"Punch List"/Open Items on Post-Transition IANA Model Items for CWG Discussion and Input (6 May 2015)

Status update 26 May 2015

Includes:

Sydley comments and additional questions (22 May 2015) and DT M and DT N/X latest recommendations/proposals

Note: Grey shaded/red items below are priority items.

Item #	Task	Group/ DT	Draft Recommendation	Status
New Post-Transition IANA (PTI) entity type				
1.	Determine legal entity: non-profit corporation or limited liability company. (Section III.A.i.a.)	CWG	Propose to move forward with a Non-Profit Public Benefit Corporation. including any additional restrictions or obligations on the board of directors under specific bylaws.	*Further work required to describe or develop the details including any additional restrictions of obligations under specific bylaws.* *Caveat, check with ICA legal and finance on potential issues If so re to LLc (preferred Delaware).*

1A.	ICANN Finance/Tax to advise re need for PTI tax exempt status	CWG/ICANN Finance/Tax		*Added by Sydley 22 M 2015*

Transfer of naming functions to PTI				
2.	Determine assets that will need to be transferred to PTI. (Section III.A.i.a.)	CWG	TBD	
3.	Determine whether consents will be required to transfer/assign assets to PTI. (Note: IETF consent is required for the assignment of the IETF MOU.) (Section III.A.i.a.)	CWG	TBD	

PTI Board				
4.	Determine size and composition. Determine who appoints. (Section III.A.i.b.)	CWG	Propose to move forward with an insider board meaning a board with the majority appointed and therefore controlled by ICANN and likely to include employees / officers of ICANN (ref Sidley Memo of May 13 re PTI IANA Board Stress Tests).	*Further work required on the details including any specification of both inside and outside board members and roles.*
5.	Determine scope of PTI Board role. (Section III.A.i.b.) (See Sidley Austin memo of April 28 for statutory duties)	CWG		*Further work required to specify the details of any PTI board responsibilities over and above the statutory duties outlined by Sidley.* *Specify requirements for insider Board members.* *Based on a functional analysis*

IANA Function Review (IFR)				
6.	Proposal contemplates that a Special Review may also be initiated by TLDs on concerns raised by TLDs directly with the ccNSO or the GNSO. (Section III.A.i.d.)	DT-N	A special IFR should not be triggered on the basis of concerns raised directly by individual TLDs, but rather should first follow existing remedial action procedures. The Special IFR should only be triggered after the following remedial action mechanisms have been exhausted: • CSC Remedial Action Procedures are followed and fail to correct the deficiency (See Annex G); • The IANA Problem Resolution Process is followed and fails to correct the deficiency (See Annex J); and • Relevant accountability mechanisms defined by the CCWG-Accountability are exhausted and fail to remedy the identified deficiency. **Sidley Proposed Revisions to CWG Proposal:** *Section III.A.i.d. (page 23)* . In the event of a Special Review being proposed, the ccNSO and GNSO should consult with both members and non-member TLDs, in the light of the consultations, the Councils can decide by a supermajority to call for a special review. *Annex F (page 49)* While the IANA Function Review will normally be scheduled based on a regular 5 year rotation with other ICANN reviews, a Special Review may be also be initiated by supermajority approval of each of the GNSO and ccNSO Councils . *Annex F (page 55)* [IFR] Can also be triggered by supermajority approval of each of the GNSO and ccNSO Councils	*Discussion by DT –N ongoing* *Language latest version DT N does not match language uses by Sydley:* This trigger for the Special Review should be struck and the Special Review should only be triggered after the CSC first undertakes remedial action procedures and then refers the matter to ccNSO/GNSO for approval. Individual TLD operators are empowered to raise these issues with the CSC and that is the correct pipeline through which these problems should come up.

