**Cross-Community Working Group on Enhancing ICANN Accountability** Draft 4, 21-Dec-2014

**Work Area 2: Review Input from Public Comment and Categorize into Work Streams 1 & 2**

Proposed rationale for designating Work Streams:

Work Stream 1 is designated for accountability enhancement mechanisms that must be in place [or firmly committed] *before* IANA transition occurs.

All other consensus items could be in Work Stream 2, provided there are mechanisms in WS1 adequate to force implementation of WS2 items despite resistance from ICANN management and board.

| **Accountability Suggestions from public comments and posts** | **Supported by** | **Work Stream(s)** |
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| *1. Mechanisms giving the ICANN community ultimate authority over the ICANN corporation. Most of these are initially designated as WS1, since community Members need the leverage of IANA transition to obtain these Bylaws changes.* | | |
| **Community Members as ultimate authority[[1]](#footnote-1)**. Amend ICANN bylaws to recognize permanent cross-community Members (ALAC, ccNSO, GAC, SSAC, NRO, RSSAC, IETF, ASO, and each Constituency) with authority to: | GNSO Joint Statement, BC, ITIC, Brian Carpenter, CNNIC, Siva, TPI, Verizon, NCSG, Just Net, E.Morris | WS1 |
| Appoint members of *Affirmation* review teams | BC, Spain, Avri Doria | WS1 |
| Review any board decision | BC, ITIC, Heritage, SIIA, EC | WS1 |
| [Alt:] Refer any board decision to an independent review panel. | BC, ITIC, Heritage, SIIA, EC, Mueller, Google | WS1 |
| Approve changes to ICANN bylaws or Articles, with 2/3 majority | BC, ITIC, Google, SIIA, Hutty | WS1 |
| Approve annual proposed ICANN budget | BC, ITIC, USCIB | WS1 |
| Recall one or all ICANN Board members | BC, Avri Doria, NCSG | WS1 |
| Bring the *Affirmation of Commitments* (incl the Reviews) into the ICANN bylaws, with these amendments: | BC, USCIB, SIIA, Verizon, Morris | WS1 |
| *Affirmation* Review Teams get access to all internal documents | Doria, MPAA, CIS, Morris | WS2 |
| *Affirmation* Accountability & Transparency Review Team could recommend sunset of original reviews and create new reviews | BC, USCIB | WS2 |
| Change standard for *Affirmation* reviews from “in the public interest” to “for the protection and advance of human rights and internet freedoms” | NCSG, Robin Gross  [opposition noted] | WS2 |
| Change bylaws to improve Reconsideration Process, by triggering when board acts arbitrarily or capriciously; make decisions subject to Independent Review | Google | WS1 |
| *2. Mechanisms to restrict actions of the board and management of the ICANN corporation. Most of these are initially designated as WS2, since the Members could reverse board or management decisions if Members are empowered in WS1 (above).* | | |
| Require supermajority for Board to approve action despite advice to the contrary from ACs or significant subsets of SOs | ISPCP, ITIC | WS1 |
| Ensure that the ICANN Board can be held to its own Bylaws, and effective remedy granted if breach found by independent adjudicator. | Malcolm Hutty | WS2 |
| Prevent ICANN Board redefining mission/scope in Bylaws without community consensus | Malcolm Hutty | WS2 |
| Ensure ICANN Board does not act "ultra vires", and stays within assigned mission and scope. e.g., prevent scope creep in policies imposed via RAA. | Malcolm Hutty, BC, TPI | WS2 |
| Prohibit ICANN from entering agreements that impose obligations unrelated to DNS management | Heritage | WS2 |
| Require supermajority board vote and 2/3 community vote to change ICANN not-for-profit status or change ICANN’s state of incorporation | USCIB, Verizon, SIIA [opposition noted] | WS2 |
| Before leaving California, ICANN must show benefits exceed costs | SIIA, USCIB | WS2 |
| Broadly expand grounds on which ICANN decisions and operations can be challenged; lower threshold to succeed in a challenge | Spain, Heritage | WS2 |
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| *3. Mechanisms to prescribe actions of the ICANN corporation. Most of these are initially designated as WS2, since the Members could reverse board or management decisions if Members are empowered in WS1 (above). For example, a bottom-up consensus process to change ICANN bylaws might be rejected by ICANN board, but the Members could then reverse that decision and force the change.* | | |
| Require a defined notion of consensus for any GAC advice that would need to be given deference by the ICANN board | Heritage,  BC Stress Test #6 | WS1 |
| Let local courts hear complaints on free expression, security, and privacy | NCSG [opposition noted] | WS2 |
| Establish an independent inspector general for ICANN | SIIA | WS2 |
| Commit the ICANN organization to maintain freedom of expression | Heritage, NCSG | WS2 |
| Require registry and registrar agreements be equitable and non-discriminatory | ITIC, Heritage | WS1 |
| Require supermajority of board to [increase] change registry or registrar fees [Members could reverse] | Heritage | WS1 |
| Create channels for inquiry/complaint/suggestions | Internet Society of China | WS2 |
| Recall mechanism for any board member selected by an AC/SO | Avri Doria | WS2 |
| Recall mechanism for SO Council and ALAC member selected by NomCom | Avri Doria | WS2 |
| ICANN to engage with all governments as equal community stakeholders | Fiona Asonga | WS2 |
| Allow GAC to select 2-4 voting ICANN board members | Spain [opposition noted] | WS2 |
| Give Ombudsman ability to refer a matter to external body | NCSG [opposition noted] | WS2 |
| Change bylaws to establish term limits for ICANN senior officers | Heritage | WS2 |
| Change bylaws to require that ICANN remain subject to US Law | Heritage [opposition noted] | WS1 |
| Explore incorporation as international org under international law | NRO [opposition noted] | WS2 |
| Limit ICANN executive function to implementation of policies | ITIC, Siva | WS1 |
| Require ICANN to operate under rule of law in jurisdictions that support effective redress | MPAA [opposition noted] | WS1 |
| Require one-third of board members to devote full time to ICANN | Spain | WS2 |
| Separate policy functions from root zone management functions | Heritage, Google, USCIB, Mueller, Verizon | WS1 |
| Allow NomCom to select and retain Ombudsman | Morris | WS2 |
| Have Transparency International conduct audit of all SOs and ACs | Morris [opposition noted] | WS2 |
| Severely limit ICANN ability to deny disclosure/transparency requests | SIIA, Siva |  |
| ICANN to undergo annual audit for transparency and achievement of goals | ITIC, Heritage, Google, Spain | WS2 |
| Make all board deliberations transparent (with minimal redaction) | Siva, Robin Gross, Internet Society of China, BC | WS2 |
| Require all Supporting Organizations to have accountability and transparency mechanisms aligned to those of ICANN | Morris, Fiona Asonga | WS2 |
| Improve mechanism to obtain transparency of ICANN documents (e.g. FOIA) | USCIB, CIS, Verizon | WS2 |
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Links to sources cited in the table:

