AFRALO / AfrICANN joint meeting

Buenos Aires, Wednesday 24 June 2015

Our views on the Proposed future Governance of the Internet unique identifiers

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We, African ICANN Community members participating in the ICANN 53rd International Public meeting in Buenos Aires and attending the joint AFRALO / AfrICANN meeting on Wednesday 24 June 2015, discussed the Proposals made by the Cross community working group on IANA stewardship transition (CWG-Stewardship), the Consolidated RIR IANA Stewardship Proposal team (CRISP) and the Cross Community Working Group on enhancing ICANN accountability (CCWG-Accountability).

We first want to congratulate the CWG-Stewardship, the CRISP and the CCWG-Accountability groups for the huge amount of work undertaken in a short period of time and thank them for their time and efforts. Nevertheless, we want to make the following comments:

Concerning the Proposal of the Cross Community Working Group on IANA Stewardship Transition of Naming Related Functions that has been submitted to the chartering organizations for ratification:

- We observe the significant change in the overall model presented in the current draft as opposed to the first draft of the CWG proposal released for public comment in December 2014 and we welcome this change in approach. We also observe the improvement from the 2nd draft as well.

- We welcome the intention of the proposal to create a new entity called "Post Transition IANA (PTI)" as an affiliate to ICANN (with ICANN as its sole member) that will be awarded contract by ICANN to operate the IANA function for names.

- The expected composition of PTI Board which is proposed to be sourced internally as determined by ICANN Board is acceptable. However we expect that the selection of its members would be done in an open and fair manner. We also hope that the inclusion of 2 members of PTI Board to be populated by the Nominating Committee would strongly ensure geographic diversity without neglecting the competence.

- We remain concerned about the sustainability of PTI especially as it will rely on ICANN in terms of its resources (particularly funding), and we do hope that this would be carefully considered during implementation

- Although we understand the legal separation that PTI brings, we are concerned about the structural complexity that goes along with it and wonder whether maintaining separation of IANA as a department was explored in details

- We strongly suggest that the prerogatives of the Customer Standing Committee (CSC) which is tasked with monitoring operational performance of IANA function related to names, be strictly defined within its intent of monitoring and reporting. It has to ensure that its reports are transparently available to the community since it is proposed to be largely dominated by the "so-called" direct customers.

- We also understand from the proposal that an IANA Function Review Team (IFRT) would be created to review activities of PTI as it concerns IANA naming functions and operations as

defined in the proposed contract, and would recommend renewal of PTI contract (or otherwise) to the ICANN Board

- The composition of the IFRT as proposed is acceptable, however we do not think there is need for a CSC liaison since CSC is already dominated by Registries and considering that IFRT also has more seats for the so called "direct customers"

- We are concerned that the IFRT decision would still be subject to GNSO/ccNSO approval (separate from the approval of ICANN Board) as we believe IFRT is already composed of the chartering organizations.

- We welcome the proposed composition of the Separation Cross Community Working Group (SCWG) and we suggest that its charter is defined to ensure that its composition is made up of individuals that are not members of IFRT

- We expect that activity of IFRT would be transparently carried out and would be community driven

- We do not find it appropriate to grant "exclusive" access of IANA trademark to PTI; we would prefer that the trademark remain with the contractor post-transition (which is ICANN) as it is an asset for the 3 operational communities. Nevertheless we suggest that the 3 operational communities coordinate and agree on this. Our main interest is that whoever holds the trademark makes it available/accessible to the operational communities as it is at the moment.

- We recommend that the scope of IFRT is clarified in its charter, ensuring that it is solely for names related functions, since that is its intent based on its composition. However a single IFRT to perform the 3 IANA functions would be a good idea that the operational communities may want to consider.

Concerning the Proposal of the Consolidated RIR IANA Stewardship Proposal (CRISP) Group related to Numbering Functions that has been submitted to the IANA Coordination Group (ICG):

- We understand that the number resource community has proposed an SLA with the IANA Function Operator (IFO), a Review Committee to review the functions of IFO, and a transfer of the Intellectual Property related to the IANA functions held by ICANN to a neutral entity.

