

Public Comment Categories – Table of Contents

| | |
|---|-----|
| CWG Proposal Attributes & General Comments | 2 |
| Contract Co. | 53 |
| Multi-Stakeholder Review Team | 74 |
| Customer Standing Committee..... | 97 |
| Independent Appeals Panel | 112 |
| Independent Certification for Delegation and Redelelegation Requests..... | 125 |
| Possible Modifications to the Independent Review of Board Actions..... | 129 |
| Possible Modification to the NTIA's Responsibilities Acting as the RZ Management Process Administrator..... | 131 |
| ALAC Proposal | 135 |
| Other Alternative Proposals | 145 |
| Accountability | 164 |
| General Comments..... | 171 |

Public Comment Review Tool – CWG Stewardship – Preliminary Proposal for Names

Updated 28 December 2014 – For complete submissions, please see <http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/>

***Abstracts added to each comment are a short summary of the submission and it’s meant to facilitate a quicker response and possible action for by the CWG.

CWG Proposal Attributes & General Comments

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| CWG Proposal Attributes & General Comments | | | | |
| 1. | <p>23 Dec:</p> <p>It is from this context that we seek to provide comment on the Cross Community Working Group on Naming Related Functions Draft Transition Proposal. We support the goal of the National Telecommunications and Information Administration (NTIA) stewardship transition and its goals to preserve the security, stability, resiliency, and openness of the Internet.</p> <p>However, we also understand that the status quo has been successful in maintaining not just the security and stability of the Internet but in the accountability of ICANN. The NTIA has held ICANN accountable historically through the IANA contract, and we don’t want to lose a layer of accountability as NTIA steps aside. We believe that it is possible to create a new, better status quo in which the IANA function is performed by ICANN in a way that makes them truly accountable to the multistakeholder community, but there is a lot of work to do to get there.</p> <p>There are areas in which the i2Coalition supports the efforts of the Cross Community Working Group (CWG) and areas in which we have ongoing concerns.</p> <p>Areas of support:</p> <p>1) We support the public posting of all IANA change requests, and the extra layer of transparency that would come from by requiring the public posting of all IANA change requests. However, we must ensure that public postings should not delay the implementation of requests. The process must be informational only, and not a chance to revisit prior decisions on the reasons for or methods of information disclosure.</p> <p>2) We support the creation of a Customer Standing Committee (CSC) to monitor the performance of the naming functions for problems or technical</p> | i2 Coalition | | |

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| | <p>irregularities, to ensure that the IANA functions operator maintains appropriate service levels for services associated with naming; and to raise and address any performance deficiencies on an ongoing basis related to naming.</p> <p>We recommend limiting the scope of the CSC to naming issues only. It should be technical in nature and limited to a review of policy implementation. For that reason its membership should be limited to direct customers of the IANA naming functions (gTLD and ccTLD operators) and related experts as that group sees fit — such as liaisons from the Security and Stability Committee (SSAC), the Root Server System Advisory Committee (RSSAC), the Regional Internet Registries (RIRs), the Internet Society (ISOC), the Internet Engineering Task Force (IETF) among others.</p> <p>Areas of ongoing concern: We see areas in which the CWG proposal could introduce significant instability and uncertainty in the supervision of the DNS. Specific areas of concern involve significant questions that remain around the establishment of a Contract co., a Multi-stakeholder Review Team (MRT) and an Independent Appeals Panel. We ask for clarification, more work and in some areas a rethinking of the approach currently being taken by the CWG.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfZsBVnpFHH1.pdf</p> | | | |
| 2. | <p>23 Dec: Summary Comment ICANN has called for public comment on the Cross Community Working Group (CWG) on Naming Related Functions Draft Transition Proposal.¹ The draft proposal was posted for public comment on 1-- - Dec-- - 2014 and allowed 20 days for comment submission, with no provision for a reply comment period. The CWG proposes to create a new contracting entity (Contract Co.) to enter into a contract with ICANN for the performance of the IANA naming functions. It also proposes to create a customer service committee and a multistakeholder review team. Most of the power of the contracting company would be in the hands of the multistakeholder review team, whose composition is not yet defined. The CWG also proposes to create an independent appeals panel, whose terms of reference and composition are still being fleshed out. Overall, the CWG draft proposal raises more questions than it answers.</p> <p>Specific Comments</p> | CBUC | | |

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| | <p>Regarding the draft proposal to create multiple new entities, the BC has three principle concerns:</p> <ol style="list-style-type: none"> 1. The proposal would create too much in the way of new structures, considering that the present IANA arrangement is much simpler and everyone agrees that it is working relatively well. 2. Creating several new entities creates both opportunities for capture and opportunities for forum shopping. These concerns are exacerbated by uncertainty around the jurisdictional home of the Contract Co. and choice of law for the contract between the Contract Co. and ICANN as the IANA functions operator. 3. Some of the key accountability reforms suggested by the CWG (e.g., broader the scope of “appellate” review) would be best addressed in the CCWG on Enhancing ICANN accountability, because they should have broader application to ICANN as a whole and not just the IANA functions. <p>Given those concerns, the BC reached these conclusions regarding the draft transition proposal:</p> <ol style="list-style-type: none"> 1. The BC does not support the proposed creation of a new contracting entity. 2. A number of the accountability improvements are best addressed in the broader accountability group. Otherwise, we risk creating competing accountability mechanisms, thereby enabling forum shopping for stakeholders seeking redress or reversal of ICANN decisions. Of course, this means that structural accountability improvements will have to be agreed before the transition can take place. 3. The BC supports incremental changes proposed to establish a customer service committee and to publish delegation and re-- - delegation information 4. This proposal makes clear that we need to do the IANA transition and accountability processes in tandem, and that we cannot support the transition until we have a plan for broader ICANN organizational accountability enhancements. <p>The best reason to create a separate contracting entity is to retain the possibility that the IANA contract could be removed from ICANN in the event of negligence or malfeasance. But the BC believes that we could address the possibility of ICANN negligence or malfeasance in two ways:</p> <ol style="list-style-type: none"> 1) Require ICANN to enter a contract for an emergency back-- - up provider for IANA; and 2) Establish stronger accountability mechanisms (e.g., spilling the board) in the | | | |

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| | <p>broader process.</p> <p>Finally, the accountability process and the IANA transition process are clearly linked. As a result, the BC finds it extremely difficult to evaluate the CWG transition proposal without the accompanying accountability enhancements.</p> <p>Commenters are being asked to judge the early results of one process while the other is still in its organizational stage. This challenge is exacerbated by the fact that the CWG framework is largely a blueprint that lacks critical detail. Moreover, the timeframe for comment was a mere three weeks.</p> <p>The issues associated with the transition are so important that they call for further development of the proposal and an additional thirty-- - day comment period, followed by a reply period, to allow for true community understanding, participation, and consensus.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfQaBDxEJlvc.pdf</p> | | | |
| 3. | <p>23 Dec:</p> <p>CDT broadly supports the proposed draft. However, we recognize, as do many others in the community, that there is still much work to be done, many details to be worked through and a raft of procedures and mechanisms to be explored and agreed. We fully expect that there will be further elaboration of the proposal based upon the inputs of the community and look forward to the consensus that will emerge.</p> <p>This said we believe that the proposal is one that encompasses some important key principles, including: 1) independence of IANA function operator oversight; 2) separability of the IANA contract from the IANA functions operator; 3) a clear commitment to and structures that reflect multistakeholder principles; and 4) a desire to see a non-capturable, neutral and robust IANA going forward.</p> <p>We offer the following comments with regards to the component parts and substance of the draft proposal:</p> <ul style="list-style-type: none"> - CDT agrees with the broadly supported points that preface the proposed post-transition oversight and accountability mechanisms. In particular, there is no doubt in our minds that the post transition arrangements should provide for the ability to tender for the IANA functions and to replace ICANN as the IANA | Center for Democracy & Technology (CDT) | | |

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| | <p>functions operator.</p> <ul style="list-style-type: none"> - We agree that the separation of ICANN as a policy body and ICANN as the IANA functions operator is essential and this, in our view, can be reinforced through the ability to remove the contract from ICANN should that separation be proven elusive and/or be abused. - We agree that the replacement should not recreate a “mini” ICANN and that oversight should be as simple and as effective as possible while ensuring its multistakeholder nature, independence and robustness. - Much of the uncertainty expressed by parties with the overall draft proposal revolves around the lack of detail as to how the Contracting Co. is organized, its legal structure, the relationship between it and the MRT, etc. Further CWG discussion of the Contracting Co. and legal advice is critical at this stage. This lack of clarity is significantly contributing to undermining the draft proposal as a whole. - Clarity is also needed in terms of the roles and responsibilities of the CSC and the MRT, the way in which issues are escalated to the MRT from the CSC, and to what degree can the MRT act on the escalated issue. There has been talk about stress testing the draft proposal as a whole, but the WG also needs to better understand how its component parts would work in practice. - There is a related concern that the MRT is increasingly looking like a permanent structure or organization. When one factors in the ongoing discussions as to how the various constituencies are going to be represented it look increasingly bureaucratic. We need to remind ourselves of the purpose of the MRT – it is about oversight over largely technical and administrative issues related to the performance of the IANA functions. It is not about policy decisions, unless changes that were agreed as a result of those policy decisions have been poorly or inaccurately implemented by the IANA functions operator. - There are fundamental differences among communities as to the need for or desirability of separability of the contract from the contractor. CDT believes that periodic rebidding is the right approach to ensuring stability, accountability and predictability. We recognize that such rebidding should not be too short as to incur uncertainty nor too long as to encourage complacency. A reasonable periodicity in and of itself will encourage greater performance and responsiveness. We do not believe that the IANA contract should be placed with an operator in perpetuity. <p>We believe that the final proposal should incorporate the following key elements: 1) oversight over the IANA functions that is independent of the</p> | | | |

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| | <p>operator; 2) separability of the IANA functions contract from the IANA functions operator; and, 3) periodic rebidding on the IANA contract through RFPs and, if the current operator is not meeting a set of defined criteria, the ability to withdraw the contract. We are not comfortable with the “alternative proposal” outlined in the consultation document which would see the IANA function remain with ICANN without any independent oversight or ability to rebid the contract.</p> <p>And, of course, there is the imperative of ensuring that the work and recommendations of the CCWG on Enhancing ICANN's Accountability are also taken into account, particularly given those discussions have only just begun. CDT supports very close linkages with the work of work-stream 1 in the CCWG on Enhancing ICANN Accountability. The IANA transition work cannot be disassociated from the work of enhancing ICANN's accountability. At the same time we cannot depend on accountability changes at ICANN to ensure the IANA function's accountability or integrity. CDT sees both independent oversight and separability of the IANA contract on the one hand and enhancements to ICANN's accountability on the other as desirable, indeed essential, to ensuring appropriate levels of accountability and performance once the USG steps back from its administrative and stewardship roles.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfOnoRPdJD8H.pdf</p> | | | |
| 4. | <p>22 Dec: I can see that the proposal is still “under construction” since requirements such as affordability of appeal mechanisms are not dealt with in the draft proposal. In the “Key questions and issues” paper, the ccWG says that standing to file appeals using the proposed appeals panel is still under consideration by the CWG. Effectiveness of those recourse mechanisms depend to a large extent on who can appeal a decision and on what grounds. Effectiveness, affordability and independence of appeal mechanisms are key elements of a sound accountability system for us. I don't know whether it belongs to this WG or the other on accountability to elaborate on appeal mechanisms.</p> <p>The draft proposal refers to applicable law and jurisdiction especially as regards ccTLDs. However, it does not work out in detail how to reconcile the enforcement of the IANA functions contract with decisions made at the local level notably to redelegate a ccTLD. The process for delegation and relegation of ccTLDs, including any appeal or review mechanisms, could be tested against</p> | GAC | | |

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| | <p>instances where the redelegation is disputed, i.e. by the incumbent Registry operator because they are the most complex scenarios ICANN can be confronted to.</p> <p>The Security and Stability Advisory Committee has just released and Advisory on Maintaining the Security and Stability of the IANA Functions Through the Stewardship Transition (SAC 069) which contains several recommendations as regards accountability and protection against outside political or economic influence on the IANA Functions Operator. It also recalls that the current contracts provides a legal shield for the performance of IANA functions as they relate to entities subject to U.S. Government sanctions and recommends that this is retained in future IANA Service contracts. It could be worth exploring this issue in ccWG on naming related functions. The Advisory can be found here: https://www.icann.org/resources/pages/documents-2012-02-25-en</p> <p>http://mm.icann.org/pipermail/cwg-stewardship/2014-December/001195.html</p> | | | |
| 5. | <p>22 Dec:</p> <p>First, it should be acknowledged the the CWG on naming functions has done an impressive amount of work in an incredibly short period of time, while also under intense scrutiny. The volume and tone of dialog has been both positive and constructive; the members of the CWG should be commended.</p> <p>Broadly, from a Registrar perspective, we desire a proposal that ensures the security and stability of the IANA functions. Our Registry partners rely on the IANA functions, and so does our collective business. That business also relies on a global trust in the IANA functions, ensuring a single, unified DNS. We should note here that the role Registries play with respect to the IANA functions affords them a unique view and special interest. Their pivotal place, and the importance of the IANA functions to their business (and subsequently ours) should afford Registries increased representation and oversight throughout the transition proposal. In general, it would seem sensible to afford the contracted parties an elevated role in the oversight of the IANA functions.</p> <p>Overall, there has been a considerable amount of progress. In general, the proposed structure and approach of the transition is good. We nonetheless have some concerns and suggestions that will be made below.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfsDZ7QPOcxD.pdf</p> | RrSG | | |

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| 6. | <p>22 Dec:</p> <p>At a high level, our comments can be summarized as follows:</p> <ul style="list-style-type: none"> • The delay by ICANN in acknowledging that the NTIA stewardship transition and accountability discussions were inter-related has resulted in the issues to be discussed under the two processes being conflated; • The current proposal does not adequately recognize Registry Operators as direct customers of the IANA functions and the importance of a satisfactory and reliable IANA service to their businesses; • ccTLD and gTLD Registry Operators are well placed to assume NTIA’s responsibility for the technical and operational oversight of the IANA Naming Functions Operator; • Any decision to replace the current IANA Functions Operator should be supported by Registry Operators; and • The Multi-stakeholder Review Team (MRT) is open to capture and missioncreep. <p>General Comments</p> <p>Timing of the IANA Transition Process and the ICANN Accountability Process</p> <p>One of our concerns lies in the relative timing of the IANA Stewardship Transition Process and the related process on Enhancing ICANN Accountability (Accountability Process). We initially applauded ICANN’s decision to initiate the Accountability Process in association with the IANA Stewardship Transition Process. However, both work streams have been hampered by ICANN’s attempts to bifurcate the two processes and create two separate work streams when in reality these two efforts are intrinsically linked. In response to community concerns, in its revisions to the Accountability Process, ICANN conceded that the two processes were dependent, but significant delays to the Accountability Process have still prevented engagement and collaborative work across the two work streams.</p> <p>We do not believe this is the fault of the CWG-IANA. The CWG-IANA has repeatedly referred to these dependencies and there appears to be a universal, or near-universal, recognition on the part of its members that the IANA Stewardship Transition is properly dependent on the identification and implementation of the measures established within track one of the Accountability Process. These dependencies are also reflected in the draft proposal.</p> <p>The dilemma is that the two processes are clearly being addressed out of order.</p> | RySG | | |

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| | <p>In an ideal world, the CWG-IANA would have begun its work following the adoption of recommendations by the Accountability Cross Community Working Group (“Accountability CCWG”). This would have provided a clear understanding of the overarching organizational accountability framework to which ICANN would be subject, both as the IANA Functions Operator as well as in housing the structures for policy development for the naming community. It is clear that these two processes need to run concurrently, allowing each work stream to feed into the other to ensure the sharing of information and collaboration across the two streams and account for their interdependencies.</p> <p>However, because ICANN delayed the start of the Accountability Process by several months, the IANA Transition Process has advanced far ahead without the requisite knowledge of how key ICANN accountability mechanisms will interact with the Transition Proposal. CWG-IANA discussions and the draft proposal itself reflect efforts by some CWG-IANA members to address wider accountability concerns within the CWG-IANA proposal.</p> <p>The likely consequence of this disjointedness is that it will lead to the creation of duplicative mechanisms or a failure to consider all possible options available to the CWG-IANA. By way of example, the ICANN Board’s ability to unilaterally modify its bylaws has solidified the CWG-IANA’s general belief that a new contracting entity is needed to fulfill the IANA Requirements currently set forth in the NTIA IANA functions contract. Restrictions on the ICANN Board’s ability to alter such bylaws put in place through the Accountability Process could make direct incorporation of these contract provisions into the ICANN Bylaws a more palatable option, meriting consideration by the CWG-IANA.</p> <p>In bifurcating the IANA Stewardship Transition Process and the Accountability Process, ICANN has essentially forced the CWG-IANA to develop an overly complicated proposal, which will inject more bureaucracy into a technical process that everyone agrees functions effectively today. Instead of trying to address accountability concerns through the IANA Stewardship Transition Process, we urge ICANN to formally link these two processes to ensure that the work moving forward takes into account equities from both processes so that in the end the community, ICANN, and NTIA have two well informed and robust plans to ensure the Internet’s continued growth and evolution.</p> <p>Role of User Communities As established in the NTIA announcement and restated in the CWG-IANA</p> | | | |

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| | <p>Charter, one of the four principles of the IANA Stewardship Transition is that the transition proposal “meet the needs and expectation of the global customers and partners of the IANA services.” The key communities here are members of the Internet Engineering Task Force for protocol parameters; the Regional Internet Registries for numbering allocation; and gTLD and ccTLD Registry Operators for the IANA naming functions.</p> <p>As gTLD Registry Operators, the operational performance and objective execution of the IANA Functions Operator against established service levels, policies, and procedures is paramount to our businesses. Within the ICANN community, this fundamental priority and need is shared by ccTLD Registry Operators.</p> <p>Our needs and interests as Registry Operators in the IANA Stewardship Transition are summarized as ensuring the following:</p> <ul style="list-style-type: none"> • Excellent performance of the IANA Naming Functions against established service levels for implementing changes to the Root Zone continues in the post-transition landscape; • Continued reporting by the IANA Functions Operator in the post-transition landscape to provide transparency in the performance of the IANA Naming Functions; • Continuing objective application of community-developed policies by the IANA Functions Operator; • Protection of the ICANN multi-stakeholder model for policy development for the generic namespace by preventing the interference in, or reopening of, established policies by an IANA oversight body; • Continued post-transition availability of operational oversight tools such as external audits to monitor the performance of the IANA Naming Functions; and • A lightweight transition model, providing the requisite oversight and accountability without becoming so cumbersome as to undermine the timely execution of the IANA Naming Functions, or introduce unneeded costs to its customers. <p>The current operational performance of the IANA naming functions is satisfactory to the community of gTLD Registry Operators. The IANA functions are not broken. It should also be recognized and understood that the IANA Stewardship Transition is taking place because the NTIA is comfortable that current performance by the IANA Functions Operator can continue, even in the absence of their oversight role.</p> | | | |

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| | <p>Though the draft proposal states that the “proposed replacement solution should not seek to create another ICANN-like structure with associated costs and complexities,” we fear that the model currently proposed may do just that. The consequences may be graver than monetary cost and complexity; at worst, this could jeopardize the operational functions upon which our businesses rely. In the spirit of giving all interested parties a seat at the table through the creation of broad multi-stakeholder committees, the current proposal may in fact put at risk the continued operational performance of the IANA naming functions by exposing these technical functions to undue risk of capture and external interference. We are also concerned that the complexity of the IANA Naming Proposal could slow the current, timely execution of the IANA naming functions.</p> <p>To ensure the continued, satisfactory performance of the IANA naming functions, we believe a lighter touch is needed. We believe that the scope of oversight should remain technical and operational. We also believe that the community should trust the ccTLD and gTLD Registry Operators to do what is best for their businesses by taking responsibility for the technical and operational oversight of the IANA Functions Operator.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 7. | <p>22 Dec: NTIA Responsibilities Shifting Directly to ICANN</p> <p>The RySG is not able at this time to indicate specific support for NTIA responsibilities shifting either to ICANN directly or to the entities/groups set forth in Section 3.2 of the Proposal. In both cases further detail is needed. The RySG can, however, in both cases provide the following recommendations to further the development of both plans.</p> <p>1. Mission: It is critical that whichever entity takes over NTIA responsibilities be tasked with maintaining the core functions and overarching goals exercised by NTIA to date. The IANA Functions Operator should not expand its remit into, use its position to influence, or be able to exercise a veto over policy matters, which are properly created through the ICANN multi-stakeholder policy development process. It is crucial that the IANA Functions Operator’s oversight is not used to circumvent this process.</p> <p>In connection with the MRT, it is noted that the Proposal states the “MRT</p> | RySG | | |

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| | <p>would be a multi-stakeholder body with formally selected representatives from all of the relevant communities.” We recommend that the MRT not be subject to external interference, which may lead to the IANA Functions Operator becoming a captured organization. As a result, the RySG recommends that should the proposed Section 3.2 entities be selected, both the IANA Functions Operator’s Bylaws and the ICANN Bylaws reflect that Advisory Committee Advice to the ICANN Board of Directors have no heightened influence on any activities. Similarly, if ICANN is selected as the IANA Functions Operator, we recommend that the ICANN Bylaws reflect that Advisory Committees have no heightened influence over decisions made by the IANA Functions Operator.</p> <p>2. Accountability: On December 4, 2014, Larry Strickling of NTIA made a speech to the PLI/FCBA Telecommunications Policy and Regulation Institute where he made it clear that “the two work streams on the IANA transition and enhanced accountability are directly linked and NTIA has repeatedly said that both issues must be addressed before any transition takes place.” The RySG agrees with Mr. Strickling – enhanced accountability (regardless of who the IANA Functions Operator is) must be in place prior to the transition. The necessary changes to ICANN’s organizational accountability framework go beyond IANA delegation and redelegation issues. Enhanced, independent, and binding accountability mechanisms within ICANN relating to policy development must also be in place. As IANA is subject to these policy decisions, and regardless of the number of safeguards placed over the IANA Functions Operator, IANA is at risk of inappropriate influence and capture. It is crucial that agreed upon independent and binding accountability mechanisms are in place at every stage prior to transition.</p> <p>3. Jurisdiction: Similarly, it is crucial that several external opinions (independent of outside counsel representing any particular government or ICANN) be provided to the community regarding any Contract Co., how it is formed, and what jurisdiction it will be formed under. While jurisdiction is a topic that is quite controversial, how and under what laws an IANA Functions Operator is formed will have an ongoing impact on the IANA functions as the IANA Functions Operator will be subject to that jurisdiction’s laws. Analysis on rights of free speech, human rights, business operations, takedowns or other adverse actions with respect to domain names, interference by law enforcement or private legal action, and other matters are key to prevent capture of the organization.</p> | | | |

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| | <p>The suggestion that a company be unincorporated or not subject to a particular jurisdiction's laws must similarly be examined by a neutral, unaffiliated party. For example, can such an entity be insured? If no insurance company is willing to provide coverage, will the entity be able to attract the appropriate commitment from volunteers who may face personal liability and/or potential government action in various jurisdictions?</p> <p>The RySG believes these are key questions that need to be addressed and, in the case of accountability, implemented prior to any decision being made regarding whether or not ICANN or the new Section 3.2 entities/groups should take over the NTIA responsibilities.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 8. | <p>22 Dec: Introduction</p> <p>This Statement reflects the position of the At-- - Large Advisory Committee on the Cross Community Working Group (CWG) on Naming Related Functions Draft Transition Proposal.</p> <p>This position has been developed in conjunction with the At-- - Large Ad-- - hoc WG on the Transition of US Government Stewardship of the IANA Function which has been overseeing At-- - Large involvement in the IANA Stewardship ICG and IANA Stewardship CWG.</p> <p>The ALAC firmly believes that ICANN has demonstrated that it can reliably perform the IANA services, and should be allowed to continue to do so, unless or until it demonstrates that it is incapable or unwilling to carry out these functions for the benefit of the Internet community. To ensure that this is done, additional accountability measures need to be put in place to ensure that this happens. Any transfer of the IANA functions has the potential to impact stability and should be undertaken only if there is no other alternative.</p> <p>In the view of the ALAC, a suitable transition proposal will include the following:</p> <ul style="list-style-type: none"> • IANA responsibility awarded to ICANN; • New Board accountability to ensure that multistakeholder community can initiate action if dissatisfied with IANA performance; • Independent Appeal process to address perceived errors. • Doomsday capability to reassign responsibility if all else fails. | ALAC | | |

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| | <p>The At-- - Large Ad Hoc Committee has carefully reviewed the CWG Draft Proposal and offers the following analysis and critique of the Proposal as well as several Recommendations for modification of the Proposal to more closely fit the ALAC model.</p> <p>The ALAC Notes that the components of the transitioned IANA discussed here closely model those within the CWG Proposal. That was done to ensure the smallest possible deviation from the CWG Proposal (although we do suggest an alternative to the MRT). The ALAC is not bound to support these exact components, so long as the four bullets above are addressed.</p> <p>Overview The CWG is to be commended for its work at analysing options of replacing the NTIA stewardship of IANA. The resultant model has many good characteristics which will support the transition. The model has four basic components:</p> <ul style="list-style-type: none"> • Contract Co., the entity which to which NTIA will transfer the responsibility for IANA. • The Multistakeholder Review Team (MRT) which will oversee most of the aspects of the IANA contract. • The Customer Standing Committee (CSC) composed primarily of representatives of registry operators and will do routine review of IANA operations (set service levels and review reports). • The Independent Appeal Panel (IAP) which will provide a mechanism for any affected party to challenge whether IANA has implemented policy properly. <p>The ALAC strongly supports the IAP. Although there have not been many cases where this has been needed, it is important to provide an appeal process should any of the concerned parties need it in the future. With the potential for redelegation of New gTLDs, this becomes even more important.</p> <p>The ALAC supports the CSC, but does have some problems with both the composition of the CSC and the assignment of certain specific duties to it.</p> <p>The ALAC supports the MRT concept, but has some very strong reservations about how it can be implemented in this proposed model.</p> <p>The ALAC strongly opposes the concept and implementation of Contract Co. The creation of this entity is driven by the principle of separability – the ability</p> | | | |

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| | <p>to sever all ties between the IANA function and ICANN. All parties seem to believe that the current service level is high, and that there is no reason to consider such separation at the moment. Given that the price of the service is already zero, the only motivation for moving is that at some time in the future, the service level degrades or that ICANN otherwise mismanages or attempts to manipulate IANA. The ALAC believes that the Accountability CCWG can introduce changes to ICANN to ensure that such problems can be remedied without having to risk a transition to a brand new and untested IANA service to manage the Root Zone and without risking having to break the IANA Root Zone management from the other IANA functions (since it is unclear that the IETF and RIRs will be dissatisfied at the same time, or would choose to work with the MRT and Contract Co. to select a new IANA operator.</p> <p>The core question is whether the complexity, cost and risks of the proposed model is worth the benefits of being able to separate from ICANN, or can we ensure that ICANN can be suitably controlled so as to allow a far simpler stewardship transition, and one where we preserve the current level of stability and security.</p> <p>The ALAC understands that the CWG proposal is still being refined. When and if the issues raised in this paper are addressed, these changes will be duly considered.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfddQ2yQNqpJ.pdf</p> | | | |
| 9. | <p>22 Dec: Missing Components</p> <p>As already mentioned, it is unclear who, on a day to day basis, will be responsible for ensuring that policy is adhered to. Currently the NTIA has the ability to do that. Also, if some part of ICANN notices that there is a problem, they must have standing to take action (in a world where ICANN no longer has a connection with IANA).</p> <p>In the new model, even if the GNSO were to notice a problem (and they are not staffed to do so), they would have no standing whereby they could take action.</p> <p>A related issue, as already briefly mentioned, is redelegations. It seems that some parties believe that the IAP is sufficient to rectify any problems, but others feel that the NTIA "backstop" function must be replaced, and it is far</p> | ALAC | | |

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| | <p>from clear how that can be done. In the ccTLD space, the Framework of Interpretation may make redelegations less subject to problems, but in the gTLD space, where such redelegations may have very high financial values attached to them, there must be some level of control.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfddQ2yQNqpJ.pdf</p> | | | |
| 10. | <p>22 Dec: General</p> <p>1. While we would prefer to see a solution more rooted in existing structures with appropriate safeguards, generally we could go along with the approach identified in the CWG on Naming-related Functions draft Transition Proposal, subject to significant simplification, improvements and safeguards. We could accept a solution based on all NTIA responsibilities being transferred to ICANN, again subject to very clear safeguards, in particular on the continued and strengthened separation of the role of IANA functions operator from ICANN's policy role and its contracting and compliance responsibilities for gTLDs. We recognise that structural separation might need to be an option in the case of serious and deliberate action (or inaction) by the ICANN Board, but we believe that provisions for this could be built in to the organisation's bylaws.</p> <p>2. The organisational arrangements of the draft proposal are complex – probably too complex for volunteer committees. In particular, we would note the workload associated with action to terminate the contract and in managing rebidding processes would overload a committee of volunteers, which would make it open to capture by committee members resourced to take a leading role.</p> <p>3. Serious thought needs to be given to limiting the role of the proposed entities to the minimum needed to ensure effective stewardship of the IANA functions.</p> <p>4. It is important that the mandate of each entity is clearly specified and it should not be possible for the mandate to be changed without a full and open public process. We would also wish to see quite clear rules on membership of any committees to avoid individuals rotating from one entity to another, with the committees being dominated by a small group of people.</p> <p>5. Transparency is fundamental to accountability. Through the proposal the expectation should be the publication of all documents. The proposed entities should not be gatekeepers to that information. In addition, any decision by, or report from, any entity (including the IANA functions operator) should be made public. We do not think any of the proposed entities should have any say</p> | Nominet | | |

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| | <p>whatsoever in the publication of reports from the IANA functions operator (and certainly not in the reports currently required under the NTIA contract) other than to ensure that the reports are being published in a timely fashion.</p> <p>6. We are generally concerned at the confusion of roles in the process. In particular, proposals to replace NTIA's authorisation role (which currently is very lightweight) seem to introduce multiple reassessments of decisions at various organisational levels. We believe that this needs to be simplified substantially and roles need to be clarified. Any final proposal should avoid adding layers of bureaucracy or additional decision-making entities. It should also avoid creating gatekeeper functions.</p> <p>7. We have serious concerns about authorisation or appeals processes. The issues that IANA deals with on the delegation or redelegation of ccTLDs are complex. Any process to assess decisions needs to be limited to checking due process and correct documentation of decisions, and should not be the final arbiter of the correctness of the decision itself.</p> <p>8. There is a lot of detail still to be filled in. While some of this might be developed in parallel with the coordination process, we recognise that getting the detail right is important to the coherence of the proposal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |
| 11. | <p>22 Dec: Section 3.1: Introduction</p> <p>9. First bullet: "the objective of the CWG is largely to replicate the roles played by the NTIA in the execution and oversight of the IANA Naming Functions as faithfully as possible":</p> <p>We do not believe that all of the roles need to be replicated. In particular, some of the identified roles – and in particular the role of authorising changes to the root-zone file – might no longer be needed. Others are very simple checks on process or on deliverable.</p> <p>For the role of authorising changes to the root-zone file, we would note the liability risk for the entity carrying out authorisation.</p> <p>10. Second set of bullets: We would note that the CWG-IANA needs to identify the issues that need to be addressed by the Cross-Community Working Group on Enhancing ICANN Accountability in good time to allow the CCWG-Accountability to prepare its proposals.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-</p> | Nominet | | |

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| 12. | <p>22 Dec:</p> <p>Section 3.4.4: IANA Functions Contract between ICANN and the NTIA:</p> <p>32. In the third paragraph of the introductory text we would like the last sentence qualified to show that the decision on revisions to, and evolution of, the contract is not solely a decision for the MRT: “[it] will be the responsibility of the MRT in full and open consultation.” Similarly in the fourth paragraph, we think that decisions on whether to rebid or not should be made in open consultation.</p> <p>33. In the table in section 3.4.4 we would note the following issues, mainly related to the comments above:</p> <p>34. TERMINATION FOR CAUSE; ESCALATION: bullet 4. If the contract is terminated immediately, who will carry out this role until another contractor has been appointed? Sudden action should not be allowed as it essentially pre-empts the wider multi-stakeholder community and terminates the operation of a critical Internet function without an agreed successor contractor in place.</p> <p>35. COST/PRICE (current contract clause B.2). We do not think that it should be for the MRT to approve or otherwise the fees for service. We would note that many registries fund ICANN in part to pay for the provision of the IANA service (as part of the total funding needed to provide the range of ICANN’s activities). We would suggest that it is undesirable to re-open budget discussions on these grounds.</p> <p>36. [Functional Separation]: does it need to be made clear that this functional separation is from ICANN’s policy and gTLD contracting role.</p> <p>37. Independent Evaluator: We have already commented on, and do not think that it is appropriate to establish, this role.</p> <p>38. Delegation and Redelegation of a Country Code Top level Domain (ccTLD) (C.2.9.2.c): final bullet needs to be revisited in the light of earlier comments. The Contractor should publish the delegation and redelegation reports, but it should simply need to request changes from the RZM.</p> <p>39. Root DNSSEC Key Management (C.2.9.2.f): We are not aware of any discussion on the implications of the transition on DNSSEC functions performed</p> | Nominet | | |

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| | <p>by the IANA functions operator.</p> <p>40. .INT TLD (C.2.9.4): We are not aware of any discussions about the implication of the transition on the operation of .int.</p> <p>41. Inspection Of All Deliverables And Reports Before Publication (C.2.11): The second bullet implies a gatekeeper function on the dissemination of reports that the MRT certainly should not have.</p> <p>42. TRANSPARENCY OF DECISION-MAKING: fifth bullet. It is not appropriate for IANA to hire independent legal counsel to provide advice on the interpretation of existing naming related policy. Clarification of policy should lie with the policy authority.</p> <p>43. Program Reviews and Site Visits (C.4.1 and elsewhere): we see no need for site visits.</p> <p>44. Monthly Performance Progress Reports (C.4.2): should be published</p> <p>45. Inspection and acceptance (C.4.7): Again we do not believe that the CSC should have any power to restrict dissemination of reports.</p> <p>46. INDEMNIFICATION (H.13): There is a question about whether the contractor could take action against the Contract Co, the CSC, the MRT or the IAP for requirements that went beyond the mandate of the organisation issuing an instruction or over the interpretation of contract conditions. This could be the case if there were a decision to rebid the contract.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |
| 13. | <p>22 Dec:</p> <p>E. Transparency: The IPC applauds the provisions of the Proposal supporting maximum transparency throughout the process (see especially p.76 of the Proposal). This is a potential gain for the community vis-à-vis the status quo. Transparency throughout the process can supply an important element of legitimacy to the model. When the community knows which changes are being proposed to the root zone and why, and what decisions are made on those proposals and why, affected community members are better able to decide whether to intervene or to invoke the appeals process.</p> | IPC | | |

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| | <p>F. Staffing/Secretariat: The current proposal envisions the Contract Co. as a lightweight entity having little or no staff. The CSC is expected to work with the MRT to establish service levels and performance reports for the IANA naming functions, receive reports from the IANA Functions operation and to review these reports against established service levels and escalate any significant issues to the MRT. The IPC believes there should a dedicated, independent professional staff to assist the CSC in these functions. The IPC proposes a secretariat to assist the CSC with these administrative tasks as well as other administrative tasks for the MRT. We suggest that members of this proposed secretariat be employees or contractors of Contract Co. with no connection to ICANN or any other Internet governance organization or stakeholder group.</p> <p>G. Authorization Function: A major aspect of the Proposal that has not been resolved is the fate of the Root Zone Management Authorization function currently carried out by NTIA (see p. 74 of the proposal, indicating that this function might be carried out by “CSC? MRT? RZM? Independent Evaluator?”). The IPC believes that the RZM Authorization function is a key accountability mechanism, since ICANN currently self-certifies that it has complied with policy. As such, who exercises the RZM Authorization function and the process for handling such authorizations must be clear before meaningful comprehensive comments can be submitted.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfS4113lqoCB.pdf</p> | | | |
| 14. | <p>22 Dec: The published proposal, as recalled by the CWG itself, :</p> <ul style="list-style-type: none"> - Is not yet complete (last sections will depend on the sections currently opened to discussion) - Covers only the naming IANA function of the multistakeholder proposal for the IANA transition - Is highly dependent or interdependent with the work currently underway on the ICANN accountability, <p>Afnic is concerned by the actual complexity of the proposal, given the fact it's not covering all the aspects that need to be dealt with before the final submission.</p> <p>As we move forward, Afnic would like to call for a simplification of the proposal,</p> | AFNIC | | |

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| | <p>by narrowing the roles of each of the bodies created to replace the role of the NTIA.</p> <p>On the structural or functional separation between IANA and ICANN. Once recalled than the policy making of the rules that have to be followed by IANA must be distinct from this body, the need for a very clear separation between IANA and the policy making body is obvious.</p> <p>We feel that the structural separation from ICANN is not enough envisaged in this document, as it could be a powerful simplifier of the proposal. In any case, the choice between functional and structural separation has tremendous consequences on the ICANN accountability work currently underway, and as such, the two options should be clearly and equally put on the table to allow a risk assessment of the two solutions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00042.html</p> | | | |
| 15. | <p>22 Dec:</p> <p>On the relations between IANA and the Root Zone maintainer (RZM). Unless there is a thorough analysis of the root zone publisher function, especially by what mechanisms it is bound to publish IANA-approved changes to the root zone, Afnic believes no responsibility given whether to the MRT or to contract Co. or even to IANA operator itself could be fully fulfilled.</p> <p>The root zone publisher has to remain committed to publish changes in the root when, and only when, they are approved by the IANA Operator, and that, in Afnic's views, should be clearly stated in the transition proposal.</p> <p>The proposal should therefore choose between three options, in our views :</p> <ul style="list-style-type: none"> -status quo (RZM contracts with NTIA) -Contract Co. contracts with RZM -IANA Operator contracts with RZM <p>In any case, any change approved and asked by the IANA operator to be implemented after full review should be implemented by the RZM, and this should be included in any new contract passed with the RZM. It seems to us this should be stated in the proposal, in order to secure the overall naming function transition.</p> | AFNIC | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00042.html | | | |
| 16. | <p>22 Dec: JPNIC admires and appreciate the Cross Community Working Group for its hard and intensive job. We support all aspects which have been clarified in the section 3.1 of the proposal, which are:</p> <ol style="list-style-type: none"> 1) The current operational performance of the IANA Naming Function is generally satisfactory 2) There is no reason to transition the IANA Naming Functions outside of ICANN concurrent with the IANA Stewardship Transition 3) Not to seek to create another ICANN-like structure 4) Not to seek to replace the role of the ICANN multistakeholder community with respect to policy development, and 5) The existing separation between ICANN as a policy body and ICANN as the IANA Functions Operator needs to be reinforced and strengthened. <p>Furthermore, we agree the proposal's approach to list up the existing functions within NTIA with regard to IANA Stewardship and replace them with a newly set mechanism by the Global Multistakeholder Community in order to achieve the minimal change which will be still effective to work, and the proposed mechanism should in general be acceptable.</p> <p>With these said, we have several points of concern as far as we can learn from the published proposal, which might be of problem subject to the further detail and implementation.</p> <p>a) relationship between Contract Co. and MRT The proposal reads that MRT is not the governing board/entity of Contract Co., and in the Webinar on Wednesday 4 December, it was explained in order to avoid creating the single point of authority. However, from the stipulation of the section 3.2 regarding MRT, it should be judged that MRT will hold the control on the significant decisions of Contract Co. to be effectively regarded as the governing board of it. We don't have clear idea how MRT could be separated from Contract Co., with the powers on those significant decision held, thus suppose that it would be tricky and less stable if it be possible. It should be carefully examined that the separation of Contract Co. and MRT should be feasible in a stable way, or even another approach to have MRT as the governing board of Contract Co. with sufficient separation of power or check-and-balance mechanism.</p> | JPNIC | | |