7.	Proposal contemplates that IFR team can recommend amendments to SOW. Annex F contemplates any amendments proposed by IFR would be subject to ratification by ccNSO and GNSO. Determine voting threshold for ccNSO and GNSO (e.g., majority or supermajority? require both organizations?). (Annex F, page 50)	DT-N	Recommendations would require a supermajority of both the ccNSO and the GNSO. **Sidley Proposed Revisions to CWG Proposal:** *Annex F (page 50)* Drafted amendments would be subject to at least the following processes before they came into effect: • Public comment period; • Ratification by a supermajority of each of the ccNSO and the GNSO; and • Approval by the ICANN Board.	*Discussion by DT –N ongoing*
8.	Special review is triggered by supermajority vote of ccNSO and GNSO councils. Determine voting threshold (i.e., 66-2/3%; 75%, etc.). (Section III.A.i.d. and Annex F, page 55)	DT-N	"Supermajority" threshold and definition will be defined by internal voting procedures in the ICANN bylaws and special rules and procedures. For the GNSO, a supermajority is defined as: two-thirds (2/3) of the Council members of each House, or a three-fourths (3/4) of one House and a majority of the other House. **Sidley Proposed Revisions to CWG Proposal:** *Annex F (page 55)* For the GNSO, a supermajority is defined as 2/3 of the Council members of each House, or 3/4 of one House and a majority of the other House. For the ccNSO, a supermajority is defined as [TBD]. We recommend that the requirement to conduct and facilitate these reviews (including the supermajority voting thresholds) be articulated in the ICANN Bylaws and included as a Fundamental Bylaw under consideration by CCWG-Accountability. In addition, the review could be set forth in the contract between ICANN and Post-Transition IANA or PTI.	*Discussion by DT –N ongoing* *Latest submission DT N 22 May 2015* *Suggestion Sydley 22 May*

9.	If persistent problem triggers a special review, will timeline of review be accelerated to address issue? If not, how are issues addressed in the interim? (Annex F, page 55)	DT-N	A special review will follow the same phases identified for the IANA Functions review including: • Consultations with IFO; • Consultations with CSC; • Consultation with ccTLD and gTLD Operators; and • Public Comment Period; Draft amendments to come out of the Special Review would, likewise, be subject to : • Public Comment Period • Ratification by the ccNSO and GNSO Councils (requiring supermajority support) • Approval by the ICANN Board We contemplate, however, that the inputs to the Special Review process would be narrower. Instead of reviewing all of the inputs identified for the Periodic Review process, the Special Review would focus primarily on the identified deficiency and its implications for overall IANA Performance, as well as on how that issue is best resolved. Given the narrowed set of inputs, we imagine that the timeline would be accelerated. **Sidley Proposed Revisions to CWG Proposal:** *Annex F (page 55)* A Special Review would follow the same process as that for reviewing or amending IANA SOWs and drafted amendments. Certain recommendations may also require approval of the ICANN membership (for example, the creation of the SCWG; see Annex L). In terms of inputs to be considered, a Special Review would focus primarily on the identified deficiency and its implications for overall IANA performance, as well as on resolution of the issue.	*Discussion by DT –N ongoing* *Latest submission DT N 22 May 2015* *Suggestion Sydley 22 May*

10.	Special review can be initiated after "defined escalation procedures are exhausted" and "defined accountability mechanisms are exhausted." Define with specificity what these procedures and mechanisms will be. (Annex F, page 55)	DT-N	It is hard to be specific until all the new accountability mechanisms are defined. Additionally the situation itself will determine which escalation procedures are appropriate. Part of the role of the [g, cc]NSO supermajority role is to make the determination that all relevant mechanisms have, indeed, been exhausted	*Discussion by DT –N ongoing* *Latest submission DT N 22 May 2015*

Customer Standing Committee (CSC)				
11.	Composition: who will select the TLD representative that is not a ccTLD or gTLD registry? (Annex G, page 59)	DT-C	An Expression of Interest must be submitted to be considered eligible for the CSC. For a person seeking to represent a TLD not considered to be either a cc or gTLD registry, the Expression of Interest must have the support of the relevant registry, which will serve as a recommendation for appointment to the CSC. As the ccNSO and GNSO Councils are responsible for approving the full membership of the CSC, the EOI will be considered as part of that approval process. NB: References to ccNSO and GNSO should be changed to ccNSO Council and GNSO Council. **Sidley Proposed Revisions to CWG Proposal:** *Annex G (page 60)* While the ccTLD and gTLD members and Liaisons will be appointed by the ccNSO and RySG respectively, registry operators that are not participants in these groups will be eligible to participate in the CSC as members or Liaisons. The Expression of Interest submitted by the TLD representatives who are not considered ccTLD or gTLD registry operators must have the support of the relevant registry, which will serve as a recommendation for that person's appointment to the CSC.	*To be discussed by CWG* *No comments call 19 May* *Suggestion Sydley 22 May*

