

An alternative proposal for the IANA transition

Introduction

The following is presented as an alternative to the model presented within the Cross Community Working Group (CWG) on Naming Related Functions' Draft Transition Proposal.

It is an evolution of the .au Domain Administration's (auDA's) December 2014 submission¹ ("the auDA proposal") to the CWG's call for comments².

As stated in the auDA proposal, this document assumes the need for a minimalist, simple approach to the IANA transition, given, as the CWG has itself acknowledged:

The current operational performance of the IANA Naming Functions is generally satisfactory to its direct customers, and the community generally believes that the current NTIA oversight arrangement has been successful in ensuring the accountability of the IANA Functions Operator in that role.

Further, this document assumes a narrow definition of the IANA function relating to the organisation's technical and administrative responsibilities related to naming and also assumes policy development functions remain, appropriately, the remit of relevant ICANN Supporting Organisations and Advisory Committees.

This proposal envisages an efficient, effective and minimally burdensome IANA oversight system. Only elements relating to ongoing operational matters (the Customer Service Committee) would convene on a regular basis. The remainder of the "system" would be activated as required.

This proposal outlines mechanisms that facilitate the effective and independent transfer of the IANA function and obligate ICANN to follow community instruction.

It is acknowledged that a number of additional structural changes would be required to ensure the validity and sustainability of the proposed model. The first key area would be to ensure an enhancement of the current levels of functional separation of the IANA function from the rest of ICANN. A number of initiatives could be implemented to facilitate this, including, but not limited to:

- A discrete, reviewable budget for the IANA functions operator;
- Dedicated legal advisors and independent legal advice for the operator.

In summary, this proposal addresses a pair of fundamental issues related to the IANA transition. That is, facilitating for future separability of the IANA functions from ICANN (particularly in cases of non-performance) and defining a trigger mechanism(s) for such a process.

¹ <http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00038.html>

² <https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en>

Implementation mechanisms – “The IANA Trust”

It is proposed that the future management and oversight of IANA’s naming functions be placed into a Trust. While supplementary provisions may be appended to ICANN’s bylaws (which are internally-focussed) the principal obligations placed upon ICANN (as Trustee) would be defined in this Declaration of Trust, providing an appropriate degree of separation between ICANN and the IANA function itself.

The transition from the NTIA would require ICANN to make a “Declaration of Trust” that it will perform the names function for the benefit of the relevant stakeholder community – as defined by the mechanisms outlined later in this document.

This community will be the “Guardian” of the trust, and will be the sole entity empowered to make relevant changes to the document and, if appropriate, move the role of trustee to a third party.

Within the trust document, ICANN will commit to implementing the results of regular reviews (say every 5 years) regarding the performance of the IANA functions, as identified by the community. These reviews would address not only operational matters and Service Level Agreements, but also broader issues such as whether due process has been followed and policy guidance from the community has been adhered to.

The trust document will also commit ICANN to take all necessary steps to transfer any rights and obligations it has to the new “trustee” where failings identified by periodic reviews cannot be remedied.

For performance issues outside of that regular review, there would be escalation paths identified to try to remedy those violations. Those escalation paths could also lead - in the most egregious of cases - to the “Guardian” moving the role of trustee to a third party..

In order to facilitate “urgent” reviews or the rebid processes, ICANN would prescribe funding in the Declaration that will be held in escrow, should such circumstances arise.

It should be noted that this proposal relates only to IANA’s naming functions, and is designed to be complementary to ICANN’s role with regard to numbering and protocol functions. That is:

- In relation to the numbers and protocols functions, ICANN will be acting in its own capacity, as a contractor for those services (governed by its by-laws)
- In relation to the names function, ICANN will be performing this task as trustee for that trust (governed by the trust document)

Guardian

This proposal envisages the Guardian as a cross-community group. Within the proposed Trust model the Guardian of the Trust is exclusively empowered to make amendments to Trust arrangements, including termination or transfer.

This mechanism is not intended to address minor performance issues but rather as part of the escalation process for dealing with a limited number of circumstances such as gross incompetence or material breach by IANA. We have previously referred to this as “The Nuclear Option”.

The Guardian would comprise IANA customers (TLD registries), a number of members from other SOs and ACs and, possibly, ISOC and other I* bodies. It would also be empowered to engage technical and legal experts, as required.

The Guardian’s role is to respond to identified catalysts for significant change to the management of the IANA function. These triggers may come in three forms:

- Systemic failings of the IANA operator, as identified by the periodic reviews;
- Out-of-cycle “urgent” failings identified by the CSC; or
- Pre-defined levels of community petitioning such as from 2 SOs or ACs where a 66% vote has been taken

The Guardian will assess whether a failing of IANA is so substantial that it warrants the transfer of the function to another operator. Should the Guardian determine that such a failing has occurred, it would make a recommendation to the community to that effect. That is, the Guardian does not itself take the decision to exercise the Nuclear Option.

As part of the escalation and consultation process, the Guardian would require input from all SOs and ACs, each of which would be required to show that a supermajority (perhaps 66%) of their membership support a re-bidding of the IANA function.³

Customer Service / Standing Committee

Ongoing oversight and monitoring of IANA’s work would be undertaken by the CSC. This would be a standing committee comprised of representatives from IANA’s customers (TLD registries). To broaden representation, members from other parts of the community (notably ALAC, SSAC, RSSAC and GAC) would also be included.

The CSC would perform a strictly operational and administrative role, setting and reviewing metrics for IANA and its performance against them. While ICANN is the Trustee for the IANA naming functions, the CSC will be the active mechanism that represents beneficiaries of this service.

The CSC would work with the IANA functions operator to agree service levels, receive performance reports from the IANA operator, and conduct regular budget reviews.

Should minor matters or incidents arise with IANA’s operations (an issue not warranting a full appeals process), the CSC would assist with or monitor resolution / mediation.⁴

³ Noting that not all ccTLDs are ccNSO members. This requires further consideration: for example, the ccNSO could be tasked with coordinating engagement and consultation with all ccTLD managers.

⁴ Note that these would be minor performance issues such as those that regularly arise between IANA and a client. In the vast majority of cases, these are resolved between the parties.

In the case of a more serious complaint or failure regarding IANA, any individual stakeholder (registry) or group (such as the ccNSO or GAC) would raise their concerns with the CSC in the first instance.

The complaint would be assessed by the CSC and, if deemed appropriate, the group would send it to the Guardian. This would be the first step in a structured and transparent escalation process.

Independent Appeals Process

As many stakeholders have noted in their comments to the CWG, a mechanism to deal with disputes that arise from the operations of IANA is absolutely essential.

This should be a binding arbitration mechanism, utilising the services of an independent arbitration organisation. However, under the terms of ICANN's Declaration of Trust, such appeals will not apply to the actions of the Guardian or CSC.