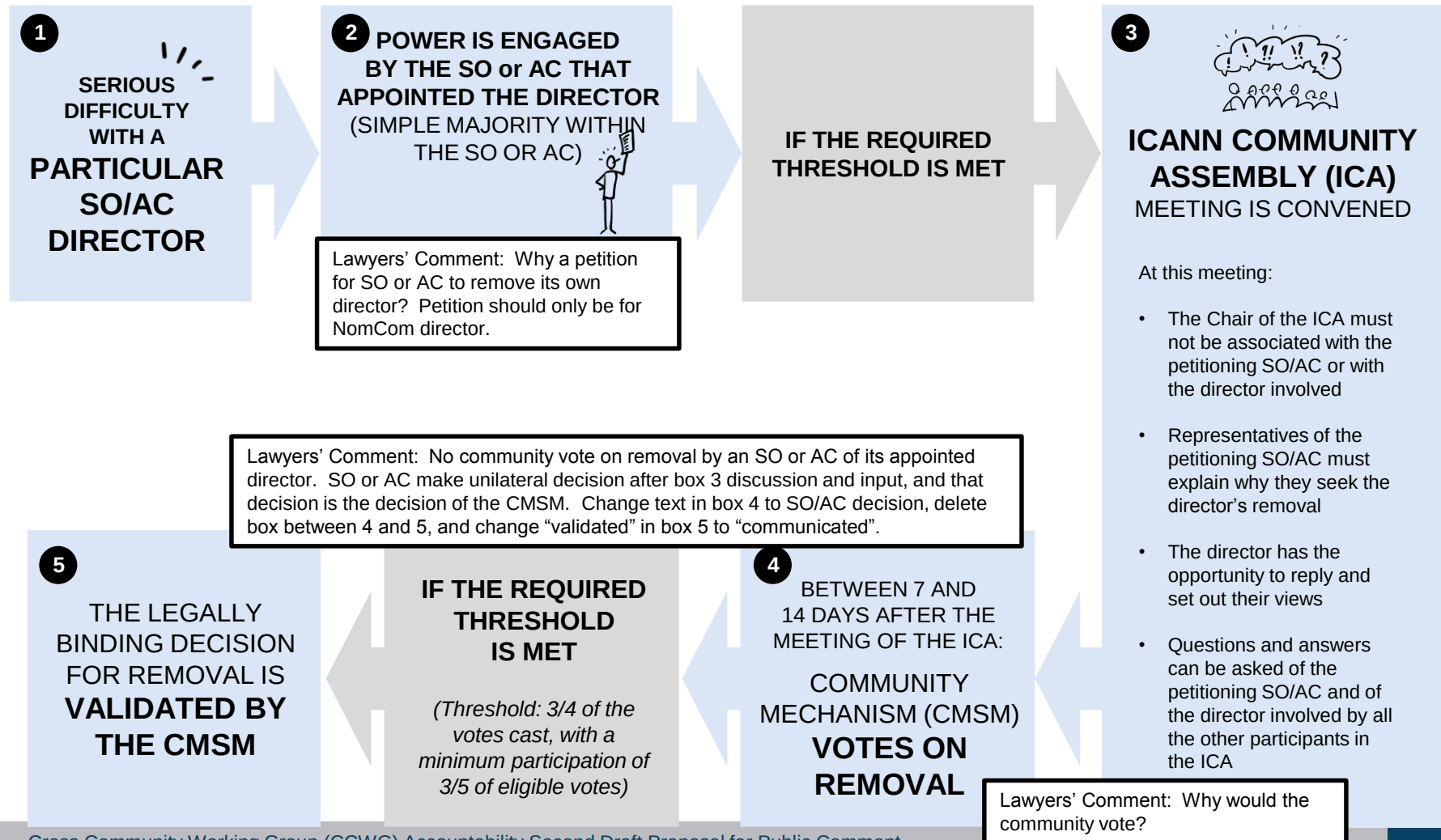
CMSM Model: Exercising Powers

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.



