

Potential areas for interlinking and dependency between work of the Cross Community Working Group on Naming Related Functions (CWG-Stewardship) and the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability)

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The linkage between the work of the CWG-Stewardship and the enhanced accountability of ICANN has been recognised in a number of ways, including explicitly by the CCWG-Accountability itself. Indeed, Work Stream 1 of the CCWG-Accountability will focus on the mechanisms for enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

In an initial conversation between us (the co-chairs of the CWG-Stewardship) and the co-chairs of the [Drafting Team](#) for the CCWG-Accountability it was clear that input from the CWG-Stewardship on matters for Work Stream 1 would be helpful. This document aims to define those matters (derived from the draft transition proposal) and to seek input from the CWG-Stewardship on these.

The CWG-Stewardship published its draft transition proposal for names on December 1<sup>st</sup> 2014 (<https://www.icann.org/en/system/files/files/cwg-naming-transition-01dec14-en.pdf>).

This document contains three elements that may be specifically relevant to the work of the CCWG-Accountability as follows:

- **Section 3.3 – “Independent Review of Board Actions – the CWG-Stewardship may propose that this becomes binding under certain circumstances directly related to IANA; no other changes proposed”**. If this were to be included in the final proposal implementation would require a change to the ICANN Bylaws regarding the IRP.
- **Section 3.4.3.2 - Independent certification for delegation and re-delegation requests**. This is still under consideration by the CWG-Stewardship but would be a replacement for the authorization function for all changes to the Root Zone or its WHOIS Database currently performed by the NTIA. The replacement mechanism would have gTLD requests for delegations and re-delegations authorized by an independent third party and its decision on these matters would be binding on ICANN/IANA. This would probably require modifications to the ICANN Bylaws.
- **Section 3.4.3.3 - Independent Appeals Panel** – The CWG-Stewardship is proposing that an independent review panel be set up to deal with contested changes to the Root Zone or its WHOIS Database. Although discussions are still ongoing as to the specifics of such a proposal it is generally agreed that such a mechanism should be part of the final proposal and that its decisions would be binding. As such this would also require changes to the ICANN Bylaws.

In addition to these elements the CWG in its public consultation has requested input on an alternate “ICANN only” proposal that is being considered by a number of participants in the CWG-Stewardship:

*Input on a specific (ICANN) alternative solution*

*The CWG is also seeking input on a specific alternative option which has been raised within the CWG which envisages all NTIA responsibilities being transferred to ICANN. This option would require an increase in ICANN accountability to its constituent communities and require the adoption of binding arbitration mechanisms (such recommendations may be beyond the scope of the CWG and probably rest with the CCWG-Accountability or other groups). Note that this integrated option would impact the future ease or ability to tender for another IANA Functions Operator (other than ICANN). However, to ensure there has been a proper consideration of this option, the CWG, would appreciate input from the community regarding support, or not, for this concept.*

If this solution were to go forward it would probably require significant changes to ICANN's accountability mechanisms and therefore the ICANN Bylaws to ensure that *e.g.* the ICANN Board could not overrule the MRT in matters related to the performance of IANA Functions or at the very least can be effectively sanctioned for doing so.

For your convenience we have attached a copy of the Introduction of the CWG public consultation to this document as it covers all of these points in greater detail (Annex 1).

## Annex 1 – Introduction from the CWG public consultation

### Introduction

This document is a draft proposal from the Cross Community Working Group (CWG) on Naming Related Functions, one of the three groups submitting a proposal to the IANA Stewardship Transition Coordination Group (ICG),<sup>1</sup> as part of the overall IANA Stewardship Transition process. As noted in the CWG Charter, the IANA Stewardship Transition process is taking place alongside a parallel and related process on enhancing the accountability of ICANN.

The CWG's work plan (to develop a transition proposal for names related functions) includes the requirement for a public consultation on its draft proposal as part of our commitment to openness and the inclusivity of the entire internet community. The publication of this draft proposal is for the purposes of communicating the draft proposal in its current form and seeking input on further development of the draft proposal.