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| | <p>b) MRT composition in conjunction with CSC What MRT examines for Contract Co. is the affairs of the IANA function operations. It's, by definition, of nothing to do with the policy of the resource, but very important in terms of the operations, with which the direct stakeholders of the resource, in this case TLD registries, are familiar. Our concern is that it might be slow in the convergence of the decision if the MRT has people who are not very familiar with the registry operations. The composition of MRT, the qualification of the members and power which each member is entitled are the keys for this concern. as well as CSC's power toward MRT's decision.</p> <p>c) Public posting of all IANA change requests The section 3.4.3.1. reads the proposed public posting of all IANA change requests is "as a notification that a change is being made", which means the posting is to be made before the change. It is not clear if objections or opinions would be allowed before the concerned change, but we suppose they would since that may be the reason for the posting in advance. If they be allowed, it may introduce the unwanted latency in the change of records of the root zone file by unqualified objections and opinions. It is notable that IAP as a redress mechanism may help minimizing inappropriate changes. If there should be posting in advance with objections or opinions accepted, the detail implementation should include effective means to avoid unqualified ones to keep the changes in a reasonable process duration.</p> <p>d) Independent certification for delegation and redelegation requests The section 3.4.3.2. stipulates the certification process by Contract Co. with an independent counsel for this particular action. The detail, especially clear condition to be certified is key for this function in order to have an independent counsel act reasonably. Thus we expect the ongoing discussion at CWG on this aspect will consider and develop such detail.</p> <p>e) Independent Appeals Panel (IAP) We support the proposal's approach to use existing dispute resolution providers, instead of establishing a standing panel. As a successful implementation of UDRP, the key of proper functioning of IAP will be achieved by clear provision of the dispute resolution policy and favorable engagement of the panelists. We expect the detailed implementation plan will clarify them.</p> | | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00053.html | | | |
| 17. | <p>22 Dec: 1. Proposal substance</p> <p>Section 3.1 of the proposal includes this principle: "The proposed replacement solution should not seek to create another ICANN-like structure with associated costs and complexities." This is a laudable principle and I support it unreservedly. Unfortunately, I think the proposal as written, were it to be followed, all but guarantees the creation of such a structure.</p> <p>The proposal includes the Multistakeholder Review Team (MRT) and the Customer Standing Committee (CSC). The MRT is to be "a multistakeholder body with formally selected representatives from all of the relevant communities". The MRT is to develop contract terms, make decisions for another entity, perform budget and performance reviews, manage a bidding process, and receive escalation from the CSC. The CSC is made up of registry operators. These two structures appear set respectively to replicate, only perhaps with different personnel, the ICANN Board on the one hand and CCNSO and GNSO (henceforth, the NSOs) on the other. The probability that these two new organizations would not turn out to reproduce the cost and complexity of ICANN seems vanishingly small. Indeed, given the MRT's representative nature and responsibility for both budget review and contracts, it is hard to see how MRT could keep out of the business of making policy. The potential for policy decisions in the MRT that do not align perfectly with name-community policies expressed as ICANN Board resolutions suggests that some sort of conflict resolution mechanism would be needed, as well. This will inevitably lead to requirements for permanent staff, travel and legal services budgets, and so on.</p> <p>Worse, there is already only a small population of interested, motivated, and available people for the work on the ICANN Board and the NSOs. The populations of the MRT and CSC are likely to draw from the same pool. If there were a formal requirement that the members not overlap, then there would be substantial risk that much of the membership would effectively just move back and forth, which offers a potential for policy deadlock. If there were not such a formal requirement, then there would be a significant risk of at least the appearance of self-dealing. Anyway, since the MRT's relevant communities are likely to be very similar to the ICANN Board's, and since the CSC's relevant communities are by definition the same as part of the NSOs', it is hard to see how the appearance of self-dealing could ever be avoided completely.</p> | Andrew Sullivan | | |

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| | <p>In addition, the proposal appears to offer a mechanism that could foil useful and necessary work. While the inspiration for the Independent Appeals Panel is noble, the proposal that "all decisions and actions (including deliberate inaction) of the IANA Functions Operator that affect the Root Zone or Root Zone WHOIS database be subject to an independent and binding appeals panel" potentially makes every action (or inaction) of IANA into an opportunity for litigation. It is not even plain, from the description, that the Independent Appeals Panel would be prevented from overruling instructions that came from the MRT or CSC; this creates an entirely new vector for attack on IANA functions. And because the Panel is not a standing body (this function should more properly be called the Independent Appeals Panels), it would be reconstituted for each dispute, which means that there would be little institutional consistency. Such a body would reproduce the functional pattern of Uniform Dispute Resolution Panels, which have been criticised in part for inconsistency from case to case. Other, similar appeal panels, such as the various ones around string similarity and evaluation for TLDs, have similarly attracted complaints about capricious ruling. It is hard to see how the Independent Appeals Panel would ensure a different result.</p> <p>It appears to me that, at bottom, the proposal is attempting to produce a mechanism that will check abuses and ill-considered outcomes from the policy and contracting organization that we already have to undertake that work: ICANN. There is already an ICANN accountability project underway (as the proposal notes). It seems to me that it would be much better for those improvements in accountability to be delivered within ICANN structures, rather than to build another set of organizations outside to try to check ICANN actions.</p> <p>The proposal nevertheless includes an excellent idea. The main thing the NTIA actually does during any root zone or whois database change is to ensure that the prevailing policy governing such a change is in fact being implemented. The proposed tiny, non-profit Contract Co could be constituted to perform exactly this action. It would have the legal authority to deny any change. Its sole responsibility would be to ensure that the change met the prevailing policy, and then pass that change along to the Root Zone Maintainer to be implemented. If a proposed change was not in keeping with the prevailing policy, then the Contract Co would not pass the change along, and so the change would not happen. Otherwise, the Contract Co would pass the change along.</p> | | | |

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| | <p>Some will object that this minimal mechanism does not provide the "credible threat" function of oversight that NTIA provides today. But presumably, the point of the accountability reform effort within ICANN is that those reforms should provide oversight from the global Internet community such that the threat is not needed. Policy and accountability mechanisms inside ICANN have to deliver what is needed. If they cannot, then it does not seem likely that producing new bodies external to ICANN, but made mostly of the very same people and with similar responsibilities, is any more likely to produce the oversight needed.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00044.html</p> | | | |
| 18. | <p>22 Dec: 2. Background materials The inclusion of some of the background material is helpful, but some of it might benefit from some changes.</p> <p>In the discussion of "delegation" in section 1.2.4, it would be helpful to note that "delegation" has acquired an ambiguous meaning. In the DNS, delegation takes a quite specific technical form: it involves placing NS records in a delegating (or parent) zone corresponding to the authoritative name servers living at the apex of the delegated (or child) zone. Change the NS records in the parent, and you thereby change the delegation. In this narrow, technical sense any change of a nameserver is a "redelegation", and there is not even a requirement that delegation cross organizational boundaries. For historical reasons, however, in the root zone the operator of a child zone (that is, a TLD) was usually a different organization, and simple changes of name server records have gradually come to be treated differently than changes to the organization undertaking operation. Hence, the second meaning of "redelegation": changing the organization operating a TLD. It is critical that the two meanings be made plain in the document, because people familiar with DNS operations will treat statements about "delegation" differently than those less familiar with DNS. Perhaps the terms "technical delegation" and "organizational delegation" could be used, though I admit they're pretty awkward.</p> <p>In section 1.2.7, there appears to be some conflation of different kinds of key material. There are potentially three different kinds of key here, and it will not do to treat them as the same thing. The first is the Key Signing Key (KSK) for the root zone. This is part of the root zone's DNSKEY RRset, and the generation of that KSK is indeed subject to a fairly elaborate ceremony. This is because it</p> | Andrew Sullivan | | |

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| | <p>represents the anchor of all trust for the DNSSEC system, so complete transparency in its generation and handling is critical. A second piece of key material is the hash of the KSK of each signed child zone (in this case, the signed TLDs). These need to be communicated to the root zone operator from time to time, whenever a TLD operator changes their KSK. Such a change needs to be authenticated to ensure the submission in question is coming from someone who has the rights to make the update. A third kind of keying material would be a public key for a public-private key pair, used to ensure secured communication between a registry operator and the IANA operator. It has been some time since I've administered a TLD, so I do not know whether this is common practice now; but this is the sort of key material that would "ensure that TLDs are able to communicate securely" (at least, as I understand that phrase).</p> <p>In section 2.1.2.1, there is a suggestion that RFC 1591 was written in the "very early days" of the Internet. It was certainly early days for the commercialization of the Internet; but if we understand the Internet to have begun in 1983 with the deployment of TCP/IP, then 1994 does not seem so early. This sounds picky until one realizes that what RFC 1591 was doing was codifying existing, fairly well-established practice rather than setting new policy. In undertaking the current changes to the IANA arrangements, we could do much worse than to follow the pragmatic approach undertaken by the pioneers of the Internet, in preferring the continuation of existing working procedures to any elaborate new ones.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00044.html</p> | | | |
| 19. | <p>22 Dec: ccTLDs</p> <p>Regarding the ccTLD, it's essential that the overall robustness and stability of the global Internet as well as the security and stability of the domainname system should be maintained. At the same time, the most minimal impact on ccTLDs national sovereignty must be fully guaranteed, with particular reference to the delegation and re-delegation decisions.</p> <p>Redress and appeals mechanisms</p> <p>In the novel organization, proper checks and balances must be in place, with effective and affordable means of appeal and redress, and adequate guarantees of independence.</p> | Ministero dello Sviluppo Economico | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf1dAdjAKbLg.pdf | | | |
| 20. | <p>22 Dec: DIFO has the following general comments to the proposal. DIFO finds that these comments are fundamental principles of the outmost most importance for us.</p> <p>Stability A stable, resilient and secure internet is the overall principle that should be ensured in any model chosen. DIFO agrees with the statement on page 61 that the performance of the IANA naming functions is generally satisfactory to its direct customers. Thus the NTIA has been successful in ensuring the accountability of IANA. Therefore DIFO finds that the roles played by NTIA should be replicated. However, DIFO also finds that any model should ensure that the IANA functions can be removed from ICANN if needed.</p> <p>Separation A separation of the IANA function from ICANN is one of the key elements for DIFO; however a structural separation of the IANA function is not needed. Instead DIFO finds that there should be a functional separation of the IANA function so that the key organizational parts are separated. For instance legal advice is to be done by IANA's own legal employee and not an employee of ICANN. Furthermore we agree that the existing separation between ICANN as a policy body and ICANN as the IANA Functions Operator needs be strengthened.</p> <p>Funding DIFO finds that the services of IANA must remain free for all ccTLDs. This means that the funding must be arranged otherwise than by demand of membership or paying for the ser-vice directly. Today the funding comes from ICANN and for the ccTLDs this is based on voluntary donations. DIFO finds it is important that all ccTLDs that are able to donate do so, but we still believe that it is important to keep this on a voluntary basis.</p> <p>Automation While DIFO agrees that the performance of the IANA Naming Functions is satisfactory; there is still room for improvement. One way of improving is by automatizing the majority of the functions so that these don't need to be authorized by a third party as it is done today by NTIA's approval of any changes. The registries themselves should be able to submit changes to IANA</p> | DIFO | | |

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| | <p>without any interference or subsequent approval. This should be possible for most functions except for delegation and re-delegation.</p> <p>The proposal DIFO finds that the proposal is a good way to replace the roles of NTIA. Since the proposal isn't finished yet and there are still a lot of details to be concluded DIFO finds it necessary to underline that any further work on the proposal shouldn't enhance the complexity. Moreover the accountability and transparency of all the groups are of outmost importance unless prevented or precluded by business confidentiality.</p> <p>Funding of IANA functions As stated above, DIFO finds that the IANA functions should be free, so we don't agree with and can't accept what is written on page 71: "Contractor may establish and collect fair and reasonable fees from third parties, subject to the MRT's approval. Fees, if any, will be based on direct costs and resources. After one year of charging fees, Contractor must collaborate with all Interested and Affected Parties to develop the fee structure and a method to tracks costs for each IANA function."</p> <p>Policy issues DIFO wants to underline that IANA shall not interpret any naming related policy. This is the key element of separating the policy part from IANA. Therefore DIFO objects to what is written on page 76: "Provide IANA a budget sufficient to allow it to hire independent legal counsel to provide advice on the interpretation of existing naming related policy."</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfHkjcjicPAs.pdf</p> | | | |
| 21. | <p>22 Dec: Key Contracting Provisions [Duplicate from Alt Proposal Section] SIDN supports an alternative solution where there will not be a contractual relation. At the same time, also in that solution a number of arrangements will have to be in place comparable to what is suggested now as contract terms in the CWG proposal. Given the different approach of the alternative solution, we limit our comments to those most relevant.</p> <p>B.2 Cost/Price – This is clearly highly controversial for ccTLD's as there is currently no obligation to pay for the IANA services. SIDN however pays ICANN on a voluntary basis a significant amount of money for amongst others the IANA services, and expects that it will continue do so after the oversight</p> | SIDN | | |

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| | <p>transition. At the same time SIDN would also want to have substantial influence on the budget of IANA and the height of its contribution. In our opinion this is rather a CSC than a MRT matter.</p> <p>C.2.8 [service levels]- We suggest that the CSC should determine the Service Levels after an open public consultation like the NTIA did in the last RFP round. [Independent Evaluator] – As stated above SIDN does not support the role of an Independent Evaluator.</p> <p>C.2.9.2. Perform Administrative Functions ... - As stated above we do not see a role for the Administrator.</p> <p>C.2.9.2.c Delegation and Redellegation of a ccTLD – last bullet should not use the word “recommendation” but “decision”. In line what we have said above, it shall be directly submitted to the RZM for execution.</p> <p>C.2.11 and C.4.7 – All reports should be public so there should not be an approval process for publication in these instances</p> <p>Budget Meetings – MRT should be CSC</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | | | |
| 22. | <p>22 Dec: We acknowledge and appreciate the substantial effort that was invested in developing the draft. Even so, we are concerned that the proposal raises more questions than it answers, prescribing a complex, multi-layered process that deviates considerably from the current, highly successful system.</p> <p>After carefully reviewing the draft proposal, we came to the conclusion that, rather than focusing on IANA functions, many of the issues raised by the CWG proposal are actually addressing pressing accountability concerns, which, due to the bifurcation of the two processes, have yet to be fully discussed in the Accountability Process. While we certainly agree that enhancing ICANN accountability is paramount, we do not believe that should be the primary goal of the CWG on Naming Related Functions. Rather, it should be left to the Accountability Working Group, to ensure a holistic and streamlined approach to accountability is undertaken</p> <p>Ultimately, it is absolutely essential that the IANA transition and accountability enhancements be implemented in tandem, and that NTIA not relinquish its contractual authority until the overall plan for accountability and governance improvements are finalized and accepted by ICANN.</p> | Information Technology Industry Council | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfn2NDTDNstl.pdf | | | |
| 23. | <p>22 Dec: CIRA welcomed the March 2014 announcement from the National Telecommunication and Information Administration (NTIA) regarding its intent to transition its IANA stewardship role to the international Internet community. We are mindful of the fall 2015 deadline for a proposal to identify an alternate entity to assume the NTIA’s historic role. Subsequently, I was pleased to see the CWG produce a specific proposal on the naming functions that respects this timeline.</p> <p>Like many in the Internet community, I recognize that the initial CWG proposal is more of an outline than a fully formed plan. Much of the detail remains to be developed through the public comment period and other processes. It is my hope that through this broad consultation, the proposal’s gaps may be filled while its substance is retained. My comments below are therefore presented with this in mind.</p> <p>Let me say that I am supportive of the CWG’s overall proposal, provided that what I see as its original intent, to introduce a lightweight replacement mechanism for the IANA stewardship, is maintained. I support the CWG’s proposal to transfer the existing NTIA contract to a ‘Contract Co.’, an entity with no staff but supported by largely stand - by committees. This arrangement would represent a minimalist approach, and I believe would result in the current IANA services, which I and many others consider to be efficiently managed, remaining undisturbed, while providing a mechanism by which service improvements could be discussed.</p> <p>The addition of a periodic review of the IANA function contractor’s performance and the option that, should the Internet community find the contractor’s performance to be sub - standard or unacceptable, a request for proposals (RFP) could be issued to encourage corrective action, or in the extreme, to choose another operator would represent an effective oversight mechanism.</p> <p>As the representative of a direct customer of IANA, I support this streamlined approach. However, from observing the discourse around the proposal I am concerned that the mechanisms proposed by the CWG are rapidly becoming unduly complex, top - heavy and overly bureaucratic.</p> | CIRA | | |

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| | <p>I fear that some of the comments and criticism of the proposal stem from a fundamental misunderstanding among some members of the community as to what IANA does and, more to the point, what the NTIA's role is in the overall IANA functions process. It is critical that the entire community has a clear, shared understanding of the roles of these two entities, as it is the potential removal of NTIA from the process that prompted the IANA Transition Coordinating Group (ICG) and the CWG processes. To this end, I was pleased with the NTIA's recently released summary (pdf) of their role in root zone management.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqdvpglUueo.pdf</p> | | | |
| 24. | <p>22 Dec: IANA functions With respect to operation of the IANA functions, we believe that the creation of a separate 'contracting' entity not only poses risks when weighed against the NTIA Criteria, including potential future DNS security and stability risks, it also overreaches. The operationalization of multiple entities would raise questions about the accountability and transparency of each, as well as possible duplication of existing mechanisms and the imposition of cost and complexity on necessary processes. More to the point, however, is that ICANN was created and purpose-- - built to be the permanent and robust home of the IANA functions. Additionally, ICANN was structured from its inception to be inclusive, transparent and accountable.</p> <p>The ICANN Board is both open to and encouraging of any improvements that bring greater visibility and understanding and greater assurance to the broad community that the IANA functions are performed in an absolutely reliable and accurate fashion for the benefit of all Internet users.</p> <p>It has taken since 1998 to bring ICANN to a place where the NTIA was prepared to announce an intention to transfer the stewardship of the IANA Functions – a transition that was initially anticipated to occur in 2000. This is, in large part, what ICANN was designed to do, and we believe the considerable effort to date has yielded compelling results.</p> <p>Through this transition work, we have the opportunity to consider how to make the processes continue to work in an integrated fashion, as well as having the opportunity to establish and enhance mechanisms to hold the ICANN Board accountable if it were ever to interfere with the IANA Functions' operational</p> | ICANN Board | | |

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| | <p>role in performing actions based on policies developed by the community.</p> <p>It is useful here to define the essential “IANA function,” as distinct from ICANN’s policy responsibilities.</p> <p>It is fundamentally clerical in nature.</p> <p>It is the publication of information provided by the creators of the information, with strong emphasis on accuracy, timeliness, and global availability.</p> <ul style="list-style-type: none"> • For the protocol parameters, the information is created by the IETF community. <p>For numbers, the RIRs, in conjunction with their communities, determine the policies related to allocation of address blocks and autonomous system numbers.</p> <ul style="list-style-type: none"> • For names in the DNS root zone, the gTLD and ccTLD managers provide information about their TLD to IANA for either publication as WHOIS information, or for entry into the root of the DNS. <p>Decisions about allocation of generic top-- - level domains (gTLDs) are managed by the Global Domains Division of ICANN executing policies determined by the GNSO.</p> <p>Decisions about allocation of country code top-- - level domains (ccTLDs) are documented in http://www.iana.org/domains/root.</p> <p>While we have identified these concerns for CWG consideration in the next iteration of the proposal, the Board is supportive of many of the principles within the CWG proposal. For example, clear performance metrics and expectations are necessary for the proper operation of the IANA Functions operation, and the CWG proposal is impressive in its comprehensive identification of the services that are now housed within the IANA Functions Contract. As stated above, we agree with the principle of the functional separation between policy development and the execution of the IANA Functions Contract and we agree that a committee should be established to evaluate on an ongoing basis how the naming aspects of the IANA Function are being performed. This committee should be composed of people who understand the technical and operational issues across the ICANN community, with an emphasis on maintaining the security, stability, and resiliency of IANA operations and oversight.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf20pTv25T9l.pdf</p> | | | |
| 25. | 22 Dec: | LACTLD | | |

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| | <p>Emphasis on the commitments expressed on lightweight structures and non-duplication of ICANN's structures</p> <p>Although this is expressed at the beginning of the proposal in B.3, in light of discussions in the CWG list and the progress made on RFP3, there are increasing concerns due to the complexity of the arrangements and political nature of the representation of the corresponding SO/ACs. While we support the NTIA transition over the stewardship of the IANA functions as an opportunity to promote transparency, accountability and the participation of a wider range of stakeholders in the process, we believe that this participation should be encouraged into the policy making process rather than into these bodies that should be highly competent, knowledgeable and that should abide to pre-defined policies and guidelines approved by the community. We also believe that increased participation into the process should not be incorporated at the cost of efficiency and reliability of the IANA services.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFvls66SVvO.pdf</p> | | | |
| 26. | <p>22 Dec: IANA separability</p> <p>The principle of separability is considered an essential safeguard for accountability purposes in the discussion within the CWG. Functional separability would be desirable, but most importantly the availability of the mechanism of triggering a retender of the IANA functions, as a safeguard on IANA performance.7)</p> <p>Fees</p> <p>The mention of fees in the description of the MRT's functions should be excluded from the current proposal in line with CENTR's comments in their document (CENTR, Dec. 22, 2014: 4). We believe that the inclusion of a discussion around the issue of fees is out of scope, and is an intrinsic aspect of the policy making of the ccTLD community with its specific features underscored in point 1 of this document and in Section A of the CWG draft document.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFvls66SVvO.pdf</p> | LACTLD | | |
| 27. | <p>22 Dec: The IANA Function Operator (IFO) performs a pure data processing function.</p> | DENIC | | |

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| | <p>NTIA's role is to administer the contract with the IFO, to monitor the performance and - if needed due to performance lacks- to adjust/retender the contract. Except for "verification of process and policy" (see 2.1.4.1 T5-4 for ccTLDs and T8-6 for gTLDs) NTIA has no policy related role (such as delegation, transfer, revocation).</p> <p>The sparse policy related role can and should be removed from the remits of the organisation(s) to inherit, leading to a simplistic function with no need to address any (ICANN) accountability questions as no policy decisions are being taken by neither, the IFO or the organisation(s) to inherit as substitute to NTIA.</p> <p>Reflecting the above remits, the proposed PRT, CSC, ConCo should be "collapsed" into a single body, constituted of (direct) IFO customers, e.g. cc- and gTLD representatives.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00055.html</p> | | | |
| 28. | <p>22 Dec: Support for the general approach In general we offer support for investigating in more detail the top-level approach being promoted to replace the present NTIA stewardship role on IANA with the following structures: Contract Co., Multistakeholder Review Team (MRT), Customer Standing Committee (CSC) and Independent Appeals Panel (IAP). We understand the core elements of CWG-Stewardship's draft proposal to be as follows:</p> <ol style="list-style-type: none"> 1. That the IANA functions should continue to be operated under a contract, and that there should continue to be a counter-party to place this contract with the IANA functions operator 2. To create, as new entities external to ICANN (in the sense of being not answerable to the ICANN Board) <ol style="list-style-type: none"> a. a Customer Standing Committee (CSC), to support liaison between IANA and those that directly engage with IANA, and to monitor IANA service levels and operational performance on a continuing basis b. a Multistakeholder Review Team (MRT) to define the requirements for the IANA functions operator, and provide a means for the community to hold the IANA functions operator to account c. a Contract Company, to be a corporate shell to act as the counter-party to the IANA functions contract, taking direction from the MRT | ISPCP | | |

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| | <p>d. an Independent Appeals Panel (IAP) to hear and adjudicate complaints about the operation of the IANA functions, on narrowly defined procedural grounds</p> <p>3. That the MRT be a multistakeholder body capable of representing the whole community.</p> <p>4. That the MRT be empowered to define requirements for the IANA functions operator.</p> <p>5. That MRT shall be empowered to institute, through the IANA functions contract, a range of corrective and remedial measures to address any failure to meet contractual requirements, up to and including the possibility, as a last resort, of termination of the contract and the contract being offered to an alternative operator.</p> <p>6. That it is CWG-Stewardship’s intention that once the new structures are established MRT should expeditiously move to place a new IANA functions contract with ICANN through the vehicle of Contract Co.</p> <p>We support this as the basis for a proposal for transition of oversight of the IANA functions from the NTIA to the multistakeholder community, and urge CWG Stewardship to continue its work to develop a fully formed transition proposal based on these underpinnings.</p> <p>Lack of completeness</p> <p>We regard the draft proposal as being in its early stages with many outstanding issues still to be resolved. A considerable number of these have already been highlighted on the CWG mailing list. They include</p> <p>a. Jurisdiction of Contract Co.: we suggest to seek external advice with multinational background</p> <p>b. Cost and financing of the structures, in particular Contract Co. and MRT: a rough cost analysis parallel to any proposal is needed.</p> <p>c. Clarity on how it is proposed that MRT be instituted to ensure that it meets its goal of reflecting the multistakeholder community, in particular with respect to the MRT membership rules.</p> <p>d. Clarity on how Contract Co will be able to act following a finding by MRT that enforcement action is required.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf0CjHDDM8hY.pdf</p> | | | |
| 29. | <p>22 Dec:</p> <p>The ultimate goal of the National Telecommunications and Information Administration (NTIA) stewardship transition is to preserve the security, stability, resiliency, and openness of the Internet. To accomplish this, Google</p> | Google | | |

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| | <p>recommends that ICANN continue to serve as the IANA functions operator. We recognize, however, that the IANA functions contract has served as a critical means of ensuring not only that the IANA functions were performed properly, but also that ICANN remained accountable to NTIA. Therefore, the key challenge is not to replicate the form of the current accountability mechanism (a contract), but to ensure that, post-transition, ICANN performs its responsibilities in such a way that it remains accountable to the ultimate beneficiaries of the Internet -- the multistakeholder community.</p> <p>Rather than creating a new contracting entity to replace NTIA and simply transferring the current governance arrangement directly to a new entity, we propose that concerns raised in the CWG be addressed by a combination of two strategies: by adopting some of the CWG's proposals, and by requiring broader accountability improvements through the recently-constituted Community Working Group on Accountability (Accountability Working Group). A contract is neither a sufficient nor a necessary mechanism to ensure the community's ultimate goal -- accountability to the broader set of Internet stakeholders.</p> <p>The current proposal is structurally complex but substantively facile: Because it was created in a vacuum without the input of the Accountability Working Group, it has created a complex rubric of committees and teams. But even as it designs these complex structures, it leaves open key questions regarding authority, accountability, and checks and balances. As such, it is extremely important that the work on accountability be conducted in parallel with the work of the CWG, and that the CWG's proposal be informed by broader recommendations that we hope the Accountability Working Group will develop. Below, Google sets forth its proposal for the post-transition structure of IANA and ICANN, and raises critical questions regarding the CWG's proposal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 30. | <p>22 Dec: Google supports a number of the process improvements proposed by the CWG. Google supports a number of suggestions in the draft proposal, each of which could be incorporated into the framework discussed above.</p> <p>Public posting of all IANA change requests: ICANN's current contract with NTIA requires it to carry out the IANA functions in a transparent manner, including publishing of user instructions, technical requirements, and an explanation of</p> | Google | | |

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| | <p>the processes and procedures that are used to develop policies related to the IANA functions. Google supports adding an extra layer of transparency to the process by requiring the public posting of all IANA change requests. However, posting the change requests should not be regarded as an invitation to re-litigate any underlying policy decisions that led to these changes; the process should be largely informational in nature. Moreover, the public posting of each IANA change request should not delay the implementation of requests.</p> <p>Periodic random audit: Rather than creating an independent certification process for each delegation and re-delegation request, Google supports a more streamlined process which takes into account the sensitive nature of these requests, especially for ccTLDs. As such, we recommend the following modifications to the CWG's proposal to require independent evaluation for every delegation and redelegation request: First, a certifier should only review the processing of change requests for compliance with a limited, pre-determined set of requirements to be agreed by the Generic Names Supporting Organization (for gTLDs) and by the Country Code Names Supporting Organization (for ccTLDs). Second, the certifier should not have the authority to review every delegation and redelegation request; instead, it should be called upon to review a designated number of changes at random over the course of the year. This approach will minimize the possibility of the certifier unilaterally and unfairly revisiting change requests to alter the outcome in a particular case while at the same time ensuring agreed policies are being followed.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 31. | <p>22 Dec: Brazil is particularly concerned about the "Subcontracting" terms of the proposed IANA Post-transition contract, as it would require (or assume) the IANA functions operator to be a company based in the United States and the related functions to be performed in that country as well. In Brazil's view, this would contradict the purpose of globalizing the management of Internet's unique identifiers and should, therefore, not remain in the new contract.</p> <p>For the sake of clarity and to avoid unnecessary concerns, it would be advisable to specify the role of governments in the new proposed arrangement, not as "oversight" authorities or "sole public policy makers" but as interested stakeholders, on an equal footing with other actors.</p> | Brazilian Government | | |

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| | <p>Lastly, although fully cognizant of the fact that the issue of who performs the Root Zone Maintainer (RZM) role is not within the scope of the CWG's work, the Brazilian Government considers that the current contractual agreement with Verisign needs to be included in the efforts to revisit and evaluate existing pre-transition arrangements in order to propose possible changes, if that would be the case, in the arrangements for the post-transition period.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | | | |
| 32. | <p>22 Dec: We do not seek to provide specific comments on the proposal as we largely support the comments provided by the Registry Stakeholder Group. However, we would like to provide input in the form of principles that we consider important in this exercise. These principles are provided below in no particular order of importance.</p> <ul style="list-style-type: none"> * The role performed by the IANA Department is largely technical and operational. The role performed by the IANA Department should not be conflated with ICANN's role as a policy development body. * Operational stability and reliability of the IANA function is imperative to the business operations of registry operators. * One of the four principles identified in the NTIA announcement is: Meet the needs and expectation of the global customers and partners of the IANA services; and this should be a primary consideration of the development of a transition proposal. * As direct customers of the IANA service, registry operators (ccTLDs and gTLD) should have prominent representation on any oversight committee or organisation intended to replace NTIA's role. * Registry operators should have the casting vote on any future decision to remove the IANA function from ICANN; however, any decision to remove the IANA function from ICANN must be for reasons of continued poor performance or incompetence. * The current performance of the IANA service as it relates to naming functions is satisfactory. There have been many improvements in the quality of service in recent years and this can be attributed to the IANA Department responding to the needs of their customers as well as adhering to the requirements and SLAs contained in the contract between NTIA and ICANN as the IANA Functions Operator. * There must be no transition of the NTIA oversight of the IANA functions | ARI Registry Services | | |

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| | <p>before the conclusion of the Accountability CWG discussions and as such no transition proposal can be submitted to the ICG until the implications of any recommendations from the Accountability CWG, as it pertains to the IANA function, are understood.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00024.html</p> | | | |
| 33. | <p>22 Dec: Simplicity of any new structure Overall we support the underlying ideas of the proposal as it tries to find the balance between the need to keep it simple and the necessity to cover a complex set of functions. However, we felt that as work progressed, most of the original simplicity has got lost. It is unfortunate to see that the initial starting point that any replacement of the NTIA functions should be limited to a technical performance review seems to have been abandoned. We are concerned that references to the evaluation of delegation and redelegation reports can be interpreted as assigning additional authority to new committees and bodies as envisaged in the proposal. The mandates and scope of the different players in the proposal need to be outlined in a clearer way. In most cases this can be achieved by cutting back their roles to the strictest minimum. Unless these structures are lightweight we believe that the equilibrium that was aimed for will not be achieved. The more complex the proposed structures become, the more relevant it will be to reassess alternatives, such as an ICANN-based solution before making a final decision. We have followed with great interest the discussions on whether the proposed Customer Standing Committee (CSC), the Multistakeholder Review Team (MRT) and the Contract Co. should be separated or part of ICANN. In our view, both options have advantages and disadvantages. We believe that the current proposal does not provide sufficient detail to come to any conclusion on this important topic. Furthermore, most of the accountability issues that the proposal tries to solve through structural separation might come back in the proposed structure. Accountability issues could also be solved through implementation of appropriate safeguards in ICANN's bylaws and a mechanism to trigger a retendering of the IANA function contract if needed. It is most unfortunate that the timing of the IST and the work of the accountability working group is not properly synchronized. It is clear that much</p> | Centr | | |

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| | <p>of the complexity of the current proposal derives from the absence of recommendations on how to fix ICANN's current accountability issues.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | | | |
| 34. | <p>22 Dec: IANA automation</p> <p>We welcome the fact that the further automation of the IANA function is supported in this proposal. Automation was an important element in the latest RFP send out by the NTIA for the current IANA functions contract. The transition should not affect the continuing implementation of this automation process for all changes other than those related to delegation, revocation or transfers.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | Centr | | |
| 35. | <p>22 Dec: Root Zone Maintainer</p> <p>We recommend that the proposal takes into account the future of the contractual relationship with the Root Zone Maintainer. It is crucial that the RZM recognizes the authority of the MRT to reassign the IANA functions contract and acts accordingly if that situation occurs.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | Centr | | |
| 36. | <p>22 Dec: Fees</p> <p>On page 71 it is stated that the MRT might approve the collection of fees by the contractor. At the moment the IANA customers already contribute significantly to ICANN – some under contractual arrangements, some voluntarily. It has always been assumed (cfr. the financial contributions discussions in the ccNSO) that those fees also cover the operation of IANA. It would be out of scope for this proposal to address those existing arrangements and they would overlap with the fees referred to in the proposal. We therefore believe that any reference to fees should be removed from this proposal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | Centr | | |
| 37. | 22 Dec: | Centr | | |

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| | <p>We have not commented in detail on the wording of this proposal, but would like to see one important change to make this part of the proposal factually correct.</p> <p>3.4.3.1 IANA will be required to publicly post all requests for changes to the Rot Zone File or the Rot Zone WHOIS database as a notification that a change is being made. Should be changed to</p> <p>3.4.3.1 IANA will be required to publicly post all requests for changes to the Rot Zone File or the Rot Zone WHOIS database as a notification that a change was requested.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | | | |
| 38. | <p>22 Dec: Community stewardship</p> <p>Community stewardship of the IANA functions is essential, as a principle in itself and as a means to securing other principles such as distribution of powers and functions. This relates in particular to discussion of some sort of “internal to ICANN” solution being a better approach. InternetNZ would not support a transition proposal that saw NTIA stewardship replaced with ICANN stewardship of the DNS.</p> <p>The reasons for this include the following significant points:</p> <ul style="list-style-type: none"> • It would erode the current distributed model & today’s reality of separability which we support in principle and in practice; • It would make the possibility for future reassignment of the operation of the IANA functions theoretical at best and impossible at worst, considerably worsening the accountability situation facing IANA customers; • ICANN’s track record shows that it has a fundamental cultural difficulty in accepting its primary role as a limited purpose servant of the Internet community – <ul style="list-style-type: none"> o in its attitudes to community attempts to control it (e.g. the debate in 2014 about the accountability side of this transition); o in its practice of top-down decision-making (e.g. the President’s strategy panels, or the ongoing failure of the WHOIS review); and o in its adventures in the broader Internet Governance environment without community mandate (e.g. the NetMundial Initiative). <p>As such, in practice it seems unlikely to be the sort of steward the community as a whole could have confidence in;</p> <ul style="list-style-type: none"> • ICANN’s consistent arguments over many years that the law under which it operates makes it impossible for the corporation to accept real accountability to the Internet community. If that is correct in law, ICANN can’t be the overall | InternetNZ | | |

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| | <p>steward. If that position is wrong and ICANN changes its mind, it will have diminished further its credibility as a reliable and dependable option for steward;</p> <ul style="list-style-type: none"> • The scale of change and evidence of such change required to deal with the practical matters set out in the previous two points cannot be achieved in the timeframe required for the stewardship transition. <p>The CWG-IANA's proposal contains a workable model that does not have these problems of principle and practice. It has gaps of detail that need to be explained and resolved before it can be accepted, but what has been produced so far is clearly preferable to a fully "internal to ICANN" model both in principle and in practice.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | | | |
| 39. | <p>22 Dec: Comments on key elements</p> <p>The CWG-IANA proposal is a strong one. If implemented, it would improve the situation the Names community faces in terms of reliable stewardship and accountability to mirror that enjoyed by the Numbers and Protocol communities.</p> <p>We endorse the elements set out in the CWG-IANA proposal at a high level (Section 3.1) and believe they are fundamental to a workable transition. They are:</p> <ul style="list-style-type: none"> • Current performance of IANA functions is satisfactory • Maintaining the contract environment • Maintaining ICANN as operator for now • Not replicating ICANN's broader role in new, very narrowly focused institutions (i.e. names policy broadly remains where it is) • Separation between policymaking and IANA functions operation needs to be reinforced and strengthened <p>The CWG-IANA's proposal is the lightest and simplest possible institutional structure required to allow an outcome consistent with these elements and with the NTIA's requirements.</p> <p>In particular we commend the CWG-IANA for dealing with operational accountability for the IANA functions, which is clearly a requirement of its Charter and is essential.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | InternetNZ | | |
| 40. | 22 Dec: Comments on key elements | InternetNZ | | |

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| | <p>Some other points of feedback for the CWG-IANA to consider:</p> <ul style="list-style-type: none"> • A clear and transparent audit chain and process needs to be in place for the entire system. The certification matter and public posting of root zone change requests are useful, as is the IAP. • We look forward to further work by the CWG-IANA on what replacement if any is required for the NTIA's root zone management process administrator role (3.4.3 in the proposal), and express no view on this matter at this time. • The costs of maintaining the infrastructure required for effective stewardship of the IANA functions should properly fall on the IANA Functions Operator – as such, it should finance the required expenses of the CSC / MRT / Contract Company. The costs of operating the IANA functions should be largely met by the customers of those functions in a manner similar to today. • InternetNZ supports the retention of a single integrated IANA function across the three customer groups (names, numbers & protocols), but believes that in the event of a choice between an integrated IANA and an acceptable settlement for the Names community, the choice should fall in favour of the latter. <p>Finally, we note that in all this work with more detail the vision will become clearer – important choices need to be fleshed out and we respect the fact the CWG-IANA is still progressing much of the detail.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | | | |
| 41. | <p>22 Dec:</p> <p>(1) Comments on the relationship among the IANA function operator, the administrator and the maintainer</p> <p>We recommend that a kind of tripartite relations among the operator, the manager and the maintainer shall be more accountable and transparent. To effectively and securely managing the root zone shall be always prioritized during the process of proposal developing and transition. The organizational structure replacing NTIA's roles in managing IANA functions shall be a integrated and well organized structure combing the management, supervision and policy updating functions, whose composition shall reflect the principle of multi-participation and equal consultation.</p> <p>(2) Comments on the proposed structure based on the multistakeholder model</p> <p>We noticed that the proposal presented a new structure which claims as to enhance the multistakeholder model. We encourage this new structure to mandate real multi-participation by all stakeholders, to conduct the global</p> | CNNIC | | |

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| | <p>bottom-up supervision on the root zone operation, which will be conducive to replace the functions of NTIA. We also recommend that ICANN, as the current root zone operator shall take this opportunity to further advance its globalization and promote ICANN's reforms toward the direction of more transparency and openness</p> <p>(3) Comments on the proposed four-part structure</p> <p>-Regarding to the function and responsibility of the new structure We consider that the four-part structure, namely Contract Co., Multistakeholder Review Team MRT (abbreviated as MRT), Consumer Standing Committee (abbreviated as CSC) and Independent Appeals Panel (abbreviated as IAP), is moderately complicated, and the functions and responsibility of each entity is not clearly defined, especially there are ambiguous overlaps of the functions between MRT and CSC. We recommend that MRT shall abide by the principle of Multi-participation, taking the responsibility for developing the detailed IANA contract and administration of daily routine. We recommend that CSC, as the representative collective of the registries of ccTLDs and gTLDs as well as naming directly related stakeholders, shall implement the supervision on the policies and actions of MRT, and shall provide the corresponding policy support in order to guarantee the quality of the decisions and service standards made by MRT. The proposal illustrates that the Contract Co. will replace NTIA to sign the IANA contract with ICANN, given that this entity has a close relationship with internet mutistakeholders , we recommend that it shall be incorporated in the neutral state where the office of the entity shall be set up to guarantee its independence.</p> <p>-Regarding to the composition of the new structure As regards the proposed composition of the new structure, we hold the point of views that if MRT's members are selected in accordance to the existing multi-stakeholders regulation, the overlaps with ICANN's existing structure and personnels is hard to avoid. Therefore, we recommend CWG to consider that, and make further formulation and illustration, the purpose of which is to avoid conflicts of the interest. In addition, we also recommend that MRT and CSC shall strictly follow the principle of bottom-up, fair and just as well as transparency in member selection, and ensure the participation seats of the developing countries.</p> <p>(4) Comments on the role of ccTLD community in IANA transition process</p> <p>We recommend that the opportunities and appropriate participating mechanism shall be provided for the representatives from the ccTLD community to discuss key service levels requirements of IANA functions. We also suggest that the public policies which are related to ccTLD and its root</p> | | | |