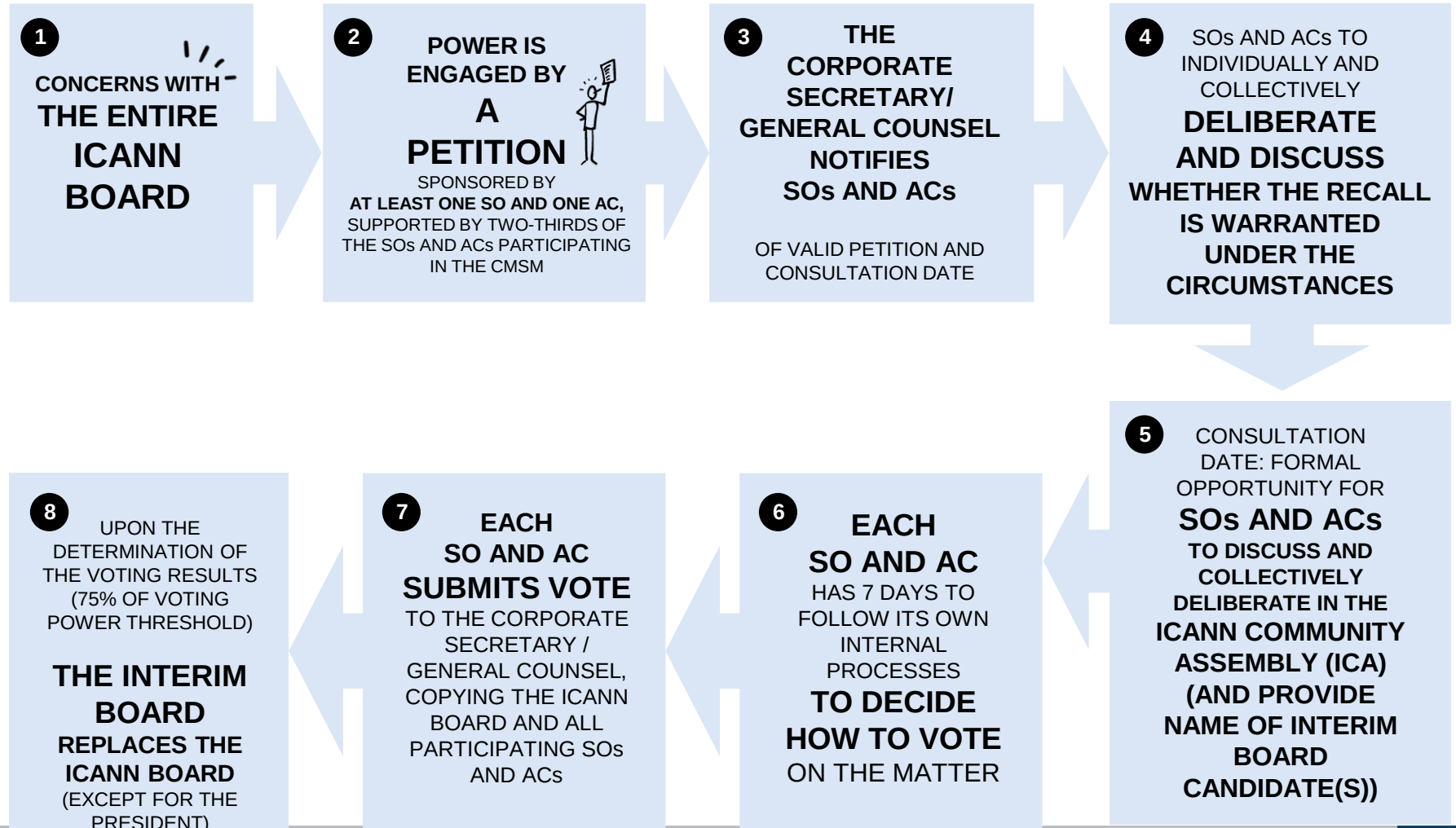
Power Example: Removing Individual ICANN SO/AC Directors

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.



Power 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.



Stress Tests

An essential part of the CCWG-Accountability Charter calls for **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.

Lawyers' Comment: The order of II and III is reversed here from the order in which they're presented in Section 7.4 of the CCWG proposal.

I



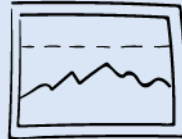
**Financial
Crisis or
Insolvency**

II



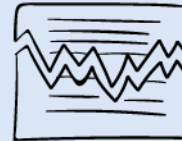
**Legal /
Legislative
Action**

III



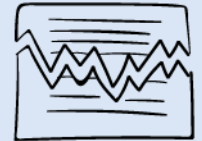
**Failure to Meet
Operational
Expectations**

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

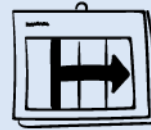
The CCWG-Accountability's work is **organized in two work streams**.

Workstream 1



Work Stream 1 is focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition. The current proposal is the result of Work Stream 1.