12.	Full membership of CSC is approved by ccNSO and GNSO. By what percentage? (Annex G, page 60)	DT-C	Full membership of the CSC is to be approved by the ccNSO Council and GNSO Council in accordance with their own rules and procedures. The approval process should include some form of consultation between the two Councils. **Sidley Proposed Revisions to CWG Proposal:** *Annex G (page 60)* The full membership of the CSC must be approved by the Council of each of the ccNSO and the GNSO in accordance with their own rules and procedures and after consultation between the ccNSO and GNSO.	*To be discussed by CWG* *No comments call 19 May* *Suggestion by Sydley 22 May 2015*
12A.	What form of consultation is envisioned to take place between ccNSO and GNSO Councils in relation to approving the membership of	DT-C		*Added by Sydley 22 May 2015*

13.	If ccTLD or gTLD representative is recalled, can meetings continue before a replacement is named? (Annex G, page 60)	DT-C	In the event that a ccTLD or gTLD representative to the CSC is recalled, the appointing party can provide a temporary replacement while they endeavor to fill the vacancy. As the CSC will be meeting regularly on a monthly basis, best efforts should be made to fill the vacancy within one month of the recall. **Sidley Proposed Revisions to CWG Proposal:** *Annex G (page 60)* In the event that a ccTLD or gTLD registry representative is recalled, the appointing party can provide a temporary replacement while they endeavor to fill the vacancy so that the appointing party can participate in the next meeting of the CSC.	*To be discussed by CWG* *No comments call 19 May* *Suggested by Sydley 22 May 2015*
13A.	Are candidates who have been proposed to act as temporary replacements to the CSC required to provide an Expression of Interest? (See #13 above)	DT-C		*Added by Sydley 22 May 2015*
14.	Determine how CSC will decide on who will be liaison to IFR. (Annex F, page 52)	DT-C	The CSC as a whole will decide who will serve as the Liaison to the IFR. Preference should be given to the Liaison being a registry representative given that technical expertise is anticipated to be valuable in the role. **Sidley Proposed Revisions to CWG Proposal:** *Annex G (page 58)* The CSC will determine who will serve as Liaison to the IFR and the SCWG. In making its determination with respect to the Liaison to the IFR, the CSC will give preference to registry representatives because their technical expertise is anticipated to be valuable in the role.	*To be discussed by CWG* *No comments call 19 May* *Suggested by Sydley 22 May 2015*

14A.	Determine how CSC will decide on who will be liaison to the SCWG. (See #14 above)	DT-C		*Added by Sydley 22 May 2015*
15.	Proposed Remedial Action Procedures is noted as item to be agreed upon by CSC and PTI. Will this happen prior to transition? (Annex F, page 62)	DT-C	It is expected that the CSC and the PTI will agree to Remedial Action Procedures post transition once the two entities are formed. It is important to note that the agreement should be between the CSC and PTI, not the CSC and PTI Board.	*To be discussed by CWG* *No comments call 19 May*
15A.	Does deferral of the agreement between CSC and PTI until the post-transition period create implementation risk? (See #15 above)	DT-C		*Added by Sydley 22 May 2015*

16.	IANA Problem Resolution Process: contemplates that CSC can escalate to ccNSO and GNSO which may then decide to take further action "using agreed consultation and escalation processes". What will these processes be and is anything contemplated beyond a Special Review? (Annex J, page 68)	DT-C	The ccNSO and GNSO will be responsible for developing their own procedures, which will be done post-transition. It is envisaged that the Special Review will not be the only possible escalation path available, for example the ccNSO and GNSO could seek a meeting with the ICANN Board as a mechanism to resolve issues.	*To be discussed by CWG* *No comments by CWG 19 May 2015*
16A.	Does deferral of the development of the IANA Problem Resolution Process until the post-transition period create implementation risk? (See #16 above)	DT-C		*Added by Sydley 22 May 2015*