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| | <p>zone management shall be decided by each country, but it seems that there are not corresponding mechanism of coordination and policy making in the present proposal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfwqYsmtqmgj.pdf</p> | | | |
| 42. | <p>22 Dec: Contract Length</p> <p>As the details of the plan are fleshed out, we have the following concerns, or would propose the following modifications:</p> <ul style="list-style-type: none"> • There should be an unambiguous commitment to a fixed, periodic renewal of the IANA contract. We suggest a 3 year term with two optional 2 year renewals. Further, should the contract remain with the current operator (ICANN) in the period immediately after the transition, it should be for a limited period of time, for example 2 years (equivalent to the extension period under previous NTIA-ICANN contracts). After that RFPs should be issued at regular periodic intervals. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | NCSG | | |
| 43. | <p>22 Dec: Policy Implementation</p> <p>As the details of the plan are fleshed out, we have the following concerns, or would propose the following modifications:</p> <ul style="list-style-type: none"> • Failure to implement policy properly, or implementation of policies that are not actually approved by the community, should be explicitly listed as factors that could lead to suspension or non-renewal of the IANA contract by MRT. Under this structure, most concerns about improper policy implementation would be initially directed to the appeals team. But stakeholders should be able to bring concerns about this to the attention of the MRT in some well-defined manner. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | NCSG | | |
| 44. | <p>22 Dec: iana.org</p> <p>As the details of the plan are fleshed out, we have the following concerns, or would propose the following modifications:</p> <ul style="list-style-type: none"> • As a precaution we suggest that discussions be held with the IETF Trust, regarding the domain name iana.org and suggesting that it hold the name for use by the names, numbers and protocols directories. Any changes to the use of the domain name should be agreed to by all operational communities. | NCSG | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfwjMYC0dY1.pdf | | | |
| 45. | <p>16 Dec: Missing Components</p> <p>As already mentioned, it is unclear who, on a day to day basis, will be responsible for ensuring that policy is adhered to. Currently the NTIA has the ability to do that. Also, if some part of ICANN notices that there is a problem, they must have standing to take action within ICANN (in a world where ICANN no longer has a connection with IANA).</p> <p>In the new model, even if the GNSO were to notice a problem (and they are not staffed to do so), they would have no standing whereby they could take action. A related issue, as already briefly mentioned, is redelegations. It seems that some parties believe that the IAP is sufficient to rectify any problems, but others feel that the NTIA “backstop” function must be replaced, and it is far from clear how that can be done. In the ccTLD space, the Framework of Interpretation may make redelegations less subject to problems, but in the gTLD space, where such redelegations may have very high financial values attached to them, there must be some level of control.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 46. | <p>16 Dec: Risk</p> <p>Any change implies some level of risk. A major change such as removing IANA from ICANN, with a potential result of it being taken over with no overlap of employees or systems would have a great risk of impacting security and stability. The concept of a mandatory RFP every N years has been pushed very strongly by some proponents of the model. Aside from the cost in both money and time on both the MRT and the RFP responder(s), such a process, regardless of a perceived need – essentially, change for the sake of change, is frightening!</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 47. | <p>16 Dec: Rigidity</p> <p>By its design, Contract Co would be very restricted in what it does. By its Articles of Incorporation and Bylaws it would be strictly bound to follow the instructions of the MRT, and its Board would be restricted from changing these rules. Such rigidity has been deemed to be necessary to ensure that its founding principles are honoured and it is bound to support its multistakeholder masters. However, this very rigidity presumes that the world around Contract Co. will be stable and unchanging for the possible unlimited future. It is unclear how it might change if that was required to meet some unforeseen eventuality.</p> | At-Large | | |

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| | <p>The only apparent option would be to give the MRT a capability of altering (or ordering to be altered) the core Contract Co. This presumes that there is no possibility whatsoever that the MRT itself could be corrupted (more on this later).</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | | | |
| 48. | <p>16 Dec: Litigation</p> <p>Given that Contract Co. will be awarding a contract for a perceived valuable resource, and more particularly since some proponents of this model believe that there should be a mandatory RFP with the potential for moving the IANA resource, it is quite possible that an entity that loses the contract, or a bidder that is not selected could sue Contract Co. Contract Co. could also be the subject of malicious lawsuits. Regardless of the cause, such lawsuits could be expensive and time-consuming.</p> <p>One particularly intriguing case study would be a losing contractor suing because IANA is about to be transferred to another entity, but at the same time, (as described under Costs), the losing contractor who still was the IANA operator at that moment, would be bound to cover the costs of defending it against its own lawsuit.</p> <p>It has been proposed that in some jurisdictions, Contract Co. might be given immunity from civil lawsuit. That would certainly address this problem, but could ultimately cause others.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 49. | <p>16 Dec: Capture</p> <p>The potential problem of Contract Co being “captured” has been discussed at length and the proponents of the model feel comfortable that it can be avoided. Many of these discussions have focused on the entire operation being taken over, and indeed, that may not be too likely. However, a more subtle form of capture is when the balance among stakeholders favors one group preferentially, effectively disenfranchising one or more other groups. With the unknown composition or formation processes for the MRT (which directs Contract Co.), this is potential problem.</p> <p>One version of capture that has not been discussed is nationalization by the country in which Contract Co is incorporated or operates. One can readily imagine a situation where “in the interests of national security”, a government takes over Contract Co., violating one of the principle constraints on the NTIA transfer. Nationalization is not uncommon -</p> <p>http://en.wikipedia.org/wiki/Nationalization.</p> | At-Large | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html | | | |
| 50. | <p>16 Dec: Cost</p> <p>It is unclear who will bear the costs associated with Contract Co. A suggestion has been made that the IANA contractor (ICANN for the moment) should bear all costs associated with Contract Co. (and of the other components of this model). There has been no formal assessment of these costs, but some estimates of the entire operation have been as high as a multiple of current IANA costs.</p> <p>The possibility of litigation (see below) could push costs much higher. Cost will either have to be borne by the direct customers of IANA (none of who now pay for the service) or by the IANA operator (currently ICANN). Although the contract allows for fees to be levied under certain controlled circumstances, it has never been seriously considered, and if it were, the contract requires that they be based on direct costs and resources, not the infrastructure of Contract Co.</p> <p>Although out of scope for this Names-related CWG, it is unlikely that the IETF and the RIRs would appreciate fees being levied. gTLD registries would likely be willing to pay fees if necessary, but would likely be unwilling to bear costs disproportionate with their usage of IANA. Although some ccTLDs might be willing to pay reasonable cost-based fees, that cannot be said of ccTLDs in general. If costs are borne by the operator, to start, that would imply that ICANN pays for the infrastructure (and presumably start-up costs). ICANNs prime source of revenue is gTLD registrations and that implies that gTLD registrants, through registrar and registry fees, would bear the total cost.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 51. | <p>16 Dec: Jurisdiction</p> <p>The issue of “in what jurisdiction Contract Co. should be incorporated” has been raised repeatedly. The decision of which jurisdiction is ultimately selected may not have a great impact on Contract Co.’s operation, but it could ultimately be a question that is very difficult to resolve. There is some indication that the US government might require that it transfers the responsibility for IANA to a US-based corporation (in fact, the draft CWG proposal has place-holder text which says just that). There is, however, strong pressure from some quarters that this transition be used as the opportunity to reduce the US-centric control over core Internet resources.</p> <p>The possible threat of nationalization is of course a critical decision point (see next point), as is the availability of litigation immunity if it is decided that it is a</p> | At-Large | | |

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| | <p>mandatory requirement.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | | | |
| 52. | <p>9 Dec: Jurisdiction: 1) Sections 2.2.3.4, 2.2.4.4, and 2.2.5.4 state "The jurisdiction for enforcement of the IANA Functions Contract is the United States."</p> <p>In the US, there are state laws and courts and federal laws and courts; I believe that contract law is state law. I think that these clauses should be made more precise by specifying which law applies, and which specific court, by filling in the blanks in the following model:</p> <p>"The law applicable to the IANA Functions Contract is the law of [FILL IN, United States of America] and the venue for disputes is the [SPECIFY whether State or Federal] court of [FILL IN, United States of America]."</p> <p>2) 2.2.6.4 states "The jurisdiction is set per country and territory."</p> <p>This is correct, in the same sense that the answer to most legal questions is "it depends". But it is not particularly informative, because it does not explain what the jurisdiction might be nor, perhaps more importantly, what the applicable law might be.</p> <p>Any dispute between a ccTLD operator and IANA would be a dispute between ICANN, a US entity, and a non-US entity. In the absence of a contract between the ccTLD operator and ICANN, two questions arise: what is the law applicable to the relation (if any) and what is the jurisdiction in which a dispute would be heard and, as the case may be, adjudicated.</p> <p>I think that some legal analysis is required here. The situation might be simpler if a contract binds the parties, because the contract might have choice of law and venue clauses. I see that you provide some examples of that under 2.2.7.1.</p> <p>3) 2.2.7.4 states "The jurisdiction for enforcement will be as per the specific agreements." It would be more precise to say something like: "The law applicable to the relation and the venue for resolution of disputes are specified in the agreements."</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html</p> | Richard Hill | | |
| 53. | 9 Dec: Separation: 3.1 says "The existing separation between ICANN as a policy | Richard Hill | | |

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| | <p>body and ICANN as the IANA Functions Operator needs to be reinforced and strengthened."</p> <p>At present, article I.1 of the ICANN Bylaws implies that ICANN has the overall responsibility for the coordination and allocation and assignment of domain names.</p> <p>I suggest that I.1.1 and I.1.2 of the ICANN Bylaws be modified to read as follow: "1. Under contract, coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, ..." "2. Under contract, coordinates the operation and evolution of the DNS root name server system. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html</p> | | | |

Contract Co.

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| Contract Co. | | | | |
| 1. | <p>23 Dec:</p> <p>Our concerns around the creation of a Contract Co. are that as currently designed, the Contact Co. would be a shell organization that would only have a meaningful role in the ICANN ecosystem if the multistakeholder review team decided to transfer the contract to a new entity. Creating a shell entity limits its attractiveness as a target for potential capture. On the other hand, it may hamper the contracting entity's leverage in negotiations. NTIA, the predecessor entity to the Contract Co., could invoke the power and resources of the United States Government to withstand external pressures, lawsuits, and other challenges to its role as contractor.</p> <p>We have concerns about the rebidding process, and need to ensure that a predictable, open, and transparent process remains that assures the continued stability of the IANA functions. Parameters need to be set for the timing of any potential rebidding. We oppose the introduction of very short contract terms with frequent rebidding processes because such an approach would be costly, time-consuming, and disruptive to the naming community.</p> <p>We have concerns about the level of discretion accorded to Contract Co. In revoking IANA contract. The model proposed by the CWG does not establish much-needed guidelines or limitations on the circumstances under which the IANA Functions could be transitioned to a new operator. The circumstances for re-awarding the IANA functions contract should be limited to issues of non-performance, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms. Transitioning the IANA Functions outside of ICANN would be costly and disruptive not only to registry operators but to all parties that rely on a smoothly functioning DNS. Such an option should only be exercised if ICANN fails to perform the functions adequately.</p> <p>Recommendations: The CWG should engage in further discussion and conduct additional legal analysis, which is needed to identify and mitigate any risks associated with moving the contracting role currently played by the NTIA to the new Contract Co. Further, we also think that a legal analysis will be required to assess where</p> | i2 Coalition | | |

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| | <p>Contract Co. should be incorporated and the implications of deciding upon that legal jurisdiction</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfZsBVnpFHH1.pdf</p> | | | |
| 2. | <p>23 Dec: Contract Co. We are interested in seeing the separation of IANA function operator from ICANN without creating several new legal entities similar to ICANN. The principle of separation is a welcoming one and should be upheld as the basis of the proposal. However, we expect changes to be as minimal as possible, speaking from ccTLD point of view. Replacing the NTIA oversight function with 4 different entities looks too wiewling from the perspective of what really is being transited We do not support the creation of Contract Co. We believe it is not necessary as NIRA believes the MRT which can stand on its own (if properly structured) and can enter into MoU with IANA function Operator is strong oversight mechanism.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx4Rg42iHRTs.docx</p> | NIRA | | |
| 3. | <p>22 Dec: The foremost example of the challenge that the accountability lag has presented is around the notion of separability. The proposal puts forth a new, distinct entity whose primary responsibility is to enter into a contract with the IANA functions operator. There has been considerable discussion of whether or not this is strictly necessary. As it stands, and given the present state of accountability within ICANN, Registrars believe that this Contracting Co. must exist. With the existence of a Contracting Co, the possibility exists (although at the moment it may be remote) to remove the IANA functions from within ICANN. To be clear, the RrSG supports the possibility of separation, and the ultimate accountability measure that a potential loss of contract would imply for ICANN.</p> <p>The proposed simplicity or lightness of the Contracting Co. is a good idea, and reduces the importance of jurisdiction. However, we suggest further legal analysis of an appropriate jurisdiction and would propose that the U.S. would be ideal, as it maintains something akin to the status quo. Canada, or the U.K. would be acceptable alternatives, though Switzerland, and the status and cost</p> | RrSG | | |

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| | <p>associated with that would be problematic</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfsDZ7QOcxD.pdf</p> | | | |
| 4. | <p>22 Dec: Contract Co. We believe that some form of a contract with the IANA Functions Operator is necessary to establish key requirements of the IANA Functions Operator currently provided for within the NTIA agreement. As such, a contracting entity is likely a requirement of any IANA Stewardship Proposal for the naming community. We agree that this entity should be incorporated so as to protect its Directors and staff from personal liability and that this entity should be lightweight in order to minimize costs.</p> <p>gTLD registrants are the primary contributors of funding to ICANN (the current IANA Functions Operator) via fees collected and paid by gTLD Registry Operators and gTLD Registrars. The RySG would oppose a proposal for the IANA Naming Transition that yielded significant cost increases to gTLD Registry Operators and their customers, whether through increased ICANN fees or a requirement by registries to independently fund a new entity. However, there are tradeoffs at play in making Contract Co. a shell company, which merit further consideration. The role of awarding the contract, which would be assumed by Contract Co., is currently played by the U.S. Government, by way of the NTIA, an entity with the power and resources to withstand external pressures, lawsuits, and other challenges to its role as contractor. We believe that further discussion and legal analysis is needed to identify and mitigate any risks associated with moving the contracting role currently played by the NTIA to a shell entity. Further, we agree with many within the CWG-IANA that a legal analysis will be required to assess where Contract Co. should be incorporated and the implications of deciding upon that legal jurisdiction.</p> <p>We support the provisions of the draft proposal that would allow a rebidding process to be initiated at any time if the Customer Standing Committee (CSC) identified significant non-performance issues. We believe that further discussion is required over how regular re-contracting or rebidding processes for the IANA Naming Functions should take place.</p> <p>Historically this process was carried out by NTIA at the end of each usually four-year contract term for the IANA functions. It was a relatively predictable, open,</p> | RySG | | |

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| | <p>and transparent process. We would oppose the introduction of very short contract terms with frequent rebidding processes, as we believe that this would be costly, time-consuming, and disruptive to the naming community. Notwithstanding, we believe that well-reasoned arguments have been made within the CWG-IANA for how regular periodic re-bidding processes could provide for greater stability and predictability in the contracting functions.</p> <p>The current model does not establish much-needed guidelines or limitations on the circumstances under which the IANA Naming Functions could be transitioned to a new operator. We believe that the circumstances for re-awarding the IANA Functions contract should be limited to issues of non-performance, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms. Transitioning the IANA Naming Functions outside of ICANN could be costly and disruptive to registry operators and their customers, and should only be undertaken as warranted by persistent issues of non-performance. The parties best equipped to identify these issues and make performance-based decisions in the context of a rebidding process are the direct customers of the IANA Naming Functions: gTLD and ccTLD Registry Operators.</p> <p>On Key contracting provisions: The RySG has no comments on the key provisions at this time but will continue to monitor them as they are discussed in the CWG and as decisions are made that may impact the provisions from other sections of the proposal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 5. | <p>22 Dec: Contract Co. There are a number of perceived potential problems with the concept of Contract Co. Some of them are unlikely, but since we are only establishing Contract Co. to cover the *possible* need to move from ICANN, we cannot ignore any problem areas with the solution. The security and stability of the root zone depends on it.</p> <p>The following examples are not exhaustive, but will serve to illustrate the level of concern and potential for disruption.</p> <p>Cost</p> | ALAC | | |

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| | <p>It is unclear who will bear the costs associated with Contract Co. A suggestion has been made that the IANA contractor (ICANN for the moment) should bear all costs associated with Contract Co. (and of the other components of this model). There has been no formal assessment of these costs, but some estimates of the entire operation have been as high as a multiple of current IANA costs.</p> <p>The possibility of litigation (see below) could push costs much higher.</p> <p>Cost will either have to be borne by the direct customers of IANA (none of who now pay for the service) or by the IANA operator (currently ICANN). Although the contract allows for fees to be levied under certain controlled circumstances, it has never been seriously considered, and if it were, the contract requires that they be based on direct costs and resources, not the infrastructure of Contract Co.</p> <p>Although out of scope for this Names-- - related CWG, it is unlikely that the IETF and the RIRs would appreciate fees being levied. gTLD registries would likely be willing to pay fees if necessary, but would likely be unwilling to bear costs dis-- - proportionate with their usage of IANA. Although some ccTLDs might be willing to pay reasonable cost-- - based fees, that cannot be said of ccTLDs in general.</p> <p>If costs are borne by the operator, to start, that would imply that ICANN pays for the infrastructure (and presumably start-- - up costs). ICANNs prime source of revenue is gTLD registrations and that implies that gTLD registrants, through registrar and registry fees, would bear the total cost.</p> <p>Jurisdiction The issue of "in what jurisdiction Contract Co. should be incorporated" has been raised repeatedly. The decision of which jurisdiction is ultimately selected may not have a great impact on Contract Co.'s operation, but it could ultimately be a question that is very difficult to resolve. There is some indication that the US government might require that it transfers the responsibility for IANA to a US-- - based corporation (in fact, the draft CWG proposal has place-- - holder text which says just that). There is, however, strong pressure from some quarters that this transition be used as the opportunity to reduce the US-- - centric control over core Internet resources.</p> | | | |

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| | <p>The possible threat of nationalization is of course a critical decision point (see next point), as is the availability of litigation immunity if it is decided that it is a mandatory requirement.</p> <p>Capture The potential problem of Contract Co being “captured” has been discussed at length and the proponents of the model feel comfortable that it can be avoided. Many of these discussions have focused on the entire operation being taken over, and indeed, that may not be too likely. However, a more subtle form of capture is when the balance among stakeholders favors one group preferentially, effectively disenfranchising one or more other groups. With the unknown composition or formation processes for the MRT (which directs Contract Co.), this is potential problem.</p> <p>One version of capture that has not been discussed is nationalization by the country in which Contract Co is incorporated or operates. One can readily imagine a situation where “in the interests of national security”, a government takes over Contract Co., violating one of the principle constraints on the NTIA transfer. Nationalization is not uncommon -- - http://en.wikipedia.org/wiki/Nationalization.</p> <p>Litigation Given that Contract Co. will be awarding a contract for a perceived valuable resource, and more particularly since some proponents of this model believe that there should be a mandatory RFP with the potential for moving the IANA resource, it is quite possible that an entity that loses the contract, or a bidder that is not selected could sue Contract Co. Contract Co. could also be the subject of malicious lawsuits. Regardless of the cause, such lawsuits could be expensive and time-- - consuming.</p> <p>One particularly intriguing case study would be a losing contractor suing because IANA is about to be transferred to another entity, but at the same time, (as described under Costs), the losing contractor who still was the IANA operator at that moment, would be bound to cover the costs of defending Contract Co. against its own lawsuit.</p> <p>It has been proposed that in some jurisdictions, Contract Co. might be given immunity from civil lawsuit.</p> | | | |

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| | <p>That would certainly address this problem, but could ultimately cause others.</p> <p>Rigidity By its design, Contract Co would be very restricted in what it does. By its Articles of Incorporation and Bylaws it would be strictly bound to follow the instructions of the MRT, and its Board would be restricted from changing these rules. Such rigidity has been deemed to be necessary to ensure that its founding principles are honoured and it is bound to support its multistakeholder masters.</p> <p>However, this very rigidity presumes that the world around Contract Co. will be stable and unchanging for the possible unlimited future. It is unclear how it might change if that was required to meet some unforeseen eventuality.</p> <p>The only apparent option would be to give the MRT a capability of altering (or ordering to be altered) the core Contract Co. This presumes that there is no possibility whatsoever that the MRT itself could be corrupted (more on this later).</p> <p>Contract Co. Misbehaviour One cannot ignore the possibility of the Company Co. Board not following the rules under which it should be operating, or a Company Co. employee or contractor not following instructions and the Board not taking suitable corrective action.</p> <p>The normal recourse in such a case it to have some harmed or interested party sue. If Company Co had received the protection from litigation that some proponents believe would be necessary, this recourse would not be available.</p> <p>Risk Any change implies some level of risk. A major change such as removing IANA from ICANN, with a potential result of it being taken over with no overlap of employees or systems would have a great risk of impacting security and stability. The concept of a mandatory RFP every N years has been pushed very strongly by some proponents of the model. Aside from the cost in both money and time on both the MRT and the RFP responder(s), such a process, regardless of a perceived need – essentially, change for the sake of change, is frightening!</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-</p> | | | |

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| | 01dec14/pdfddQ2yQNqpJ.pdf | | | |
| 6. | <p>22 Dec: Section 3.2: Summary of the transition proposal 11. Contract Co: If the Contract Co has additional roles to the one it is being proposed to carry out, these need to be specified. There should be a reference that, "The operation of the Contract Co would be based on the concept of maximum public transparency. The mandate and responsibilities of the Contract Co will need to be clearly defined and limited to its primary role. It should not be possible to change the mandate except through an open and transparent process."</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | Nominet | | |
| 7. | <p>22 Dec: A. Contract Co. Structure: The IPC agrees with the shared community sentiment that ICANN should continue to perform the IANA functions, with the important caveat that ICANN should maintain its headquarters in the United States and remain subject to applicable law in the United States. As such, the IPC supports in principle the Contract Co. structural proposal. However, we also sympathize with community concerns favoring primacy for accountability mechanisms and noting the lack of detail regarding defining contours designed to ultimately ensure accountability. In particular, Contract Co.'s domicile, officer structure, and resources to deal with vexatious litigation all remain undefined in the Proposal. At present, there is also no suggested timeline, limitations on discretion, or other guidelines governing future rebidding of the IANA agreement. These details need to be fully established should the community decide to proceed with the Contract Co. structure.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfS4113lqoCB.pdf</p> | IPC | | |
| 8. | <p>22 Dec: 3. Specifics of the CWG proposal--I agree that there needs to be a separate entity apart from ICANN, holding contract authority now exercised by NTIA on behalf of the global internet community (which is much broader than just ICANN's "stakeholders groups"). That entity would choose the IANA functions operator (presently ICANN), by entering into a contract (for a term of years and containing other necessary terms, conditions, and covenants), and having the power and authority to choose another IANA functions operator in the future, should the need arise. However as to the specifics of the CWG proposal--</p> | John Poole | | |

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| | <p>Contract Co./MRT/CSC/IAP--I would prefer a much simpler, more elegant solution, than what the CWG proposes. Instead, I would suggest a Trust under American or English law, or an international organization formed under Swiss law, with nine Trustees (or Directors), independent of ICANN, nominated and elected (3 each) by three identifiable groups: 1) the technical community (IETF/IAB et al); 2) ccTLD registry operators; and 3) gTLD registry operators.</p> <p>The 9 trustees or directors (hereinafter "Trustees" and "Trust") would serve without pay, and under normal circumstances, meet only once a year via the internet (e.g., Adobe Connect, open to public observers), receive electronically (stored in the Cloud and open to public view) reports and audits of the IANA functions operator, including a copy of all complaints filed with IANA functions operator relating to IANA functions and an annual report of the disposition or status of those complaints. In addition, all contracts entered into between the IANA functions operator (now ICANN) and the independent Root Zone Maintainer (now Verisign) would require approval by the Trustees and be subject to termination by the Trustees should the IANA functions operator contract be terminated or not renewed by said Trustees.</p> <p>With no staff, no office (just an agent for service of process in the chosen domicile and necessary annual filing fees), and full indemnification by the IANA functions operator (as required in the contract), the Trust would have a minimal operating budget funded either by the IANA functions operator, or alternatively, by direct assessments paid by each TLD registry authorized to use the DNS. For those who doubt whether such a "lightweight" solution is viable, I would point to the successful administration of the oldest international sporting trophy and series--the America's Cup sailing regatta--operated successfully since 1857 (without government oversight) by the terms of a Trust document registered in the New York Supreme Court in Manhattan, New York City, New York, which is a (first instance) trial court. An interpretation of the Trust document, when contested, can be taken before that Court for clarification on whether the Trust's terms and conditions are being met.</p> <p>The day-to-day operations of "IANA functions and the Root Zone" should be left to the IANA functions operator (ICANN) and Root Zone Maintainer (Verisign) with periodic reports and audits filed electronically with the Trustees in the Cloud, open for public inspection via the internet. The Trustees could, should the need arise, communicate concerns and questions about the operation of the IANA functions and Root Zone, but the Trustees' remedies would be limited</p> | | | |

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| | <p>to either terminating the IANA functions operator contract “for cause,” or not renewing it at the end of its term.</p> <p>In contrast to the “lightweight” solution suggested above, the CWG draft proposal has chosen an unnecessarily complex structure (Contract Co./MRT/CSC/IAP). Such complexity in this case is really not needed, and is burdensome and problematic.</p> <p>The “devil is in the details,” and the complex CWG draft proposal currently has too many specifics that either have not been “thought through” or are “missing.” I asked a question at the December 3rd Webinar as to how Contract Co. would pay for legal representation in the event of litigation with ICANN—there is nothing in the draft proposal addressing this. The webinar response was that some members of the CWG had “talked about that” and there would be a requirement in the IANA functions operator contract requiring the contractor (ICANN) to fund all litigation expenses (including litigation expenses against ICANN) of Contract Co.—again, these kinds of details need to be thought through and “spelled out.”</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfJLLhkeamll.pdf</p> | | | |
| 9. | <p>22 Dec: Contract co DIFO supports establishing a Contract co since this seems to be the best way to ensure the possibility of removing the IANA functions from ICANN. If a Contract co is to be established it should be lightweight and have no staff.</p> <p>But on the other hand we are open to any other suggestions that will enable the same level of insurance as the Contract co with respect to ensuring that the contract is fulfilled and in worst case an eventual removal of the IANA functions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfHkjcijcPAs.pdf</p> | DIFO | | |
| 10. | <p>22 Dec: Perhaps most importantly, while we understand the rationale for proposing a new “Contracting Co.,” i.e., to serve as contract administrator after the transition of the of the U.S. National Telecommunication and Information Administration’s (NTIA) stewardship role over the IANA functions, we do not</p> | Information Technology Industry Council | | |

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| | <p>believe it is the right approach for securing the desired protections. While establishing a new contracting entity with corresponding severability is one possible way to introduce accountability into the naming functions, we believe this outcome would best be achieved through the implementation of effective accountability mechanisms, e.g., the creation of a “Council of Members.” Indeed, effective accountability reforms would make a contracting entity unnecessary.</p> <p>While well-intentioned, we are concerned that the array of new mechanisms outlined in the proposal would complicate an otherwise straightforward and effective process. This in turn would create new opportunities for “capture” and forum shopping; new avenues for policy relitigation; new uncertainty around jurisdictional issues and the choice of contract law; and multiply rather than reduce community accountability concerns and create. Clearly, none of these outcomes is desirable.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfn2NDTDNstl.pdf</p> | | | |
| 11. | <p>22 Dec: Contract Co. As described in the proposal, the Contract Co. would exist exclusively for purposes of signing the contract with the IANA functions operator with respect of the IANA functions, what is commonly called a ‘paper company’. The need for permanent staff for the corporation after the first contract is signed has yet to be determined.</p> <p>The CWG has recognized the need to secure independent legal advice to support the creation of the Contract Co. as well as the signing of the initial contract. Funding for these legal services should come from the IANA functions operator as a condition of the first contract. CIRA has approximately 0.8 per cent of the total number of domains under management, yet voluntarily provides ICANN with \$75,000 annually. In terms of a financial contribution, this amounts to 2.8 percent of the total IANA functions budget, 350 per cent greater than our share of total domains under management. As a consequence, CIRA should not be required to pay any additional fees with respect to the establishment of Contract Co. or to the operation of the IANA functions. I suspect the majority of ccTLD operators would be similarly opposed to being required to enter into any form of contractual undertaking in respect of the payment of any fees.</p> | CIRA | | |

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| | <p>The draft CWG proposal requires the MRT “to appoint an evaluator assigned to verify that a root zone change request followed all applicable policies and procedures and authorize such change before it is implemented by the RZM.” This is a function that does not currently exist, and will add unnecessary complexity and cost to the overall proposed stewardship process. As noted earlier, the NTIA has clarified its role in the IANA process – it verifies that processes and procedures have been followed by the IANA functions operator by requiring ICANN to self - certify compliance. I see no need to change this procedure in a post - transition environment.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqdvpglUUeo.pdf</p> | | | |
| 12. | <p>22 Dec: The IANA functions should remain within ICANN, and the CWG’s proposal to establish a separate contracting entity to replace NTIA should be rejected. Concerns regarding accountability should be addressed through process improvements within ICANN and through broader accountability improvements within the scope of the Accountability Working Group before the final transition of NTIA’s stewardship role over the IANA functions.</p> <p>The IANA stewardship transition process represents a significant milestone in the evolution of the domain name system (DNS). Google strongly supports an approach that preserves operational stability in this time of change. This is especially important because members of the ICANN community, including direct customers of the IANA functions, generally believe that ICANN is performing well in its role as the IANA functions operator.</p> <p>As a result, Google recommends that stewardship of the functions be transferred to the community without developing a separate contracting structure. Creating a separate contracting structure is fraught with peril for several reasons: (1) It is an ill-defined entity subject to capture. (2) It raises the potential for a power struggle between ICANN and the contracting entity at a time where stability is extremely important. (3) It creates unnecessary bureaucracy and complexity in performing a set of technical duties. (4) It simply shifts the accountability concerns frequently raised regarding ICANN to a different locus.</p> <p>Today, the community often expresses concerns regarding the choices made by</p> | Google | | |

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| | <p>ICANN even though ICANN’s staff reports to the ICANN Board, and the ICANN Board is selected by the multistakeholder community through a bottom-up, community-driven process.</p> <p>Nothing in the proposal suggests that the management of the proposed new structures (Contract Co., the Multistakeholder Review Team, or the Customer Standing Committee) would be more accountable to the community than the ICANN Board. Moreover, all of these risks are magnified because the proposal contains very few details regarding the contracting entity, including where it would be domiciled, who would serve as its officers, and how the structure would ensure that principal decisionmaking responsibility remains within the multistakeholder community.</p> <p>In order to ensure that key IANA functions are performed properly, Google recommends that existing terms be explicitly stated, incorporated into the Affirmation of Commitments, and expanded in some cases. We detail some of these requirements below:</p> <p>(1) A prohibition on subcontracting the naming functions: The stakeholder community should have confidence that it knows the parties actually performing the IANA naming functions. Performance of the functions is too important to delegate to an unvetted, undefined third party.</p> <p>(2) Conflict of interest requirements: Given the importance of ICANN’s role, board members and staff must conduct themselves with utmost integrity.</p> <p>(3) Confidentiality and data protection requirements: ICANN has access to significant amounts of sensitive data. It must take precautions to ensure that such data is securely held.</p> <p>(4) A United States local presence requirement for ICANN: Google believes that it is important for ICANN to retain a presence in the United States because many existing contracts between ICANN and other entities are governed by U.S. law. Retaining a local presence in the United States does not preclude ICANN from opening offices elsewhere.</p> <p>(5) Annual program reviews and monthly performance progress reports: These progress reports allow stakeholders to ensure that the functions are performed properly.</p> <p>(6) Complete transparency of all decision making processes within ICANN, including the recording and publishing of all Board meetings and minutes and a prohibition on the redaction of any Board minutes: An entity with such significant responsibility to the Internet community must operate with the highest degree of accountability and transparency possible. One way of</p> | | | |

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| | <p>achieving this is for ICANN to require all decision-making by its board and executive officers to be a matter of public record, including matters such as contracting, board, executive, and senior staff compensation, and performance reviews of both the policymaking and implementation functions. While unusual for an organization, ICANN's unique role warrants a unique commitment to full transparency.</p> <p>Google understands the CWG's principal purpose in proposing a separate contracting entity is two-fold: "to provide the possibility of replacing ICANN as the IANA Functions Operator at a later date" and to "ensure effective replacement of NTIA," including NTIA's role in ensuring that the IANA functions are performed effectively. We believe that the first goal is merely a means for ensuring second, more-important goal of replacing NTIA's stewardship function is met. Nevertheless, both of these goals can be effectively met without creating a separate contracting entity.</p> <p>First, the community can and should put in place a number of broader accountability mechanisms to guard against individual Board member negligence or malfeasance, such as strengthened review of Board actions, independent audit, and more explicit conflict-of-interest reviews. For example, the Accountability Working Group should explore creating a process to rapidly replace all of ICANN's leadership in the event of gross negligence, malfeasance, or abandonment of the multistakeholder model. The process should include but need not be limited to the possibility of recalling the entire Board en masse. Such measures will not automatically transfer performance of the IANA functions out of ICANN, but -- if designed properly -- they will both serve as a preventative measure to guard against negligence and malfeasance and enable rapid restructuring of ICANN in the event of a crisis.</p> <p>Second, the transition proposal should explore the possibility of ICANN entering into a contract with an emergency back-up provider wherein the second entity would agree to perform the IANA functions only in the event of an emergency. This entity would need to demonstrate the technical competence to perform the functions and commit to perform the functions in a way that is consistent with the open, multi-stakeholder process. The precise parameters of emergency could be defined to include a vote of no-confidence of the Board, but they should be very limited. In the event of a recall, for example, a new Board could temporarily transfer the functions to the back-up entity while it addresses the issues that led to a recall. The concept of requiring an emergency</p> | | | |

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| | <p>provider is well-established in the ICANN context: new generic top-level domain (gTLD) registry operators are required to specify an emergency back-end registry operator to be temporarily activated if a registry operator is at risk of failing to sustain five critical registry functions. Taken together, strengthened accountability improvements and the option to invoke an emergency IANA functions operator should effectively replace the stewardship function performed by NTIA today.</p> <p>Google recognizes that this proposed approach puts significant pressure on the Accountability Working Group and requires that the community reach agreement on key accountability improvements before the transition moves forward. We do not view this requirement as a flaw. As a procedural matter, the groups have recognized their work is linked from the start. The interdependencies have also been recognized by the community, by NTIA, and by ICANN staff. As a substantive matter, if the CWG puts language in its proposal requiring key accountability proposals to be agreed before the transition occurs, this recommendation will ensure that NTIA will not relinquish stewardship of the IANA functions until those recommendations are agreed and a timeline for their implementation is in place.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 13. | <p>22 Dec: The community will have to address significant concerns if it adopts the proposed new structures. The new structures proposed by the CWG could introduce significant instability and uncertainty in the supervision of the DNS. Here we highlight specific concerns with all four of the proposed new structures.</p> <p>Issues Related to the Establishment of a Contract Co. Creating a separate contracting entity replicates the form of the current arrangement without addressing the ultimate question of how to ensure accountability to stakeholders. Moreover, a contracting arrangement works best when there are two discrete contracting entities -- such as one institution (ICANN) and one government (the U.S. Government). It is not a structure well-suited to the current situation, wherein an institution must remain accountable to a vast and diverse set of stakeholders. These accountability mechanisms are best discussed in the Accountability Working Group, which has a broad remit to consider a variety of new mechanisms, including changes to the governance</p> | Google | | |

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| | <p>structure of ICANN’s Board, improvements to the reconsideration and independent review processes, incorporating the Affirmation of Commitments into the Bylaws, and strengthening the role of the ombudsman. Each of these changes has a much greater possibility of ensuring accountability than merely forming a shell corporation.</p> <p>However, if a consensus develops around maintaining a contractual relationship between ICANN and a contracting entity, then the following issues require further evaluation.</p> <p>Benefits and risks of the Contract Co. as a shell entity. As currently designed, the Contract Co. would be a shell organization that would only have a meaningful role in the ICANN ecosystem if the multistakeholder review team decided to transfer the contract to a new entity. Creating a shell entity limits its attractiveness as a target for potential capture. On the other hand, it may hamper the contracting entity’s leverage in negotiations. NTIA, the predecessor entity to the Contract Co., could invoke the power and resources of the United States Government to withstand external pressures, lawsuits, and other challenges to its role as contractor. The CWG should engage in further discussion and conduct additional legal analysis, which is needed to identify and mitigate any risks associated with moving the contracting role currently played by the NTIA to the new Contract Co. Further, a legal analysis will be required to assess where the Contract Co. should be incorporated and the implications of deciding upon that legal jurisdiction.</p> <p>Risks associated with rebidding process. Historically, the rebidding process was carried out by NTIA at the end of each roughly seven-year contract term. It was a predictable, open, and transparent process that assured the continued stability of the IANA functions. Thus far, no parameters have been suggested for the timing of any potential rebidding. Google opposes the introduction of very short contract terms with frequent rebidding processes because such an approach would be costly, time-consuming, and disruptive to the naming community.</p> <p>Level of discretion accorded to the Contract Co. in revoking IANA contract. The model proposed by the CWG does not establish much-needed guidelines or limitations on the circumstances under which the IANA Functions could be transitioned to a new operator. The circumstances for re-awarding the IANA functions contract should be limited to issues of non-performance, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms. Transitioning the IANA Functions outside of</p> | | | |

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| | <p>ICANN would be costly and disruptive not only to registry operators but to all parties that rely on a smoothly functioning DNS. Such an option should only be exercised if ICANN fails to perform the functions adequately.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 14. | <p>22 Dec: With respect to the "Contract Co." organization, Brazil considers that any institution replacing NTIA's role as IANA function contract administrator should not be subject to the jurisdiction of a single country, unless all stakeholders should so decide.</p> <p>Therefore, having in mind that an innovative multistakeholder model is required, Brazil recommends that the CWG proposal should resort to International Law expertise in order to evaluate different alternatives of juridical personality for the proposed "Contract Co."</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | Brazilian Government | | |
| 15. | <p>22 Dec: Contracting entity While we understand ideas behind the suggestion to put in place a contracting entity, we are concerned that the current proposed shell-structure might make it subject of attack. Independent legal advice should be sought to provide clarity on this aspect, assess the risks and identify solutions. The same should be done with regard to the alternative internal-to-ICANN proposal. We believe that the choice of jurisdiction should only be made on sound, legal grounds. In particular the liability aspects (or immunity from legal challenges) should be explored in detail. IANA in the ICANN framework, but with a certain degree of separation. In line with the principle that stability and security of the IANA function are crucial in this process, CENTR fully supports the idea that IANA currently remains a functionally separated organization within the ICANN framework but believes that a clear, organizational separation is needed to maintain full accountability in the future¹. In this context it is also important to underline the continuing need to separate ICANN as a policy body and ICANN as the (current) IANA functions operator. Therefore, CENTR would welcome a further enforcement of that separation.</p> | Centr | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf | | | |
| 16. | <p>22 Dec: 二、方案草案中提出设立合同公司 (Contract Co.) ,作为与 IANA 职能运营机构签订合同的主体。IANA 职能的法律管辖权问题是各方关注的重要问题,这与合同公司的设立地点和形式有直接关系。我们认为方案中应当说明合同公司的法律管辖权。并且,我们希望提案中指出 Contract Co. 将以何种方式对 IANA 职能运营机构进行制约。</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdythM9wBy3.pdf</p> | China Academy of Information and Communication Technology | | |
| 17. | <p>22 Dec: In respect of the specific entities proposed by the CWG-IANA: Contract Company: • Should “own” or be the steward of the key IANA functions assets – the root zone, the IP addresses of the A root server, the domain names, the DNSSEC keys. • Needs a suitable set of indemnities from ICANN (or any future Operator) such that ICANN protects both it, and the MRT that directs its actions. • Structure and jurisdiction are important so as to prevent scope creep and make sure there is accountability. There are advantages and disadvantages to any jurisdictional choice. We look forward to seeing the future work of the CWG on this matter.</p> <p>There is one issue on which the proposal is silent which we recommend further work on: the Contract Company needs the ability to ensure that root zone management is conducted consistent with decisions made by the IANA Functions Operator it selects. That is not dealt with in the current proposal so far as we can see.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | InternetNZ | | |
| 18. | <p>22 Dec: Although we realize that important details need to be filled in, we also support the basic structures set out in the plan, namely: • A lightweight, “shelf corporation” as Contractor. A separate, independent contracting entity is required to maintain proper oversight of ICANN. We appreciate the way the concept of a lightweight Contract Co. can avoid capture, avoid growth and ‘mission creep’ dynamics, and serve a single well-defined</p> | NCSG | | |

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| | <p>function based on instructions from a Multistakeholder Review Team. We recognize that legal advice on the design, operating methods and jurisdiction of such a structure is urgently needed, but we are confident that these issues can be resolved.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | | | |
| 19. | <p>22 Dec: As the details of the plan are fleshed out, we have the following concerns, or would propose the following modifications:</p> <ul style="list-style-type: none"> • As noted above, the legal design of the Contract Co. needs to be further developed based on expert advice. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | NCSG | | |
| 20. | <p>21 Dec: Contract Co</p> <ul style="list-style-type: none"> • Purpose of Contract Co: The Contract Co should be extremely light-weight and its purpose should be limited to holding contracts for the names community. The Contract Co should not become a vehicle for policy related collective action by the names community. To operationalise this concept (i) the Memorandum of Association (MoA/By-laws) of Contract Co should narrowly limit the activities of Contract Co; and (ii) the MRT should be specifically recognised as an independent entity outside the Contract Co. • Term of IANA Functions Contract: The term of the IANA Functions Contract should be 3+2+2 i.e. an initial duration of three years with two options of renewal of two years each. The renewals should be at the discretion of the MRT. There should be a mandatory RFP at the end of the contract term. Only for the purpose of the stewardship transition, ICANN should be allowed to retain IANA for an initial period of two years (Sept 2015 to Sept 2017) after which RFPs should be conducted periodically. • Jurisdiction of Contract Co: There needs to be predictability in the IANA Functions Contract. Therefore, the jurisdiction of the Contract Co and the jurisdiction of the IANA Functions Contract should be a country/state where contract law and corporate law is well developed. It is also recognised that one of the objectives of the NTIA announcement is the globalisation of the stewardship. Therefore, as token recognition of globalisation, the jurisdiction of the Contract Co should not be the United States. Switzerland is a neutral country with well developed contract law and corporate law; and it is suggested as the preferred jurisdiction for Contract Co. • Financing of Contract Co: The Contract Co should be | Rishabh Dara Student, IIM Ahmedabad | | |

