

CSG-IANA: LEGAL ISSUES FOR INDEPENDENT ADVICE

Overview: We need advice from a corporate governance and corporate structure legal expert, with experience in California law generally and California non-profit corporations law specifically. Areas of concern include:

1. Board Decisions: What are the options available to allow a multistakeholder body to (a) mandate, (b) overrule, or (c) take a binding appeal from, a particular Board decision?
 - a. If these options are not legally available in California, what are the closest available alternative options?
 - b. If these options are not legally available in California, are there other jurisdictions (foreign or US) where they may be available (or where better alternative options)?
 - c. NOTE: All options should be under consideration, including changing the form of the corporation (e.g., membership organization, moving away from Public Benefit Corporation), changing bylaws (e.g., “golden share/bylaw”; requiring “consensus against” by the Board to reject a change mandated by the “community”), change in jurisdiction, etc.
2. Replacing the Control and Binding Nature of a Contract: Currently, ICANN is under contract to the NTIA to perform the IANA Functions. If the NTIA (in the role of contracting party) is replaced by the “global multistakeholder community,” how can that community have an arrangement with ICANN (or the IANA Function Operator directly) that replicates the control and binding nature of the contract?
 - a. What documentation would be needed?
 - b. What structures would be needed?
 - c. NOTE: Consider this in light of (i) having all structures and documents “internal to ICANN” or (ii) having some structures and documents be “external to ICANN.”
3. Jurisdictional Issues: If a “Contract Co.” is established, we will need to explore whether California, another US jurisdiction (e.g., Delaware or New York), or another country would be the most appropriate home. We will need to determine the “pro’s and con’s” of several jurisdictions.