ICANN/PTI Contract; Statement of Work and SLEs				
17.	Determine to what extent the ICANN/PTI contract will be enforceability mechanism (vs. CSC, IFR or other ICANN accountability mechanisms).	CWG		*See Sydley term sheet, . 19 May 2015. To be discussed by CWG*
18.	Determine which rights under the existing NTIA contract will be implemented in the ICANN governance documents and which will be in the new ICANN/PTI contract. (Section III.A.i.c.)	CWG	TBD	*See Sydley term sheet, . 19 May 2015. To be discussed by CWG*

19.	Determine who will have the right to trigger remedies for breaches of, and otherwise enforce, ICANN/PTI Contract (i.e., will PTI Board exercise this right or will this require CSC or IFR). (Sections III.A.i.b, c, and d)	CWG	TBD	*See Sydley term sheet, . 19 May 2015. To be discussed by CWG*
20.	DT-A SLE documentation following receipt of additional IANA documentation. (Section III.A.ii.b. and Annex H)	DT-A	TBD	*DT-A agreed to define high level principles for SLE first and drill down to details in consultation with ICANN's IANA staff*

Escalation mechanisms				
21.	Who does ccNSO/GNSO escalate unresolved issues to? Will there be an IRP process? (Section III.A.ii.a. and Annex J, footnote 22)	DT-M	Discussed by DT C as input to DT –M: This is related to Q. 16 and will be dependent upon the procedures developed by the ccNSO and GNSO, which are expected to happen post-transition. DTM proposes that the following should be eligible for using the IRP: individual gTLD registries, the GNSO or ccNSO or the two SOs collectively, and the RySG (in cases of systemic issues, not individual registry cases). Note,the eligibility of ccTLD registries to use the IRP is dependent on the ccTLD community work that is anticipated in this regard.. Furthermore, if an issue is escalated to the ccNSO/GNSO, DTM foresees the following steps: 1) an issue is raised with one or both SOs – one or both SOs would carry out fact finding in view of mitigating the issue. If the issue is not resolved via step 1), step 2) could be for the ccNSO or GNSO to initiate an IRP and/or step 3) both SOs agree on escalation to IFR.	*DT-M to meet and discuss Tuesday 19 May 2015* *Recommendation DT-M*
21A.	Does deferral of the development of escalation procedures until the post-transition period create implementation risk? (See #21 above)	DT-C		*Added by Sydley 22 May 2015*

22.	Additional detail on how a persistent performance issue/systemic problem will be defined (e.g., discretion given to CSC or some principles-based standard)? (Section III.A.ii.c.)	DT-M and DT-C	Discussed by DT C, and shared with DT- M: This is related to Q15 and should also be considered in the context of the SLAs contained in the contract. DT-M agrees with the proposed approach by DT-C: The Remedial Action Procedures should contain a threshold of what is regarded persistent or systemic problems, for example if reports reveal that an SLA has not been met for 6 continuous months this would be considered a persistent performance issue; however, it should be recognized that the CSC should have the discretion to determine whether this is a trivial or serious matter, and agree a course of action appropriate to the circumstances. **Sidley Proposed Revisions to CWG Proposal:** *Annex J (page 68)* The Customer Standing Committee (CSC) is authorized to monitor the performance of the IANA Functions against agreed service level targets on a regular basis. In the event that persistent performance issues are identified by the CSC (in accordance with the Remedial Action Plan), the CSC will seek resolution in accordance with a Remedial Action Plan which includes:…	*DT-M to meet and discuss Tuesday 19 May 2015* *No comments call 19 May* *DT-M Recommendation* *Suggested by Sydley 22 May 2015*
22A.	What process should the CSC follow in the event it identifies a persistent performance issue or systemic problem that is not serious? Is it still required to follow a Remedial Action	DT-M and DT-C		*Added by Sydley 22 May 2015*

23.	Customer complaints, Phase 2: additional detail on customer mediation process and ability to initiate an IRP. (Annex I, page 66)	DT-M and DT-C	Discussed by DT C, provided as input to DT –M: It appears that this question relates to a) and c) and as such is outside the remit of the CSC DT M has observed that the new gTLD registry base agreement includes a process for mediation (see section 5.1). DT M suggests that it should be explored whether this process could be used as a basis for how mediation would be invoked. If there is support for this approach, the CWG-Stewardship could consider recommending that staff commence work on exploring the options for mediation services as part of the implementation of the CWG-Stewardship proposal.	*DT-M to meet and discuss Tuesday 19 May 2015* *Recommendation DT-M*
23A.	Who will make determinations with respect to the customer mediation process and/or ability to initiate an IRP? (See #23 above)	DT-M and DT-C		*Added by Sydley 22 May 2015*