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| | <ul style="list-style-type: none"> ◦ reimbursed/indemnified for all expenses (both legal and administrative expenses) by the IANA Functions Operator as part of the IANA Functions Contract; and ◦ financed by a crowd-funded 'Internet Freedom Corpus' where individuals and Governments should be allowed to voluntarily contribute. <ul style="list-style-type: none"> • By-Laws of the Contract Co: The by-laws (or the articles of association) of the Contract Co should explicitly delegate contract related authority to the MRT. Precaution should be taken to ensure that the by-laws of the Contract Co can not be easily modified resulting in capture of Contract Co by a rouge board. I suggest that a subgroup within the CWG-Stewardship should produce a draft template of the proposed by-laws, as it will be help the global community to better understand the (i) relationship between Contract Co and MRT; (ii) the scope of activities to be performed by Contract Co. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbn0hCY.pdf</p> | | | |
| 21. | <p>20 Dec: In terms of firm recommendations for changes.</p> <p>* Allow the Contract Co. to ask as the approver of changes through the contract.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00016.html</p> | Kieren McCarthy | | |
| 22. | <p>18 Dec: Contract Co</p> <ul style="list-style-type: none"> • BRG agrees a legal entity is required to be able to contract. • There needs to be greater clarity around exactly what role this contract company plays. • The advantages and disadvantages of a separate contract company compared with alternative arrangements (such as making this role internal to ICANN) need to be listed. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfprMbyPZTHi.pdf</p> | Brand Registry Group | | |
| 23. | <p>16 Dec: The ALAC strongly opposes the concept and implementation of Contract Co. The creation of this entity is driven by the principle of separability – the ability to sever all ties between the IANA function and ICANN. All parties seem to believe that the current service level is high, and that there is no reason to consider such separation at the moment. Given that the price of the service is already zero, the only motivation for moving is that at some time in the future, the service level degrades or that ICANN otherwise mismanages or attempts to manipulate IANA. The ALAC believes that the Accountability CCWG</p> | At-Large | | |

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| | <p>can introduce changes to ICANN to ensure that such problems can be remedied without having to risk a transition to a brand new and untested IANA service to manage the Root Zone and without risking having to break the IANA Root Zone management from the other IANA functions (since it is unclear that the IETF and RIRs will be dissatisfied at the same time, or would choose to work with the MRT and Contract Co. to select a new IANA operator.</p> <p>The core question is whether the complexity, cost and risks of the proposed model is worth the benefits of being able to separate from ICANN, or can we ensure that ICANN can be suitably controlled so as to allow a far simpler stewardship transition, and one where we preserve the current level of stability and security.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | | | |
| 24. | <p>16 Dec: Contract Co. Misbehaviour</p> <p>One cannot ignore the possibility of the Company Co. Board not following the rules under which it should be operating, or a Company Co. employee or contractor not following instructions and the Board not taking suitable corrective action.</p> <p>The normal recourse in such a case it to have some harmed or interested party sue. If Company Co had received the protection from litigation that some proponents believe would be necessary, this recourse would not be available.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |

Multi-Stakeholder Review Team

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| MRT | | | | |
| 1. | <p>23 Dec: Our concerns regarding the Multi-Stakeholder Review Team (MRT) center around its ability to limit its mandate to truly technical concerns. In the current proposal, the MRT retains discretion over contracting decisions related to the IANA functions, including deciding when a rebidding process should be opened, as well as managing and determining the outcome of that resulting request for proposal process. Granting this much power over a set of technical and implementation functions to the MRT could allow for capture and re-litigation of already decided non-technical policy decisions. In particular, including a broad variety of technical and non-technical stakeholders on a review team that is supposed to supervise purely technical functions could detract from the focus on operational performance and expose the IANA functions to the possibility of interest capture and policy reformulation. Though the exact composition has yet to be determined, a large body that includes a variety of interests could also be susceptible to external lobbying by entities that want the body to play a role in influencing or enforcing policies developed within the GNSO and ccNSO and implemented by the IANA functions operator.</p> <p>Recommendations: It is clear that the MRT could operate as a successful check on over-reaching or negligence by the ICANN Board. However, the proposal does not make clear how the power of the MRT would itself be checked in the event of an overreach by that group. Without an answer to this question, the proposal merely displaces, rather than solves, a key issue regarding accountability.</p> <p>Before agreeing to establish an MRT, the community should require a clearer explanation of the MRT's mandate and composition, including bylaws or other organizational documents.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfZsBVnpFHH1.pdf</p> | i2 Coalition | | |
| 2. | <p>23 Dec: NIRA supports the proposed MRT and its functions but without the Contract Co attachment. The entity should include stakeholders outside ICANN</p> | NIRA | | |

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| | <p>constituencies and should be independent of the ICANN Board. It should be positioned to contract with the IANA Functions Operator and has the powers to call for a rebid in the event of unsatisfactory performance of the current operator in service delivery.</p> <p>We support the adoption of the contract contents of the NTIA contract except for C2.1 dealing with exclusive country location of the IANA function operator to USA based company or organization. It is our considered opinion that this clause be deleted in the MoU.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx4Rg42iHRTs.docx</p> | | | |
| 3. | <p>22 Dec: The exact composition of the MRT is not yet known, and it will be crucial to get this right. The MRT needs to be robust enough to avoid capture from external forces, while at the same time lean enough to avoid scope creep. It's important that policy development remain within the existing structures (like the GNSO), and that the MRT remains focused on implementation, RFPs and rebidding. The spectre of the MRT developing into a parallel ICANN is not one to take lightly.</p> <p>We would strongly encourage further work to identify a suitable composition, as well as ensure that the scope of the MRT activities are carefully bounded. As mentioned above, contracted parties whose day to day business relies on the security and stability of the IANA functions are ideally situated to oversee these functions.</p> <p>We'd like to reinforce our concerns around the potential danger of overloading the Multistakeholder Review Team; careful selection of membership and clear boundaries for operation are required</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfsDZ7QPOcxD.pdf</p> | RrSG | | |
| 4. | <p>22 Dec: Multi-Stakeholder Review Team As registry operators and direct customers of the IANA function, we believe that a primary focus for the MRT should be the operational performance of the IANA Functions Operator. As direct customers of the IANA function, we believe that registry operators are in the best position to examine and determine if the service levels and operational performance of the IANA Functions Operator is</p> | RySG | | |

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| | <p>satisfactory and worthy of continuance, or whether they are sufficiently deficient that an alternative operator should be sought.</p> <p>In the current proposal, the MRT retains:</p> <ul style="list-style-type: none"> • Discretion over contracting decisions related to the IANA Functions • Deciding when a rebidding process should be opened • Determining the outcome of any rebid Request for Proposal (RFP) process <p>As such the MRT has considerable decision-making authority over the IANA functions, with insufficient checks and balances on this authority. The broad composition suggested for the MRT could also detract from focusing on operational performance and expose the IANA naming functions to the possibility of interference in, or reopening of, established policies by an IANA oversight body.</p> <p>Though the exact composition of the MRT has yet to be determined, we envision that a body that provided seats to all interested stakeholders (inside and outside the ICANN community) could end up being large in size and bring into play considerations other than operational performance. With this expanded size and set of interests, the MRT would be more susceptible to external lobbying, or to internal capture, by members that want the body to play a role in influencing or enforcing policies developed within the GNSO and ccNSO and implemented by the IANA Functions Operator. Similarly, the composition of the MRT could be manipulated to enable the goal of some to take the IANA function out of ICANN, regardless of whether the current service levels and operational performance is being undertaken to the satisfaction of its direct customers.</p> <p>With these concerns in mind, we believe that the composition of the MRT should adequately reflect the direct customers of the IANA function, namely TLD registry operators; and the primary focus for the MRT should be concerned with operational performance. The TLD registry operators should guide measurement.</p> <p>Aside from the composition and focus issues, we are also concerned with the potential implications of having an unincorporated entity retaining the ultimate discretion over whether to re-award the IANA Functions Contract. We believe that further analysis is necessary to determine whether this could expose its representatives to personal liability. Additionally, like Contract Co. we believe that organizational documents, including clear bylaws with a well-defined and</p> | | | |

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| | <p>limited mission statement, would be necessary for the MRT to ensure that members act within their mandate.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 5. | <p>22 Dec: Multistakeholder Review Team -- - MRT</p> <p>The Multistakeholder Review Team is the core of the proposed model. It is essentially the operating arm of Contract Co., since it is delegated responsibility for determining the content of RFPs, evaluating their responses, determining the terms and conditions of contracts, evaluating overall performance, determining any remedial action necessary (up to and including breach and termination), budget review and performing a variety of activities currently performed by the NTIA. In earlier version of the model, it was named the Periodic Review Team with that the intent that it would only be convened when there was a specific task (such as an annual review) It has now been acknowledged that although it might not need to meet very regularly, it needs to be ready.</p> <p>Quite simply, if the MRT cannot be assured to be 100% reliable, the entire model collapses.</p> <p>It is unclear what entity or entities is envisioned as convening the MRT, establishing who is and is not an eligible stakeholder, how that evolves over time, whether the participants are remunerated or not and who funds it.</p> <p>These are not trivial questions. It has been suggested that the MRT could be similar to the CWG itself, or the IANA ICG. But these are convened and funded by ICANN. In a scenario where Contract Co is compelled to separate IANA from ICANN, there is little reason to believe that ICANN would continue participating, or indeed if Contract Co. (and the MRT) would want to trust ICANN to play this role if the intent is complete separation.</p> <p>Whoever convenes the MRT may consciously or unconsciously impact how MRT decisions are made based on the mix of stakeholders allowed to participate. It is easy to see these decisions at work. The IANA CWG (as an example), allows 2- - 5 Members per stakeholder including those outside the ICANN community and unlimited Participants. The Accountability CCWG also allows 2- - 5 Members and unlimited Participants, but no Members from outside of ICANN’</p> | ALAC | | |

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| | <p>s component organizations. At least one proposal for the MRT called for restricting some stakeholders to fewer seats than other stakeholders (GNSO@4, ccNSO@5, Root Servers@2, GAC, SSAC and ALAC@2 each). Each subtle difference impacts the decisions that the MRT will make. If, as envisioned, decisions will be made by consensus (that is, the vast majority but not unanimous) a sufficiently small allocation of seats implies being able to be completely ignored.</p> <p>Another unknown about the MRT is just what sort of entity it is. It will be referenced in Contract Co.'s Articles of Incorporation and/or its Bylaws as the entity which will give Contract Co. its instructions and perform most of the work associated with Contract Co. It has not been specified just what this relationship is – a contract, a Memorandum of Understanding? Surely there will need to be SOME document describing the relationship and the responsibilities of both parties, yet we have been told repeatedly that only formally incorporated bodies can enter into such agreements without having the individual participants personally liable for actions of the entity. Not having any corporate structure and yet requiring such a structure seems to be a direct contradiction.</p> <p>One possible option that removes this unknown is to have the MRT as a component part of Contract Co. But at that stage, Contract Co. is no longer a bare-- - bones entity and in fact has become a mini-- - ICANN, something that we were trying to avoid. So we are back with a large question mark here.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfddQ2yQNqpJ.pdf</p> | | | |
| 6. | <p>22 Dec: Section 3.2: Summary of the transition proposal 12. Multi-stakeholder Review Team: Again we believe that, “The mandate and responsibilities of the MRT will need to be clearly defined and limited to its primary roles. It should not be possible to change the mandate except through an open and transparent process” could usefully be added. This should be in the chapeau text. First bullet: Cross-reference needs to be corrected (it is not Annex 3). Second bullet: “Within its clear and limited mandate, making key decisions...” Fourth bullet: Add “... raised by the Customer Standing Committee or from elsewhere, subject to the clearly defined mandate of the MRT”. Fifth bullet: Elsewhere we refer to annual reports and this could be a useful timeframe for periodic reviews. It would be useful to clarify that the periodic</p> | Nominet | | |

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| | <p>reports should be ex-post assessments of performance against commitments and of conformity of decisions against the agreed policy framework. Reports need to be widely published and open to discussion.</p> <p>Additional enforcement role: We have serious concerns about any enforcement role for the MRT except in the annual ex-post review on issues requiring subsequent corrective action if there appear to be systemic problems. Introducing an additional layer of authorisation or appeal for specific decisions is undesirable as it could introduce additional delays, might open liability for costs incurred because of delays, and could be open to abuse. In addition we would note that the complexity of some decisions (for example in the delegation and redelegation of ccTLDs) requires considerable knowledge and experience and is not a role that could be performed by the MRT, the Independent Appeals Process or by an independent certification agent.</p> <p>Section 3.4.2.2: Multi-stakeholder Review Team</p> <p>23. We would suggest that, “The MRT would meet annually to review overall IANA Functions Operator performance and other concerns and report to the global multi-stakeholder community.” Current wording makes this committee very inward-facing. However, the decisions made by the MRT could have wide-reaching consequences and its conclusions should be properly understood and debated by the wider community.</p> <p>24. Based on this view, “The responsibilities of the MRT should be clearly defined and the mandate limited to:” and most decisions should go out to full and open public consultation. (In particular, all the functions related to contracting decisions; negotiating and funding improvements to the service; and starting enforcement action should not be carried out without wide consultation.)</p> <p>25. A number of the administrative roles (and in particular C.2.12.a-C.4.6) look more appropriate for the CSC (if the CSC is maintained): these are all operational issues best dealt with by technical experts who have an interest in maintaining quality of service.</p> <p>26. We would also note the scale of responsibilities for this Committee, especially should there be performance issues with the IANA functions operator or during a periodical re-bid process. We have already commented on whether this is a tenable approach for a committee of volunteers.</p> | | | |

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| | <p>27. One area where the MRT could take a leading role would be in preparing ex-post reviews of performance and decisions. This would help show where there are deficiencies and causes for concern that could be taken up with the IANA functions operator.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |
| 7. | <p>22 Dec: D. MRT Representation/Balance/Mandate: To support and enhance the multistakeholder model of managing Internet resources, the oversight mechanisms associated with the transition of the IANA functions should reflect the full range of private sector interests affected by the management of the IANA Functions, along with other stakeholders. We would not support an MRT which served to re-litigate policy debates, or breathe life back into disagreement and consensus within the policy development process. Adequate representation of the private sector within the post-transition stewardship of IANA is necessary for accountability to ensure that the diversity of private sector stakeholder views and interests are reflected, to avoid capture, to provide legitimacy for the entire model and, overall, to ensure the effective oversight and accountability of the IANA Functions by the global multistakeholder community. The proposed framework, establishing “Contract Co.,” the “Multistakeholder Review Team” (“MRT”), the “Customer Standing Committee” (“CSC”), and the “Independent Appeals Panel,” requires balanced representation of non-registries and private sector interests to ensure effective operational and technical oversight of the IANA Functions. For example, in terms of the proposed post-transition oversight structure, the various private sector interests currently placed within ICANN's Commercial Stakeholder Group cannot be adequately represented by one representative “slot,” but require broader representation to reflect the full range and diversity of global stakeholder interests within the private sector.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfS41I3lqoCB.pdf</p> | IPC | | |
| 8. | <p>22 Dec: On the proposed structure (i.e. the new bodies proposed). MRT : We see the MRT as the heart of the proposal, and view this body as the true steward of the multistakeholder approach. Therefore, this body should be focused on organizing the multistakeholder open consultations rather than “representing” the various stakeholders. In order to do so, and to be fully in</p> | JPNIC | | |

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| | <p>position to draft contracting decisions, this body must be adequately funded and staffed. And once again focus on drafting contracting decisions after extensive consultations, as the review of technical performance should lie with the CSC. Any decision made by the MRT when it comes to reassigning the IANA naming function should be decided, not only by the MRT, but proposed by the MRT to the direct customers and other parts of the community. This mechanism still has to be described.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00042.html</p> | | | |
| 9. | <p>22 Dec: Multistakeholder Review Team - MRT DIFO supports the creation of a MRT but we think that this should have a size that is representative of ICANN and the global internet community and at the same time is not too big. A size of 10 – 12 people should be the maximum size. While the MRT will ensure an ongoing review there is still a need for a periodic review team like e.g. the ATRT so that a thorough review is done every three years by independent members. This could be a substitute for a tender and a way to find out if there is a need for a tender.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfHkjcjicPAs.pdf</p> | DIFO | | |
| 10. | <p>22 Dec: Customer Standing Committee and Multi-stakeholder Review Team Essentially SIDN is of the opinion that both structures should be as lightweight as possible. The IANA function is an administrative function only and the oversight should therefore be limited to specifically that function. We do not see why the CSC should be composed of others than the registries, as it is supposed to deal with the day-to-day business. As expert it should be upon the CSC to set the service levels using open, transparent and inclusive consultations and oversee IANA's performance on the service levels. The role of the MRT should be, as originally proposed, be limited to those situations where the MOU/agreement itself needs to be changed including the situation where IANA non-compliance with the MOU/agreement is such that separation might be necessary.</p> <p>For practical reasons we feel that the MRT should be a standing committee so that it will always be available if necessary, but at the same time stay as much dormant as possible. With regard to both structures safeguards with regard to capture and mission creep are extremely important. A lot of further detailing with regard to these structures is necessary.</p> | SIDN | | |

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| | <p>Last point on these new structures is that none of them should replicate the role of the Root Zone Management Process Administrator role NTIA currently has. The public posting of all change requests should be sufficient to avoid clear mistakes missed by IANA and the registry manager concerned. The CSC nor the MRT nor an independent certification from a counsel should have a role with regard to ccTLD delegation and redelegation request. What might help in this respect is the publication by IANA of the complete intended delegation/redelegation decisions for public comment prior to taking the final decision.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | | | |
| 11. | <p>22 Dec: In addition to calling for a new contract entity, the proposal recommends creating a Customer Standing Committee (CSC) and a Multistakeholder Review Team (MRT). Most of the Contracting Co. authority would be wielded by the MRT, but details regarding this entity are murky. For example, it is intended to be multi-stakeholder but it is unclear whether that is necessary when the body itself will not be creating policy, but rather, overseeing the implementation of policy already created via the multi-stakeholder model. There is also a proposal to create an Independent Appeals Panel (IAP) that would provide redress mechanisms for those impacted by Board decisions as it relates to the IANA functions; however, it is unclear how this process will mesh with other accountability mechanisms currently being discussed as a part of the separate Accountability Process.</p> <p>While well-intentioned, we are concerned that the array of new mechanisms outlined in the proposal would complicate an otherwise straightforward and effective process. This in turn would create new opportunities for “capture” and forum shopping; new avenues for policy relitigation; new uncertainty around jurisdictional issues and the choice of contract law; and multiply rather than reduce community accountability concerns and create. Clearly, none of these outcomes is desirable.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfn2NDTDNstl.pdf</p> | Information Technology Industry Council | | |
| 12. | <p>22 Dec: Multi - stakeholder Review Team On a planned basis, the MRT should meet only every few years in anticipation</p> | CIRA | | |

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| | <p>of the expiry of the existing IANA functions contract. This would be consistent with the need to keep the overall post - transition arrangements lightweight and the role of the MRT minimal.</p> <p>At that meeting, I foresee the MRT initiating a public comment process open to the broad Internet community (similar to the process undertaken by the NTIA in 2011) on any necessary changes to the contract that should be implemented as part of the renewal. As an event determined solely by the terms of the contract, the question of issuing a RFP or tender seeking other operators would not necessarily be part of the normal contract renewal process.</p> <p>In the event of significant operational performance issues identified by the CSC, the MRT could choose to initiate a public consultation on the need to issue a RFP. I believe such a public process should be sufficient to convince the IANA functions operator to address the performance issues. If the issues are not resolved, the MRT would have the mandate to initiate the RFP process on the conditions that support to do so is expressed in the outcomes of the public consultation and that the terms of the contract permit such an action.</p> <p>Given that the role of the MRT would be restricted to dealing with operational performance issues with respect of the services delivered to IANA direct customers (the naming, numbering and protocol - setting communities, the root server operators), it follows that actual decision - making authority should be left to those entities. Other community stakeholders could participate in the public consultations held prior to decisions being taken on larger issues, including the terms for a renewal of the contract, or whether to issue the RFP.</p> <p>Structured in this manner, the MRT would only require infrequent meetings. These meetings should be open for all community members to participate as observers. With open meetings and a public consultation process before any major decisions, the principles and spirit of the multi - stakeholder model would be respected.</p> <p>Should a decision be taken to proceed with a RFP by the MRT, it would need to establish a special team to deal with this process, and that this team would need to have access to professional advice, including legal advice, which could be funded by the IANA functions operator (currently ICANN) as a condition of the existing contract.</p> | | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqdvqqlUUeo.pdf | | | |
| 13. | <p>22 Dec: CSC and MRT objectives and composition The participation of representatives in the CSC and the MRT should address the specific concerns related with the security, stability and resiliency of the IANA functions and should strictly abide to these principles and clerical process that attach objectivity and neutrality to operational concerns, of relevance to the international Internet community in general. The CSC should be a technically competent, neutral body concerned with operational performance. Recent discussions on the lists and some of the strawman proposals on the MRT to have an overarching, duplicative mechanism of representation of already existing SOs / ACs in this body are not considered to be per se conducive to an accountable and transparent oversight body of the IANA functions. On the contrary, we believe that an increasingly politicized and large MRT might backlash the main objectives it intends to accomplish. If it becomes so complex that only deep insiders who are able to politically maneuver – with the necessary linguistic and cultural skills, then the MRT is not accomplishing its mission and it will not be seen as a reliable, trustworthy, comprehensible nor legitimate structure to the global community. The MRT functions and its structure should be kept in its minimal form.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFvIs66SVvO.pdf</p> | LACTLD | | |
| 14. | <p>22 Dec: The Centre for Communication Governance at the National Law University, Delhi reserves its comments on the draft transition proposal pending the CWG's final recommendation on the exact composition of the Multistakeholder Review Team and the Customer Standing Committee. Transparency in the election of MRT and CSC members will render both entities accountable to the larger community. Although the draft proposal asserts "Contract Co" will likely be a not-for-profit corporation, there is no discussion on the legal character of the Multistakeholder Review Team. The CWG, it is expected, will answer these concerns in the final report.</p> <ol style="list-style-type: none"> 1. Will the MRT be incorporated under US law? 2. Will MRT members be immune from personal liability in lawsuits? 3. If IANA is to be maintained as a "separate division" within ICANN, what would be the nature of the relationship between the Multistakeholder Review Team and the ICANN Board of Directors? | National Law University Delhi | | |

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| | <p>4. Given the functional separation so prescribed, why is the MRT expected to meet in conjunction with ICANN meetings?</p> <p>5. Would ccTLDs who are not members of the ccNSO be represented in the MRT?</p> <p>6. Which organisation or entity will fund the operational expenses of the MRT and CSC?</p> <p>7. In drafting the terms of agreement between Contract Co and the IANA functions operator, is the MRT expected to obtain independent legal counsel?</p> <p>8. Will the MRT have a significant role in Root Zone Management?</p> <p>9. In addition to a transparent and representative selection process, will ongoing transparency and accountability be embedded in the functioning of the Multistakeholder Review Team?</p> <p>10. Would the MRT play a role, if any, in the development of ICANN bylaws relating to IANA-related policies?</p> <p>11. What would be the nature of the relationship between the MRT and registry operators?</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfv3vvpIOI2.pdf</p> | | | |
| 15. | <p>22 Dec:</p> <p>While the CWG's efforts to create functional separation between ICANN and the IANA functions operation is appreciated, the Multistakeholder Review Team and the Customer Standing Committee should not become unaccountable structures. In particular, it is hoped the CWG will address concerns around overlapping memberships in the MRT and CSC. The terms of reference as well as the tenure lengths of MRT members are equally important (it is expected that membership would be equitable and rotated frequently). Greater clarity on the relationship between the ICANN Government Advisory Council and the MRT would also be appreciated.</p> <p>In formulating its final recommendations, the CWG should not end up creating a parallel "super-structure" without addressing its accountability to the community. Questions regarding funding of all four entities proposed are critical and must be addressed by the CWG in its final report. The CWG should also liaise with the Cross-Community Working Group on Accountability to prevent overlap of accountability-related issues on naming functions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfv3vvpIOI2.pdf</p> | National Law University Delhi | | |
| 16. | 22 Dec: | Google | | |

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| | <p>The community will have to address significant concerns if it adopts the proposed new structures.</p> <p>The new structures proposed by the CWG could introduce significant instability and uncertainty in the supervision of the DNS. Here we highlight specific concerns with all four of the proposed new structures.</p> <p>Concerns regarding the Multi-Stakeholder Review Team’s (MRT) ability to limit its mandate to truly technical concerns. In the current proposal, the MRT retains discretion over contracting decisions related to the IANA functions, including deciding when a rebidding process should be opened, as well as managing and determining the outcome of that resulting request for proposal process. Granting this much power over a set of technical and implementation functions to the MRT could allow for capture and re-litigation of already decided non-technical policy decisions. In particular, including a broad variety of technical and non-technical stakeholders on a review team that is supposed to supervise purely technical functions could detract from the focus on operational performance and expose the IANA functions to the possibility of interest capture and policy reformulation. Though the exact composition has yet to be determined, a large body that includes a variety of interests could also be susceptible to external lobbying by entities that want the body to play a role in influencing or enforcing policies developed within the GNSO and ccNSO and implemented by the IANA functions operator.</p> <p>Concerns regarding the accountability of the MRT. It is clear that the MRT could operate as a successful check on over-reaching or negligence by the ICANN Board.</p> <p>However, the proposal does not make clear how the power of the MRT would itself be checked in the event of an overreach by that group. Without an answer to this question, the proposal merely displaces, rather than solves, a key issue regarding accountability.</p> <p>Concerns regarding the mandate of the MRT. Before agreeing to establish an MRT, the community should require a clearer explanation of the MRT’s mandate and composition, including bylaws or other organizational documents.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 17. | <p>22 Dec: On the other hand, the Brazilian Government understands that the proposed Multistakeholder Review Team (MRT) should include members from all</p> | Brazilian Government | | |

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| | <p>interested stakeholder sectors (civil society, private sector, government, academia and technical community), taking geographical and gender balance into account.</p> <p>As the MRT would have stewardship responsibilities towards the IANA functions operator, its composition should not be necessarily based on the current multistakeholder model adopted within ICANN (i.e. distribution based on SOs/ACs).</p> <p>Although not within the scope of the CWG, it would seem natural that the MRT, by being the main decision body in the IANA functions contract administration set up, should have responsibilities beyond the naming related IANA functions. It would necessarily be involved in administrative issues of the other parts of the contract, namely the number and protocol parameters related functions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | | | |
| 18. | <p>22 Dec: For all the different organizations suggested the mandate and responsibility should be clarified and it should not be possible to change the mandate without through a transparent process. We are concerned that references to the evaluation of delegation and redelegation reports can be interpreted as assigning additional authorities to new committees and bodies.</p> <p>As for the MRT (Multistakeholder Review Team) the composition of the group is essential. We do not approve that it should be possible for a group of non- - registries to reassign the IANA contract based on anything else than serious performance issues. It seems that we could end up with a very large group, and we are afraid that the registries – ccTLDs and gTLDs – who are the real customers of IANA – could be outvoted. This will mean that one of the essential elements for a secure DNS is out of the hands of the registries. The ccTLD operators have invested significantly in security, robustness and stability of our operations for many, many years. It is very important that any key process in the ccTLDs operations is not in the hands of any interest group, leaving TLD operators with a single point of failure.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfiVFdJVu8t.pdf</p> | UNINETT Norid AS | | |
| 19. | 22 Dec: | Centr | | |

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| | <p>Multistakeholder Review Team (MRT)</p> <p>We take note that the proposal assigns a significant number of responsibilities to the MRT. Some of those responsibilities are more of an administrative nature and therefore, should be assigned to the CSC, in particular C.2.12.a-C.4.6. Even if these functions are reassigned to the CSC, we caution for the workload that members of the MRT will face. In particular if the situation ever occurs where the IANA functions contract needs to be reassigned, it is unlikely that more than a few members will have the necessary resources to handle the workload. Without strong support from independent staff this situation creates possible vulnerability that should be adequately addressed in the proposal.</p> <p>As ccTLD registry operators, we have invested significantly in security and stability of our operations at multiple levels. It is essential that any key process in our operations is not in the hands of any interest group, leaving TLD operators with a single point of failure. We would find any proposal that allows the reassignment of the IANA functions by a majority of non-registry operators on any grounds other than consistent bad performance of the IANA functions operator unacceptable. We recommend that this risk is removed by carefully addressing it in the scope and decision making mechanisms of the MRT.</p> <p>We believe that the strength of the current IANA functions contract was built on the two rounds of open consultations. During those consultations, all stakeholders had the opportunity to have their voice heard and their interests acknowledged. We strongly recommend exploring the opportunity to use this or similar mechanisms in the future and avoid trying to use the composition of the MRT to that effect.</p> <p>On page 73 it is stated that the MRT will appoint an evaluator who should assess that a root zone change request followed all applicable policies and procedures and authorize such changes before their implementation by the RZM. We do not believe that such a role is necessary, in particular as we expect the full automation of root zone changes (with exception of delegation and relegation requests).</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | | | |
| 20. | <p>22 Dec:</p> <p>一、方案草案中提出设立多利益相关方审查组（MRT），开展 IANA 职能预算审查、运作审查、运营机构招标、关键合同条款审查、处理 IANA 客户建议等工作。按照目前的架构设计，MRT 承担了上述有关 IANA 事务的重要决策职能。我们认为，IANA 职能运作的问责和透明最为关键，应尽快提出</p> | China Academy of Information and Communicatio | | |

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| | <p>有关 IANA 职能运作的问责与透明机制。目前，问责方面的工作进展很慢，建议问责跨社群工作组加快工作，使 IANA 监管权移交方案设计与问责机制的设计保持同步。</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdythM9wBy3.pdf</p> | n Technology | | |
| 21. | <p>22 Dec: In respect of the specific entities proposed by the CWG-IANA: Multistakeholder Review Team:</p> <ul style="list-style-type: none"> • Is the appropriate body for the global multistakeholder community to exercise its stewardship. • Has a limited and narrow role which should not be extended. • There must be recognition of the work required of this body, and appropriate support given to allow effective participation across the community when required. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | InternetNZ | | |
| 22. | <p>22 Dec: MRT (Multi-stakeholder Review Team) composition: Giving sufficient consideration for Geographical Balance The CWG proposal suggests a framework consisting of 4 groups as the model to replace the US Government's IANA stewardship of function. Although additional discussion is needed as to the details of all 4 suggested groups, geographical balance should be sufficiently considered for the composition of the Multi-stakeholder Review Team (MRT), which will play the most important and critical role such as decision making on IANA contract signing among the IANA functions to be transferred by the US Government. To be a truly multi-stakeholder body, it is very important for the body to be a balance of various types of stakeholders. Although the composition rate of domain communities (ccTLD officials, gTLD officials, GAC, ALAC, etc.) is also an important agenda, and we believe that geographical balance should be sufficiently considered when selecting MRT members to ensure that no region is neglected before the discussion of details.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfAk3oqe18IZ.pdf</p> | Internet Community of Korea | | |
| 23. | <p>22 Dec: Although we realize that important details need to be filled in, we also support the basic structures set out in the plan, namely:</p> | NCSG | | |

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| | <ul style="list-style-type: none"> • A Multistakeholder Review Team (MRT) for developing the detailed contract terms, deciding to whom to award the contract, managing a renewal/rebidding process, conducting performance reviews, and serving as the vehicle for escalating problems identified by the CSC or by the community. The MRT, drawn from both the ICANN environment and the broader community engaged in domain names, is the key oversight institution in this plan. Appropriately, it is multistakeholder in composition and should be formed from the ICANN community and other relevant stakeholders <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfwjMYC0dY1.pdf</p> | | | |
| 24. | <p>22 Dec: As the details of the plan are fleshed out, we have the following concerns, or would propose the following modifications:</p> <ul style="list-style-type: none"> • The plan needs to specify more details about the composition and formation of the MRT. Here we offer specific suggestions. We propose an 18-member team with 2 non-voting liaisons, with some kind of supermajority voting construct (¾ or ⅔) for key decisions. The composition is structured and balanced to ensure that the MRT embodies a strong commitment to efficient and neutral administration of the DNS root zone rather than any specific policy agenda. Safeguards must be in place to ensure that it is independent of ICANN corporate but also cannot be captured or unduly influenced by governments, intergovernmental organizations, or specific economic interests. The MRT should draw most of its ICANN community members from ICANN's GNSO and ccNSO, with the GNSO forwarding 4 (1 member for each Stakeholder Group), and the ccNSO forwarding 5 (1 for each world region). The root server operators should also be represented on the MRT with 2 positions. Each ICANN Advisory Committee (GAC, SSAC and ALAC) should appoint 2 members. There should be 2 independent experts external to the ICANN community selected through a public nomination process administered by the Internet Society but subject to conflict of interest constraints. Additionally, 2 non-voting but fully participating liaisons from the other operational communities should be appointed (by ASO for numbers and by IAB for protocols) to facilitate coordination across the different IANA functions. MRT members should be appointed for limited terms sized appropriate to the contract renewal cycle. The MRT should operate according to principles of openness; diversity; global participation; involvement of affected parties, and transparency. When possible decisions should be made through bottom-up consensus, or supermajority when not. • Details regarding the frequency of meetings of the MRT and its relationship to | NCSG | | |

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| | <p>the Customer Standing Committee also need to be specified.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | | | |
| 25. | <p>Dec 22:</p> <p>As for the MRT composition, it is suggested that multi-stakeholder principle should be taken into consideration. For example, within ICANN community, GAC, GNSO or ccNSO could recommend or elect representatives from the five Regions respectively. Besides, MRT could also include the representatives from non ICANN community and non technical community, and ensure the fully participation of the representatives from developing countries. It is suggested that the term of MRT member shall be one year or two years and the member shall serve for no more than two consecutive terms.</p> <p>As for the MRT decision-making process, we suggest it should be further in details, including how to ensure a transparent process, how to be accountable, and what is the remedy mechanism.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqpv2Fo9RgE.pdf</p> | ISOC-China | | |
| 26. | <p>21 Dec: Multi-stakeholder Review Team</p> <ul style="list-style-type: none"> • Purpose of MRT: To every extent possible, MRT should only be the convener of a community process and not be the actual decision-making body. The MRT should have a strict mandate to initiate a cross community process open to the global multistakeholder community for managing the RFP in a transparent and bottom-up manner. • Charter of MRT: The MRT should not be a separate legal entity but a group (without a legal personality) that is organised independently of ICANN and Contract Co. The MRT should be governed by a charter. It is suggested that a draft charter be prepared by a subgroup within the CWG. This draft charter should not be binding on the future MRT. This draft charter is only intended to provide guidance to the future MRT. Such a draft charter will allow the community to better understand the purpose and operating principles of the MRT. This will also help identify the finer details of the MRT which may currently be escaping the CWG's attention. • Term of MRT: I suggest that the MRT be treated as a body with continuous existence. The MRT should require 1/3rd members to retire on a rotation basis (3 years) so that the MRT has a continuous existence. This will allow MRT to deal with urgent issues such as premature termination of a contract or a time | Rishabh Dara Student, IIM Ahmedabad | | |

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| | <p>bound escalation by the CSC. This will also ensure that knowledge transition is continuous in the MRT. In this, no person should be allowed to be re-selected on the MRT for a second time. On the other hand, if the entire MRT is constituted afresh periodically, then the MRT may not be ready or prepared to deal with urgent situations during the transition periods when a new MRT is being constituted; further syncing the time intervals of constituting the MRT with the time intervals of the RFP for the IANA Contractor may not be an easy job.</p> <ul style="list-style-type: none"> • Instruments with MRT: In the current proposal, it appears that the MRT can only threaten to terminate the IANA Contract in case of non-compliance and performance deviations. It is suggested that other additional instruments should also be built into the IANA Contract to deal with smaller issues. For example, the MRT should be able to impose financial liquidated damages in case certain pre-defined service level flags are set off. These fines should be used to finance the functioning of the Contract Co and MRT. • Size of MRT: It is suggested that the MRT be kept small in size (maximum size of 20) to avoid creation of a parallel ICANN with high potential to grow. However, it is recognised that MRT may become bulky owing to political considerations. To deal with this, the MRT should organise itself into smaller sub-groups in its operating principles/charter to respond to emergency or time bound escalations. • Secretariat to the MRT: The MRT will require a dedicated secretariat that should be independent of ICANN. The secretariat will be required for tasks related to contract formulation and for conducting the RFP process. The secretariat should have (access to) legal resources for performing contract related tasks. • Barriers to Participation in MRT: It has been proposed that MRT members will not be reimbursed/compensated for travel expenses. This proposal should not be applied towards MRT members from emerging countries resulting in the exclusion of their participation. • Funding of MRT: It is suggested that the MRT be indemnified by the Contract Co for all its expenses. The MRT should not be funded by ICANN as it will raise questions about its independence. • Composition of MRT: The composition of MRT should recognise and reflect that <ul style="list-style-type: none"> ◦ not all ccTLDs are a part of ccNSO. ◦ that there is (numeric) parity between ccTLDs and gTLDs. ◦ that registries are the primary customers of IANA functions ◦ that the role of GAC and ALAC is important in bringing diverse | | | |

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| | <p>cultural perspectives to the table.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbn0hCY.pdf</p> | | | |
| 27. | <p>20 Dec: In terms of firm recommendations for changes.</p> <ul style="list-style-type: none"> * Make the MRT temporary and only cause it to be created upon a specific event rather than act as a standing body. Break it down immediately afterwards, * Go through all the functions that the MRT is expected to carry out, identify any that would bring with them some kind of status and figure out how to hand those functions over to existing bodies. * Follow the system used by the NTIA when it last reviewed the IANA contract: run an open public comment process through the use of open questions (which could themselves be crowd-sourced). Review and repeat back community feedback. Put together a proposition based solely on that feedback and ask for review a second time. In other words, do NOT allow the MRT to become its own decision-making body; keep its power to an absolute minimum and make it only the receiver, collator and reflector of community input. * The multi-stakeholder element of control can be introduced as and when it is needed, and only when needed --- when the CSC requests it, or when the contract is up for renewal. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00016.html</p> | Kieren McCarthy | | |
| 28. | <p>18 Dec:</p> <p>Many Important Elements Remain Under Consideration, or To Be Determined – Finally, USCIB has serious concerns regarding the extent to which important interrelated elements of the CWG’s draft proposal have yet to be determined. For example, we support the concept that a new structure may need to oversee various administrative functions set forth in the IANA Functions Contract, which is currently performed by NTIA. And we concur that it is appropriate that direct consumers of the IANA naming functions should be vested with such oversight functions.</p> <p>However, the proposal lacks critical details concerning the composition and selection of the Multistakeholder Review Team (MRT), making it impossible for business to fully evaluate this element of the proposed post-NTIA structure.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfh3LeIVkkYI.pdf</p> | USCIB | | |

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| 29. | <p>18 Dec: MRT</p> <p>MRT as a Multistakholder Community:</p> <ul style="list-style-type: none"> • BRG recognises itself as a “relevant community.” • Language in the whole document should recognise the existence today and relevance of representative bodies such as the BRG that exist wholly outside the GNSO and are currently excluded from GNSO by current rules. • BRG notes the composition of this body to create a meaningful decision-making process will be the greatest challenge of the four proposed bodies. BRG cautions against an overly-broad composition that misses the narrow role of this body. <p>MRT roles & responsibilities:</p> <ul style="list-style-type: none"> • BRG supports the roles defined. • The BRG recalls the draft proposal’s principle #4: “The proposal should not seek to replace the role of the ICANN multistakeholder community with respect to policy development for the Names Community, nor to affect existing TLD policies or how they are currently applied by the IANA Functions Operator.” <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfprMbyPZTHi.pdf</p> | Brand Registry Group | | |
| 30. | <p>16 Dec: The Multistakeholder Review Team is the core of the proposed model. It is essentially the operating arm of Contract Co., since it is delegated responsibility for determining the content of RFPs, evaluating their responses, determining the terms and conditions of contracts, evaluating overall performance, determining any remedial action necessary (up to and including breach and termination), budget review and performing a variety of activities currently performed by the NTIA. In earlier version of the model, it was named the Periodic Review Team with that the intent that it would only be convened when there was a specific task (such as an annual review) It has now been acknowledged that although it might not need to meet very regularly, it needs to be ready.</p> <p>Quite simply, if the MRT cannot be assured to be 100% reliable, the entire model collapses.</p> <p>It is unclear what entity or entities is envisioned as convening the MRT, establishing who is and is not an eligible stakeholder, how that evolves over time, whether the participants are remunerated or not and who funds it. These are not trivial questions. It has been suggested that the MRT could be</p> | At-Large | | |