- We welcome the high satisfaction of the Regional Internet Registries with the performance of ICANN in the role of the IANA Numbering Services Operator. We acknowledge and support the desire of the Internet Number Community for ICANN to remain in the role of the IANA Numbering Services Operator for at least the initial term of the new contract to ensure stability and a minimum of operational change.

- We also appreciate that the numbering community chose arbitration over litigation in the unlikely event there are disputes related to the execution of the IANA functions where mediation has failed. Arbitration avoids hostility, is cheaper, faster, and more flexible than litigation

- It is our expectation that the proposed Review Committee is formed in an open and transparent manner, with balanced representation from the 5 RIRs and composed of

members who are well conversant with the operations of the RIRs and analytical enough to give a scorecard on the performance of the IFO.

Concerning the report of Cross Community Working Group on enhancing the ICANN accountability (CCWG-accountability)

- The creation of fundamental bylaws that require the consent of the community to be changed is a good approach and would enhance the accountability of ICANN Board to the community. We believe that the fundamental bylaws should include the essential standing issues such as the mission and the core values of the organization, excluding any functional or operational issues.

- We find it inappropriate to mention that the governance of the organization will be under the leadership of the private sector. One of the conditions of the NTIA for the transition to happen is to preserve and enhance the multi-stakeholder nature of ICANN. Multi-stakeholder model includes private sector, civil society, technical and academic communities and governments. This is how ICANN has always been governed and this is how it should be in the future.

- While giving the community the power of recalling the whole board is an appropriate accountability mechanism, it should be the very extreme step to be taken. We do wish this would never happen. The majority of 75% proposed in the report for such decision looks acceptable.

- Recalling one or more board members without reason is an aberration in itself; Its impact would be that the Board directors will act in the interest of the SOs or ACs that appointed them rather than acting in the interest of the entire community (ICANN as an organization). We believe that such a power should only be given to the whole community (and not the appointing party only) and for a cause agreed on by a reasonable majority of the community.

- We find it inacceptable that the Board of Directors appointed by the NomCom would have a different recalling procedure that makes the whole members of ICANN Board having unequal treatment.

- We appreciate the reinforcement of the Independent review Process, as well as the reconsideration mechanism proposed in the report.

- We do not see the unincorporated associations as a good means for SOs and ACs to exercise the powers included in the report because the practical application of the UA setup seems to be problematic and complicated.

- One of the problems is the fact that some of the community stakeholders may be unable and/or unwilling to become a UA, which means that they will not contribute to the community decision making process while exercising the proposed community powers.

- Also creating the UA may expose the SO/AC to legal issue as they may be sued within the California jurisdiction, which may harm the community members.

- Any other form of legal entity to represent the SOs and ACs wouldn't be acceptable if it may lead to suing those entities in courts.

- All the accountability mechanisms should avoid leading to courts as much as possible. In fact, we do not accept that ICANN affairs be managed by courts in whatever jurisdiction. ICANN is an example of a thriving multi-stakeholder community and we should endeavor to protect that as much as possible

- The final aim of the CCWG work is to enhance the Accountability of ICANN to the community. The membership model would enhance the accountability of the board to the ICANN members, but the accountability of the members to the community remains an issue. This model does not solve the accountability problem but instead shifts it from the board to the members

- The community group that will act on behalf of the respective community stakeholders to exercise the powers mentioned in the report should be as inclusive as possible. We prefer equal footing for all SOs and ACs, but can live with the composition proposed in the report.

Finally, we find it important for the three operational communities to ensure the proposals submitted to ICG are compatible to avoid protracted negotiations and back and forth with ICG because this may affect the timelines given. We expect that commitment is shown by the three operational communities, and the ICG in ensuring that the transition will happen on time, and timelines are adhered to.

We reiterate our support to all groups who were and still are behind this huge effort and appreciate the progress made so far. We hope they will find the right balance in the multi-stakeholder solution for the stewardship transition of the 3 IANA functions, and the best ways to empower the community using the right means and avoiding the risk of ICANN being weakened or losing its independence, its inclusiveness and its multi-stakeholder nature. Considering that the CWG-stewardship proposal is getting to its final state of submission to ICG, we hope our views/comments would be considered during implementation phase.