Separation Process				
24.	Under what circumstances can the separation process be triggered? Will it only be upon a recommendation of the IFR? (Section III.A.ii.d. and Annex L)	CWG/DT-[SR]	The Separation process would be triggered only upon exhaustion of other remedies (see #25) by the following steps: • Special IFR Recommendation • Supermajority of GNSO Council & supermajority of ccNSO Council • Board approval Comment from Sidley: Based on Separation Process document, separation would also require ICANN membership approval if a membership organization. **Sidley Proposed Revisions to CWG Proposal:** *Section III.A.ii.d. (page 26)* **III.A.ii.d. Separation Process** The CWG-Stewardship recommends that a fundamental bylaw be created to define a Separation Process that can be triggered by a special IFR if needed. The special IFR would require supermajority approval of each of the ccNSO and GNSO Councils and would only occur if other escalation mechanisms and methods have been exhausted. If the special IFR recommends a separation process, a Separation Cross Community Working Group (SCWG) would be formed to review the issues and make recommendations. The recommendations would need to be approved by a supermajority vote of each of the ccNSO and GNSO Councils, the ICANN Board and the ICANN membership (assuming ICANN becomes a membership organization). There would be no prescribed action by the SCWG for the Separation Process. It would be empowered to make a recommendation ranging from "no action required" to the initiation of an RFP and the recommendation for a new IFO [or other separation process]. Any new IFO would be subject to the approval the ICANN Board and the ICANN membership (assuming ICANN becomes a membership organization).	*Discussion by DT –N /X ongoing* *Latest changes DT-N/X 22 May 2015* *Suggested by Sydley 22 May 2015* *Annex L (page 72)* [*Replace Annex L with Separation Process Document*]

24A.	Confirm supermajority voting threshold for approvals by the ccNSO and GNSO (Annex L) [*add additional open items if needed from Separation Process Document*]	CWG/DT-[SR]		*Added by Sydley 22 May 2015*
25.	What remedies must be exhausted prior to triggering separation process? (Section III.A.ii.d. and Annex L)	CWG/DT-[SR]	The following remedial procedures must be followed before a Special IANA Functions Review, which could precipitate a decision to initiate separation: • CSC Remedial Action Procedures are followedleveraged and fail to correct the deficiency (See Annex G); • The IANA Problem Resolution Process is followedleveraged and fails to correct the deficiency (See Annex J); and • Relevant accountability mechanisms defined by the CCWG-Accountability are exhausted and fail to remedy the identified deficiency.	*Discussion by DT –N /X ongoing* *Latest changes DT-N/X 22 May 2015*
26.	Who can initiate a separation process? (Section III.A.ii.d. and Annex L)	CWG/DT-[SR]	At the conclusion of a Special IANA Functions Review that recommends that the separation process take place, a separation process could be triggered by a supermajority vote of the ccNSO and the GNSO. To move forward the action would also require approval by the ICANN Board.	*Discussion by DT –N /X ongoing* *Latest changes DT-N/X 22 May 2015*

27.	Is the cross community working group for a separation contemplated by Annex L different from the IFR team? If so, more detail is needed. (Annex L)	CWG/DT-[SR]	The Cross Community Working Group responsible for executing the separation process would have the following composition: • ccNSO - 1 • ccTLDs (non-ccNSO) - 1 • Registry Stakeholder Group (RySG) - 2 • Registrar Stakeholder Group (RsSG) - 1 • Commercial Stakeholder Group (CSG) - 1 • Non-Commercial Stakeholder Group (NCSG) - 1 • Government Advisory Committee (GAC) - 1 • Security and Stability Advisory Committee (SSAC) - 1 • Root Server Operators Advisory Committee (RSSAC) - 1 • At-Large Advisory Committee (ALAC) - 1 • CSC Liaison - 1 • Special IFR Team Liaison - 1 • Liaison from Numbers - 1 (tbd Numbers willing) • Liaison from Protocols - 1 (tbd Protocols willing) While the composition structure is highly similar to that used in carrying out the IANA Functions Reviews it is strongly recommended that the representatives appointed to the Cross Community Working Group be *different* representatives than those engaged in the Special IANA Functions Review that produced the recommendation to initiate separation. **Sidley Proposed Revisions to CWG Proposal:** *Annex L (page 72)* [*Replace Annex L with Separation Process Document*]	*Discussion by DT –N /X ongoing* *Latest changes DT-N/X 22 May 2015* *Suggested by Sydley 22 May 2015*