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| | <p>similar to the CWG itself, or the IANA ICG. But these are convened and funded by ICANN. In a scenario where Contract Co is compelled to separate IANA from ICANN, there is little reason to believe that ICANN would continue participating, or indeed if Contract Co. (and the MRT) would want and trust ICANN to play this role if the intent is complete separation.</p> <p>Whoever convenes the MRT may consciously or unconsciously impact how MRT decisions are made based on the mix of stakeholders allowed to participate. It is easy to see these decisions at work. The IANA CWG (as an example), allows 2-5 Members per stakeholder including those outside the ICANN community and unlimited Participants. The Accountability CCWG also allows 2-5 Members and unlimited Participants, but no Members from outside of ICANN's component organizations. At least one proposal for the MRT called for restricting some stakeholders to fewer seats than other stakeholders (GNSO@4, ccNSO@5, Root Servers@2, GAC, SSAC and ALAC@2 each). Each subtle difference impacts the decisions that the MRT will make.</p> <p>Another unknown about the MRT is just what sort of entity it is. It will be referenced in Contract Co.'s articles of Incorporation and/or its Bylaws as the entity which will give Contract Co. its instructions and perform most of the work associated with Contract Co. It has not been specified just what this relationship is – a contract, a Memorandum of Understanding? Surely there will need to be SOME document describing the relationship and the responsibilities of both parties. We have been told repeatedly that only formally incorporated bodies can enter into such agreements without having the individual participants personally liable for actions of the entity.</p> <p>One possible option that removes this unknown is to have the MRT as a component part of Contract Co. But at that stage, Contract Co. is no longer a bare-bones entity and in fact has become a mini-ICANN, soothing that we were trying to avoid. So we are back with a large question mark here.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | | | |
| 31. | <p>16 Dec: The ALAC supports the MRT concept, but has some very strong reservations about how it can be implemented in this proposed model.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 32. | <p>9 Dec: 3.2 says "The MRT would be a multistakeholder body with formally selected representatives from all of the relevant communities (exact composition TBD)."</p> <p>I presume that "the relevant communities" refers to the "global multi-</p> | Richard Hill | | |

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| | <p>stakeholder community", which is broader than the "ICANN community". So the "relevant communities" would include communities other than the "communities" that comprise ICANN.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html</p> | | | |

Customer Standing Committee

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| CSC | | | | |
| 1. | <p>23 Dec: NIRA is happy with the current services it receives from IANA on re-delegation and root zone updates, etc.</p> <p>We believe that the CCs as direct customers to IANA should have direct oversight on how its policies are being implemented on delegation and re-delegation, root zone changes, etc. For this, we support the proposal of CSC as long as every ccTLD has a say on:</p> <ul style="list-style-type: none"> (1) how the oversight is carried out, (2) respect to national laws and public policies, (3) monitoring of performance by the IANA function operator. <p>ICANN Board should not be the final authority on Delegation and re-delegation processes or root zone management.</p> <p>We make this suggestion taking into account the sovereignty nature of the ccTLDs the defined sources of policies to be followed by the IANA function operator.</p> <p>In addition to what has been proposed by CWG, NIRA suggests the following be further considered: “ that each request for delegation and re-delegation should be made public by the requesting ccTLD to the ccTLD community for comments within a specified time frame, and also allow CC community to give authority/endorsement to the request. The same goes for root zone and WHOIS management activities of the IANA function Operator. In this way, the ccTLDs would perform the oversight function. Since not all ccTLDs belong to the ccNSO, NIRA thinks a percentage, say 75%, of this IANA customers “CC” would give legitimacy to the authority/endorsement to the activities of the IANA function operator relating to the cc naming functions.”</p> <p>Other functions proposed for CSC relating to Gs naming related functions are generally acceptable to NIRA.</p> <p>NIRA supports the Independent Appeals Panel (IAP) as propose by the CWG.</p> | NIRA | | |

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| | <p>NIRA also believes that the accountability issues in the transition should form part of proposal to the ICG by the CWG considering that the two overlap in some aspects of developing an acceptable and workable mechanism of the transition.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx4Rg42iHRTs.docx</p> | | | |
| 2. | <p>22 Dec: Customer Standing Committee</p> <p>As previously stated, the RySG believes that the continuation of excellent service to the customers of the IANA Functions is paramount in the IANA Stewardship Transition. We are fully supportive of the creation of the Customer Standing Committee (CSC) to engage in monitoring to ensure that such service continues and to identify and address any performance deficiencies on an ongoing basis.</p> <p>Within the current framework where the tasks of the CSC are narrowly focused on the technical and operational execution of the IANA Function, we question the need for liaisons or representatives from other ICANN Supporting Organizations or Advisory Committees on the CSC. One possible exception to this rule could be to allow liaisons/experts from relevant technical organizations also charged with undertaking parts of the IANA functions process. Examples could include the RSSAC, IETF, RIRs, IAB, SSAC as well as others; however, these various liaison/expert roles should be more fully fleshed out. We strongly support the continued development of the policies that are applied by the IANA Functions Operator through the existing multi-stakeholder process; however, once those policies move to the implementation phase there is no evident need for external engagement with stakeholders that are not directly impacted by that implementation. We believe that external experts should only be included as needed by the CSC and be appointed directly by the CSC members.</p> <p>Notwithstanding the establishment of the CSC, we feel that the direct customers of the naming functions are insufficiently empowered in the context of the proposal as a whole.</p> <p>We believe that registry operators currently represented in the CSC should be the parties empowered to make contracting decisions related to the IANA Naming Functions. As the entities both affected by performance of the duties</p> | RySG | | |

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| | <p>described in such a contract as well as possessing the level of expertise necessary to adjudicate technical performance, registry operators should play a key role in determining whether a rebidding process is necessary or not.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 3. | <p>22 Dec: Customer Standing Panel -- - CSC If the CSC is restricted to making mechanical decision on IANA performance, the current proposal may well work. The ALAC believe that regardless of the function, there should be a substantive multistakeholder component.</p> <p>The description of the CSC says that it will take over the NTIA responsibility of reviewing redelegations.</p> <p>Later in the draft proposal, it says "Contractor shall submit its recommendations to the [[CSC] or [MRT] or [RZM1] or [Independent Evaluator]] via a Delegation and Redelegation Report." Certainly if the CSC is largely populated by registry operators, there is no reason to believe that they are the proper authority for this task. More on this later.</p> <p>Since it has been suggested that the MRT will meet only when there is an explicit task for it to do (or perhaps on a monthly basis), and it is not tasked with routine monitoring of IANA, no one is monitoring whether IANA is following established policy and practice. Clearly that needs to be rectified. If the MRT is to only meet when called upon, then the only body left to do this is the CSC. If the CSC were to be tasked with monitoring adherence to policy, it MUST have a very significant multistakeholder component. The reason is that at least for the gTLDs, the policy process allows the GNSO to adopt policy which affects registries but without the support of the Registry Stakeholder Group. In such a case, it could be to in the interest of registries, who did not want the policy in the first place, to have IANA not follow it. The body that monitors that policy is carried out, if it is comprised of some stakeholders, must have a composition comparable to the body that set the policy.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfddQ2yQNqpJ.pdf</p> | ALAC | | |
| 4. | 22 Dec: | Nominet | | |

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| | <p>Section 3.2: Summary of the transition proposal</p> <p>13. Customer Standing Committee: As with the other proposed entities, we would wish to see references to transparency, mandate and constraints on changing the mandate: “The operation of the CSC would be based on the concept of maximum public transparency. The mandate and responsibilities of the CSC will need to be clearly defined and limited to its primary roles. It should not be possible to change the mandate except through an open and transparent process.”</p> <p>The nature of the CSC – representing the customers of the IANA naming functions – should be clearly limited to service level commitments, performance indicators and quality assurance. As such, while we see benefits from the Committee adopting open and transparent processes, possibly including liaisons from other communities, we would question the reference to including “additional individuals with relevant expertise.”</p> <p>We would be concerned about extending the mandate of the CSC to receive and review delegation and redelegation reports, as appears to be suggested later.</p> <p>Section 3.4.2.1: Customer Standing Committee</p> <p>19. It would be helpful to indicate clearly that all the IANA functions operator’s reports will be made public.</p> <p>20. We have already raised our concerns about including “other individuals with relevant expertise” as part of the CSC.</p> <p>21. More fundamentally, we would have concerns with the suggested role of the CSC to receive and review IANA functions operator reports. While we were happy for what we believed to be essentially a technical performance monitoring function, the role now seems to have expanded into another tier of evaluation. Rather a lot of different entities are being included in the process of reviewing decisions by the IANA functions operator. Other than to note that this confusion on who does what could lead to serious issues, there is also a concern on where liability would rest in the case of a legal challenge. We would also be worried about decisions being made by people without the right level of understanding or experience of the issues.</p> <p>ne with the interpretation that the CSC should simply exercise a technical hance monitoring function, we believe that the first two bullets should be . If not, we would question whether the CSC really has any clear role that could</p> | | | |

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| | <p>included in the MRT. Under no circumstances should the CSC review or comment on delegation or redelegation reports ex-ante as this would add another committee to the list of gatekeepers.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |
| 5. | <p>22 Dec: On the proposed structure (i.e. the new bodies proposed). CSC : all direct customers of the IANA naming function should be represented, and only them. These customers (essentially CCTLDs and GTLDs) are already liable to other parties for their own and final SLAs, that depend heavily on IANA performance. There is no need to expand the composition of this committee to include indirect customers. Furthermore, having indirect customers within this committee would make harder to distinguish it from other bodies, such as the MRT, creating confusion and possible overlaps between the various bodies. In particular, the CSC's role should be focused on setting the technical SLA's with the contractant and reviewing the IANA technical performance.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00042.html</p> | JPNIC | | |
| 6. | <p>22 Dec: Customer Standing Committee As a general principle, we believe that the reform process of the stewardship of the IANA functions should duly take into account the interest of all stakeholders.</p> <p>At the same time, the presence of a commission dealing exclusively with technical issues related to the day-by-day work could improve the efficiency of the overall process. Before the transition takes place, the boundaries within the CSC should operate must be defined in a clearly and unambiguous way.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf1dAdjAKbLg.pdf</p> | Ministero dello Sviluppo Economico | | |
| 7. | <p>22 Dec: Customer Standing Committee We agree that the establishment of a committee that will specifically deal with the service level agreements and performance indicators associated with the execution of the IANA function is essential.</p> | auDA | | |

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| | <p>The development and management of performance metrics is a critical role that is equally important to ccTLD customers and gTLD customers and these registry operators must compose the majority of the committee's membership. As the CWG notes, it is possible that liaisons from other SO/ACs may participate in the committee's work, however they should not represent a significant proportion of the its structure.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFuBxTOIQIB.pdf</p> | | | |
| 8. | <p>22 Dec: Customer Standing Committee – CSC DIFO agrees that the CSC should be made up of representatives of registry operators. The function of this committee is of operational nature, which according to the proposal has the responsibility of conducting an operational review in order to ensure that the technical and operational SLA is fulfilled.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfHkjcijcPAs.pdf</p> | DIFO | | |
| 9. | <p>22 Dec: Customer Standing Committee and Multi-stakeholder Review Team Essentially SIDN is of the opinion that both structures should be as lightweight as possible. The IANA function is an administrative function only and the oversight should therefore be limited to specifically that function. We do not see why the CSC should be composed of others than the registries, as it supposed to deal with the day-to-day business. As expert it should be upon the CSC to set the service levels using open, transparent and inclusive consultations and oversee IANA's performance on the service levels. The role of the MRT should be, as originally proposed, be limited to those situations where the MOU/agreement itself needs to be changed including the situation where IANA non-compliance with the MOU/agreement is such that separation might be necessary.</p> <p>For practical reasons we feel that the MRT should be a standing committee so that it will always be available if necessary, but at the same time stay as much dormant as possible. With regard to both structures safeguards with regard to capture and mission creep are extremely important. A lot of further detailing with regard to these structures is necessary.</p> <p>Last point on these new structures is that none of them should replicate the role of the Root Zone Management Process Administrator role NTIA currently has. The public posting of all change requests should be sufficient to avoid clear mistakes missed by IANA and the registry manager concerned. The CSC nor the</p> | SIDN | | |

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| | <p>MRT nor an independent certification from a counsel should have a role with regard to ccTLD delegation and redelegation request. What might help in this respect is the publication by IANA of the complete intended delegation/redelegation decisions for public comment prior to taking the final decision.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | | | |
| 10. | <p>22 Dec: In addition to calling for a new contract entity, the proposal recommends creating a Customer Standing Committee (CSC) and a Multistakeholder Review Team (MRT). Most of the Contracting Co. authority would be wielded by the MRT, but details regarding this entity are murky. For example, it is intended to be multi-stakeholder but it is unclear whether that is necessary when the body itself will not be creating policy, but rather, overseeing the implementation of policy already created via the multi-stakeholder model. There is also a proposal to create an Independent Appeals Panel (IAP) that would provide redress mechanisms for those impacted by Board decisions as it relates to the IANA functions; however, it is unclear how this process will mesh with other accountability mechanisms currently being discussed as a part of the separate Accountability Process.</p> <p>While well-intentioned, we are concerned that the array of new mechanisms outlined in the proposal would complicate an otherwise straightforward and effective process. This in turn would create new opportunities for “capture” and forum shopping; new avenues for policy relitigation; new uncertainty around jurisdictional issues and the choice of contract law; and multiply rather than reduce community accountability concerns and create. Clearly, none of these outcomes is desirable.</p> <p>ITI does support some of the recommendations. For example, we believe that the establishment of a customer service-related committee to manage a complaint resolution process could be useful, as well as the publication of ccTLD and gTLD delegation and redelegation information. However, this customer service-related committee would need to be staffed by those entities who are direct customers of the IANA functions (gTLD and ccTLD operators).</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfn2NDTDNstl.pdf</p> | Information Technology Industry Council | | |

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| 11. | <p>22 Dec: The Customer Support Council</p> <p>I support the creation of a forum – identified in the proposal as the Customer Support Council (CSC) – where registry operators can discuss operational performance issues on the part of, and potential improvements to, the IANA functions operator. As I understand it, the CSC’s discussions would be limited to the operators’ technical performance and would therefore only need to involve the direct customers of the operator. However, I see no reason to have CSC meetings closed to the community; anyone who wishes to observe these meetings should be permitted to do so. The CSC itself may choose not to have face - to - face meetings if there are no reasons to do so.</p> <p>I envisage the CSC to have four substantive functions:</p> <ol style="list-style-type: none"> 1. To review the monthly performance reports that the IANA operator produces as well as any audit reports that might be produced as may be required under the contract. This function does not require a meeting, let alone a face - to - face meeting. 2. To meet with senior representatives from the IANA functions operator (in the current environment, this would be the ICANN CEO and the vice - president responsible for IANA) on an annual basis to discuss the budget for performing these technical functions. 3. To extend an existing IANA contract, where it contains provisions for such extensions, and where the CSC determines that there are no outstanding operational performance issues that would prevent this extension. 4. To report to the Multi - stakeholder Review Team (MRT) on any operational performance issues that have been noted, and which the CSC has not been able to resolve through direct contact with the IANA functions operator. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqdvqIUUeo.pdf</p> | CIRA | | |
| 12. | <p>22 Dec: CSC and MRT objectives and composition</p> <p>The participation of representatives in the CSC and the MRT should address the specific concerns related with the security, stability and resiliency of the IANA functions and should strictly abide to these principles and clerical process that attach objectivity and neutrality to operational concerns, of relevance to the international Internet community in general. The CSC should be a technically competent, neutral body concerned with operational performance.</p> <p>Recent discussions on the lists and some of the strawman proposals on the MRT to have an overarching, duplicative mechanism of representation of</p> | LACTLD | | |

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| | <p>already existing SOs / ACs in this body are not considered to be per se conducive to an accountable and transparent oversight body of the IANA functions. On the contrary, we believe that an increasingly politicized and large MRT might backlash the main objectives it intends to accomplish. If it becomes so complex that only deep insiders who are able to politically maneuver – with the necessary linguistic and cultural skills, then the MRT is not accomplishing its mission and it will not be seen as a reliable, trustworthy, comprehensible nor legitimate structure to the global community. The MRT functions and its structure should be kept in its minimal form.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFvIs66SVvO.pdf</p> | | | |
| 13. | <p>22 Dec: The community will have to address significant concerns if it adopts the proposed new structures. The new structures proposed by the CWG could introduce significant instability and uncertainty in the supervision of the DNS. Here we highlight specific concerns with all four of the proposed new structures.</p> <p>Issues Related to the Creation of a Customer Standing Committee Under the current contracting arrangement, NTIA is responsible for monitoring the IANA functions operator to ensure that the functions themselves are being carried out in an accurate and efficient way. We agree that this role should continue after the transition as it provides important oversight over the technical performance of the IANA functions. However, we believe that creating a new structure to perform these tasks could create complexity, bureaucracy, and further obfuscates issues of authority, governance, and dispute resolution. In that vein, we support the CWG and/or the Accountability Working Group further exploring ways in which technical oversight over the IANA functions can be maintained and strengthened without creating a separate structure. However, if the community decides to move forward with the creation of the Customer Standing Committee (CSC), this committee’s scope should be strictly technical and include only: (1) monitoring the performance of the naming functions for any technical irregularities or issues; (2) ensuring that the IANA functions operator maintains appropriate service levels for services associated with naming; and (3) raising and addressing any performance deficiencies on an ongoing basis related to naming. Our recommendation to limit the CSC’s scope to naming issues only is informed by the fact that ICANN maintains a contract</p> | Google | | |

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| | <p>with IETF for protocol parameter table maintenance and that ICANN and the Numbering Resource Organization have a memorandum of understanding that addresses numbering issues.</p> <p>Because the CSC's remit should be technical and it should have no role in setting or re-evaluating policy, its composition should be limited to direct customers of the IANA naming functions (gTLD and ccTLD operators) and related experts as that group sees fit. As a result, registry operators, as well as liaisons from the Security and Stability Committee (SSAC), the Root Server System Advisory Committee (RSSAC), the Regional Internet Registries (RIRs), the Internet Society (ISOC), the Internet Engineering Task Force (IETF) among others, could be invited to participate to ensure a seamless coordination among impacted parties of the IANA functions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 14. | <p>22 Dec:</p> <p>With respect to the Customer Standing Committee (CSC), the Brazilian Government considers that its activities should be of a technical nature, strictly limited to assessing performance data of IANA operations and transactions. It should not be within the scope of the CSC to make decisions, but rather to provide regular reports with objective information related to the performance of the IANA Function Operator.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | Brazilian Government | | |
| 15. | <p>22 Dec:</p> <p>For all the different organizations suggested the mandate and responsibility should be clarified and it should not be possible to change the mandate without through a transparent process. We are concerned that references to the evaluation of delegation and redelegation reports can be interpreted as assigning additional authorities to new committees and bodies.</p> <p>As for the CSC (Customer Standing Committee) we think it is really important that the committee is composed of IANA customers only. The review of delegation and redelegation reports should be removed. We do not support the assignments of any evaluation of delegation and redelegation reports to the CSC.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-</p> | UNINETT Norid AS | | |

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| | 01dec14/pdfiVFdJVvu8t.pdf | | | |
| 16. | <p>22 Dec: Customer Standing Committee (CSC) It is crucial that his committee is composed of IANA customers only. This is the best guarantee that its role is not expanded beyond the scope currently outlined in the proposal. References to C292c and C292d should be interpreted narrowly and review of delegation and redelegation reports should be removed.</p> <p>We do not support the assignment of any evaluation of delegation and redelegation reports to this Committee. We see its role as a technical performance monitor, composed of technical experts that have the right skillset to make assessments on performance standards. The review of delegation and redelegation reports is not part of that role.</p> <p>As is the case for the MRT, it should be specified that he representatives to the CSC will not be paid.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | Centr | | |
| 17. | <p>22 Dec: 三、方案草案中提出设立用户常任理事会（CSC），成员来自 ccTLD 和 gTLD 注册管理机构，将在提升 IANA 职能域名功能的服务水平方面开展工作。我们欢迎成立该委员会，ccTLD 和 gTLD 注册管理机构是 IANA 职能直接服务的用户，它们组成利益团体，有权利也有责任不断提升 IANA 职能的服务质量。</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdythM9wBy3.pdf</p> | China Academy of Information and Communication Technology | | |
| 18. | <p>22 Dec: In respect of the specific entities proposed by the CWG-IANA: Customer Standing Committee:</p> <ul style="list-style-type: none"> • Must retain a focus on the direct customers in its membership and approach. • In particular, there should be no role for government or users' representation on this Committee. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | InternetNZ | | |
| 19. | <p>22 Dec: Maintaining the Neutrality of IAP (Independent Appealing Panel) and Contract</p> | Internet Community of | | |

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| | <p>Co. IAP and contract co. also need to be discussed in more detail. We suggest neutrality as the broad principle so that they can be independent from the capturing of specific groups or nations.</p> <p>The Internet Community of Korea will continue participating and actively contributing to discussions on the transfer of IANA functions. We suggest that ICANN actively engage in more efforts for outreach to share the information and encourage participation, since reaching global consensus is of utmost importance.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfAk3oqeI8IZ.pdf</p> | Korea | | |
| 20. | <p>Dec 22: Although we realize that important details need to be filled in, we also support the basic structures set out in the plan, namely:</p> <ul style="list-style-type: none"> • A Customer Standing Committee (CSC) composed primarily of direct IANA functions users to monitor Service Level Agreements and day to day performance. By ‘direct IANA functions users’ we mean ccTLD and gTLD registries and root server operators, supplemented by an expert liaison from each of SSAC and RSSAC and liaisons from the MRT representing the ccNSO and the GNSO. We caution strongly against expanding the composition of the CSC in ways that would make it a duplicate and/or competitor of the MRT. The CSC is intended to be a highly specialized form of oversight responsive to the day to day operational concerns of direct IANA customers, as well as raising alerts about any critical issues that may come up in security, stability and the effective implementation of policy. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | NCSG | | |
| 21. | <p>Dec 22:</p> <p>As for the CSC member composition, we suggest that it is necessary to take the Internet users distribution status and future Internet development into consideration so that it could maximally reflect diverse consumers’ voices and better protect their rights and interests.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqpv2Fo9RgE.pdf</p> | ISOC-China | | |
| 22. | <p>Dec 21: Customer Standing Committee</p> <ul style="list-style-type: none"> • Structure: It is suggested that CSC need not be a separate entity but a sub-group within the MRT. The charter of the MRT should enable the creation of a | Rishabh Dara Student, IIM | | |

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| | <p>standing committee (as a subgroup) for day-to-day oversight of IANA. This will be in sync with the principle that the otherwise bulky MRT will be operating through smaller sub-groups.</p> <ul style="list-style-type: none"> • Role and Composition of CSC: Will the CSC only be escalating issues related to performance deviation or also issues related to policy deviation? It is suggested that the CSC also be tasked with the job role of escalating issues related to policy deviation. In this case, it is suggested that the composition of CSC should be multi-stakeholder and not be dominated by the registry stakeholder group. In the case that CSC is only tasked with performance deviation, the composition of CSC can continue to be dominated by the registries. • CSC Composition: The CSC members should preferably be drawn from the MRT so that there is coordination between CSC and MRT on matters that are escalated. • Funding of CSC: It is suggested that the CSC be indemnified by Contract Co for all its expenses. • Term of CSC: It is suggested that CSC have a continuous existence with 1/3 members retiring on a rotation basis. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbnOhCY.pdf</p> | Ahmedabad | | |
| 23. | <p>20 Dec: In terms of firm recommendations for changes.</p> <ul style="list-style-type: none"> * Allow the proposed Customer Standing Committee (CSC) - the actual users of the naming functions - to address issues directly with the IANA contract operator rather than require it to go through the MRT. * Allow the CSC to decide whether to go to the proposed IAP if there is an issue that cannot be resolved. * Allow the CSC to decide whether it is needed to create a (temporary) incarnation of the MRT to address a specific topic or issue by limited what the CSC is allowed to do in terms of creating new policies * Do not require the CSC to develop service levels through the MRT. The MRT has no inherent knowledge or stake in this process and should stay out of the way. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00016.html</p> | Kieren McCarthy | | |
| 24. | <p>18 Dec: CSC Primarily be made up of representatives of registry operators (ccTLD, gTLD):</p> <ul style="list-style-type: none"> • BRG supports the concept that those who are direct customers of the IANA technical functions have a means of making sure those functions are being performed properly. | Brand Registry Group | | |

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| | <ul style="list-style-type: none"> BRG expresses a firm commitment to be such a registry representative. BRG recommends that membership is restricted to registries to avoid duplication with the MRT. <p>RE: CSC Roles & Responsibilities:</p> <ul style="list-style-type: none"> BRG supports the roles defined. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfprMbyPZTHi.pdf</p> | | | |
| 25. | <p>16 Dec: If the CSC is restricted to making mechanical decision on IANA performance, the current proposal may well work. The ALAC believe that regardless of the function, there should be a substantive multistakeholder component.</p> <p>The description of the CSC says that it will take over the NTIA responsibility of reviewing redelegations. Later in the draft proposal, it says “Contractor shall submit its recommendations to the [[CSC] or [MRT] or [RZM1] or [Independent Evaluator]] via a Delegation and Redelegation Report.” Certainly if the CSC is largely populated by registry operators, there is no reason to believe that they are the proper authority for this task. More on this later.</p> <p>Since it has been suggested that the MRT will meet only when there is an explicit task for it to do (or perhaps on a monthly basis), and it is not tasked with routine monitoring of IANA, no one is monitoring whether IANA is following policy. Clearly that needs to be rectified. If the MRT is to only meet when called upon, then the only body left to do this is the CSC. If the CSC were to be tasked with monitoring adherence to policy, it MUST have a very significant multistakeholder component. The reason is that at least for the gTLDs, the policy process allows the GNSO to adopt policy which affects registries but without the support of the Registry Stakeholder Group. In such a case, it could be to in the interest of registries, who did not want the policy in the first place, to have IANA not follow it. The body that monitors that policy is carried out, if it is comprised of some stakeholders, must have a composition comparable to the body that set the policy.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 26. | <p>16 Dec: The ALAC supports the CSC, but does have some problems with both the composition of the CSC and the assignment of certain specific duties to it.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 27. | <p>9 Dec: 3.2 also describes a CSC. I don't understand why both a CSC and an MRT</p> | Richard Hill | | |

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| | <p>are needed. Couldn't the CSC perform the functions of the MRT?</p> <p>And why shouldn't the CSC consist of all users of the names part of the IANA function, that is all the registries?</p> <p>The CSC could constitute the membership of "Contract Co.", which could conveniently be created as a Swiss non-profit association (that is an extremely light weight structure).</p> <p>In that structure, the MRT would simply be the board of Contract Co., which board would be elected by the membership of Contract Co., that is, by the CSC, that is, by the registries.</p> <p>This approach would be simpler than the one that is outlined in the draft. The "global multi-stakeholder community" would be represented by the registries, which appears adequate to me in terms of the functions that are under discussion here.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html</p> | | | |

Independent Appeals Panel

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| IAP | | | | |
| 1. | <p>23 Dec: Our concern around the development of an Independent Appeals Panel is centered on concerns regarding bifurcation of the appeal mechanism. First, the discussion regarding appeal mechanisms should take place in a holistic fashion. The ability of aggrieved parties to seek review of ICANN’s actions should be improved across the board -- not just with respect to the IANA functions.</p> <p>Recommendations: This discussion should take place in the Accountability Working Group. A broader review mechanism with binding outcomes and appropriate redress should be implemented through the Accountability Process, and this mechanism could and should also cover the appeals referred to in the draft proposal for as long as ICANN continued to act as the IANA Functions Operator. Separation of these mechanisms could lead to unnecessary duplication of processes, forum shopping, and a risk of inconsistent adjudications on the same topic.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfZsBVnpFHH1.pdf</p> | i2 Coalition | | |
| 2. | <p>22 Dec: The IAP component of the proposal is crucial, and it’s location outside of both ICANN and the IANA oversight functions is necessary. It’s stated that the IAP may be used to assess the decisions and actions of the IANA functions operator, as well as any policy implementation actions. Like the MRT, the activities and actors for the IAP must be carefully scoped. The wording in the proposal that the IAP is open to “other parties who feel that they were affected by an IANA action or decision” is unfortunately broad, and the interpretation of this will surely be stretched by parties with an agenda. It would seem sensible for implem</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfsDZ7QPOcxD.pdf</p> | RrSG | | |
| 3. | <p>22 Dec: IANA Independent Appeals Process We strongly support the existence of a binding and independent appeals</p> | RySG | | |

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| | <p>process extending to decisions and actions of the IANA Functions Operator that affect the content of the Root Zone File or Root Zone WHOIS Database. It is imperative that this appeals process only challenge whether established policies have been properly applied or adhered to by the IANA Functions Operator. It should not evaluate the merits of such policies. Allowing this independent appeals process to challenge the policies governing delegation and re-delegation of gTLDs themselves could create a secondary nexus for policy development, undermining the role of the multi-stakeholder model for policy development for the naming community. It would be unacceptable to the gTLD Registry Operators.</p> <p>We believe that further work is needed to define who has standing to appeal to this body. Below is a more in-depth discussion of our views on this matter provided in response to the specific questions raised by the CWG-IANA when the proposal was posted for comment.</p> <p>Additionally, while it is premature to comment on the outcomes of the accountability process, one of the resounding calls from the community with regard to that process has been the need for a mechanism to provide meaningful review and redress for ICANN decisions and actions. This directive from the community to develop a more meaningful review process aligns closely with the request of the CWG-IANA for an appeals process to cover policy implementation by the IANA Functions Operator. If a broader review mechanism with binding outcomes and appropriate redress was implemented through the Accountability Process, this mechanism could and should also cover the appeals referred to in the draft proposal for as long as ICANN continued to act as the IANA Functions Operator. Separation of these mechanisms would mean unnecessary duplication and increased cost. If a satisfactory mechanism for independent review and meaningful redress is put in place as a result of the work of the Accountability CCWG, we believe that it would be worthwhile to revisit this aspect of the IANA Proposal to determine whether these mechanisms should be integrated.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 4. | <p>22 Dec: The RySG recommends that standing to appeal decisions and actions resulting from the gTLD process steps associated with delegations or redelegations of gTLDs be as shown in the table below. The step numbers and process step</p> | RySG | | |

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| | <p>descriptions come from the CWG-IANA draft proposal section 2.1.8.2, Description of gTLD Policy Dispute Resolution Processes, Table 11 (T11) - Description of gTLD Policy Dispute Resolution Processes.</p> <p>Steps A-5 through A-9 involve IANA functions so any appeals would involve the Independent Appeals Panel (IAP) proposed in the CWG proposal. Steps A1 through A-4 involve development and implementation of GNSO policies. Therefore, appeals relating to any of those steps would possibly involve a different appeals process depending on the results of the Enhancing ICANN Accountability cross community working group. In either case, the RySG believes that the appeals process should be binding on the parties.</p> <table border="1" data-bbox="188 531 1055 1334"> <thead> <tr> <th data-bbox="188 531 371 566">Step #</th> <th data-bbox="371 531 763 566">gTLD Process Step Description</th> <th data-bbox="763 531 1055 566">Standing to Appeal</th> </tr> </thead> <tbody> <tr> <td data-bbox="188 566 371 632">T11-A-1</td> <td data-bbox="371 566 763 632">Development of Consensus Policies</td> <td data-bbox="763 566 1055 632">N/A</td> </tr> <tr> <td data-bbox="188 632 371 667">T11-A-2</td> <td data-bbox="371 632 763 667">Approval of Consensus Policies</td> <td data-bbox="763 632 1055 667">GNSO</td> </tr> <tr> <td data-bbox="188 667 371 732">T11-A-3</td> <td data-bbox="371 667 763 732">Implementation of Consensus Policies including:</td> <td data-bbox="763 667 1055 732">N/A</td> </tr> <tr> <td data-bbox="188 732 371 798">T11-A-3a</td> <td data-bbox="371 732 763 798">Finalization of Registry Agreement</td> <td data-bbox="763 732 1055 798">RySG and/or GNSO</td> </tr> <tr> <td data-bbox="188 798 371 863">T11-A-3b</td> <td data-bbox="371 798 763 863">Approval of gTLD for delegation</td> <td data-bbox="763 798 1055 863">Impacted Registry Operator</td> </tr> <tr> <td data-bbox="188 863 371 928">T11-A-3c</td> <td data-bbox="371 863 763 928">Execution of Registry Agreements</td> <td data-bbox="763 863 1055 928">N/A</td> </tr> <tr> <td data-bbox="188 928 371 994">T11-A-4</td> <td data-bbox="371 928 763 994">Pre-delegation testing</td> <td data-bbox="763 928 1055 994">Impacted Registry Operator</td> </tr> <tr> <td data-bbox="188 994 371 1098">T11-A-5</td> <td data-bbox="371 994 763 1098">Request for delegation by registry operators or by ICANN in the case of EBERO action</td> <td data-bbox="763 994 1055 1098">N/A</td> </tr> <tr> <td data-bbox="188 1098 371 1195">T11-A-6</td> <td data-bbox="371 1098 763 1195">Verification of process, policy and technical checks were successfully confirmed</td> <td data-bbox="763 1098 1055 1195">N/A</td> </tr> <tr> <td data-bbox="188 1195 371 1260">T11-A-7</td> <td data-bbox="371 1195 763 1260">Approval of delegation of gTLD</td> <td data-bbox="763 1195 1055 1260">Impacted Registry Operator</td> </tr> <tr> <td data-bbox="188 1260 371 1295">T11-A-8</td> <td data-bbox="371 1260 763 1295">Change into the root</td> <td data-bbox="763 1260 1055 1295">N/A</td> </tr> <tr> <td data-bbox="188 1295 371 1331">T11-A-9</td> <td data-bbox="371 1295 763 1331">Updating root zone Whois</td> <td data-bbox="763 1295 1055 1331">N/A</td> </tr> </tbody> </table> | Step # | gTLD Process Step Description | Standing to Appeal | T11-A-1 | Development of Consensus Policies | N/A | T11-A-2 | Approval of Consensus Policies | GNSO | T11-A-3 | Implementation of Consensus Policies including: | N/A | T11-A-3a | Finalization of Registry Agreement | RySG and/or GNSO | T11-A-3b | Approval of gTLD for delegation | Impacted Registry Operator | T11-A-3c | Execution of Registry Agreements | N/A | T11-A-4 | Pre-delegation testing | Impacted Registry Operator | T11-A-5 | Request for delegation by registry operators or by ICANN in the case of EBERO action | N/A | T11-A-6 | Verification of process, policy and technical checks were successfully confirmed | N/A | T11-A-7 | Approval of delegation of gTLD | Impacted Registry Operator | T11-A-8 | Change into the root | N/A | T11-A-9 | Updating root zone Whois | N/A | | | |
| Step # | gTLD Process Step Description | Standing to Appeal | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-1 | Development of Consensus Policies | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-2 | Approval of Consensus Policies | GNSO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-3 | Implementation of Consensus Policies including: | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-3a | Finalization of Registry Agreement | RySG and/or GNSO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-3b | Approval of gTLD for delegation | Impacted Registry Operator | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-3c | Execution of Registry Agreements | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-4 | Pre-delegation testing | Impacted Registry Operator | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-5 | Request for delegation by registry operators or by ICANN in the case of EBERO action | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-6 | Verification of process, policy and technical checks were successfully confirmed | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-7 | Approval of delegation of gTLD | Impacted Registry Operator | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-8 | Change into the root | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| T11-A-9 | Updating root zone Whois | N/A | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf | | | |
| 5. | <p>22 Dec: Independent Appeal Panel -- - IAP The ALAC is largely satisfied with the IAP as specified in the proposal. It has been suggested that there should be an associated mechanism to ensure the pending an appeal, the action being objected to might need to be delayed pending the appeal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfddQ2yQNqpJ.pdf</p> | ALAC | | |
| 6. | <p>22 Dec: Section 3.2: Summary of the transition proposal 14. Independent Appeals Panel: The role of the IAP – as distinct from that of the MRT – should be to address specific cases and in direct response to an appeal from an affected party. Its role is to provide a final step in cases where there is a real dispute – as might be the case in the redelegation of a ccTLD. However, we would be concerned if the role of the IAP were to be more than simply assuring that due process had been followed, with its actions limited either to accepting the decision or to referring the case back to the IANA functions operator to provide explanations. Similarly, the IAP should not be used to bypass or duplicate existing processes (for example, a direct review of Board actions) or to challenge the agreed policy framework. Nor should it be open to potentially abusive appeals from competitors or from “vigilante” or other “concerned” groups on the basis of the disputed value of a TLD to the Internet community.</p> <p>Section 3.4.3.3: Independent Appeals Panel 31. The details of the appeals process would need careful consideration: its scope and who can challenge decisions need to be clearly defined to avoid abusive or inappropriate interventions. The IAP should be limited to affected parties or to those who can demonstrate that they will be adversely affected by the IANA action or decision. And as previously noted, it’s mandate in assessing ccTLD delegation and redelegation decisions should be very limited.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | Nominet | | |
| 7. | <p>22 Dec: B. Appeals Mechanism: The IPC also supports in principle the concept of an</p> | IPC | | |

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| | <p>Independent Appeals Panel. However, we note that the requirements for standing to file an appeal has not been specified within the proposal. Standing should be determined through integration with the CCWG-Accountability in order to avoid having multiple and potentially inconsistent or overlapping review mechanisms, as opposed to a holistic accountability regime.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfS4113lqoCB.pdf</p> | | | |
| 8. | <p>22 Dec: Independent Appeals Mechanism</p> <p>We agree that a system to address appeals relating to the execution of the IANA function is absolutely critical. We note that recently, in a survey of ccTLD operators, 94.4% supported the establishment of such a mechanism – at least in principle. However, it is equally important to note that the structure, scope and powers of the proposed Independent Appeals Panel (IAP) need to be extremely carefully developed and enforced.</p> <p>The current recommendation from the CWG states that: ... all decisions and actions (including deliberate inaction) of the IANA Functions Operator that affect the Root Zone or Root Zone WHOIS database be subject to an independent and binding appeals panel.</p> <p>This is very broad wording which could, upon first reading, infer that the IAP would hold binding powers with regard to ccTLD delegations and re-delegations. This is, of course, out-of-scope for the CWG and needs to be addressed in a separate forum.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFuBxTOIQIB.pdf</p> | auDA | | |
| 9. | <p>22 Dec: Independent Appeals Panel - IAP</p> <p>An independent appeals panel is important. There needs to be a way to try any decision taken by IANA in a way that is effective, non-discriminatory and affordable. This is essential to ensuring adequate accountability to the new institutional set up. With regard to the ccTLDs, sovereignty must be respected. Re-delegation and delegation of ccTLDs should be conducted according to national rules and procedures, including respecting national authorities and appeals mechanisms, where such rules and mechanisms exist.</p> | DIFO | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfHkjcijcPAs.pdf | | | |
| 10. | <p>22 Dec: Independent Appeals Panel (IAP) SIDN in general welcomes the idea of an IAP but notes that this is not replacement of an existing structure but creating a new one. Which introduces the question if it is a precondition for the successful transition of the IANA stewardship. We feel it is not and suggest that detailing of an IAP proposal be postponed to a later moment.</p> <p>In detailing the IAP, a distinction should be made between gTLD's and ccTLD's. Where it may be possible to define a single IAP entity and IAP procedure for the gTLD's, this will not be the case for ccTLD's. We for example could, in line with the subsidiarity principle, accept and possibly welcome an appeals process for IANA decisions regarding .nl if it were in the Netherlands under Dutch law with a Dutch panel of independent relevant legal experts where ideally this structure would be set up in consultation with the .nl internet community. This could work for us but it is not said that a comparable solution would work for other ccTLD's. The IAP should therefore be tailored to the needs of the specific ccTLD. We note that it is vital that the IAP should be the sole forum for appeals with regard to IANA naming decisions. It should therefore replace, as far as one would recognize it as being currently applicable, the Independent Review of Board Actions procedure in the bylaws of ICANN.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | SIDN | | |
| 11. | <p>22 Dec: Independent Appeal Panel (IAP) The question of just who might have standing to initiate the IAP requires further clarification as well as the question of whether the scope of IAP should be limited to questions regarding whether due process was followed in terms of a ccTLD delegation or redelegation or whether it should be broader. I am of the view that the the answers to these questions may be different for the gTLD and ccTLD communities, and that each community should be permitted to determine these themselves.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqdvpglUUeo.pdf</p> | CIRA | | |
| 12. | <p>22 Dec: The Independent Appeals Panel The existence of such a body is of importance to ccTLDs in general as expressed</p> | LACTLD | | |

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| | <p>in the ccTLD IANA survey results. Such a mechanism would provide safeguards in case of failure of service delivery, or position abuse. The IAP should nevertheless be able to address the concerns and needs of an international community, including cultural and linguistic differences in its pool of panelists. The necessary safeguards should be incorporated so that any registry operator / party could be able to access these services, regardless of their financial capability to face the usual costs of international arbitration fees.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFvls66SVvO.pdf</p> | | | |
| 13. | <p>22 Dec: The Centre for Communication Governance at the National Law University, Delhi reserves its comments on the draft transition proposal pending the CWG's final recommendation on the exact composition of the Multistakeholder Review Team and the Customer Standing Committee.</p> <p>Given that the Independent Appeals Panel provides for a “binding arbitration process”, it is expected the CWG would provide a broad framework for dispute resolution among interested parties. In particular:</p> <ol style="list-style-type: none"> 1. Would the IAP follow ad hoc arbitration (where arbitral rules are selected by parties) or be housed under an institutional set up (such as the International Chamber of Commerce, JAMS arbitration rules etc)? 2. How would awards rendered by the IAP be made enforceable? 3. What is the role of local courts in enforcing an IAP award made outside their jurisdiction? 4. What policies may be defined as “IANA-related” under the IAP’s ambit? 5. Who would frame the list of panelists qualified to adjudicate IAP disputes? What would be the role of the MRT in this process? 6. How would the IAP secretariat be funded for operational expenses? 7. Would an arbitral award by the IAP be subservient or superior to an ICANN Board resolution on the subject? 8. Given that the CWG has sought no changes to the “principle of subsidiarity” for ccTLDs, how would the IAP adjudicate a matter involving a ccTLD registrar and an individual/entity from another jurisdiction? Would the IAP defer to local policy concerns? <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfv3vvpIOI2.pdf</p> | National Law University Delhi | | |
| 14. | 22 Dec: | Google | | |