[GNSO Joint Statement](http://mm.icann.org/pipermail/internal-cg/2014-July/000202.html), London, 26-Jun-2014

[Staff summary of accountability proposals taken from public comments](https://community.icann.org/display/acctgeneral/Proposed+Solutions+from+Public+Comment), 15-Oct-2014

[ITIF post of Key Principles](http://www.innovationfiles.org/key-principles-for-the-icann-transition/), 26-Jul-2014

[Public comments on enhancing ICANN Accountability](http://forum.icann.org/lists/comments-enhancing-accountability-06may14/), 7-May thru 30-Jul, 2014

[BC (Business Constituency) comments](http://forum.icann.org/lists/comments-enhancing-accountability-06may14/pdfUqkydSWPcN.pdf) and Stress Tests, 27-May-2014

[Google comments](http://forum.icann.org/lists/comments-enhancing-accountability-06may14/pdfwmPf9Fr4gw.pdf), 28-May-2014

[SIIA comments](http://forum.icann.org/lists/comments-enhancing-accountability-06may14/pdfUayC2ZzenT.pdf), 30-May-2014

[Heritage Foundation comments](http://forum.icann.org/lists/comments-enhancing-accountability-06may14/pdftmfaKEvnSR.pdf), 20-Jun-2014

[Public comments on enhancing ICANN Accountability](http://forum.icann.org/lists/comments-enhancing-accountability-06sep14/index.html#00014), 6-Sep thru 13-Oct, 2014

[ITIC Principles](http://forum.icann.org/lists/comments-enhancing-accountability-06sep14/pdfrffl9RL6Ci.pdf), 27-Sep-2014

[CDT Endorsement of ITIC principles](https://cdt.org/blog/clear-and-concrete-principles-for-icann-accountability/), 4-Aug-2014

[ISPCP comments on proposed Bylaws change](http://forum.icann.org/lists/comments-bylaws-amend-gac-advice-15aug14/pdfhGb2aiKDu8.pdf) 14-Sep-2014

[Malcolm Hutty, comments at ICANN51, Enhancing ICANN Accountability session](http://la51.icann.org/en/schedule/mon-accountability-governance/transcript-accountability-governance-13oct14-en.pdf) 13-Sep-2014

[Op-Ed from ITIF regarding permanent cross-community group as ultimate authority](http://thehill.com/blogs/pundits-blog/technology/227375-icann-transition-plan-needs-new-ideas-to-ensure-accountability), 17-Dec-2014

1. California Nonprofit Corporation Law expressly authorizes non-profit organizations to have Members with the ultimate responsibility and authority to control the organization. Under Cal. Corp. Code § 5310 “A corporation may admit persons to Membership, as provided in its Articles or Bylaws”. Further, California law recognizes that the Members may reserve the right to approve nonprofit actions and, thus, oversee the Board of Directors. ( Cal. Corp. Code § 5210) A Board of Directors’ authority to conduct the affairs of a nonprofit may be limited by the rights of the Members specified the law or in the nonprofit corporation’s Articles or Bylaws.

     Although ICANN does not currently have Members under Article XVII of its Bylaws, ICANN’s Articles of Incorporation expressly anticipate that ICANN may have Members: “These Articles may be amended by the affirmative of at least two-thirds of the directors of the Corporation. When the Corporation has Members, any such amendment must be ratified by a two-thirds (2/3) majority of the Members voting on any proposed amendment.” (Section 9) [↑](#footnote-ref-1)