The CWG is looking forward to the results of this public consultation on any elements of the current proposal in order to aid it in finalizing the key aspects of its transition proposal and, to this end, some **specific open issues are highlighted and specific questions asked later in this introduction**. However, in presenting this draft proposal in its current form, the CWG is mindful that there are some who are of the view that alternatives to (rather than refinements of) this proposal should still be considered. The CWG remains open to hearing these views.

The key dates of the CWG work plan include:

- 6 October: First meeting of the CWG
- 1 December: Publication date of the Draft Proposal for Public Comment
- 19 January: Submission of the CWG Final Proposal to chartering organizations
- 31 January: Planned submission of the Final CWG Proposal to ICG

The CWG consists of 119 people, organized as 19 members, appointed by and accountable to chartering organizations, and 100+ participants who do so as individuals<sup>2</sup>. The CWG is an open group. Anyone interested in the work of the CWG can join as a participant. Participants may be individuals or from a chartering organization, a stakeholder group or an organization not represented in the CWG or currently active within ICANN.

The CWG has structured its work into seven sub-groups based on sections of the ICG Request for Proposals (RFP). These are:

- 1 Description of Community's Use of IANA Functions

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<sup>1</sup> Annex 2 of this document

<sup>2</sup> Annex 3 of this document

- 2.1 Existing, Pre-Transition Arrangements – Policy Sources (section 2A of the ICG RFP)
- 2.2 Existing, Pre-Transition Arrangements – Oversight and Accountability (section 2B of the ICG RFP)
- 3 Proposed Post-Transition Oversight and Accountability Arrangements
- 4 Transition Implications
- 5 NTIA Requirements
- 6 Community Process

Final drafts of sections 1, 2.1 and 2.2 which describe the current situation were completed at the Frankfurt meeting on 19 November 2014.

Section 3 (the Proposed Post-Transition Arrangements), which is the heart of the transition proposal, is still a work in progress as not all details have been ironed out at the date of publication of this draft. Although lacking in some such details, the information provided in this section should be sufficiently detailed to facilitate community comment on all key components.

Sections 4, 5 and 6 are currently in development and are directly dependent on the final choices that will be made for section 3.

Annex 6 of this proposal presents the *CWG's Draft of Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship*. Although still not finalized these principles should provide the reader with some context as to how the CWG is looking to properly meet all its objectives.

### **Key areas for additional work**

The CWG is aware that the following points and questions need to be analysed and will continue with its work on these and other matters during the public consultation:

- Regarding the co-ordination with the related Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability)
  - The co-chairs of the CWG issued an update statement on 28 November 2014 which addressed this point<sup>3</sup>:

*....We also note that a particular area of attention for the CWG is to ensure effective coordination with the parallel and related process on enhancing ICANN accountability. To that end, the CWG co-chairs met on 28 November 2014 with the co-chairs of the drafting team on Cross Community Working Group (CCWG) on Enhancing ICANN Accountability, at least one of whom (Thomas Rickert) we understand will remain as a co-chair of the CCWG on Enhancing ICANN Accountability. Recognising that the two cross community groups are at different*

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<sup>3</sup> <https://www.icann.org/news/announcement-2014-11-28-en>

*points in their work, it was discussed that the CWG on Naming Related Functions could make a contribution to the CCWG on Accountability by assisting to identify accountability mechanisms that are necessary conditions for the stewardship transition. To this end, we (the co-chairs of the CWG) plan to work with our CWG to identify such necessary conditions for transmission to the CCWG on Accountability in order to assist their work and moreover, to coordinate with the co-chairs of the CCWG on Accountability on an ongoing basis.*

- Section 3.1 of this document also addresses this point:

*It is important to note that many elements of this proposal are interrelated and interdependent with the ICANN Accountability Process and thus are subject to the results of CCWG-Accountability. It is generally agreed that the transition must not take place until:*