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| | <p>The community will have to address significant concerns if it adopts the proposed new structures.</p> <p>The new structures proposed by the CWG could introduce significant instability and uncertainty in the supervision of the DNS. Here we highlight specific concerns with all four of the proposed new structures.</p> <p>Issues Related to the Development of an Independent Appeals Panel As described in the proposal, the Independent Appeals Panel (IAP) will allow review of all actions which affect the Root Zone or the Root Zone WHOIS database. It also appears that the panel could review implementation of policies developed through ICANN’s bottom-up processes. Google agrees that decisions and actions of the IANA Functions Operator that affect the content of the Root Zone File or Root Zone WHOIS Database should be open to independent review via a clearly defined and narrowly scoped review process. Moreover, a discussion of how to improve the review of ICANN actions -- whether related to the performance of the IANA functions or not -- should be addressed holistically through the Accountability Working Group.</p> <p>Concerns regarding bifurcation of appeal mechanism. First, the discussion regarding appeal mechanisms should take place in a holistic fashion. The ability of aggrieved parties to seek review of ICANN’s actions should be improved across the board -- not just with respect to the IANA functions. As such, this discussion should take place in the Accountability Working Group. A broader review mechanism with binding outcomes and appropriate redress should be implemented through the accountability process, and this mechanism could and should also cover the appeals referred to in the draft proposal for as long as ICANN continued to act as the IANA Functions Operator. Separation of these mechanisms could lead to unnecessary duplication of processes, forum shopping, and a risk of inconsistent adjudications on the same topic.</p> <p>Concerns regarding the scope of review, standing to bring claims, and frivolous claims. A number of issues regarding the scope of the review and the appeals process need to be better defined. First, the review process should be limited to arguments that established technical procedures have not been properly applied or adhered to by the IANA Functions Operator. Parties should not be able to make claims regarding the merits of such policies. Allowing this independent appeals process to challenge the policies governing delegation and re-delegation of top-level domains themselves could create a secondary nexus for policy development, undermining the role of the multistakeholder model for policy development for the naming community. Second, standing to invoke the review process should be defined and limited: only direct customers of the</p> | | | |

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| | <p>IANA functions (e.g., ccTLD and gTLD registry operators, regional Internet registries, IETF) should be able to ask for review of IANA functions operator decisions. Finally, parties bringing an appeal should be required to post a bond to establish their bona fides, but should be entitled to some level of fee-shifting if their claims are validated. The requirement to post a bond will limit frivolous claims, while the ability to seek fees will ensure that meritorious claims are pursued even if the claimant does not have an unlimited litigation budget.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdwixFUTBY7.pdf</p> | | | |
| 15. | <p>22 Dec: The Brazilian Government also welcomes the suggestion of establishing an Independent Appeals Panel (IAP) the competence of which should, by the way, extend beyond the areas within the scope of the CWG. The IAP would be instrumental to ensure that the management of IANA functions involves clear separation and independence of powers.</p> <p>However, it is important to be more precise about the scope of work of the IAP. A clear dispute settlement process should be defined, by which parties should be encouraged to refer to the IAP as a last resort only. The draft proposal should also contain concrete examples of dispute cases in order to improve the understanding of IAP's functions.</p> <p>In order to make sure that decisions emanating from the IAP are absolutely independent, it is of utmost importance to ensure that the panel is not pre-determined to be subject to the jurisdiction of a single country or a particular regional block. Hence, any arrangement that would outsource IAP's arbitration function to a commercial company would gravely undermine the panel's autonomy.</p> <p>In this regard, the Brazilian Government would be more inclined towards the suggestion of setting up "ad hoc" IAP panels, composed of three experts, two of them chosen by the parties at dispute and one chosen by the other two selected panelists. WTO's Appellate Body constitutes in our view a possible example that could be considered in this regard.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | Brazilian Government | | |
| 16. | 22 Dec: | UNINETT | | |

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| | <p>For all the different organizations suggested the mandate and responsibility should be clarified and it should not be possible to change the mandate without through a transparent process. We are concerned that references to the evaluation of delegation and redelegation reports can be interpreted as assigning additional authorities to new committees and bodies.</p> <p>As for the IAP (Independent Appeals Panel) its role should only be to assure that due process has been followed in the case of appeals on delegation and redelegation, and then either accepting the decision or referring it back to the IANA functions operator and ask for explanation. It is not clear who can launch an appeal and on what grounds. We would like to strongly underline the local and national character of a ccTLD and the principles of subsidiarity.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfiVFdJVu8t.pdf</p> | Norid AS | | |
| 17. | <p>22 Dec: Independent Appeals Panel (IAP) The scope of the Independent Appeals panel needs clarification, in particular who can launch an appeal and on what grounds. In the case of appeals on delegation and redelegation decisions, the IAP should under no circumstances go beyond checking if the delegation or redelegation decision by the IANA operator is properly documented and showing that due process have ben followed. If the IAP would conclude that his is not the case, it should refer back to the IANA functions operator. It is recommended that reference is made in this section of the proposal to a limited list of documentation and policies that provide the framework for these decisions. The work of the ccNSO FoI WG can be used as a basis here. We further notice that more details are needed about the composition of the IAP as in the case of cTLD's an IAP made up of non-nationals of the related country may be problematic.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | Centr | | |
| 18. | <p>22 Dec: 四、方案草案中提出设立独立申诉仲裁团（IAP），对涉及根区 文件修改、根区 WHOIS 修改以及相应政策作出独立仲裁决定。我们认为，方案应对独立申诉仲裁团的组成及运作机制进一步说明，进一步 向社群解释这一机制的有效性与公平合理性。</p> | China Academy of Information and Communicatio | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfdythM9wBy3.pdf | n Technology | | |
| 19. | 22 Dec: In respect of the specific entities proposed by the CWG-IANA: Independent Appeals Panel: • Specific requirements will need to be in place to protect ccTLD sovereignty and independence, noting that this will be vital to get right so as to secure support of the ccTLD community http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf | InternetNZ | | |
| 20. | Dec 22: Although we realize that important details need to be filled in, we also support the basic structures set out in the plan, namely: • An Independent Appeals Panel that can resolve disputes regarding incorrect implementation of policy or failure to implement policy http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf | NCSG | | |
| 21. | Dec 21: Independent Appeals Panel • Instruments with IAP: ◦ The IAP should be allowed to issue temporary injunctions withholding (re)delegation pending the disputed matter at hand. ◦ In case of contempt of a IAP directive/order by the IANA Operator, the IAP should be able to escalate the matter to the MRT. The MRT should use its position to threaten termination of the IANA contract to ensure compliance. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbn0hCY.pdf | Rishabh Dara Student, IIM Ahmedabad | | |
| 22. | 18 Dec: Many Important Elements Remain Under Consideration, or To Be Determined – Similarly, the proposal fails to elaborate on the terms of reference for the IAP or provide details on the composition of this panel, making it difficult for business members of the ICANN community to offer fulsome comments – either pro or con – concerning this pillar of the proposal. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfh3LeIVkkYI.pdf | USCIB | | |

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| 23. | <p>18 Dec: Input on possible modifications to the Independent Review of Board Actions:</p> <p>INTA supports of the concept of an Independent Appeals Panel (IAP) for independent review of Board actions that is binding in all technical matters relating to the IANA functions, including delegation and redelegation decisions. We are generally supportive of the proposed allocation of the NTIA’s current functions among Contract Co., the Multistakeholder Review Team (MRT), and Customer Standing Committee (CSC). However, it is important for INTA to point out that the composition of these groups, which has not been determined, will be key to allowing INTA to fully and finally evaluate this proposal.</p> <p>Finally, with respect to the issue related to key contracting provisions, the very complexity of the “Summary of Key Terms” found on pages 70 – 79 of the CWG report in conjunction with the short comment period makes it extremely difficult to provide considered and comprehensive feedback. We have, however, identified the following issues that deserve further examination.</p> <p>While we support the functional separation of IANA as a separate division within ICANN, the caveat that this should be done “to the extent possible without undue expense” may undermine its efficacy. In particular, it is not clear whether IANA will dedicate personnel who are not involved to a significant extent in other non-IANA duties. In this regard, we note that the Contractor is to provide IANA with a budget sufficient to hire independent legal counsel, and we wish to understand how that separation from the existing General Counsel’s office will be effectuated.</p> <p>Additionally, given Verisign’s long history of administering the root zone management (RZM) functions, we request greater detail on what factors might require its replacement by a successor organization. Finally, additional information is needed in regard to the process to be followed by the IANA contractor for delegation or redelegation of a ccTLD or gTLD, both as to which entity shall receive such a report and how the relevant policy framework will be considered.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfEhxmJOp2lz.pdf</p> | INTA | | |
| 24. | <p>18 Dec:</p> <p>RE: subject to an independent and binding appeals panel.</p> <ul style="list-style-type: none"> • BRG supports the concept of an independent and binding appeals | Brand Registry Group | | |

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| | <p>process</p> <p>RE: an independent arbitration organization (e.g., ICDR, ICC, AAA)</p> <ul style="list-style-type: none"> • If arbitration is chosen, BRG recommends use of existing arbitration providers and rejects the creation of a new body. • BRG suggests greater international credibility would be provided by use of the ICC arbitration service. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfprMbyPZTHi.pdf</p> | | | |
| 25. | <p>16 Dec: The ALAC is largely satisfied with the IAP as specified in the proposal. It has been suggested that there should be an associated mechanism to ensure the pending an appeal, the action being objected to might need to be delayed pending the appeal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |
| 26. | <p>16 Dec: The ALAC strongly supports the IAP. Although there have not been many cases where this has been needed, it is important to provide an appeal process should any of the concerned parties need it in the future. With the potential for redelegation of New gTLDs, this becomes even more important.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html</p> | At-Large | | |

Independent Certification for Delegation and Redelegation Requests

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| Independent Certification for Delegation and Redelegation Requests | | | | |
| 1. | <p>22 Dec: The RySG calls attention to Section 1 of the Proposal where a discussion on the differences between ccTLDs and gTLDs is provided. Understanding the difference between each of these types of registries is important in understanding the potential need for different procedures depending on the party involved.</p> <p>ccTLDs “are representative of individual countries and territories” and are more autonomous. gTLDs, however, represent a broader global interest – whether that represents an open space with no restrictions, a community, a brand, or a particular business model. While it is clearly appropriate for delegation and re-delegation requests for ccTLDs to be analyzed in connection with local and national laws and public policy of the jurisdiction the ccTLD represents, it is not appropriate for gTLDs to be subject to the same requirement.</p> <p>Because of the global nature of gTLDs, an operator would need to seek an opinion in every jurisdiction where its end-users reside, which is theoretically every jurisdiction in the world. Determining whether or not a particular gTLD’s policies violate local and/or national laws and policies would be impossible. ICANN would be forcing registries to move to permission-based operations in all instances, and governments would be able to override the policy development process by simply banning certain types of registry policies and provisions. Permissionless innovation is what has made the Internet a thriving place globally – for business, speech, communications, and a variety of other things. This concept must be allowed to survive.</p> <p>Should the delegation/redelegation role that NTIA currently performs be replaced (or removed) for gTLDs?</p> <p>The NTIA transition has two parts: the elements related to the management of the IANA Functions Contract; and the ‘authorisation’ role performed by NTIA.</p> <p>The ‘authorisation’ role currently performed by NTIA has been described by Larry Strickling as largely ‘clerical’ or ‘administrative’. The NTIA ‘authorises’ both changes to the Root Zone, and changes to the WHOIS database: i.e.,</p> | RySG | | |

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| | <p>delegations and changes to technical and administrative details respectively. This role is currently performed by a single person at NTIA as required. To accommodate for increased delegation requests associated with the new gTLD process is largely automated and managed via a web interface.</p> <p>A new gTLD registry operator signs a Registry Agreement with ICANN prior to delegation, which asserts, among other things, that the registry operator has met all the requirements of the application process and the terms and conditions under which the TLD will be operated. The delegation process commences after the Registry Agreement is signed and pre-delegation testing is completed.</p> <p>The ‘authorisation’ role performed by NTIA is essentially a completeness check: confirming that the details of the request are accurate and meet the necessary requirements. Given that accuracy of information is critical for TLD delegations, it can be argued that it will be important that the ‘authorisation’ role performed by NTIA be replicated post-transition. How and by whom is the question that needs to be answered?</p> <p>Possible options include:</p> <ul style="list-style-type: none"> • an alternative, independent, third party that confirms the accuracy and completeness of the delegation request a secondary check that is built into the IANA delegation processes. In the case of gTLDs, an alternative, independent, third party could confirm the accuracy and completeness of the delegation request and also that the rules for delegation or redelegation as created through the policy development process have been followed. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 2. | <p>22 Dec: Section 3.4.3.2: Independent certification for delegation and redelegation requests</p> <p>28. For reasons already explained, it is hard to understand the role of introducing a third party and a written opinion on ccTLD delegation and redelegation decisions. We do not believe that it is appropriate to introduce such a role and, bearing in mind the importance of local decisions in such case, we wonder how the third party would be able independently to verify the decision.</p> | Nominet | | |

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| | <p>29. At best an independent counsel could establish whether due process had been followed and that satisfactory evidence had been produced to show this. But if a decision is contested, it would be more appropriate for the aggrieved party to take its case to the IAP to have the decision referred back for further consideration, should due process not have been followed or decisions were not properly documented.</p> <p>30. As it is, we do not believe that the NTIA role has ever been to verify delegation and redelegation decisions – at best it has checked that due process has been followed. We therefore do not think this exact role needs to be replicated. An appeals process (limited, as already explained) should be sufficient.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |
| 3. | <p>22 Dec: On the independent certification on delegation and redelegation requests, as well as the independent review panel, the proposal should state more clearly that only the way IANA followed the specific policy should be checked, and in no case or no circumstance should the panel take a binding decision that is not exclusively and only based on these specific policies IANA have and will continue to have to follow. In other words, only IANA’s fulfillment of its due diligences regarding the policies agreed are to be checked, and in no circumstance the proposed delegation or redelegation “per se”.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00042.html</p> | AFNIC | | |
| 4. | <p>22 Dec: Periodic random audit: Rather than creating an independent certification process for each delegation and re-delegation request, Google supports a more streamlined process which takes into account the sensitive nature of these requests, especially for ccTLDs. As such, we recommend the following modifications to the CWG’s proposal to require independent evaluation for every delegation and redelegation request: First, a certifier should only review the processing of change requests for compliance with a limited, pre-determined set of requirements to be agreed by the Generic Names Supporting Organization (for gTLDs) and by the Country Code Names Supporting Organization (for ccTLDs). Second, the certifier should not have the authority to review every delegation and redelegation request; instead, it should be called</p> | Google | | |

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| | <p>upon to review a designated number of changes at random over the course of the year. This approach will minimize the possibility of the certifier unilaterally and unfairly revisiting change requests to alter the outcome in a particular case while at the same time ensuring agreed policies are being followed.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pfdwiXFUTBY7.pdf</p> | | | |
| 5. | <p>22 Dec: With these said, we have several points of concern as far as we can learn from the published proposal, which might be of problem subject to the further detail and implementation.</p> <p>d) Independent certification for delegation and redelegation requests The section 3.4.3.2. stipulates the certification process by Contract Co. with an independent counsel for this particular action. The detail, especially clear condition to be certified is key for this function in order to have an independent counsel act reasonably. Thus we expect the ongoing discussion at CWG on this aspect will consider and develop such detail.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00053.html</p> | JPNIC | | |

Possible Modifications to the Independent Review of Board Actions

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| Possible Modifications to the Independent Review of Board Actions | | | | |
| 1. | <p>22 Dec: We feel that that discussion is misplaced. The ICANN Bylaws provide for a limited Independent Review Process (IRP) of Board actions when it comes to the IANA functions. Primarily, this is intended to apply to the delegation and redelegation of ccTLDs, which require Board approval prior to being submitted to NTIA. The IRP also applies to Board actions regarding gTLDs such as policy approval and implementation plan approval. We feel that this level of scrutiny is sufficient when it comes to Board actions as it pertains to the IANA functions provided broader accountability checks are implemented as discussed further below.</p> <p>As we have noted above, maintaining the level of accountability contained with the IANA functions contract is important; however, we do not feel it is necessary to create another layer of bureaucracy into already complex processes that have definite checks and balances already built into the system.</p> <p>However, this does not mean that the RySG does not support broader accountability checks on Board actions and decisions, specifically the development of a binding independent review process for all Board actions on policy or the implementation of GNSO policies, including Board decisions as they pertain to the IANA functions.</p> <p>We feel this is a more streamlined and efficient way of addressing the concerns raised by this question. Instead of creating an extra layer of review for IANA-related Board decisions, ICANN would implement a broader scope for independent review of Board decisions, which could encompass both the issues raised here as well as other issues within the broader policy development process within ICANN.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | RySG | | |
| 2. | <p>22 Dec: We do not believe that the ICANN Board currently has, or should have, any role in approving ccTLD delegations and redelegations beyond verifying that due process has been followed by the IANA functions operator. We would not see</p> | Nominet | | |

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| | <p>the ICANN bylaw provision for independent review of Board actions having much, if any, role in the case of the CWG draft proposal.</p> <p>As noted in our detailed submission on the CWG draft transition proposal below, we are concerned about the duplication of different entities and mechanisms involved in oversight and review of the delivery of the IANA functions, with the risk of confusion and dispute, as well as opening an already overloaded process to forum shopping.</p> <p>However, we could envisage a key role for strengthened bylaw provisions in the case of a simplified stewardship model directly based around ICANN, but with binding obligations and the potential to set up a separate entity should ICANN's stewardship fail to meet community requirements.</p> <p>Section 3.3: Summary of current arrangements/Continuation of existing arrangements</p> <p>15. Independent Review of Board Actions: We do not believe that "delegation and redelegation of ccTLDs ... require ICANN Board approval prior to being submitted to the NTIA." Table T5-5 does not identify what the actual role performed by the Board is, but we believe that the role is (and should remain) limited to assuring that due process has been followed and documented.</p> <p>16. There needs to be a clear differentiation between the roles of the proposed Independent Appeals Panel (for specific decisions) and the Independent Review of Board Actions to avoid confusion between the different appeals processes and the risk of gaming the system.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |

Possible Modification to the NTIA's Responsibilities Acting as the RZ Management Process Administrator

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| Possible Modification to the NTIA's Responsibilities Acting as the Root Zone Management Process Administrator | | | | |
| 1. | <p>22 Dec: The accountability measures enumerated in the IANA functions contract itself largely address the challenge of ensuring that ICANN performs the IANA functions effectively and transparently. This includes, “carry[ing] out the IANA functions in a transparent manner, including inter alia, publishing of user instructions, technical requirements, and an explanation of the processes and procedures that are used to develop policies related to the IANA functions.” We feel that adding an extra layer of transparency by requiring the public posting of all IANA change requests will only increase visibility into the IANA functions.</p> <p>However, it should be made clear that the public posting of IANA change requests is for informational purposes only and these change requests should not be open to further discussion or public comment by the community. Further, the public posting of each IANA change request needs to be done in an efficient manner to ensure that this new process does not slow down these requests.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | RySG | | |
| 2. | <p>22 Dec: We welcome the continued obligation for the IANA functions operator to publish all requests for changes to the root-zone file and WHOIS database and the publication of delegation and redelegation reports. We would note that the delegation & redelegation reports could be assessed in an ex-post review as part of the annual reporting cycle.</p> <p>As outlined below in our detailed assessment of the CWG draft transition proposal, we do not think that the NTIA’s theoretical role of certifying ccTLD delegation and redelegation decisions should be replicated, and we would have serious concerns about the mechanism proposed in section 3.4.3.2. This proposal fails to recognise the complexity of these decisions given (for example) the importance of national or local decisions, and the differences in culture and practice in different parts of the world. Subjecting the careful analysis that is needed by the IANA functions operator to the views of counsel, which is unlikely to have sufficient experience and understanding of these issues, is not</p> | Nominet | | |

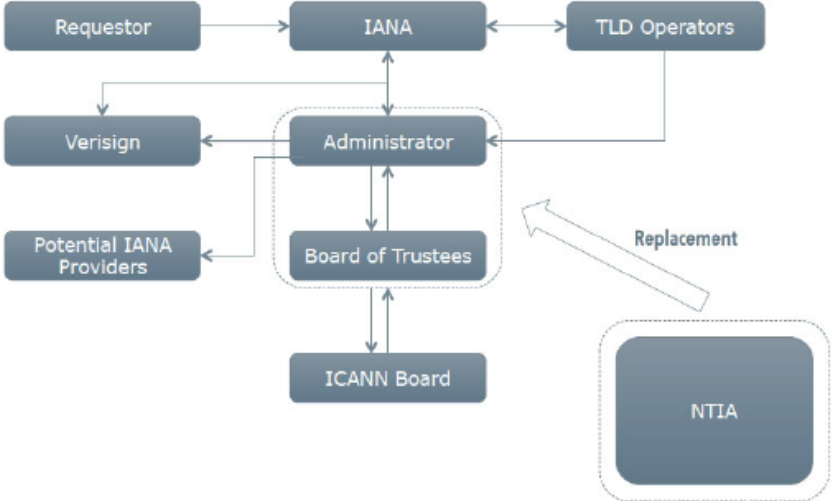
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| | <p>appropriate.</p> <p>We would also note that the role of any independent certification process would overlap and cause confusion with the role of the Independent Appeals Panel.</p> <p>Subject to addressing the concerns identified for the role of an independent certification process, we could see some benefits from the IAP as part of the process. However, we believe that the IAP role in decisions associated with delegation and redelegation of ccTLDs (at least) can also only be based on assessing whether the IANA functions operator has carried out its role correctly: has it performed the relevant checks, is the documentary evidence in place, is there documented explanation and justification where criteria are applied in a different way depending on the particular case?</p> <p>Hence we believe that any decision by the IAP should be limited to agreeing that due process has been followed and documented, or to referring the case back to the IANA functions operator for further consideration and explanation. It should not make a decision on approval or rejection of the decision: we do not believe that an independent body would have the experience and knowledge to do this.</p> <p>Section 3.4.1: NTIA acting as the IANA Functions Contract Administrator – contracting functions</p> <p>17. Do we need to address the potential liability of the Contract Co? The bylaws of the company need to be written quite precisely to limit its mandate and to allow it to ignore instructions from the MRT that are outside the MRT's mandate. (We would have a serious concern about the MRT's liability for its decisions and instructions, especially if there is any question of the committee exceeding its mandate.)</p> <p>18. This section could again usefully note the obligation for the Contract Co to work with maximum public transparency in a clearly defined and limited mandate and that it should not be possible to change the mandate except through an open and transparent process.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |

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| 3. | <p>22 Dec: Arrangements relating to the NTIA's current function The CWG has developed a proposal to replicate existing arrangements, with a formal contract between the IANA Functions Operator (currently ICANN) and an independent entity.</p> <p>It has been assumed by the CWG, as reflected in its proposal, that the contract manager must be an "entity" in a legal sense, a new construct and operate completely outside of ICANN.</p> <p>The other alternative, as mentioned in the introduction to the CWG's proposal but not expanded upon, is a mechanism that is based within ICANN, but is protected by Bylaw provisions and other structural changes. As can be seen for our alternative proposal below, we favour this approach.</p> <p>An independent new organisation as contemplated in the CWG's proposed model is of significant concern to us. We believe that ICANN is the right body to fulfil the role, a role for which it was specifically created. For the CWG's proposal to be workable, significant and complex issues of jurisdiction, structure, scope and the avoidance of "capture" would need to be resolved. They are not addressed in the current draft proposal.</p> <p>The current document from the CWG proposes a hierarchical and multi-tiered model for the future management of the administrative functions relating to the IANA contract. Notably, many of the proposed functions of a "Multistakeholder Review Team" and "Customer Standing Committee" either overlap or feed into each other. As we have said above, we believe it is possible for registry customers to be directly empowered to oversee the current contract-related IANA functions. We believe this also holds true for administrative functions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFuBxTOIQIB.pdf</p> | auDA | | |
| 4. | <p>22 Dec: With respect to the role of "Root Zone Management Process Administrator", the replacement suggestion contained in the draft proposal is not clear. In particular, chapter "3.4.3.2" suggests that a "counsel independent from ICANN" should submit a written opinion whether TLD delegation/redelegation requests meet policy requirements, but no further descriptions of the "counsel" is given.</p> | Brazilian Government | | |

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| | <p>As an alternative to the "counsel", the MRT, as the main body in the new proposed replacement architecture, could perform the given administrator role.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | | | |
| 5. | <p>Dec 22: As the CWG is in the process of discussing whether and how to replace the authorization role currently played by the NTIA, it is suggested that a clear, specific and detailed authorization process be described in the final proposal.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqpv2Fo9RgE.pdf</p> | ISOC-China | | |
| 6. | <p>Dec 21: Authorisation Function</p> <ul style="list-style-type: none"> • Role of Legal Counsel: It has been proposed that the Authorisation Function will be replaced by publication for gTLDs and counsel review for cTLDs. It is unclear who will appoint this independent legal counsel? Will the legal counsel be providing an assessment based on California Law or the country from where the ccTLD originates? The advice provided by the legal counsel should preferably be in the form of a pre-defined checklist. In case of any contentious issues, the legal counsel should refer the matter to the IAP. <p>Cooperative Agreement</p> <ul style="list-style-type: none"> • Silence about Cooperative Agreement: The proposal is silent about the post-transition arrangement for the Cooperative Agreement between NTIA and Verisign. I suggest that post-transition, the Cooperative Agreement should be signed between Contract Co and Verisign. The MRT should be delegated the authority of monitoring the Cooperative Agreement. Elements of the Cooperative Agreement that relate to the registry functions of Verisign (in contrast to the root zone functions) should be removed from the Cooperative Agreement and be transferred to a direct contract between ICANN and Versign. It should be left to the future MRT to decide whether the Cooperative Agreement should be merged with the IANA Functions Contract. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbnOhCY.pdf</p> | Rishabh Dara Student, IIM Ahmedabad | | |

ALAC Proposal

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| ALAC Proposal | | | | |
| 1. | <p>22 Dec: VI. Alternative Model: As stated under section III above, an alternative model would more closely tie the Administrator / Board of Trustees role to ICANN. The benefits would be: saving in administration cost while retaining an effective oversight function. The Administrator and the Board of Trustees would lose some independence but the implementation and operation path is clearer.</p> <p>The hallmarks of this alternative model (i.e., the differences between this model and the one proposed above):</p> <ul style="list-style-type: none"> - The Administrator / Q.A. function and the Board of Trustees would essentially report to the ICANN Board. - The IANA-- - services contract would expire. There would be no contract so long as ICANN provided the service. - Same as the proposal above, if ICANN were unable to perform, the Administrator and Board of Trustees would combine to find a new IANA-- - function services provider. - The ICANN Board would be obligated to facilitate the search. - When a new provider is selected, the contract and its trappings would be re-- - installed. The contract could be between the Administrator and new IANA-- - function services provider or ICANN and the IANA-- - function services provider. That decision could be made at that time. | Kurt Pritz | | |

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| | <p data-bbox="779 140 1048 164" style="text-align: right; color: blue;">Alternative IANA Oversight Model</p>  <p data-bbox="185 699 555 722">The rationale for this approach is:</p> <ul style="list-style-type: none"> <li data-bbox="185 730 1055 850">- It is highly likely that ICANN will provide this routinized, no-cost service for a long time. The cost of formal contract maintenance and oversight is unnecessary until a new provider is sought. This is an unlikely and probably distant in time event. <li data-bbox="185 866 1037 922">- The Board of Trustees, if populated by high-level people, will maintain its independence of the ICANN Board. <li data-bbox="185 930 1055 1026">- If a clear set of performance and escalation criteria are developed, the decision to re-bid the IANA function contract will be largely objective. (If ICANN is not performing and cannot perform, it will be clear to everyone.) <li data-bbox="185 1034 1048 1090">- The power and independence of the Board of Trustees might be embedded in the ICANN Bylaws. <li data-bbox="185 1098 1032 1153">- There are reasons why ICANN might retain the contractual relationship with the new provider: <ul style="list-style-type: none"> <li data-bbox="185 1161 745 1185">o Ensure the new provider adheres to ICANN policy <li data-bbox="185 1193 902 1217">o Provide ICANN with weight in the Internet ecosystem discussion <li data-bbox="185 1225 1003 1249">o Provide a communications forum for the IANA function and its customers <p data-bbox="185 1297 1048 1385">However, if ICANN has lost the services agreement, there are likely to be larger, unanticipated issues with the ICANN model, so the decision should be left to that time.</p> <ul style="list-style-type: none"> <li data-bbox="185 1393 1025 1417">- Resourcing the Administrator and Board of Trustees functions will be easier | | | |

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| | <p>under the ICANN Board umbrella.</p> <p>– The negotiation of SLAs and their enforcement is the same. However, some independence is lost. A prerequisite for the implementation of this alternative proposal is successful implementation of Accountability measures (i.e., to the satisfaction of IANA customers) being developed elsewhere.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfr6tLwDJZvf.pdf</p> | | | |
| 2. | <p>22 Dec: Specific ICANN Alternative Solution</p> <p>As mentioned above, we firmly believe that the separation of the IANA Functions Operator from ICANN remain a possibility, and as such a solution purely internal to ICANN is unacceptable.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfsDZ7QPOcxD.pdf</p> | RrSG | | |
| 3. | <p>22 Dec: ALAC Proposal</p> <p>As indicated by our analysis, the ALAC believes that:</p> <ul style="list-style-type: none"> • there a large number of problems associated with the draft proposal; • although many might be solvable, some seem less likely to be addressed in a practical way; • The overall structure is complex and will be costly, • The benefits it attempts to deliver are available in other less complex and costly ways. <p>Recommendation 1</p> <p>The Contract Co. entity should be eliminated and the assignment of IANA should be made by the NTIA to ICANN. This will drastically reduce the one-- - time and ongoing costs of the transition.</p> <p>The Accountability CCWG should be charged with ensuring that the objectives associated with the Contract Co. can be met within the ICANN structure.</p> <p>Although the details of such measures are outside of the scope of the IANA Stewardship CWG, the ALAC feels that it is necessary to demonstrate that the task presented to the Accountability CCWG is not an impossible one. Towards that end, the ALAC offers some measures that the CCWG could recommend implementing should it so decide:</p> <ul style="list-style-type: none"> • Requirement that MRT (or similar body) recommendations are adhered to. <p>This is essentially the exact same rule as Contract Co. would have been subject</p> | ALAC | | |

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| | <p>to. Should that not be possible under applicable corporate law, binding arbitration could be used to ensure that advice is duly considered. ICANN already accepts the concept of binding arbitration in its contracts.</p> <ul style="list-style-type: none"> • In addition to the MRT, and IANA Support Organization could be established. Conceivably, with suitable powers, the IANA Supporting Organization (ISO?) and the MRT could be one and the same organization. But that would presume that an entity within ICANN could be given the necessary authority. Changes with respect to IANA would be subject to advance notice, public comment and MRT approval, and would require significant Board voting thresholds (percentage of those voting for a change and/or absolute number of votes required). • ACs and SOs could be allowed to recall their Board members. Such action could temporarily reduce the size of the Board (until replacement members are appointed) to freeze any Board action on critical IANA issues. • In extreme cases, the MRT could require mandatory divestiture of IANA, with the same ultimate effect of Contract Co. moving IANA to a new contractor. The MRT would specify the details of such divestiture, and the attributes of the prospective recipient of the IANA functions. If necessary, the MRT could even require the creation of a Contract Co.-- - like entity, but this would only need to be done if it was clear that ICANN was no longer a suitable vehicle for IANA. This last option provides the separability of ICANN and IANA, but does not build the entire infrastructure required to do so until and unless there is evidence that it is required. <p>The net impact would be that ICANN would be subject to constraints with respect to IANA similar to those of Contract Co, without the complexity and cost of building, supporting and defending the new infrastructure.</p> <p>Recommendation 2 The MRT should be convened by ICANN, similar to how it has convened the Stewardship CWG, the Accountability CCWG, and most particularly, the IANA ICG. ICANN has demonstrated an ability and willingness to create such groups. Moreover, in the process we have learned a lot about how this should be done, so the process should only get better.</p> <p>Convening the MRT under the auspices of ICANN, in conjunction with its ACs and SOs and the I* family of organizations can ensure that all MSs are covered and treated equitably.</p> <p>Whether the MRT resides within the bounds of ICANN, or is created as an entity</p> | | | |

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| | <p>external to ICANN is an issue that the Accountability CCWG would have to investigate (depending on which structure would be optimal given any corporate law restrictions).</p> <p>As another way forward, the MRT could be replaced by a dual-- - pronged vehicle similar to that used by the addressing community. In that case, there is the Address Supporting Organization (ASO) and the ASO Address Council contained wholly within ICANN, and the Number Resource Organization (NRO) external to ICANN. In the case of IANA, there might be an IANA Support Organisation (ISO) and the IANA Resource Organization (IRO). The latter could be established in coordination with the other I* organizations and would afford a strong measure on continuity should the option of divesting IANA ever be needed.</p> <p>Recommendation 3 There is a serious gap in all proposals related to a viable way to replace the NTIA backstop functions, particularly those sensitive ones related to redelegations. The IAP may be a way of correcting a perceived error, or with suitable delay and injunctive procedures, perhaps even a way to prevent them, but there should be “standard operating procedure” way of catching most such errors without resorting to the appeals process.</p> <p>There is no evidence that any solution or partial solution proposed to date is directly related to the presence of Contract Co or not (since Contract Co. itself only follows instructions from other bodies that will continue to exist in the ALAC proposal).</p> <p>Although the ALAC does not have specific recommendations at this time, we believe that identifying an equitable solution is critical to an effective stewardship transition</p> <p>Recommendation 4 Ongoing monitoring ensuring that IANA is adhering to established policy and practice is an essential part of any transition. In the ALAC proposal, this could be done with relation to names/root zone by some combination of the appropriate SOs (with suitable staff support), since they are the ones that have created the policies, the MRT, the CSC (with suitable MS components added), or an IANA Support Organization if that were to be created. The Accountability CCWG would no doubt need to ensure that they had standing to take action on</p> | | | |

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| | <p>perceived violations.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfddQ2yQNqpJ.pdf</p> | | | |
| 4. | <p>22 Dec: Input on a specific (ICANN) alternative solution While we understand the motives behind the model being proposed, we are concerned about the scale of the changes and the roles of so many different players. The mandates of the proposed new entities are poorly defined and the currently identified work is onerous. In particular, the outline of the work of the Multi-stakeholder Review Team is large and, for a committee of volunteers, we wonder how it will be able to carry out all of its role in normal times, let alone when it is organising a rebidding process.</p> <p>This is a major weakness of the proposal: an overloaded committee could easily be dominated by a few well-resourced people or organisations able to devote their time to the work of the MRT. Given the nature of the operation there are also likely to be concerns about good governance and handling of conflicts of interest.</p> <p>We also have particular concerns about the Contract Co: while we recognise the reasons for the construct being proposed, unless it is supported to allow it to weather litigation, its shell-nature makes it vulnerable to attack and likely to be an unequal bargaining partner in any negotiations with much larger and better resourced organisations.</p> <p>We believe that an ICANN-based solution could be operationally effective, subject to introducing real safeguards and controls. These could include, for example:</p> <ul style="list-style-type: none"> o An obligation for any new entities (CSC or MRT-like roles) that are created to ensure the independent oversight of the IANA functions operator to work in the interests of the wider stakeholder community and to engage with the wider community in making decisions and to be empowered to exercise any remedies for failure including ultimately a re-tender of the IANA functions operator role away from ICANN; o Establishing these entities under new ICANN bylaws with a degree of independence from the Board and the staff of ICANN. These new bylaws should also clearly define their very limited mandates; o Clear functional separation of the roles of policy development (and, in the | Nominet | | |

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| | <p>case of gTLDs, the contracting and enforcement roles) from that of the provision of the IANA functions; and o Limitations on making changes to these bylaw provisions for as long as ICANN performed the IANA functions operator role.</p> <p>It would be easier for stakeholders to engage in a stewardship processes within ICANN (meaning ICANN as a platform for engagement, rather than simply the Board and staff of the company), than with overloaded committees that see themselves as having an independent existence.</p> <p>However, we do recognise that time is short to identify a different approach to the cross-community working group’s draft. Accordingly, we provide a detailed analysis of the CWG draft proposal: there is a significant number of major changes that would be needed to make this proposal viable, in particular to respond to the specific environment in which ccTLDs work.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfhbqFwOgsyZ.pdf</p> | | | |
| 5. | <p>22 Dec: Norid cannot see that the NTIA stewardship has been anything else than good governance. We find it necessary that at least the same level of stewardship should be maintained. And we should not be tempted to create a whole new system. We are concerned that the introduction of multiple organisations/players to replace the lightweight NTIA authorization role of today might be confusing and very bureaucratic. And that it will be alienated from the community.</p> <p>We therefore think that an alternative ICANN-- - based solution should be considered before making the final decision. With sufficient safe-- - guards and control this could function. But of course, we recognise that the time given for a solution probably is too short.</p> <p>For all the different organizations suggested the mandate and responsibility should be clarified and it should not be possible to change the mandate without through a transparent process. We are concerned that references to the evaluation of delegation and redelegation reports can be interpreted as assigning additional authorities to new committees and bodies.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfiVFdJVVu8t.pdf</p> | UNINETT Norid AS | | |
| 6. | 22 Dec: The ‘ICANN only’ option | NCSG | | |

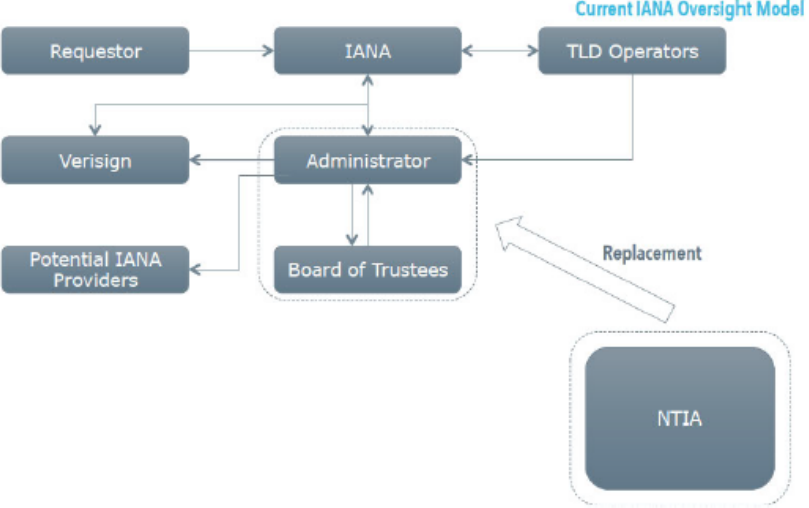
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| | <p>NCSG strongly opposes proposals to turn over permanent responsibility for the names-related IANA functions to ICANN, Inc. We agree with many of the operational communities that ICANN's existing IANA department has done a good job. We note, however, that its performance has always been disciplined by the ability of the NTIA (or the IETF) to change the IANA functions contractor. Without that separability, we have significant concerns about ICANN's performance, its accountability to the global multistakeholder community, its susceptibility to capture and the separation of policy from implementation. Advocates of an ICANN-only solution believe that the CCWG on accountability can reform ICANN in ways that would address those concerns, but we disagree. ICANN itself will have the final say on any reforms proposed by the CCWG-Accountability. A bargain in which ICANN gets permanent control of IANA now in exchange for a mere promise that it will remain accountable indefinitely into the future is not a wise bargain. Placing the IANA functions permanently with ICANN, without independent periodic review, community comment and open bidding on a recurring basis, would not be acceptable to the NCSG.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | | | |
| 7. | <p>21 Dec: Alternative Proposal</p> <ul style="list-style-type: none"> • I strongly oppose the alternative proposal which envisages transferring all of NTIA's responsibilities to ICANN. This proposal appears to be a guise to gift IANA to ICANN in perpetuity. In the absence of external accountability, there would be no feasible mechanism to change the IANA operator in the future in case of serious dissatisfaction with the incumbent IANA operator. • It is a risky and speculative gambit to suggest that if IANA is transferred to ICANN without a contract then in return the ICANN board may accept strong internal accountability mechanisms, especially since the output of CWG-Accountability will be vetted by the ICANN board. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbn0hCY.pdf</p> | Rishabh Dara Student, IIM Ahmedabad | | |
| 8. | <p>18 Dec: Input on a specific (ICANN) alternative solution: The CWG calls for contributions on a specific alternative option which contemplates all NTIA responsibilities being transferred to ICANN rather than to the multistakeholder community. INTA generally agrees that such an option would require both substantial improvements to ICANN accountability and the implementation of binding arbitration mechanisms executed by an</p> | INTA | | |

