Guidance for the transition of stewardship of IANA functions

This guidance for the transition of IANA functions stewardship from the U.S. Government to the Internet community was developed by a number of direct consumers of IANA functions in particular a collaborative group of gTLD and ccTLD managers. As such, this document is focussed upon the continued management of naming functions performed by IANA.

This document defines structures, mechanisms, processes and key principles for the IANA transition. It has been developed with two key goals in mind:

- to deliver the minimal, most simple and lightweight structures possible, while still meeting the needs and expectations of stakeholders; and
- to avoid the creation of new, unnecessary structures and their associated complexities.

Every TLD registry operator has a direct relationship with the IANA Functions Manager (IFM) governed by agreed service levels and performance metrics, including action timelines.

In 2012, in response to the US Government's solicitation for the performance of the IANA functions, ICANN lodged a "submission of proposal"[1] that detailed the functions ICANN would perform, and the levels to which it would do so. ICANN also publishes a series of timeline-related performance metrics.[2] Subject to the current review of them by the CWG Design Team, until such time as the Direct User Group ("DUG" – as defined below) has negotiated any necessary improvements to these arrangements, ICANN will continue to abide these commitments.

Disputes about agreed service levels or performance that arise between a TLD registry operator and the IFM should be addressed, in the first instance, between the two parties.

In instances where direct negotiation cannot resolve a dispute the escalation mechanisms should be activated. The first of these mechanisms is a "Direct User Group" (DUG).

A. Direct User Group (DUG)

The DUG is intended to represent the direct naming functions customers of IANA and so its membership will be drawn from the ccTLD and gTLD registry community.[3] Members of the DUG must possess relevant technical experience. While the structure of the DUG must allow it to be representative of direct stakeholders, its size should not limit its efficiency and responsiveness. As such, a sensible size for the committee would be 8 participants with two or three non-voting liaisons from the technical community.

The DUG will be a standing body that will operate under a Charter defining the role of the group, including the appointment of a Chair and set out the lines of communication between the DUG and IANA staff.

---

[1] Part 1: https://www.icann.org/en/about/agreements/iana/contract-i-1-31may12-en.pdf
Part 2: https://www.icann.org/en/about/agreements/iana/contract-i-2-redacted-31may12-en.pdf
Part 3: https://www.icann.org/en/about/agreements/iana/contract-i-3-redacted-31may12-en.pdf
[2] http://www.iana.org/performance
[3] The concept of a "DUG" is similar to the "Customer Service Committee" outlined in other proposals and discussions.

The DUG will perform five main functions.

1. Dealing with disputes:

The DUG will be the first point of escalation in the instance of a dispute between a TLD registry operator and the IFM regarding levels of service and performance metrics where resolution cannot be reached between the parties. The DUG will be empowered to act as an intermediary and, if appropriate, issue instructions to the IFM.

Disputes arising in respect the delegation or re-delegation of a TLD are specifically excluded from this process. Further, a dispute between an individual TLD registry operator and the IFM need not automatically lead to the engagement of the DUG. The proposed model does not limit the operator's right to initiate direct legal action against the IFM.

In instances where a dispute regarding agreed levels of service or performance between a TLD registry operator and the IFM is escalated, and facilitation by the DUG does not provide resolution, a binding independent appeals mechanism will be activated (see additional detail below).

Information provided to the DUG regarding such disputes will remain confidential, unless the involved parties agree otherwise.

2. Regular reporting:

The IFM will develop, and publish, regular performance reports. The DUG will review these against agreed service levels and performance metrics. The DUG can provide advice to the IFM on the type, frequency and content of the reports.[4]

3. Periodic audit:

Every 3 years the DUG will commission an independent organisation with the relevant technical expertise to undertake a detailed audit of the performance of the IANA functions operator. The DUG will publish the audit results and seek feedback from the community.

As a result of this independent audit process and the community feedback the DUG will examine and if necessary refine the agreed levels of service and performance metrics.

The results of the audit will help inform the periodic reviews to be undertaken by the Review Team (see below).

4. Urgent Review

Outside of one-to-one disputes, the DUG will be empowered to initiate an urgent review in cases where a significant, systemic breach of agreed levels of service or performance by the IFM is identified. This may be due to a single extreme event or an escalated number of TLD registry operator/IFM disputes. While the DUG is the organ through which the urgent review process is

---

[4] Note that the IFM already publishes monthly reports and a Working Group is already investigating this issue further.

undertaken, the DUG will not be able to execute on the 'Further Escalation Options' (see below) without explicit consent from IANA's naming customers (ccTLDs and gTLDs).

5. Introduction of technical changes

On occasion, the IFM may be required to address matters that are outside of its existing scope or deal with technical changes or additions to the IANA functions. This has occurred, in the past, with issues such as the introduction of DNSSEC.

In some instances, these changes are the result of policy developed within ICANN and its SOs and ACs. The adoption of these policies and subsequent implementation are subject to the relevant ICANN bylaws and are outside the scope of the DUG. However, in instances where an operational / technical change is not the result of policy processes, and has an effect on the IANA naming functions stakeholder community, the DUG will liaise with the IFM and agree implementation plans on behalf of the TLD registry operators.The IFM should publish implementation plans for significant technical changes, initiate an RFC process, and then issue a statement based on the comments received.

B. Detailed escalation procedures

As noted above, engagement of the DUG will be the first step in dispute escalation, both in instances of individual party disputes and systemic failure.