Workstream 2



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

Elements considered for Work Stream 2:

- Enhancements to ICANN's accountability based on the law(s) applicable to its actions
- Alternative options for ICANN's jurisdiction
- Enhancements to the Ombudsman's role and function
- Limiting ICANN's ability to deny transparency / disclosure requests
- Improvements to ICANN's budgeting and planning process
- Define security audits and certification requirements for ICANN's IT systems
- Institute a culture of default transparency at ICANN
- Improve diversity in all its aspects at all levels of the organization
- Enhancements to ICANN's whistleblower policy

Lawyers' Comment: Parallel structure in list – either all nouns (enhancements, definitions, limits), all verbs (enhance, limit, define), or all gerunds (limiting, enhancing, defining). This list doesn't exactly track the "Items for Consideration within Work Stream 2" provided in the Section 9 draft document.

Implementation

Work Stream 1 changes **must be implemented or committed to before any transition of IANA Stewardship from NTIA can occur**. The CCWG-Accountability roughly estimates nine months for implementation, understanding that several tracks of effort and change will be required, with some requiring multiple public comment periods.

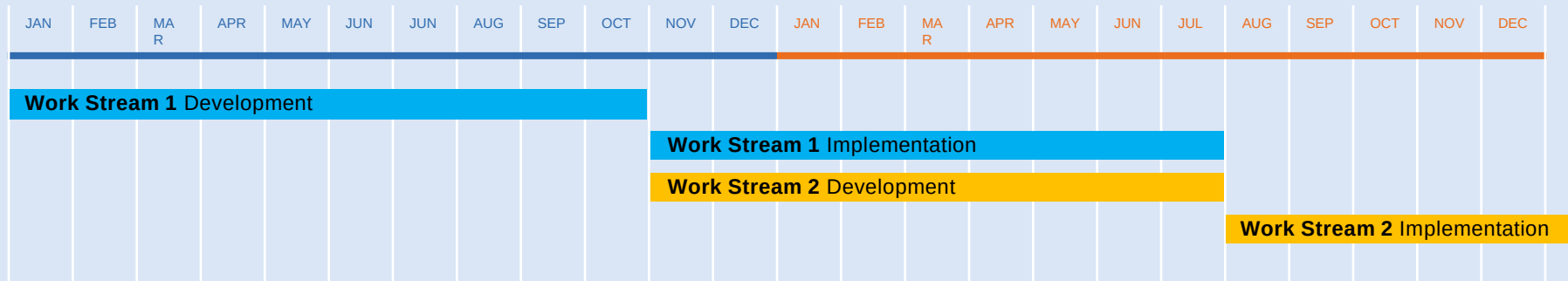
Possible tracks for implementation of Work Stream 1:

- Revised Mission, Commitments, and Core Values
- Fundamental Bylaws establishment
- Independent Review Panel enhancements
- Community empowerment mechanism establishment and incorporation of powers into Bylaws
- Affirmation of Commitments reviews transcription into the Bylaws
- Reconsideration process enhancements

Lawyers' Comment: Aren't some of the AoCs to be incorporated into the Bylaws, not just the reviews?

2015

2016



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.**



ICANN Budget

CWG requested transparency around cost allocation in relation to the IANA functions, and supported the CCWG's proposal for the community to have the power to review and reject the ICANN budget.



Community empowerment mechanisms

CWG noted it will be relying on the community empowerment and accountability mechanisms, particularly the ability to review ICANN Board decisions.



Review and redress mechanisms

CCWG-Accountability has recommended the CWG's proposed IANA review function be brought into the ICANN bylaws as a fundamental bylaw.



Appeal mechanisms

CWG considers the IRP, and other strengthened review processes, important for its proposals and any other issues that may involve IANA. CWG asked the CCWG not to develop appeals mechanisms to cover ccTLD delegation/re-delegation issues.

Linkage with the CWG-Stewardship (cont.)

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.**

iana

Separation Process

The incorporation into the Bylaws of the procedure to implement a Separation Process should it arise from a Special IANA Function Review, including provision for the creation of the Separation Cross-Community Working Group (SCWG), its functions and voting thresholds for approving the end-result of the SCWG process (which could include a separation).

iana

Post-Transition IANA (PTI) Governance

The incorporation into the Bylaws of governance provisions related to PTI is anticipated. Specifications with respect to these PTI governance provisions will be based on the requirements to be detailed by the CWG-Stewardship and the Bylaw drafting process will include the CWG-Stewardship.