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| | <p>independent arbitration organization. However, such organizational accountability enhancements and a binding arbitration procedure are, in INTA's view, required regardless of whether the IANA functions are transferred to an entity such as Contract Co. or directly to ICANN. The ongoing discussion about such an alternative solution should allow ample participation from the business sector and be guided principally by technical considerations related to operational excellence in root zone management.</p> <p>This issue is interrelated with the Enhancing ICANN Accountability Process and thus is subject to the results of the separate Cross Community Working Group on Enhancing ICANN Accountability ("CWG-Accountability").</p> <p>INTA recognizes that the Contract Co. approach recommended by the CWG enhances accountability regarding ICANN's technical management of the IANA functions by assuring periodic review of ICANN's performance and simplifying the task of transferring the contract if that performance is deficient. A direct transfer of the IANA functions to ICANN would be simpler in form but raises questions about whether technical performance accountability could be adequately enforced. INTA has no objection to further exploration of such an alternative but, absent a specific and well-developed proposal, is unable to comment further at this time. Again, we believe that a more elongated and realistic timetable would allow the CWG to more fully develop such an alternative for community consideration.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfEhxmJOp2lz.pdf</p> | | | |
| 9. | <p>16 Dec: [This submission pre-dates the more formal submission on 22 Dec and therefore only summarized here. See entries on 22 Dec through the document for detailed analysis.]</p> <p>As indicated by our analysis, the ALAC believes that:</p> <ul style="list-style-type: none"> • there a large number of problems associated with the draft proposal; • although many might be solvable, some seem less likely to be addressed in a practical way; • The overall structure is complex and will be costly, • The benefits it attempts to deliver are available in other less complex and costly ways. <p>Refer to pages 6 to 8 for details (4 Recommendations)</p> | ALAC | | |

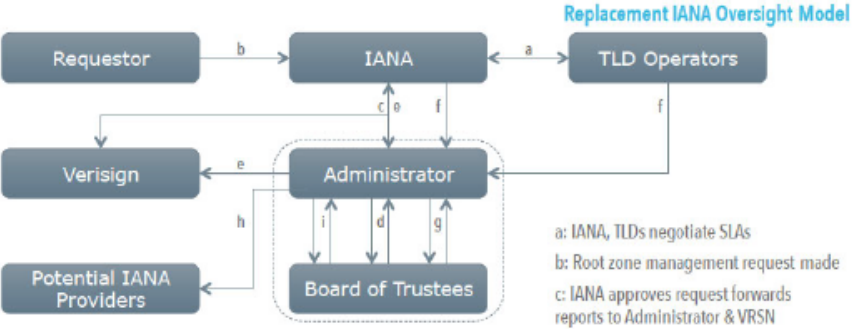
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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00011.html | | | |

Other Alternative Proposals

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| Other Alternative Proposals | | | | |
| 1. | <p>22 Dec:</p> <p>I. Principles (in addition to those already published by the CWG): Replace only what needs to be replaced, and develop new entities only when necessary. Use existing multi-stakeholder mechanisms wherever possible. While the CWG is authorized to create the IANA oversight model, independent, non-policy making bodies should implement it. Existing ICANN organizations can work together to monitor the new model without creating new, permanent organizations.</p> <p>Of the different oversight roles, the least discussed and potentially most important is to provide a backstop to the IANA function operator decisions on root zone management change decisions. If powerful third parties (governments or organizations) protest a legitimate root zone management change (most likely a re-delegation or registry operator change of control), the oversight function must be of sufficiently high level to resist significant pressure, provide independent corroboration, and approve the change.</p> <p>II. Current regime: The IANA oversight function is comprised of two responsibilities: - Approval of root zone change requests: Approval of root zone change requests currently is performed by the NTIA contracts administrator. In contentious changes, the contracts administrator is backed / supported by the NTIA, and other US Government Departments. - Designator of the IANA function services provider: the Designator of IANA function service provider is performed by the NTIA. In this role the NTIA gauges IANA performance and, upon expiration of the IANA agreement, decides whether to issue a Request for Proposals, or renew the agreement.</p> <p>III. The Replacement: - Administrator. Fulfilling the role of the NTIA Contract Administrator and Quality Assurance function. - Board of Trustees. Fulfilling the executive role that backs the Administrator in authorizing controversial root zone change requests and deciding whether to engage with an alternative IANA function services provider.</p> | Kurt Pritz | | |

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| | <p>The model described here proposes an independent Administrator and Board of Trustees. Alternatively, those two functions can be associated more formally with ICANN. The alternative model might be simpler to implement and less expensive to retain without much effect on performance of the two oversight responsibilities. The alternative is described at the end.</p> <p style="text-align: right; color: blue;">Current IANA Oversight Model</p>  <p>IV. Model Operation:</p> <p>a. Administrator</p> <ul style="list-style-type: none"> - Is an existing organization (not-- - for-- - profit) with the ability to contract with the IANA-- - function services provider. - Is hired by the Board of Trustees for a fee. The fee is paid by ICANN. If ICANN loses the IANA-- - function contract the Board of Trustees and the ICANN Board will agree on a fee mechanism that, in total, is cost neutral to current ICANN fee payers (i.e., fees paid to ICANN are reduced to fund the Administrator through a direct contract or other mechanism.) - The specification for Administrator hire is developed by IANA Stewardship Transition Coordination Group (ICG) and ICANN staff, reviewed through public comment and approved by the GNSO, the ccNSO and the ICANN Board. - Covers the NTIA Contract Administrator role: <ul style="list-style-type: none"> o Reviews IANA-- - function reports, recommending root-- - zone management changes for authorization by the Board of Trustees. o Monitors on-- - going IANA-- - function performance against process control | | | |

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| | <p>metrics, QA role.</p> <ul style="list-style-type: none"> - Compiles periodic (quarterly or annual) performance reports issued by: the IANA-- - function services provider, a self-- - formed gTLD group, and a self-- - formed ccTLD group. - Recommends to the Board of Trustees whether the IANA-- - functions contract should be renewed or put out for RFP. - If releasing an RFP is approved by Board of Trustees, the Administrator conducts an open RFP and reports recommendations to the Board of Trustees. b. Board of Trustees <ul style="list-style-type: none"> - Are selected by the NomCom using criteria initially developed by the ICG and approved and maintained by the GNSO and ccNSO. - Hires Administrator in an open process. - Sets the Administrator and IANA-- - function provider contract term. - Retains an independent auditor who will review and report on Administrator performance. The review will include public comment and customer input. - Authorizes root zone management change requests recommended by the Administrator or request additional information. The Board of Trustees does not “reject” changes; the Board “requests additional information” until the IANA-- - function provider, the Administrator and the Board of Trustees are in agreement. This last type of instance is expected to occur rarely. - Approves administrator recommendations regarding renewal of the IANA-- - functions contract, or requests additional information. - In the case where a new IANA-- - function provider is to be selected: sets RFP criteria, after consultation with the gTLD registry stakeholder group and the ccNSO, and the opportunity for public comment. - Approves the recommendation of the Administrator for IANA-- - functions service provider or requests additional information from the Administrator. | | | |

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| | <p style="text-align: center;">Replacement IANA Oversight Model</p>  <p>The diagram illustrates the Replacement IANA Oversight Model. It features several entities: Requestor, IANA, TLD Operators, Administrator, Board of Trustees, Verisign, and Potential IANA Providers. The Administrator and Board of Trustees are enclosed in a dashed box. Arrows indicate the flow of information and actions: 'a' from TLD Operators to IANA; 'b' from Requestor to IANA; 'c' from IANA to Administrator; 'e' from Administrator to Verisign; 'f' from IANA and TLD Operators to Administrator; 'g' from Administrator to Board of Trustees; 'h' from Administrator to Potential IANA Providers; and 'i' from Board of Trustees to Administrator.</p> <p>Legend:</p> <ul style="list-style-type: none"> a: IANA, TLDs negotiate SLAs b: Root zone management request made c: IANA approves request forwards reports to Administrator & VRSN d: Administrator reviews/authorizes change (certain cases: recommends to Board of Trustees, who authorize change) e: Administrator informs VRSN & ICANN change is authorized, VRSN makes change f: IANA & TLDs make performance reports to Administrator g: Administrator makes recommendation to renew contract or conduct RFP; Board agrees or asks for additional analysis h: Administrator conducts RFP in accordance with terms agreed by Board and subject to public comment i: Administrator makes recommendation on new IANA provider; Board agrees or asks for additional analysis <p>V. Implementation / Assumptions / Rationale:</p> <ul style="list-style-type: none"> - The Board of Trustees is comprised of independent, high-- - level members: executives, former ICANN Board members, former senior government officials and recognized world-- - community leaders. A parallel example might be the Advisors to the Cross Community Working Group on Enhancing ICANN Accountability. Rationale: High-- - level members are required in the rare event that there is governmental or public protest to a legitimate change. The Board's most important role will be to approve legitimate changes despite pressure to do otherwise. The root zone change management role is relatively simple and easy to accomplish. The benefit the USG has provided is to act as a backstop to IANA decisions when there is controversy. A high-- - level, globally diverse Board dedicated to the multi-- - stakeholder approach is the best model for retaining the backstop. - The Board of Trustees will authorize root-- - zone management changes in the same process and using the same criteria the NTIA does now. Rationale: One could propose a model without a Board of Trustees, the IANA-- - function operator or an Administrator could approve root-- - zone management changes without further review. Nearly all changes are routine and require no further review so the establishment of a Board of Trustees for this purpose is a close call. However, a Board of Trustees will add value for | | | |

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| | <p>contentious changes where independent corroboration of ICANN recommendations will defend root- - zone management changes against government, societal or organization intervention.</p> <p>– Trustees are nominated for staggered terms set by the NomCom using their traditional methods (including use of nominations and search firms). The NomCom will take public nominations and recommendations during its deliberations. Rationale: This will allow ICANN to use existing and independent means for maintaining this Board of Trustees. The NomCom is a multi- - stakeholder body.</p> <p>– The ICANN Board, taking public input, will consider and approve ICG recommended criteria for nomination to the Board of Trustees. The ICG will use the input of the various stakeholder groups to create the criteria. If additional clarity is required, the ICANN Board will reconvene the ICG or a group comprised of SO/AC leadership. (The criteria can be modified through standard Supporting Organization policy processes.)</p> <p>Rationale: A small group can develop clear criteria consistent with the goals of this model to provide high- - level membership only.</p> <p>- The Administrator does most of the “leg- - work” for the Board of Trustees (so the Board can act quickly and easily):</p> <ul style="list-style-type: none"> o organizing change management reports o providing periodic IANA- - function performance reports, recommending whether corrective action is required o compile a performance report at the end of the contract term recommending either that the contract should be renewed or a request for proposals will be issued. <p>Rationale: We are more likely to attract high- - level members to the Board of Trustees if the work and recommendations are well organized for them; and less likely if the task requires extensive analysis and time.</p> <p>Rationale: In practice, the Administrator approves the change requests and the Board of Trustees plays an active role only in the case of controversial ccTLD re- - delegations, gTLD changes of control or controversial change requests. As the model develops, it is likely the Administrator will become the entity authorizing requests. - There should be a strong renewal presumption in the IANA- - function services agreement, based upon performance. If performance goals are met or if corrective action is taking place, the contract will be renewed. An RFP will issued if the incumbent IANA- - services provider cannot perform to the negotiated SLAs and so cannot be awarded the contract.</p> | | | |

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| | <p>Rationale: This is intended to avoid lightly-- - taken or speculative bid periods and the significant costs attending them. If an RFP is issued it will be because ICANN can no process of attempted corrective action and failures.</p> <p>Rationale: Because the IANA-- - function contract is a no-- - fee contract, the primary issue for consideration is performance. If performance meets the customer-- - negotiated requirement, there should be no need to find another provider. If there is a sense that ICANN spends too much on the IANA-- - function, the issue should be addressed through the existing, open budgeting process.</p> <p>Rationale: The strong-- - renewal presumption will leave in place intangible IANA services currently performed at ICANN. For example, in addition to responding to and processing change requests, the current IANA function provider performs a strong community role in coaching TLD operators through successful change processes, improving their operations, and safeguarding overall stability. This cooperation took years to construct and cannot easily be replaced.</p> <p>– The Administrator will develop the corrective action escalation processes, subject to public comment for approval by the Board of Trustees. Rationale: There must be a very clear performance standard and escalation steps. It will be most clear if those who have to use the standards and escalation process develop it.</p> <p>- SLAs will be developed through negotiation between self-- - formed TLD groups and ICANN. Rationale: Use existing stakeholder mechanisms; give the customer the voice.</p> <p>– Policy changes to this approach will be made by the GNSO and ccNSO through their normal policy processes. Rationale: Uses ICANNs existing multi-- - stakeholder approach. Establishment of the MRT will burden an already-- - over-- - burdened volunteer community, putting the MRT’ s long-- - term viability in doubt. ICANN’ s policy-- - makers should not be in the role of implementers or operations. The CWG and its progeny should create a model, oversee its establishment, monitor and recommend changes through existing policy processes.</p> | | | |

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| | <p>– Implementation changes to this approach can be recommended by ICANN staff, by the ICANN community through the Supporting Organizations and Advisory Committees, and by the Administrator. Recommended changes will be considered by the Board of Trustees.</p> <p>Rationale: This provides an open, clear path for improvement with recommendations coming from anywhere in the ICANN community.</p> <p>– Appeals: there need not be an appeal mechanism.</p> <p>Rationale: A root- - zone management change requires the agreement of three entities: the IANA- - function operator, the Administrator and the Board of Trustees. It would be difficult and impractical to create an organization that could effectively supplant the judgment of all three. If a root- - zone change request is denied at any step of the way, the requestor is asked for additional information and the request can proceed through processing. If the IANA- - function operator does not provide adequate consideration of a request, the requestor can (and has successfully in the past) request intervention by the ICANN Board, and then make an intervention request to the Board of Trustees (that ultimately decides whether to issue an RFP for a replacement operator).</p> <div data-bbox="197 798 1048 1125"> <p style="text-align: center; color: #00AEEF;">Replacement IANA Oversight Model: Assumptions</p> <pre> graph TD Requestor --> IANA IANA <--> TLD_Operators[TLD Operators] IANA --> Administrator Verisign --> Administrator Administrator --> Board_of_Trustees[Board of Trustees] Board_of_Trustees --> Administrator Board_of_Trustees --> Potential_IANA_Providers[Potential IANA Providers] Potential_IANA_Providers --> Administrator </pre> </div> <p>Administrator: already formed organization; ability to contract; performs services for a fee Board of Trustees: high-level executives or former officials; pro-multistakeholder; appointed by NomCom TLDs: self-formed customer group(s) (similar to or same as CSC) Assumptions: Board high-level, immune from influence or interference; hires Administrator after public participation Administrator does most of legwork; can be replaced by Board of Trustees Strong IANA contract renewal presumption ICANN cannot bid on RFP: to discourage speculative RFPs; only issued when ICANN can no longer perform</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-</p> | | | |

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| 2. | <p>22 Dec: RySG Proposed Modifications to CWG Proposal In light of the concerns above, we believe that the following modifications to the CGW proposal could account for the unique role of Registry Operators as the direct customers of the IANA Naming Functions and would be more effective in ensuring the continued performance of the IANA Functions Operator than that put forward in the Draft Proposal.</p> <p>Below, we provide an overview of our recommended modifications to the proposal, including a description of the improvements in comparison to the existing draft proposal.</p> <p>RySG Proposed Modifications</p> <p>The IANA Functions Contract provides the NTIA a critical technical oversight role, which we propose should be retained in the form of an Operational Oversight Council (OOC).</p> <p>In order to protect individuals and attract the most qualified experts, the OOC will be a lightweight, incorporated entity. Decisions and actions of the OOC would be carried out by two subsidiary entities: the Operational Oversight Board (OOB) and the Multistakeholder Advisory Committee (MAC). The OOB and the MAC would have welldefined compositions and responsibilities, which are described in more detail below.</p> <p>The primary accountability mechanism to ensure that the performance of the IANA Naming Functions remains satisfactory to its customers (gTLD and ccTLD Registry Operators) would continue to be a contract with the IANA Functions Operator. This contract would provide for the possibility of transitioning the performance of the IANA Naming Functions to a successor operator as a result of performance deficiencies or other failures of the IANA Functions Operator to adhere to contract terms. The contract would include a requirement for the incumbent operator to accept a determination to transition the IANA Functions to a successor entity and to facilitate such a transition, provided that the rebidding process was conducted in accordance with established requirements (e.g., confirmation of a performance deficiency in an independent audit and approval by both the MAC and the OOB).</p> | RySG | | |

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| | <p>The RySG also recommends that a mechanism is put in place through which the decisions and actions of the IANA Functions Operator can be appealed by directly affected parties (as defined in Section III 2.c of the RySG comments). This requirement could be filled by a satisfactory mechanism identified as part of the CCWGAccountability or by another distinct mechanism, if necessary. Finalization of this mechanism would be paused pending the publication of recommendations by the CCWG-Accountability, following the process described later in these modifications to the proposal.</p> <p>The Operational Oversight Council (OOC) An OOC would be established to serve as the counterpart to a contract with the IANA Functions Operator for the performance of the IANA Naming Functions. The OOC would have minimal staff, with most of its activities carried out by OOB and the MAC, as described below. Meetings of the OOC would provide for remote participation and, to the extent possible, in-person meetings would be held around ICANN meetings to reduce the cost of attendance to participants.</p> <p>Multi-Stakeholder Advisory Committee (MAC) The OOC Bylaws would establish a MAC comprising one representative from each of ICANN’s Stakeholder Groups and Advisory Committees. Representatives would serve three-year staggered terms to provide for rotation and diversity in the community members serving on the MAC. Representatives would not be paid and would be expected to cover expenses associated with participation. Further, to ensure a holistic approach is taken when examining the overall performance of the IANA Functions, the MAC would also include liaisons from other direct customers of the IANA Functions related to Internet numbering allocation and protocol parameters, namely the Internet Engineering Task Force (IETF), the Numbering Resource Organization (NRO), and the Regional Internet Registries (RIR).</p> <p>The overarching goal of the MAC would be to provide feedback from the multistakeholder community as it relates to the ongoing performance of the IANA Naming Functions.</p> <p>The MAC would be tasked with the following specific responsibilities:</p> <ul style="list-style-type: none"> • Approving changes to the OOC Bylaws requested by the OOB; • Appointing a liaison to the OOB to facilitate information exchange between the OOB and the MAC and participate fully in OOC decisions and activities; • Engaging with their respective communities as a part of a regular performance review; | | | |

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| | <ul style="list-style-type: none"> • Approving any decision of the OOB to initiate a bidding process (which could include an RFP) outside of any regularly scheduled rebidding processes; and • Approving the outcome of a rebidding process that resulted in a decision to transition the IANA Naming Functions to an entity other than the incumbent operator. <p>The MAC would provide an internal check to the OOC by ensuring that significant changes to the performance of the IANA Naming Functions would be acceptable both to the direct customers of those functions as well as to the broader multi-stakeholder community.</p> <p>Operational Oversight Board (OOB) The primary responsibility for operational oversight of the IANA Functions would be provided to an OOB. The OOB would be comprised of ccTLD and gTLD Registry Operators, the direct customers of the IANA Naming Functions. The ccTLD and gTLD community would each be designated five seats, which would be filled through procedures developed by the ccNSO and RySG. The MAC would also appoint a liaison to the OOB, who would have full voting rights on any OOB decision. Members of the OOB would serve three-year staggered terms to provide rotation and diversity in the registry operators serving on the OOB; representatives would not be paid and would be expected to cover expenses associated with participation on the OOB.</p> <p>The OOC and OOB would operate according to Articles of Association and Bylaws. The Bylaws would, at a minimum, include the following provisions related to the conduct of the OOB:</p> <ul style="list-style-type: none"> • A requirement that the OOB act transparently by publishing minutes of all OOB Meetings; • A requirement that any changes to the OOC Bylaws be approved by a majority vote of the (MAC, as described in greater depth above; • A requirement that any decision to initiate a rebidding process (outside of the regular cycle) be on the basis of an identified performance deficiency confirmed in an independent audit; • A requirement that any decision to transition the IANA Naming Functions to an entity other than the incumbent operator be supported by one or more identified performance deficiencies or instances of non-adherence to established contract terms substantiated by an independent audit; • A requirement that any decision to transition the IANA Naming Functions to an entity other than the incumbent operator be approved by a supermajority | | | |

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| | <p>vote of both the MAC and the OOB; and</p> <ul style="list-style-type: none"> • A requirement that any changes to the OOC Bylaws be approved by a supermajority vote of both the MAC and OOB. <p>The principal responsibilities of the OOB would include:</p> <ul style="list-style-type: none"> • Identifying terms for the contract with the IANA Functions Operator, including the establishment of service levels; • Entering into a contract with the IANA Functions Operator for the performance of the IANA Naming Functions; • Reviewing the regular deliverables of the IANA Functions Operator (e.g., delegation/redelegation reports and monthly reports) and ensuring that such reports are complete, accurate, and published in accordance with transparency requirements; • Coordinating regular performance reviews of the IANA Naming Functions to identify areas for improved performance or new services; • Overseeing the IANA Functions Operator’s compliance with contract terms and established service levels; • Initiating a rebidding process for the IANA Naming Functions in the case of nonadherence to contract terms, or non-performance against established service levels; • Approving the outcome of a rebidding process. <p>Independent Appeals Panel (IAP) As established in the existing Draft Proposal: All decisions and actions (including deliberate inaction) of the IANA Functions Operator that affect the Root Zone or Root Zone WHOIS database would be subject to an independent and binding appeals panel. The appeals mechanism should also cover any policy implementation actions that affect the execution of changes to the Root Zone File or Root Zone WHOIS and how relevant policies are applied. Where disputes arise as to the implementation of ‘IANA related policies.’</p> <p>The appeals mechanism should be limited to reviewing whether the relevant policies were properly applied and adhered to by the IANA Functions Operator and could not be used to challenge the substance of policies developed through the appropriate channels in the ICANN multi-stakeholder model.</p> <p>The Independent Appeals Panel (IAP) would apply the standards set forth in Section III 2.c. of the RySG comments in determining which parties had standing to appeal</p> | | | |

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| | <p>each category of action by the IANA Functions Operator.</p> <p>Finalization of this aspect of the IANA Naming Proposal would be deferred, pending the outcome of the ICANN Accountability Process. Following the publication of the CCWGAccountability’s draft recommendations, an assessment would be conducted to determine whether the outcome of the Accountability Process provided for a satisfactory appeals mechanism that could also meet the requirements described above.</p> <p>If the IANA CWG determined that a suitable appeals mechanism did exist, then its membership would work collaboratively with members of the CCWG-Accountability to ensure that a single, integrated appeals mechanism emerged from the CCWGAccountability that was consistently reflected in both proposals.</p> <p>If, upon publication of the CCWG-Accountability draft recommendations, no suitable appeals mechanism was deemed to exist by the IANA CWG, then the IANA CWG would resume its work of developing a mechanism to apply solely to the decisions and actions of the IANA Functions Operator. Standing to use this mechanism would be as provided in Section III 2.c of the RySG comments.</p> <p>Advantages of New Model Retains Accountability Mechanisms Provided in the Draft Proposal In our proposed modifications to the proposal, the two principal accountability mechanisms, namely the ability to move the IANA Naming Functions as a result of nonperformance of the IANA Functions Operator and the ability for affected parties to appeal decisions and actions of the IANA Functions Operator, are retained.</p> <p>Avoids Unnecessary Duplication and Bureaucracy and Potential Inconsistencies The proposed modifications to the proposal provides for the deferral of the potentially duplicate accountability mechanisms until the finalization and implementation recommendations from the completion of the work in the CCWG-Accountability. This permits the development of a more robust set of accountability mechanisms. The existence of multiple appeals mechanisms, potentially with overlapping mandates, could introduce the possibility of forum shopping and conflicting outcomes - a problem that is minimized in our proposed modifications.</p> <p>Improved System of Checks/Balances</p> | | | |

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| | <p>The two-step system we have built into our proposed modifications to the proposal for approving the decision to move the IANA Functions to a new operator provides a valuable check. Requiring approval of a decision to change the IANA Functions Operator by both the OOB and the MAC will ensure that the continued performance of the IANA Naming Functions continues to account for the needs and expectations of its direct users, while also accounting for any implications that such a change would have for the multi-stakeholder model holistically.</p> <p>Additionally, requiring that a decision to initiate a rebidding process be on the basis of a performance deficiency or upon violation of the contract between the OOC and the IANA Functions Operator provides an additional check that helps to ensure that decisions related to the continued performance of the IANA Naming Functions are operationally grounded.</p> <p>Improved Stability and Predictability We believe that putting in place limitations on the circumstances in which the IANA Naming Functions could be transitioned to a new operator provides stability and predictability in the performance of the IANA Naming Functions. Registry Operators are directly dependent on the continued execution of the IANA Naming Functions in accordance with established policies and service levels. Given the complexities and contingencies associated with transitioning the IANA Naming Functions to a new operator, as well as the uncertainty over how a new operator would perform in this role, gTLD Registry Operators have a strong preference for the incumbent operator continuing to perform the IANA Naming Functions unless a change was warranted due to performance issues, as described above. The limitations on the grounds in which a rebidding process could be initiated supports this general goal.</p> <p>The assurances that decisions regarding the IANA Naming Functions would be performance based and that the oversight bodies would not act arbitrarily, would also improve predictability for the IANA Functions Operator, while incentivizing continued satisfactory and improving performance.</p> <p>Better Integration of New Structures Integrating the contracting entity and its composite committees involved in operational oversight and introducing a liaison between the OOB and the MAC facilitate the establishment of Bylaws for each entity. They also improve coordination and execution by all parties involved in the oversight of the IANA</p> | | | |

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| | <p>Naming Functions.</p> <p>Limits the Scope on Mission Creep The existence of clear Bylaws in our proposed modifications to the proposal defining the responsibilities and composition of the OOB and the MAC also offers important limitations to ensure that oversight over the IANA Naming Functions remains operationally and technically focused. Further, the internal limits on the ability of each committee to modify its own Bylaws without the approval of the other limit the possibility of mission-creep by either of the two bodies.</p> <p>Improved Separation of Policy and Operational Responsibilities The aforementioned restrictions on mission-creep provided for in our proposed modifications also enhance separation of policy and operational responsibilities vis-a-vis the existing draft proposal by restricting the ability for either party to create a secondary nexus whereby policies can be reopened and reevaluated. As a result, our proposed modifications to the proposal better preserves the existing ICANN multi-stakeholder model for policy development while maintaining the technical and operational nature of the IANA Functions</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfnG7Rx16GgC.pdf</p> | | | |
| 3. | <p>22 Dec: Alternative Proposal As with the CWG's draft proposal, our alternative is intended as an attempt to develop a high level, over-arching framework for the future of the IANA function. Assumptions: 1. In a limited number of circumstances (such as 'gross incompetence' or 'material breach') there should be an option for the IANA function to be transferred from ICANN to another operator - The Nuclear Option. 2. There should be an enhancing of the current functional separation of the IANA function from the rest of ICANN - Functional Separation. 3. There should be a TLD registry operator centric standing committee to liaise with and oversee the IANA functions operator on administrative and service level functions - The Customer Standing Committee. 4. There should be an independent, binding arbitration mechanism to handle certain disputes - Appeals. 5. The policy for and implementation details of any review mechanism or</p> | auDA | | |

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| | <p>appeals process that pertains to the re-delegation of a ccTLD is a matter for the ccTLD community.</p> <p>6. The Cross Community Working Group (CCWG) on Enhancing ICANN</p> <p>Accountability will deal with ICANN wide accountability recommendations (for example a mechanism to replace the Board) and that such matters are best dealt with there. This alternative proposal seeks to deal solely with IANA matters. It is clear that any fully formed transition proposal from the CWG has to be inextricably linked to the work of that Accountability WG and therefore the timing of the work of the groups needs to become aligned.</p> <p>Proposal:</p> <p>1. The Nuclear Option - Where the IANA functions operator is grossly negligent or incompetent or in material breach of its obligations under agreed service level commitments or performance indicators, it needs to be possible for the IANA function to be moved to a new operator. This can be achieved by the creation of a 'Golden Bylaw', similar to the concept that exists in the corporate world of a golden share (http://en.wikipedia.org/wiki/Golden_share). The Golden Bylaw would give the TLD registry operators the right, in certain circumstances, to require ICANN to put the IANA function out to re-bid. The Golden Bylaw would set out at least:</p> <ul style="list-style-type: none"> a) the requirements to trigger the re-bid process - FOR EXAMPLE a vote of over 75% of ccTLD registry operators and 75% of gTLD registry operators b) what would need to happen to trigger the TLD registry operator's vote - FOR EXAMPLE a petition by more than 15% of TLD registry operators or a super majority vote in the gNSO or ccNSO c) the composition of a 'Re-Bid Committee' that would oversee the vote and the subsequent re-bid and decide who the successful bidder was. The Re-Bid Committee could, FOR EXAMPLE, comprise of 20 registry operators (split between ccTLDs and gTLDs) plus a number of representatives from each of the GAC, ALAC, SSAC and RSSAC d) the basis upon which the Golden Bylaw itself could be changed - FOR EXAMPLE only by a vote of over 75% of ccTLD registry operators and 75% of gTLD registry operators e) the other aspects of this proposal set out below. <p>2. Functional Separation - The current levels of functional separation of the IANA function from the rest of ICANN should be enhanced as part of the</p> | | | |

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| | <p>transition in a number of ways including:</p> <p>a) the IANA department having its own discrete budget</p> <p>b) the IANA department having its own legal advisors and independent legal advice.</p> <p>3. Customer Standing Committee - This committee would provide the day-to-day liaison between the IANA functions operator and the TLD registry operators. It could be made up of an equal number of ccTLD and gTLD registry operators plus representatives from the GAC, ALAC, SSAC and RSSAC. It would perform, at least, the following tasks:</p> <p>a) work with the IANA functions operator to agree service levels and performance indicators</p> <p>b) review and re-negotiate the service levels and performance indicators at agreed intervals</p> <p>c) receive reports on and monitor the IANA functions operator's performance with respect to the service levels and the performance indicators</p> <p>d) conduct a regular IANA functions operator budget review.</p> <p>4. Appeals - To deal with disputes that arise in respect to matters covered by 3 above there should be a binding arbitration mechanism utilising the services of an independent arbitration organisation.</p> <p>5. The ccNSO Framework of Interpretation WG report contemplates the possibilities of a process review mechanism and an appeals function in respect to ccTLD 're-delegation' matters. These are matters that the ccTLD community will work on over time and it is not intended the appeals mechanism set out in 4 should fulfil that role.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFuBxTOIQIB.pdf</p> | | | |
| 4. | <p>22 Dec: SIDN applauds the enormous amount of work done by the CWG and the time and effort its members and participants are putting into this. SIDN itself is active as a participant in the CWG and has voiced its concerns with regard to the current proposal and fuelled the present discussion on the alternative, simpler, approach. We, as others, felt that the group was too fast in its choice to working out only one in our view far from optimal direction for a solution while disregarding a much better one.</p> <p>Replicating the external NTIA like structure, the proposal seems to be based on a strong lack of trust in the current ICANN structure and more specifically the accountability of the CEO and board. Instead of focusing on the necessary</p> | SIDN | | |

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| | <p>enhancement of the existing accountability structure, the proposal tries to find a solution in setting up a completely new structure.</p> <p>We not only feel that the proposed new structure contains issues that prove difficult to solve, but are first and foremost convinced that an internal-to-ICANN solution, based on enhanced accountability, is not only possible, but easier to develop and implement as it builds onto what has been successfully developed by the community over the years.</p> <p>One concern we have with the current proposal is the idea of a Contract Co. The initial driver for the Contract Co. was to keep things as simple as possible and replicate the current contractual structure, replacing NTIA as contracting party by Contract Co. Another driver seems to be the wish by some to make it as easy as possible to separate the IANA function from ICANN.</p> <p>While we agree that the possibility of separating IANA from ICANN should be part of the proposal, we only see separation as the very ultimate remedy. A last resort option, and not one that, as some even suggest, has to be a standard option that will even be used to publicly tender the IANA function each 3 or 5 years.</p> <p>The IANA function is part of ICANN and as long as ICANN operates the IANA function as well as it does today, there is no reason whatsoever to change this. Separating the IANA function from ICANN will always create risks to the stability and quality of the service.</p> <p>At the same time we fully agree that effective oversight and control and a - worst case - way out of ICANN is necessary. However, all of these can be realized without setting up a Contract Co., the creation of which introduces issues with regard to its core stability. We hereby specifically refer to: the choice of the country under which laws it will be set up and act, the risk of capture, the yet to be defined formal relation with the MRT and the risk of all kinds of litigation and claims with which the single small entity will have to deal with.</p> <p>We suggest that if it is possible to organize the Contract Co. in a way that makes sure that its board has to follow all decisions taken by the MRT (probably because its bylaws say so), a similar design can ensure that the ICANN board (also via its bylaws) has to respect the decisions of the MRT or a similar</p> | | | |

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| | <p>structure.</p> <p>In our view the solution therefore should be found in an alternative plan, in which the oversight will be organized within ICANN, simultaneously enhancing ICANN’s accountability.</p> <p>We see the rough outlines of such a plan as follows.</p> <p>As many do, we feel that the current ICANN board structure is far from ideal. We have suggested before that the ICANN board should consist of independent professionals, only selected on their skills and expertise, instead of the current situation where the board is partly chosen by its SO’s and AC’s and partly by the NomCom.</p> <p>Above this newly structured board, a new multi-stakeholder oversight body can then be placed. The members of this multi-stakeholder body will be elected by the different stakeholder groups (e.g. their chairs) and will, different from the current ICANN board members, remain accountable to their constituency only during their entire term. To be effective this new body should have in extremis the right to dismiss the ICANN board or part thereof. This body could also be given the final say over a transfer of the IANA function, if necessary without consent of the board. Following the CWG proposal, an MRT like structure could be that body.</p> <p>These rough outlines would still need a lot of detailing and it will be essential to synchronise this work with the work of the recently started Cross Community Working Group on Enhancing ICANN Accountability. We are convinced however that it is a much better solution than the Contract Co. plan, better for the stability and quality of the IANA function and at the same time better for the future of ICANN as a global multi-stakeholder organisation.</p> <p>Key Contracting Provisions SIDN supports an alternative solution where there will not be a contractual relation. At the same time, also in that solution a number of arrangements will have to be in place comparable to what is suggested now as contract terms in the CWG proposal. Given the different approach of the alternative solution, we limit our comments to those most relevant. B.2 Cost/Price – This is clearly highly controversial for ccTLD’s as there is currently no obligation to pay for the IANA services. SIDN however pays ICANN</p> | | | |

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| | <p>on a voluntary basis a significant amount of money for amongst others the IANA services, and expects that it will continue do so after the oversight transition. At the same time SIDN would also want to have substantial influence on the budget of IANA and the height of its contribution. In our opinion this is rather a CSC than a MRT matter.</p> <p>C.2.8 [service levels]- We suggest that the CSC should determine the Service Levels after an open public consultation like the NTIA did in the last RFP round. [Independent Evaluator] – As stated above SIDN does not support the role of an Independent Evaluator.</p> <p>C.2.9.2. Perform Administrative Functions ... - As stated above we do not see a role for the Administrator.</p> <p>C.2.9.2.c Delegation and Redelagation of a ccTLD – last bullet should not use the word “recommendation” but “decision”. In line what we have said above, it shall be directly submitted to the RZM for execution.</p> <p>C.2.11 and C.4.7 – All reports should be public so there should not be an approval process for publication in these instances</p> <p>Budget Meetings – MRT should be CSC</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | | | |

Accountability

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| Accountability | | | | |
| 1. | <p>22 Dec: The issue of accountability pervades all aspects of the proposal. Unfortunately, as many others will undoubtedly note, the timing of the Accountability CWG and it's work has created needless complexity and unanswered questions for the Naming CWG. Without knowing what accountability mechanisms are being proposed or put in place, it is difficult to assess some aspects of the proposal. This is not a criticism of the CWG, but is a public acknowledgement of the failure of ICANN itself to initiate the required work in a timely fashion.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfsDZ7QPOcxD.pdf</p> | RrSG | | |
| 2. | <p>22 Dec: C. Accountability First: We vigorously agree with the Report's conclusion (see p. 61) that a transition cannot and should not occur until all accountability mechanisms have been identified, those necessary pre-transition have been implemented, and guarantees are in place for the implementation of all others. Unfortunately, history has revealed ICANN's institutional inertia favoring maintaining the status quo and failing to implement new or improved accountability mechanisms in the absence of external pressure. We believe that the IANA transition provides a unique opportunity in time -- where the entire community is focused intently on ICANN's need for better transparency and accountability -- in order to ensure a level playing field for all ICANN participants. If experience is a guide, however, any accountability mechanisms that are not finalized before transition, with confirmed and implementable timeframes, will be placed on the "back burner" in favor of the perceived priority of the moment.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfs4113lqoCB.pdf</p> | IPC | | |
| 3. | <p>22 Dec: Accountability Last but not least the transition of the Stewardship for the IANA functions is dependent of adequate accountability mechanisms to be in place before the transition can actually happen. This includes making sure there is coherence between the IANA transition proposal and the two accountability processes.</p> | DIFO | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfHkjcijcPAs.pdf | | | |
| 4. | <p>22 Dec: Accountability</p> <p>We appreciate there are concerns about how to improve ICANN’s accountability. This is the explicit purpose of the Cross Community Working Group (CCWG) on Enhancing ICANN Accountability. The work of the CCWG has started, and the output of Workstream 1 –that is Accountability in relation to ICANN’s changing historical relationship with the US, is directly linked to the transition. As also stated by NTIA, “The two work streams on the IANA transition and enhanced accountability are directly linked and NTIA has repeatedly said that both issues must be addressed before any transition takes place. The topic of broader accountability, and sub-- - topics such as capture, or checks and balances, or oversight, or backstop, are important and need to be appropriately addressed in Workstream 1 of the Enhancing ICANN Accountability process. The ICANN Board agrees that there is inherently an important linkage between the evaluation of the transition proposals arising out of the IANA Stewardship Coordination Group and the outcomes of that Workstream 1, and we stress that we acknowledge that ICANN accountability is a fundamental concern of the community. We are not seeking to make light of it or dismiss it, but ask the CWG to distinguish the broader accountability questions from the issues of the performance of the IANA Functions and concerns about addressing the possibility of improper activity within the performance of the IANA Functions.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf20pTv25T9l.pdf</p> | ICANN Board | | |
| 5. | <p>22 Dec: Overall accountability</p> <p>We firmly adhere to the expression of the CWG draft in p.61: that the transition must not take place until the requisite accountability mechanisms have been identified by the CCWG Accountability; that accountability mechanisms and other improvements that the community determines are necessary pre-transition have been put in place; and that agreements and other guarantees are in place to ensure timely implementation of mechanisms that the CCWG Accountability decides may be implemented post transition.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf20pTv25T9l.pdf</p> | LACTLD | | |

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| | 01dec14/pdfFvls66SVvO.pdf | | | |
| 6. | <p>22 Dec: Relationship between IANA stewardship transition and ICANN accountability The NTIA has asked for a proposal from the community for the transition of its unique role in the stewardship of the DNS (inter alia) to the multi-stakeholder community. One element of this concerns the NTIA's role in the oversight of the IANA functions. Another element of this concerns NTIA's role in ensuring the accountability of ICANN and its adherence to its mission and certain core values. The latter is complicated by the fact that the NTIA's contribution to upholding ICANN accountability and core values is achieved in part through terms expressed in the IANA functions contract. These twin elements of IANA oversight and ICANN oversight are being worked upon by CWG-Stewardship and CCWG-Accountability, respectively. In our view, it is essential that these two elements are integrated at least partially into a combined proposal before transmission to NTIA. We therefore consider that strong coordination is needed between the ICG, the CWG-Stewardship and the CCWG-Accountability. The accountability part in workstream 1 (WS 1) of the CCWG-Accountability has definitely to fit into the proposal to be submitted by the CWG-Stewardship.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdf0CjHDDM8hY.pdf</p> | ISPCP | | |
| 7. | <p>22 Dec: Accountability aspects and subsidiarity principle We strongly recommend that the several, open accountability issues are addressed in close cooperation with the CWG on accountability, but suggest that the CWG IST gives clear guidance to that group on which aspects they would like to see addressed as a priority. In particular in a scenario of an ICANN based solution, the CWG accountability needs to understand the importance of the introduction of safeguards and controls. As transparency is essential to ensure the broadest possible multistakeholder support for both the proposed structures and their work, it is recommended to explicitly state in the proposal that all meetings of the CSC and the MRT should be open to observers. While we have identified the recognition of the principle of subsidiarity throughout the proposal we would welcome it is underlined more prominently.</p> | Centr | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfM50Bs3ZaL.pdf | | | |
| 8. | <p>22 Dec: Timelines and Accountability Links The timeframe for this work is very compressed due to a desire by some to complete a complete proposal for NTIA review in June 2015, and implementation in time for the current IANA Functions Contract to expire on 30 September 2015.</p> <p>InternetNZ does not believe the planned timetable is workable. The main reason for this is that the CCWG-Accountability work, which is integral to the IANA stewardship transition and must be completed (for the IANA aspects of accountability) before the transition can be agreed, is only starting work now and cannot complete a first draft of its proposals before 15 April 2015.</p> <p>It seems essential that there be some possibility for all three customer groups (names, numbers & protocols) to review and if necessary adjust their proposals to the ICG once the proposed accountability environment is known. We do not see how that can be done with deadlines of January 2015 for final community proposals, and April 2015 for a first Accountability strawman.</p> <p>Rushing towards this September 2015 goal would require the community to be focused on the NTIA stewardship transition to the extent that other necessary and important debates aren't progressed – or that the community faces total overload and is unable to participate effectively. Neither is desirable.</p> <p>The NTIA has made it clear that September 2015 is a goal not a requirement. It does not seem impossible in law or in practice for a limited extension of the IANA Functions Contract between the NTIA and ICANN to be agreed if required. As such, we think the CWG-IANA should consult with the ICG and the Internet community more broadly to determine whether the current timeframe is workable – and if not, what it should be adjusted to.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfxy8tjLkldz.pdf</p> | InternetNZ | | |
| 9. | <p>22 Dec: Relationship of this plan to the CCWG-Accountability.</p> <p>The charter of the CWG on IANA Stewardship Transition notes that its output is “interrelated and interdependent” with that of the CCWG on Accountability. We support the notion that the two are interrelated, while recognizing that most of the work of reforming ICANN’s policy development process must take place in the other working group. Below, we offer two observations regarding the relationship between the two cross-community working groups:</p> | NCSG | | |

