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)
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]. 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 <u>independent</u> 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	Malcolm Hutty	WS2

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[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 <u>may</u> 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)

Accountability Suggestions from public comments and posts	Supported by	Work Stream(s)
remedy granted if breach found by independent adjudicator.		
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
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,	WS2

Accountability Suggestions from public comments and posts	Supported by	Work Stream(s)
	Spain	
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

Links to sources cited in the table:

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Staff summary of accountability proposals taken from public comments, 15-Oct-2014

ITIF post of Key Principles, 26-Jul-2014

Public comments on enhancing ICANN Accountability, 7-May thru 30-Jul, 2014

> BC (Business Constituency) comments and Stress Tests, 27-May-2014
>
> Google comments, 28-May-2014
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> SIIA comments, 30-May-2014
>
> Heritage Foundation comments, 20-Jun-2014

Public comments on enhancing ICANN Accountability, 6-Sep thru 13-Oct, 2014

> ITIC Principles, 27-Sep-2014
>
> CDT Endorsement of ITIC principles, 4-Aug-2014
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> ISPCP comments on proposed Bylaws change 14-Sep-2014
>
> Malcolm Hutty, comments at ICANN51, Enhancing ICANN Accountability session 13-Sep-2014

Op-Ed from ITIF regarding permanent cross-community group as ultimate authority, 17-Dec-2014