<u>Individual party dispute</u>

1. Where a TLD registry operator has a dispute regarding agreed levels of service or performance with the IFM, and the parties have been unable to negotiate a satisfactory outcome, the TLD registry operator may lodge a written complaint with the DUG. The DUG will request a written response from the IFM within 10 working days, will assess the circumstances, and will attempt to facilitate an agreed outcome between the parties. All disputes between the IFM and TLD registry operators will be archived for future reference.

2. Should this stage of resolution fail, the DUG will engage the services of an external mediator and will provide reports to the mediator on previous attempts at resolution. The IFM will also provide a report to the mediator. If the mediator is able to bring the parties to an agreed outcome, appropriate remedial action will be taken and records of the dispute will be archived.

3. Should mediation fail, an Independent Appeals Panel (IAP – see below) will be engaged by the DUG. All previous attempts at resolution will be considered. The IAP will take a decision that is binding upon both the TLD registry operator and IFM. The IAP's decision will be binding upon the registry based upon that entity's explicit agreement to enter into the escalation and mediation process outlined above.[5]

---

[5] Such an agreement to be voluntarily bound by an appeals process in essential, given most ccTLDs do not have a contractual agreement with ICANN/IANA.

<u>"Systemic failure"</u>

The escalation process for a systemic or critical failure of the IFM regarding agreed levels of service or performance will follow different processes to those associated with a dispute raised by a TLD registry operator.

1. The DUG is empowered to determine a significant or systemic failure of the IFM, either due to the outcome of a periodic audit or the DUG's evaluation of a rising number of TLD registry operator complaints.

2. In the instance of a failure, the DUG will appoint a team of experts, with appropriate technical knowledge, to engage with the IFM to ascertain the problem and its root cause.

3. The DUG and its technical experts will discuss planned remediation with the IFM and work with the IFM to complete the remediation.

4. The DUG-appointed experts will then advise on whether the issue is deemed a critical or systemic failure. If this determination is made, further escalation steps will be taken to ensure necessary long term changes are implemented.

5. Should this stage of resolution fail, the DUG will engage the services of an external mediator and will provide reports to the mediator on previous attempts at resolution. If the mediator is able to bring the parties to an agreement, appropriate remedial action will be taken and records of the dispute will be archived.

6. Should mediation fail, an Independent Appeals Panel (IAP – see below) will be engaged by the DUG. All previous attempts at resolution will be considered. The IAP will take a decision that is binding upon the TLD registry operator (where applicable), DUG and IFM.

C. Independent Appeals Process

The IAP will be a binding mechanism, utilising the services of an independent, external arbitration organisation. Such an ICANN-wide mechanism is expected to be developed by the CCWG on Accountability.

The IAP's scope will be limited to providing arbitration between the IFM and a TLD registry operator and, when appropriate, the IFM and the DUG in respect to disputes on agreed levels of service or performance, relating to the IFM's naming functions. The IAP will not address policy-related matters, and disputes arising in respect the delegation or re-delegation of a TLD are specifically excluded from this process.

The IAP may make the following findings:

1. That the IFM has not breached agreed levels of service or performance in which case the matter will be treated as resolved and no further action taken.

2. That the IFM has breached agreed levels of service or performance and such breach is capable of remedy in which case the IFM shall have *XX* days to remedy the breach.
3. That the IFM has breached agreed levels of service or performance and such breach is not capable of remedy.

In the event that the IAP finds a breach that is not capable of remedy or in the event that a remediable breach is not remedied within the prescribed time frame then the DUG may proceed to the 'Further Escalation Options'. All findings of the IAP will be published and made available to the stakeholder community.

D. IANA Performance Review Team

The IANA Performance Review Team (IPRT) will play a role distinct from the DUG. The IPRT will engage periodically, in order to conduct significant, scheduled reviews of the performance of IANA's naming function. As such, it will not be a "standing body", though will convene based upon established guidelines.

Membership of the IPRT will be drawn from a broad cross-section of the Internet community. At a minimum this will include representatives from all SOs and ACs and members of the technical community. As with the DUG, the IPRT must be representative, but not unwieldy. Further, direct customers must represent the majority of the team. As such, it is suggested that the IPRT could be composed of 14 members:

- 8 representing registry customers,
- 1 from the GAC
- 1 from the ALAC
- 1 from the SSAC
- 1 from the RSSAC
- 1 from the IETF
- 1 "other" member, engaged to provide independent input on legal or organisational review matters.

The IPRT will perform its first review three years after the initial transition from the NTIA and every four years thereafter.

These reviews would not address operational matters and levels of service (as undertaken by the DUG), but rather broader issues such as whether due process has been followed and policy guidance from the community has been adhered to. Should the IPRT find that problems do exist in the relationship between the DUG and IANA functions operator, the review team will direct appropriate remedial actions.

E.   Further Escalation Options

The escalation plans outlined in the above proposal require an assurance that powers invested in the DUG and SOs and ACs, cannot be overturned or rejected by the ICANN Board.

A variety of mechanisms that could provide this assurance are currently under consideration by the community. These include the ability to move the IANA function away from ICANN through the establishment of external structures such as a "Contract Co" or internal solutions such as a "Golden Bylaw" amendment and, internal ICANN based accountability mechanisms such a spilling the ICANN Board.

This document does not explicitly propose a preferred mechanism, nor does it address the relative values or limitations of each model or whether any of the proposed models would meet the security and stability requirements set out by NTIA or address the concerns expressed by the US Congress.

The utility and applicability of some alternatives is currently the subject of independent legal advice, which is expected in the near future.