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| | <ul style="list-style-type: none"> As was discussed on a number of occasions in the CWG, there should be placeholder text in the draft for the Work Stream 1 findings of the CCWG Accountability. As civil society, we want to have strong institutional checks and balances that would prevent ICANN from regulating content or violating free expression rights. We recognize that the CCWG–Accountability is the primary venue for effecting these concerns. As such, concerns about the scope of ICANN’s policy making and any consequences for violating that scope must be part of Work Stream 1 of the CCWG Accountability, (i.e., must happen before the transition), and be referenced in the CWG IANA stewardship transition plan prior to submittal to the ICG. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | | | |
| 10. | <p>21 Dec: Relationship with CWG-Accountability</p> <ul style="list-style-type: none"> Increase in Scope of New Entities: The work of CWG-Stewardship is interrelated and interdependent with the work of the CWG-Accountability. It can reasonably be expected that the CWG-Accountability may want to add extra responsibilities to the functions of the Contract Co. For example, the CWG-Accountability could possibly require the Contract Co to sign an Affirmation of Commitments (AoC) with ICANN. Similarly, the responsibilities of the MRT, CSC and IAP may also be increased by CWG-Accountability. For example, CWG-Accountability may require the MRT to monitor compliance with the AoC; or require the IAP to adjudicate policy related disputes. Keeping this possibility in mind, I suggest that the proposal should explicitly recognise that the role and scope of the four entities may be changed by CWG-Accountability even after CWG-Stewardship submits its formal response to the RFP to the ICG in January. Placeholder text at the appropriate places will allow the global community to correctly judge and assess in an informed manner the nature, width and growth dynamics of the new entities proposed to be created. Delineation of CWG's role and ICG's role: Given the non-overlapping time-lines of CWGStewardship and Workstream 1 of CWG-Accountability, it is unclear how the two proposals will be coordinated. The CWG is requested to separately delineate the CWG's role and the ICG's role in coordination between the two proposals. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbn0hCY.pdf</p> | Rishabh Dara Student, IIM Ahmedabad | | |
| 11. | 18 Dec: | USCIB | | |

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| | <p><u>Relationship between IANA Transition and Enhancing ICANN Accountability Process</u> -- USCIB supports the U.S. Government's transition of its stewardship role over IANA functions and has actively commented on the transition as well as the broader ICANN Enhancing Accountability process. In all of those previous submissions, we underscored the importance of fully implementing and stress testing broader ICANN organizational accountability mechanisms before proceeding with the IANA transition plan. We are pleased that Section 3.1 of CWG's draft proposal for the naming functions appropriately notes the strong interrelationship and interdependence between the two processes.</p> <p>We also support the recent remarks of Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information, in which he stated that, "[t]he two work streams on the IANA transition and enhanced accountability are directly linked and NTIA has repeatedly said that both issues must be addressed before any transition takes place." However, we feel the CWG should strengthen this link further by requiring a pre-transition stress test to ensure that the process is robust and effective and would not result in unintended consequences or burdens that would threaten the functionality, stability, and interoperability of the Internet.</p> <p><u>No Duplication of Accountability Reforms</u> -- In addition, we are concerned that some elements of the CWG draft proposal might destabilize the operation of accountability mechanisms.</p> <p>Specifically, the CWG proposes some new accountability reforms, such as the creation of the Independent Appeals Panel (IAP), which would have jurisdiction over disputes arising "as to the implementation of IANA related policies." We believe this reform would be better addressed as part of the broader ICANN Enhancing Accountability process because it should be applicable to ICANN as a whole and not just the IANA naming functions.</p> <p>Further, we are concerned that the creation of accountability mechanisms on a few different tracks risks creating the potential for confusion and "forum shopping." Such an outcome would introduce uncertainty and unevenness in the overall process and possibly jeopardize the stable management of the IANA naming functions. Therefore, while we urge that accountability mechanisms regarding the IANA naming functions be implemented, we believe they need to be done in a holistic manner and in conjunction with broader accountability reforms across the entire organization.</p> | | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfh3LeIVkkYI.pdf | | | |
| 12. | <p>18 Dec: Input on possible modifications to the NTIA's responsibilities acting as the Root Zone Management Process Administrator:</p> <p>INTA generally supports the notion that a mechanism for an affected party to appeal a decision relating to the Root Zone would be beneficial for Internet stakeholders and consumers. With regard to the issue of who should have standing before the Independent Appeals Panel, INTA would support the position that all decisions and actions of the IANA Functions Operator that affect third parties and impact the Root Zone or Root Zone WHOIS database should be subject to an independent and binding appeals process. The WHOIS database in particular is a critical tool for trademark owners in addressing trademark infringement online and no single party should have the ability to amend relevant policy without being held accountable through an appeal mechanism.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfEhxmJOp2lz.pdf</p> | INTA | | |
| 13. | <p>18 Dec: RE: 3.3 Independent Review of Board Actions, delegation & re-delegation of ccTLDs & gTLDs:</p> <ul style="list-style-type: none"> • BRG recommends a stronger means of review to allow for both redress and reversal. • Greater clarity is needed on who has standing to bring an appeal. • Accountability mechanisms for IANA and ICANN generally need to work sensibly together and not overlap or conflict. Any possibility of forum shopping or confusion as to where decisions are made must be avoided. <p>IANA Functions Operator actions be subject to an independent and binding appeals panel:</p> <ul style="list-style-type: none"> • BRG supports the concept and recommends use of the ICC arbitration service. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfprMbyPZTHi.pdf</p> | Brand Registry Group | | |

General Comments

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| General Comments | | | | |
| 1. | <p>22 Dec: Process concerns: The IPC appreciates this opportunity to comment on the merits of the Proposal; however, these comments should be treated as provisional. The current timeline for consideration and approval of the Proposal is unrealistic and incompatible with an effort to achieve thoughtful multi-stakeholder input. Not only is 21 days insufficient time for diverse international constituencies to digest, evaluate, and formulate a considered opinion on such a complex proposal; the Proposal itself is still incomplete, and once it is completed it will not come back to us for review. At that point the SOs and ACs will be allotted even less time to weigh in with their endorsements.</p> <p>This timeline also appears to be unnecessary. Since it is (or should be) a given that no transition can take place until accountability mechanisms have been identified and either implemented or made subject to “guarantees” that they will be implemented (see p. 61 of the Proposal), and since the timeline of the CCWG-Accountability does not provide for that group to report out even partial recommendations on some of these topics until the end of May, it seems all but inescapable that the timeline set by the IANA Stewardship Transition Coordination Group (“ICG”) (to which the CWG is quite properly responding) is not achievable.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfS4113lqoCB.pdf</p> | IPC | | |
| 2. | <p>22 Dec: General Comments As a threshold issue, we note the enormous and complex task that the CWG is currently undertaking and the difficulties associated with successfully fulfilling its responsibilities within the tight timeframes that have been prescribed. However, we also note that the presence of imminent deadlines should not negate the opportunity for appropriate levels of consultation and community input. We welcome the CWG’s efforts to clearly identify and define the functions in the current IANA contract, and propose mechanisms that address each. However, we note that the existing draft transition proposal outlines a complex and multifaceted solution. This complexity means that the community will require considerable time to assess, digest, exchange views and provide</p> | auDA | | |

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| | <p>considered input. Because of this we recommend that both the CWG and the ICG deadlines be extended to allow the various parts of the community to discuss the issues at ICANN 52 in Singapore.</p> <p>Fundamentally, significant change should only be implemented where absolutely necessary, given that, as the CWG itself states: 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.</p> <p>As some CWG members have noted in previous discussions, we believe that the final framework that is selected and implemented needs to be both extremely transparent and as “lightweight” as possible. The risk of attempting to address each of the current IANA functions with their own structure is that an excessively-complicated solution may be arrived at. The principles of simplicity and efficiency should remain paramount.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFuBxTOIQIB.pdf</p> | | | |
| 3. | <p>22 Dec:</p> <p>1. First, the CWG needs to stop and "do its homework" i.e., complete its research and study before proceeding any further with the drafting of a proposal to submit to ICG, e.g., obtain and study all information (and make public), within the knowledge and possession of the NTIA office, records and personnel at the U.S. Department of Commerce, which formed the basis for the NTIA decision finding ICANN unqualified to "run" the Internet Assigned Numbers Authority (IANA) in 2012:</p> <p>Ethics Fight Over Domain Names Intensifies - March 18, 2012 - NYTimes.com: "... the United States government, reproached the group [ICANN] for governance standards said to fall short of “requirements requested by the global community.” The Commerce Department said this month that while it was temporarily extending a contract with the Internet Corporation for Assigned Names and Numbers to manage the allocation of computers’ Internet protocol addresses — and the .com and .net names of Web sites associated with them — it warned the organization that it needed to tighten its rules against conflicts of interest or risk losing a central role. Icann, as the company is known, has filled that role since 1998. The Commerce Department said it had</p> | John Poole | | |

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| | <p>received no suitable bids for the contract, and was temporarily extending Iann's services for six months. After the department's announcement, the soon-to-depart chief of Iann, Rod Beckstrom, went on the offensive, taking an unusual public swipe at his own organization's 21-member board ... the United States government is also dissatisfied with Iann. The Commerce Department said it had canceled a request for proposals to run the so-called Internet Assigned Numbers Authority [IANA] because none of the bids met its requirements: "the need for structural separation of policy-making from implementation, a robust companywide conflict of interest policy, provisions reflecting heightened respect for local country laws and a series of consultation and reporting requirements to increase transparency and accountability to the international community." ... (emphasis added) http://www.nytimes.com/2012/03/19/technology/private-fight-at-internet-namingfirm-goes-public.html</p> <p>See also: Notice - Cancelled Internet Assigned Numbers Authority (IANA) Functions - Request for Proposal (RFP) SA1301-12-RP-IANA NTIA http://www.ntia.doc.gov/other-publication/2012/notice-internet-assigned-numbersauthority-iana-functions-request-proposal-rf and IANA Functions Contract http://www.ntia.doc.gov/page/iana-functions-purchase-order If the CWG will take the time necessary to talk to the NTIA and obtain all the information upon which the US government questioned ICANN's competence and/or integrity in 2012 to be the "IANA functions operator," the CWG will begin to understand the fundamental problems, issues, and concerns that are certain to arise (unless taken into account in IANA transition plan) in the future once the U.S. government is no longer involved, including in its role as "Root Zone Maintainer." ["ICANN, as the IANA functions operator, in cooperation with Verisign as the Root Zone Maintainer and the National Telecommunications Information Administration (NTIA) as the Root Zone Administrator, together known as the Root Zone Management (RZM) partners" source: ICANN.]</p> <p>2. Second, deal with the issue of "Authority." It may be easy (and possibly politically expedient) in the short-term, although hardly responsible, for the US Department of Commerce to just "walk away" from its role and duties as "steward" of a free, open, secure, and stable internet, which today forms the basis for trillions of dollars of commerce annually, world communications, and online content for the entire global internet community, by NTIA's announced intention to simply not renew its IANA contract with ICANN. But the situation today is far different than in the 1990s when the white paper</p> | | | |

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| | <p>(https://www.icann.org/resources/unthemed-pages/white-paper-2012-02-25-en) and green paper (http://www.gpo.gov/fdsys/pkg/FR-1998-02-20/pdf/98-4200.pdf) were published. 16+ years of experience with ICANN have shown it to be a troubled organization (see, e.g., New York Times article cited above), unrepresentative of the full global internet community, with systemic problems of accountability, transparency, conflicts of interest, as well as lacking meaningful redress from its own errors, bad decisions, poor policy-making, and “horrible” implementation and follow-up (see e.g., ICANN, Dysfunctional, Sick Organizational Culture, Warped Values http://www.domainmondo.com/2014/12/icann-dysfunctional-sickorganizational.html).</p> <p>All of this is hardly surprising given that ICANN is a California corporation, with no membership, whose governance and authority lies solely with its own Board of Directors (not the so-called ICANN “stakeholders”), in accordance with its articles, bylaws, and California law. Further, the ICANN Board of Directors is essentially self-selected by ICANN insiders. The Board of Directors’ fiduciary duty is primarily to the corporation itself, and its survival, not what is in “the public interest” nor “in the best interests of the global internet community.”</p> <p>From where does ICANN get its authority? Make no mistake, ICANN currently receives its authority from its agreements with the U.S. government, i.e., not only the IANA contract but also the 2009 “Affirmation of Commitments” -- https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en -- which can be terminated at any time by ICANN upon just 120 days written notice to the U.S. Department of Commerce.)The IANA contract and the Affirmation of Commitments afford some protection to internet users worldwide (via U.S. oversight) from ICANN malfeasance and breach of its duties and covenants as contained within those aforesaid instruments. Without an assignment of the U.S. government’s rights and duties under those agreements, including the IANA contract and Affirmation of Commitments, to the new entity being contemplated by the CWG draft proposal-- Contract Co. (together with its MRT, CSC, IAP), I fail to see where either ICANN presently, or together with the CWG proposed entities, have the authority to continue exercising ICANN’s current functions (including IANA functions), or the future functions of Contract Co./MRT/CSC/IAP under the CWG draft proposal. In other words, if the U.S. government simply abdicates its present role, by what sovereign or other authority(ies) is ICANN continuing to exercise its powers and duties over the global DNS and Internet Root Zone? Also, once the US government “abdicates,”</p> | | | |

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| | <p>there is nothing to stop ICANN from doing whatever it wants—change or amend its Articles and Bylaws, reincorporate in another nation, create and enforce whatever rules and policies it wants--all it needs is the requisite votes of its own non-accountable Board of Directors. Therefore the BIGGEST mistake the CWG or the ICG could make would be to have all “NTIA responsibilities transferred to ICANN.”</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfJLLhkeamll.pdf</p> | | | |
| 4. | <p>22 Dec: 4) Finally, please disregard the faux deadline of the ICG—there is no need to “rush” this process, if anything, slow down– these things take time – ignore the ICG time table. Larry Strickling of the NTIA has said, repeatedly, there is no deadline for this process to be complete by September, 2015, as the present contract can be extended. The ICG, for whatever reason, has decided to put meeting a false deadline as a priority over developing a transition proposal that has substance and merit. Please do not fall for the trap set by those with ulterior motives who wish to manipulate this process for their own selfish agendas. This process should not be taken lightly. Resist having the IANA stewardship transition devolve into another ICANN-like groupthink policy-making process, incomplete, not fully thought through, that ends up being a “fiasco with horrible implementation.”</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfJLLhkeamll.pdf</p> | John Poole | | |
| 5. | <p>22 Dec: We have outlined below some of these broader topics for the consideration by the CWG. Verisign would be pleased to discuss these and other topics if requested.</p> <ul style="list-style-type: none"> • Some have said that any transition should yield services "at least as reliable and secure" as the services now enjoyed by the multi-stakeholder community. We think the checks and balances in the current three-party arrangement have been an important part of the success of the current system. The CWG should consider the operational capabilities of another party to stand in the shoes of NTIA and/or Veri sign. The community has benefited from the operational aspect of the RZM function being performed by a public company whose shareholders have the right to elect a board of directors who appoint the Company's officers, all of whom could be personally liable for damages | Verisign | | |

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| | <p>resulting from breaching their fiduciary duties. The CWG should explore how this creates a powerful incentive for Verisign to put policies and procedures in place to ensure operational preparedness in all operations and especially those involving the root. Public companies such as Verisign have audit committees comprised of independent directors; independent and internal auditors, and numerous other internal and external auditable processes that help ensure operational excellence by demanding management focus and oversight on operational and cyber security issues.</p> <ul style="list-style-type: none"> • The CWG should consider ICANN's operational readiness to perform or manage operational tasks associated with the root, particularly if no new external operational oversight or accountability mechanisms exist. With an understanding of the governance issues explained above, ICANN's uneven operational performance record to date could pose a substantial risk to the many billions of dollars of ecommerce and other critical functions that depend upon a stable, secure, and operational root. Poor performance of root functions could accelerate discussions already taking place about root and broader Internet fragmentation. A transition to another entity of these important functions creates risks to continuity and stability absent assurances that operational preparedness will be prioritized. ICANN, like most other network operators, has suffered service outages including a string of recent security incidents, the latest of which that were publicly disclosed include the May 2014 Registrar Database (RADAR) compromise and subsequent extended downtime, and the November- December 2014 breaches of the Central Zone Database System (CZDS), the second such security incident to impact the system this year, as well as the Governmental Advisory Committee (GAC) website that ICANN manages, the ICANN Blog, and the ICANN WHO IS Information Portal. A compromise or outage (particularly in a DNSSEC-enabled system) of the operational elements of the root zone system could have a catastrophic global economic impact and a disproportionate impact on U.S. commerce. We believe that a multi-party arrangement with a human element in the loop for root zone changes remains imperative, irrespective of what organizations are involved. • SSAC in SAC069 has stated that NTIA's role in administering the IANA Functions contract may be at least partly responsible for shielding ICANN from improper interference. The CWG should consider how a follow-on organization might duplicate this deterrence function now credited to the NTIA. Additionally, any role that NTIA plays in obtaining Office of Foreign Asset Control (OFAC) licenses from the U.S. Department of Treasury for root zone | | | |

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| | <p>changes that may interfere with governmental sanctions or other restrictions should be investigated by the CWG, and accommodated as appropriate in any proposed future state.</p> <ul style="list-style-type: none"> • The CWG should understand fully the role NTIA now plays in DNSSEC and potentially other security features as they relate to the root. For example, in mid-2013, NTIA unilaterally postponed the root zone KSK rollover preparations because "the introduction of new generic top level domains (gTLDs) could be better understood with respect to their impact on the overall stability and security of the DNS before proceeding with a KSK rollover." NTIA delayed the KSK rollover to assess its potential impact on the introduction of new gTLDs. NTIA later issued a requirement for the root zone partners that these timesensitive critical technical preparations not restart until ICANN and Verisign provide a plan that, among other things, includes express consideration of "how to avoid inadvertently prejudging or negatively impacting the ongoing multi-stakeholder efforts to develop the IANA functions stewardship transition proposal." Both the original delay for purposes of the new gTLD program, and the subsequent instruction to avoid impacting the transition, illustrate that the NTIA performs a role in this area. A fulsome discussion of this role is necessary to assure that the CWG is fully informed about the scope of the roles involved in root management, particularly those not codified in the root zone provisioning systems themselves. • Verisign presently enjoys limited antitrust immunity as the contracted party performing the root zone management function at the direction of NTIA under the holding in PGP Media, Inc. v. Network Solutions. A transition of the root zone management counterparty status from NTIA may weaken such protections to Verisign or a successor organization. The CWG should discuss and consider this issue including avenues that could substitute for the immunity now enjoyed. For example, there may need to be legislation if such immunity is to be continued. In any event, the CWG should discuss the proper allocation of risk between the parties performing root zone management and the customers who presently enjoy at no cost the benefit of that work. Verisign is not and has not been compensated for the performance of the functions associated with root zone maintenance and it has never been indemnified for this work. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFGst0MLuMf.pdf</p> | | | |
| 6. | 22 Dec: | SIDN | | |

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| | <p>SIDN is in general quite content with the way the IANA services are currently and in the past have been provided by ICANN. As we and the millions of users of our services, heavily depend on the IANA services, our main objective in this process is make sure that the function stays as stable and of the same quality as it has been for years now.</p> <p>Stability is therefore the main driver for our following comments and suggestions. Besides that, we seek safeguards with respect to the quality of service that we as registries need to receive, at the same time making sure that the IANA function remains a strictly administrative function and that the proposal does not create policy.</p> <p>The objectives of SIDN may seem rather defensive but given the importance of the IANA function and the fact that today it all works well, we feel that to be the best approach.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | | | |
| 7. | <p>22 Dec: Root Zone Maintainer agreement</p> <p>The whole transition of IANA oversight to the multi-stakeholder community makes only sense if also the NTIA – Verisign RZM agreement will be part of it. If all other oversight mechanisms fail to make the IANA function operator perform its tasks as required, the ultimately remedy of separating the IANA function from ICANN must be available. In that case arrangements also need to be in place that make sure that the RZM accepts the separated IANA as the new administrative authority with regard to the root zone administration. On the condition of adequate oversight over and accountability of ICANN (as per sub 2 above), the role of NTIA with regard to the RZM agreement can be taken over by ICANN, making the IANA service provider the new contract party for Verisign. From a stability perspective it at the same time should be clear that replacing the current RZM should not be part of the current process.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docxT9p1hxxtvL.docx</p> | SIDN | | |
| 8. | <p>22 Dec: Emphasis on the distinctive nature of ccTLD and gTLD registries.</p> <p>While technically ccTLDs and gTLD have the same value in the root and rely in the same way on IANA services, it must be clearly underscored that whilst gTLD</p> | LACTLD | | |

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| | <p>policy making is derived from ICANN processes, the policy authority of a ccTLD comes from its local (national) Internet community and legal environment. In addition, many ccTLDs are not even part of the ICANN structure nor are they affiliated to the ccNSO. For a large proportion of ccTLDs, the only point of contact with ICANN is the usage of the IANA services. Many ccTLD formally pre-exist the IANA as an organization (created in 1988), not to mention that practically all ccTLDs pre-exist ICANN as an organization (created in 1998). In addition, ccTLDs are also subject to a wide variety of regulation (domestic and international) which goes beyond ICANN. The Tunis Agenda explicitly recognizes that countries should not be involved in the decisions affecting their country code. ccTLDs are also subject to different kinds of national regulation, be it of a taxing nature or a critical infrastructure agreement, or a contract with national authorities to mention but a few.</p> <p>This characterization of the nature of ccTLDs serves to highlight the very distinct way in which each of the registries is shaped by domestic and international forces, as well as distinct accountability mechanisms.</p> <p>ccTLD delegation and transfer issues ccTLDs and gTLDs policy authorities' need to be clearly differentiated for both type of registries since, among other issues, this has a direct impact on delegation and re-delegation procedures.</p> <p>While the current draft transition proposal of the CWG on naming related functions has addressed these differences adequately in Sections A and B1 and B2, the proposal detailed in B3 does not reflect the different nature of ccTLD and gTLD registries.</p> <p>A ccTLD delegation/re-delegation (and revocation, to use the terminology of the FOIWG final report, Oct. 20145), is derived from its local (national) Internet community, as per RFC 15916 and is considered by the GAC principles and guidelines (2005) as a national issue.</p> <p>None of the new bodies in the proposal Contract Co., MRT, CSC or IAP would be in a position to decide on a matter of ccTLD delegation/re-delegation, but should only abide to check that the due process has been followed.</p> <p>Independent legal expertise for the IANA to work on these issues if necessary should be incorporated as stated in the current CWG proposal.</p> <p>In line with strengthening the policy derivations from RFC 1591, we support auDA's proposal in its point 5 to consolidate the ccTLD Review Body and strengthen the recommendations from the final report of the FOIWG.</p> <p>Lastly we would like to reaffirm that, RFC 1591 is the single most important source of reference and guidelines for ccTLD delegation and transfer.</p> | | | |

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| | http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfFvIs66SVvO.pdf | | | |
| 9. | <p>22 Dec: Comments on the proposal structure</p> <ul style="list-style-type: none"> •In some cases, chapters’ renumbering and reordering is required in order to enhance the text intelligibility; •A glossary of terms and acronyms could be included. <p>Although some of its aspects need further elaboration, the multi-institutional architecture proposed by the CWG seems to be appropriate for the purpose of the IANA transition process.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/docx2ti5jTVAiC.docx</p> | Brazilian Government | | |
| 10. | <p>22 Dec: Proposal timing</p> <p>The CWG IST should explore the opportunity to have more time to further develop and refine the proposal. It is quite unrealistic to expect a sound proposal to be ready by the 15th of January, also considering the holiday season.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfrM50Bs3ZaL.pdf</p> | Centr | | |
| 11. | <p>22 Dec: General comments</p> <p>Firstly, we appreciate all the efforts made by CWG to develop the naming related transition proposal. It plays a positive role in carrying forward the progress of IANA stewardship transition. Given that developing the transition proposal is a challenging but pivotal responsibility for the global internet community, we are willing to make our further contributions to it.</p> <p>In addition, given that the transition should take place under several conditions including: a) the requisite accountability mechanisms have been identified by the CCWG-Accountability; b) accountability mechanisms and other improvements that the community determines are necessary pre-transition have been put in place; c) agreements and other guarantees are in place to ensure timely implementation of mechanisms that the CCWG-Accountability decides may be implemented post-transition, we suggest that the CWG shall process the comments and suggestion to the draft proposal of IANA</p> | CNNIC | | |

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| | <p>stewardship transition in a high-standard, consensus-based, accountable and transparent manner. The transition proposal shall be completed according to published timeline without any delay.</p> <p>For the domain name related function is a part of the IANA functions, CWG needs to cooperatively consider other related functions when developing the naming related proposal. The different function of IANA should be integrated in a simple and effective manner.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfwqYsmtqmgj.pdf</p> | | | |
| 12. | <p>22 Dec: NCSG supports the basic assumptions upon which the plan is based, specifically:</p> <ul style="list-style-type: none"> • The plan needs to retain certain oversight functions that used to be performed by the NTIA and these need to be based in an entity external to ICANN. • The new arrangements should provide for the possibility of replacing ICANN as the IANA Functions Operator. • The existing separation between ICANN as a policy body and ICANN as the IANA Functions Operator needs to be reinforced and strengthened. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfywjMYC0dY1.pdf</p> | NCSG | | |
| 13. | <p>22 Dec: As drafted in the proposal that a new global multi-stakeholder structure will be created to replace the oversight role played by NTIA, it may contribute to promote a bottom-up oversight on the Root Zone operation, as well as drive ICANN to develop in a much more open and transparent way. At the meantime, it is expected that ICANN could take this opportunity to further promote its globalization process moving forward.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfqpv2Fo9RgE.pdf</p> | ISOC-China | | |
| 14. | <p>21 Dec: General Comments</p> <ul style="list-style-type: none"> • I support the current draft proposal of the CWG-Stewardship. • The proposal incorporates the critical dimensions of separability and external accountability. The proposal reinforces separation between ICANN's IANA functions and ICANN's policymaking functions. The proposal also envisages a | Rishabh Dara Student, IIM Ahmedabad | | |

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| | <p>strong external accountability mechanism that allows changing the IANA functions operator by way of a limited term contract.</p> <ul style="list-style-type: none"> • However, I advice caution against creating new entities that are the subject of political ambition and result in the creation of a parallel ICANN. Adequate care should be taken to restrict the growth dynamics of the new entities. <p>Process Related Comments</p> <p>There have been many elements of the process that have been found to be exclusionary. The following should be explicitly recognised in the response to the RFP so that level of community participation can be assessed in an informed manner:</p> <ul style="list-style-type: none"> • The CWG has had all calls in English without the option of translations. All working documents have also been circulated only in English. The transcripts of sub-groups have not been translated even after the meetings concluded. This has been at the exclusion of the nonEnglish speaking participants. It is suggested that the transition proposal should explicitly recognise this limitation to allow proper assessment of community participation in the CWG. • The CWG proposal should explicitly recognise that the distinction between “members” and “participants” not only includes consideration of consensus but also includes reimbursement of travel expenses. It is suggested that the transition proposal should explicitly recognise this distinction between stakeholders to allow proper assessment of barriers to non-ICANN community participation in the CWG. <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfjglEbn0hCY.pdf</p> | | | |
| 15. | <p>20 Dec: I have closely followed the naming working group discussions and contributed to the background sections.</p> <p>The main piece of feedback I would like to relay is this: the CWG has ended up proposing an unnecessary, bureaucratic and problematic central body in the Multistakeholder Review Team (MRT).</p> <p>I think the IANA functions and the internet in general would be much better served by a more lightweight, less permanent body.</p> <p>By making the MRT a persistent entity and by giving it effective controls over all aspects of the IANA contract, you risk creating a bureaucratic monster driven more by politics and status than good decisions or effective technical</p> | Kieren McCarthy | | |

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| | <p>functioning.</p> <p>I realize this approach - effectively creating another committee developed along the lines of ICANN's current stakeholder groups - has become a default within the ICANN/IANA world. I can also see why it is attractive to a group formed through the same process.</p> <p>But the CWG overall has spent far too much time considering the edge cases and pondering the bigger picture and far too little time understanding what actually happens within the names aspect of the IANA contract.</p> <p>There has been little or no effort to talk to the parties about the day-to-day functioning of the contract, whether IANA staff, Verisign staff or the NTIA. This is highlighted by the fact that details of the process the NTIA follows in its administration of the IANA contract only appeared after this proposal was put out to public comment.</p> <p>As a result of imaging all possible scenarios, the CWG has developed an over-engineered proposal that is process-heavy and could prove to be an unnecessary drag on the actual functioning of the IANA contract.</p> <p>The proposal is also not very "internety" as it requires the selection of a small number of representatives who will make key decisions. There is no reason to believe that this will end up producing a better result since very few of the functions that it is proposed the MRT will deal with require considered or in-depth policy review.</p> <p>In short, there is no need to create what would effectively be a new NTIA for the IANA functions. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00016.html</p> | | | |
| 16. | <p>18 Dec: Before entering into the substance of the proposal, USCIB would like to raise two points. First, as a procedural matter, our membership is concerned that for a 180 page document, a three week comment period with no opportunity for reply comments can limit the opportunity for careful evaluation of the detailed proposal. As this process continues, we recommend initial comment periods of four weeks, with a reply comment period of two weeks. Second, we want to highlight that the structure currently in place that carries out the IANA naming</p> | USCIB | | |

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| | <p>functions has been working well, supporting the stability and security of the network. Hence, we should ensure we take full account of what is working and not establish a completely new system unless it will be an improvement.</p> <p><u>A Quality Result is More Important than a Fast Result</u> -- We appreciate the CWG's sensitivity to the goal of developing a transition proposal before the September 30, 2015, expiration of NTIA's current contract to perform IANA functions. Nevertheless, this process should not be unduly rushed with issuance of an incomplete, flawed, and potentially destabilizing proposal. There is no need for such haste in view of repeated statements by Assistant Secretary Strickling that September 30 is a "goal." The NTIA contract can and will be renewed if the development of appropriate transition and accountability mechanisms are not completed by then. We should take the necessary time and apply the necessary detailed attention to do this right. The security and stability of the Internet and the broader Internet-enabled economy depend on this level of care and attention.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfh3LeIVkkYI.pdf</p> | | | |
| 17. | <p>18 Dec: As an initial matter, INTA thanks the CWG for its thoughtful and diligent Draft Proposal. INTA does, however, object to the short period of time available to review and comment on the CWG's plan due to the timeline dictated by the IANA Coordination Group (ICG). Moreover, the Draft Proposal is lacking many crucial details while presenting several different options. This comment period is only 21 days long and further, unlike many other ICANN proposals set for comment, no reply period will be available for this important issue. INTA continues to urge ICANN and the ICG to manage the transition at a slower pace to enable all stakeholders to have an adequate and meaningful opportunity to provide feedback during the planning of the IANA functions' transition</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfEhxmJOp2lz.pdf</p> | INTA | | |
| 18. | <p>18 Dec: RE: Section 3.1 General Elements of Transition Proposal:</p> <ul style="list-style-type: none"> • BRG support these principles. • Accountability needs to be more robust than at present. <p>RE: Section 3.1 Timing Considerations:</p> <ul style="list-style-type: none"> • BRG support these timing considerations. • Accountability mechanisms from both ICANN groups need to work | Brand Registry Group | | |

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| | <p>sensibly together and not overlap or conflict. This is the key timing issue.</p> <ul style="list-style-type: none"> Any possibility of forum shopping or confusion as to where decisions are made must be avoided. <p>RE: Section 3.2 Structure:</p> <ul style="list-style-type: none"> BRG supports the concept of the division of roles envisaged in the four structures (see sections above for details) <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/pdfprMbyPZTHi.pdf</p> | | | |
| 19. | <p>17 Dec: What methodology will you be following and which suggested Framework will you follow with the development of your security policies? (NIST/800) (cyber security framework)</p> <p>What type of contingency plans do you have in place if the primary platform & infrastructure goes down (either by malice or in error)?</p> <p>What compliance standards will your org follow? (ISO27002 / FISMA / NERC)</p> <p>How do you plan to govern this global platform? Who will be responsible for security audits ongoing? Security assessments? Develop security practice? Build Security Posture?</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00012.html</p> | Dean Papa – Symantec Corp. | | |
| 20. | <p>15 Dec: On behalf of the Namibian Network Information Centre, the .NA(R) ccTLD manager I wish to comment as follows:</p> <p>The US Government (USG) has only recently, and retroactively, claimed control over the root through the flimsy argument of referring to an obscure contract (the Teranode Contract), which does not state anything in this regards. And only very recently it has started to use the term stewardship which, to our knowledge, is not defined anywhere in this context.</p> <p>We have never agreed to this arrangement but from our perspective it has worked out reasonably well after Jon Postel had died. Therefor we did not see any need for a change in status quo, while reserving all our rights.</p> <p>The USG now wishes to relinquish this control which means it will hand over (control of) the root zone database to another entity.</p> <p>We would like ICANN to be this entity.</p> | Dr Eberhard W Lisse | | |

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| | <p>This does, however, pose the question what it is that is handed over, and it clearly is Intellectual Property (whether sui generis as a database or under traditional definitions as a Compilation).</p> <p>To our knowledge the USG can not acquire for example Copyright under its own Federal Legislation. However, even if the alienation process where to follow USG rules, it removes any basis for a relationship between the IANA Function Manager (ie ICANN) and any and all of those ccTLDs whose Managers have not entered into a contract with ICANN (by then).</p> <p>This poses great risks to ICANN and the multi stakeholder model.</p> <p>We believe it requires ICANN to negotiate contractual agreements with each incumbent ccTLD Manager (and, of course each new, incoming one). This would be quite different from the gTLD situation since there are existing rights involved, and the IANA Function Manager can not use a One-Fits-All model and/or a Take-It-or-Leave-It approach. Rather the IANAN Function Manager will have to enter into proper negotiations with each ccTLD Manager.</p> <p>We strongly believe that negotiations with ccTLD Managers will be neither a difficult nor a long drawn out process if they followed the Framework of Interpretation2 with particular reference to restraints on the IANA Function Manager against unilateral decisions.</p> <p>Until these contracts are finalized, we feel strongly that ICANN and the multistakeholder process will be best served by ICANN stating that the current status quo with regard to each individual ccTLD will be maintained and that no unilateral decisions will be taken.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00010.html</p> | | | |
| 21. | <p>9 Dec: In 1, please add the following:</p> <p>According to the charter of CWG, participants will be able to actively participate in and attend all CCWG-accountability meetings, work groups and sub-work groups. However, should there be a need for a consensus call or decision, such consensus call or decision will be limited to CWG-Accountability members appointed by the chartering organizations.</p> <p>One potential participant understood that to mean that "participants" do not</p> | Richard Hill | | |

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| | <p>have decision-making rights. According to that person, in this context, it is important to note that the NTIA called for the IANA stewardship function to be transitioned to "the global multistakeholder community", which is broader than the existing ICANN constituency. In contrast, the CWG, while stating that it will adhere to the principle of openness, has in fact created a two-tier structure, with decision-making power being restricted to a specific group of stakeholders, namely those currently involved in the domain name business.</p> <p>According to that person, the CWG process is not a process that is truly open to the global multistakeholder community. Consequently, that person did not participate in the discussions and reserved his right to submit comments to appropriate forums regarding the outputs of the CWG.</p> <p>http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html</p> | | | |
| 22. | <p>9 Dec: In the table in 3.4.4:</p> <ul style="list-style-type: none"> • Under "Subcontracting; [U.S. Presence Requirements]", omit all the bits in square brackets. • Under "[Functional Separation]", delete the square brackets. • Under "Performance; [Service Levels]", delete the square brackets. • Under ".INT TLD", add a new bullet in the second column: "The contractor will implement, within a reasonable time, the provisions of ITU-T Recommendation E.910". • Under "Contractor not authorized to make changes to Root Zone; link to VeriSign Cooperative Agreement", the response implies that the US government will continue to be the contracting party for the operation of the authoritative root server. Thus, the US government would continue to have a direct supervisory role regarding a critical function. • It seems to me that a transition of this function should also be proposed. • Under "Intellectual Property", add a new row titled "Trademarks and domain names". • Column 2 of that row should read "Contractor expressly declares that it holds the trademark 'IANA' and the domain name 'IANA.ORG' for the purposes of performing the IANA function and it warrants that it will assign or license or otherwise authorize the said trademark and domain name to be used free of charge by any successor entity or entities to which some or all of the IANA functions may be transferred in the future." | Richard Hill | | |

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| | <ul style="list-style-type: none"> Column 3 of that row should read "H4 and H5". Also under "Intellectual Property", add a new row titled "Sui generis and other rights in data and databases". Column 2 of that row should read "The provisions above regarding patents and copyrights shall apply by analogy to any sui generis or other rights in data and databases". Column 3 of that row should read "H4 and H5". Add a new section "Dispute Resolution". That section should include a choice of law and a venue clause, presumably an arbitration clause. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html | | | |
| 23. | <p>9 Dec: 3.3 says "Applicability of local law for the administration by the IANA Functions Operator of ccTLD's associated with a specific country or territory – no changes proposed."</p> <p>As noted under (2) above, I don't think that it is obvious that local law would necessarily apply to a dispute between a ccTLD and ICANN. This section probably needs more work.</p> http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00009.html | Richard Hill | | |
| 24. | <p>7 Dec: Your listed in ICANN Et Al, as You've aided and abetted a Network Solutions RETAIL client and Domain Name Registrant, CentralNic ... violate the rules published in the RAA at section 3.7.7.9. This conduct is classified as "Contributory Infringement" and is well defined by Jones Day, who you may know as ICANN's Attorney's, who have a very informative article published in the INTA Bulletin, titled "Combating Contributory Infringement on the Internet" and it's well worth study.</p> http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00008.html | Graham Schreiber | | |
| 25. | <p>7 Dec: I want you to inform Your "Accredited" registry 123-Reg / Webfusion ".com" that they need to secure an Attorney to represent them in Washington, DC at the Supreme Court, where their listed as one of the "Et Al" Parties in my Lawsuit against you. Similarly, CentralNic as the DOMAIN NAME REGISTRANT of, which is subject to ICANN's RAA 3.7.7.9, I want you to inform your companion at 123-Reg / Webfusion that the Lawsuit against ICANN Et Al, which also includes You, goes deeper to include your Accessory & Accomplice as listed.</p> http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00007.html | Graham Schreiber | | |

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| 26. | 7 Dec: As You know, ICANN & IANA are being reviewed by the United States Government, for a proposed release from the NTIA Oversight. My problem with both ICANN and VeriSign's combined "contributory infringing" conduct remains unsolved, until all facets of The United States Government investigate ICANN, along with VeriSign's related conduct, as the Exclusive Registry of ".COM" & it's my hope, that they don't release ICANN from US Jurisdiction Venue, in Washington, DC, until the Antitrust problems are resolved. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00006.html | Graham Schreiber | | |
| 27. | 6 Dec: Until all facets of The United States Government investigate ICANN; and Your client NETWORK SOLUTIONS, industrious #RySG Stakeholder ways, I don't want ICANN to evade US Antitrust Law. Within this same investigation of ICANN, it's critical that the United States Government understand how Your OTHER CENTRALNIC LTD, Cybersquatting, Domain Name Registrant; and subject of RAA 3.7.7.8 under ICANN, also under Network Solutions, as their Domain Name Registry for ".UK.com" has become the "Contributory Infringer" when they're responsible to help ICANN enforce the RAA, to stave-off Infringement. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00005.html | Graham Schreiber | | |
| 28. | 6 Dec: Please be advised, that I don't want ICANN to vacate the United States "oversight" until some legacy issues are thoughtfully reviewed and resolved. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00004.html | Graham Schreiber | | |
| 29. | 6 Dec: Until all facets of The United States Government investigate ICANN; and your illustrious industrious #RySG Stakeholder Customers for their conduct, it's my hope that you too don't mangle to evade US Law, as You've let the Domain Name Registrant, CentralNic aided by WIPO, right under vigilant "oversight" of the NTIA and it's #GAC participants, also listed as a Defendant. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00003.html | Graham Schreiber | | |
| 30. | 2 Dec: Refers to a US supreme court case about .com (?) involving a number of parties including ICANN and suggesting that the transition work not proceed until this is resolved. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00002.html | Graham Schreiber | | |
| 31. | 2 Dec: Current system with NTIA is doing a good job and wants it maintained. http://forum.icann.org/lists/comments-cwg-naming-transition-01dec14/msg00000.html | Page Howe | | |