- *The requisite accountability mechanisms have been identified by the CCWG-Accountability,*
  - *Accountability mechanisms and other improvements that the community determines are necessary pre-transition have been put in place,*
  - *Agreements and other guarantees are in place to ensure timely implementation of mechanisms that the CCWG-Accountability decides may be implemented post-transition.*
- Regarding the on-going work of the CWG
    - This will include:
      - Obtaining legal advice regarding Contract Co. and further refining the details of this entity
      - Considering the scope and composition of two key entities in the proposed structure; the Customer Standing Committee and Multistakeholder Review Team
      - Considering funding issues
      - Considering if the approval function currently performed by the NTIA should continue post-transition and if so, how?
      - Considering if IANA should be required to legally certify, for the delegation and redelegation of ccTLDs, that it has followed policy
      - Considering details pertaining to the Appeals mechanisms for IANA actions or inactions
      - Completing sections 4, 5 and 6 of the ICG RFP

## **Specific areas for input during the public comment period**

**The CWG is actively seeking input from respondents on its proposal overall as well as the following specific options and questions:**

- Input on possible modifications to the Independent Review of Board Actions (section 3.3 of this document) – This arrangement is independent of the NTIA functions and can continue without NTIA involvement in IANA Functions. The independent review of Board actions is applicable to all ICANN Board actions which include non-DNS decisions and as such may be beyond the scope of this CWG’s charter. However, in the absence of NTIA oversight and accountability, the CWG is considering whether this review should be binding with regard to delegation/redelegation decisions, and possibly with regard to other decisions directly affecting IANA or the IANA functions. The CWG will propose arrangements to ensure that all of the IANA Functions Operator’s actions related to TLDs are subject to a similar process.
- Input on possible modification to the NTIA’s responsibilities acting as the Root Zone Management Process Administrator (section 3.4.3 of this document) – Currently IANA must submit a request for all changes to the Root Zone or Root Zone WHOIS database to the NTIA. NTIA verifies the request and then authorizes the Root Zone Maintainer to make the change. The CWG is considering whether to replace this process with the following:
  - Public posting of all IANA change requests - IANA will be required to publicly post all requests for changes to the Root Zone File or the Root Zone WHOIS database as a notification that a change is being made. IANA will also continue to be required to produce and publish Delegation and Redelegation Reports.
  - Independent certification for delegation and redelegation requests - The CWG is considering replacing the authorization role, at least with regard to ccTLDs, with a written opinion from counsel (independent of ICANN) that each delegation and redelegation request meets the policy requirements cited in the publicly posted reports. The CWG is still in the process of discussing whether and how to replace the authorization role currently played by the NTIA with respect to delegation and redelegation requests, especially those for gTLDs.

- Who should have standing with the Independent Appeals Panel? (section 3.4.3.2 of this document) – The CWG recommends 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. 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.”
- Key contracting provisions – the chart at the end of Section 3 presents key provisions which would be required to be in the first contract between ICANN and the new contacting entity “Contract Co.”. A number of these provisions come from the current IANA Functions Contract and are proposed to be retained in the new contract, either in original or modified form. Several of these provisions include options or questions on which the CWG would also appreciate receiving input.

### **Input on a specific (ICANN) alternative solution**

The CWG is also seeking input on a specific alternative option which has been raised within the CWG which envisages all NTIA responsibilities being transferred to ICANN. This option would require an increase in ICANN accountability to its constituent communities and require the adoption of binding arbitration mechanisms (such recommendations may be beyond the scope of the CWG and probably rest with the CCWG-Accountability or other groups). Note that this integrated option would impact the future ease or ability to tender for another IANA Functions Operator (other than ICANN). However, to ensure there has been a proper consideration of this option, the CWG, would appreciate input from the community regarding support, or not, for this concept.

The CWG would ask all interested parties to comment on this draft by 22 December 2014 at 23:59 UTC, through the public comment box which can be found at <https://www.icann.org/public-comments>.

Jonathan Robinson and Lise Fuhr

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