NCSG Comments on CWG Draft Transition Proposal.

The Noncommercial Stakeholders Group (NCSG) welcomes the first draft of the domain name community's Cross Community Working Group IANA stewardship transition proposal. NCSG is the part of the ICANN Generic Names Supporting Organization that represents civil society organizations, nonprofit organizations, educational and charitable organizations, and individual Internet users who are primarily concerned with the noncommercial and human rights aspects of domain name policy.

The NCSG views the successful globalization of the IANA functions as a very important test of the long-term viability of an Internet governance model rooted in the Internet community itself. We view this draft as a well thought out step towards globalization, and a demonstration of the maturity of the multistakeholder processes that produced it.

NCSG supports the basic assumptions upon which the plan is based, specifically:
- 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.

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 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.
- 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.
- 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

- An Independent Appeals Panel that can resolve disputes regarding incorrect implementation of policy or failure to implement policy.

As the details of the plan are fleshed out, we have the following concerns, or would propose the following modifications:

- As noted above, the legal design of the Contract Co. needs to be further developed based on expert advice.
- 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.
- 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.
- 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 (⅔ or ⅘) 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 the Customer Standing Committee also need to be specified.
- 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.

Relationship of this plan to the CCWG-Accountability.

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:

- 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.

The 'ICANN only' option

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.[1] 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.

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[1] See Board Resolution 2014.10.16.16,
https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d.rationale