28.	Is there an interim approval of an IRF recommendation to separate (i.e., by SOs/ACs) or does recommendation go directly to ICANN/Board? (Section III.A.ii.d. and Annex L)	CWG/DT-[SR]	The recommendation would go through the following approval steps: • A Public Comment Period is held; • The recommendation goes to the GNSO and ccNSO for approval; and • The recommendation goes to the ICANN Board for approval. **Sidley Proposed Revisions to CWG Proposal:** *Annex L (page 72)* [*Replace Annex L with Separation Process Document*]	*Discussion by DT –N /X ongoing* *Latest changes DT-N/X 22 May 2015* *Suggested by Sydley 22 May 2015*
29.	Implementation of a separation. (Section III.A.ii.d. and Annex L)	CWG/DT-[SR]		*Discussion by DT –N /X ongoing*

Root Zone Maintainer (RZM)				
30.	Proposal contemplates that if RZM transition is completed prior to IANA stewardship transition, need mechanism to ensure that change requests for Root Zone are implemented in a timely manner by RZM (proposal references possible agreement between RZM and PTI)	DT-F	Note: Cannot yet advance this. Contingent on what happens with the parallel Root Zone Maintainer Cooperative Agreement.	*DT-F meeting 19 May (outcome not included*
31.	Discuss potential requirement for an agreement between PTI and RZM or changes to the Cooperative Agreement. (Annex N, page 77)	DT-F	Note: Cannot yet advance this. Contingent on what happens with the parallel Root Zone Maintainer Cooperative Agreement	*DT-F meeting 19 May (outcome not included)*
32.	What is the process mechanism body to approve substantive changes related to RZM? The details for an authorization approval function still needs to be determined.	DT-F		*DT-F meeting 19 May (outcome not included*

Timeline				
33.	Develop timeline for implementation. CCWG dependency (consider with CCWG timeline). (Section IV.D.)	CWG		*Continue to monitor and await feed-back CCWG*

CCWG Dependencies				
34.	ICANN Budget – Ability for the community to approve/veto the ICANN budget. Requirements relating to budget to include transparency of IANA function's comprehensive costs and itemization of costs at project	CWG		*Continue to monitor and await feed-back CCWG*
35.	Community Empowerment Mechanisms – The multistakeholder community would be empowered to have certain rights with respect to ICANN Board and the IANA functions including: i. ability to appoint/remove board members; ii. ability to exercise oversight with respect to key ICANN board decisions (approve/veto rights);	CWG		*Continue to monitor and await feed-back CCWG*
36.	IANA Function Review – the IFR should be created and empowered to conduct periodic and special reviews of the IANA functions. (Section III.A.i.d.; Annex F)	CWG		*Continue to monitor and await feed-back CCWG*

37.	Customer Standing Committee (CSC) – A CSC should be created and empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the ccNSO and GNSO. The CSC should be contemplated by the ICANN bylaws. If not currently within the mandate, the ccNSO and/or GNSO should be empowered to address matters escalated by the CSC. Section III.A.ii.a.; Annex G and Annex J)	CWG		*Continue to monitor and await feed-back CCWG*
38.	Appeal Mechanism – An appeal mechanism, for example in the form of an Independent Review Panel, will be required for issues relating to the IANA functions.	CWG		*Continue to monitor and await feed-back CCWG*
39.	Separation Process – Mechanism for a separation process to be included once certain remedies are exhausted which would trigger a separation of PTI. (Annex L)	CWG		*Continue to monitor and await feed-back CCWG* *Expect note from CCWG, not addressed to date*
40.	Fundamental Bylaws – All of the foregoing mechanisms are to be provided for in the ICANN bylaws as "fundamental bylaws".	CWG	*Note: Continue to monitor*	*Continue to monitor and await feed-back CCWG*