IANA STEWARDSHIP TRANSITION CWG RFP SECTION III

STRAWMAN PROPOSAL 1

1. **Creation of an Oversight Body**

   a. Operational Performance Review Committee. A new body will be created to (1) ensure continuity and enhancement of the performance of current, new and improved IANA administrative and technical functions – the IANA naming services - essentially those described in the current IANA contract, (2) provide oversight over the IANA Functions Operator, and (3) provide a body to which the IANA Functions Operator is accountable. That body will be the Operational Performance Review Committee ("OPRC").

   b. Legal Status. The OPRC will be a committee rather than a separate incorporated entity. [The committee may be considered an "unincorporated association," and will be domiciled in [California or the U.S. or Switzerland or some other place] to the extent that the committee has a legal identity.]

   c. Governing Documents. The OPRC will operate according to Articles of Association and Bylaws to be created by a drafting team composed of a representative group of registries.

2. **Composition of Oversight Body**

   a. **Registry Operators.** The members of the OPRC will be the registry operators, as direct customers of the IANA naming functions.

3. **Documentation to Replace NTIA Contract**

   a. Service Level Agreement. The OPRC and ICANN will enter into a Service Level Agreement for the performance of the technical and administrative IANA functions. The SLA would run for an initial term of three years and would be renewed upon the agreement of the OPRC and the IANA Functions Operator.

   b. Question: Is any other document needed, beyond SLA? For example, will functional separation be set forth in the SLA? If so, does that go beyond the typical scope of an SLA?

4. **Status of IANA Functions Operator**

   a. Division of ICANN. The IANA Functions Operator will remain a division of ICANN.

   b. Enhanced Separability. ICANN will maintain the current separation between ICANN and IANA, and will make the IANA Functions Operator more easily separable from ICANN, if separation becomes necessary at some future time.

5. **Method of Oversight.** The OPRC would do some or all of the following:

   a. Review existing performance metrics, e.g., that 80% of Root Zone File and WHOIS database change requests be processed within 21 days

   b. Develop the (SLA) for the performance of these technical and administrative functions [to be negotiated with ICANN] [and approved by the multistakeholder community]

   c. meet periodically with IANA staff to review performance relative to the SLA [and the need for changes to SLA parameters

   d. meet [annually] with the president of ICANN to review and approve the budget for the IANA naming services for the next [three] years

   e. On a periodic basis, e.g., every 3 to 5 years, initiate a review of the IANA naming services to consider whether new (e.g., the addition of DNSSEC represents an example of a 'new service' that was introduced) or improved services (e.g., further improvements to root zone automation) should are needed.

      i. Question: If the OPRC is composed solely of registries, should other stakeholders be involved in this review (e.g., Registries, Commercial Stakeholders, Noncommercial Stakeholders, SSAC, ALAC and the GAC)]

      ii. Any proposed new or improved services would be reviewed by the ccNSO, GNSO, ALAC and GAC before being implemented

   f. Act as a final review of changes to the root zone made by Verisign at the direction of a designated IANA staff member. [The Verisign Cooperative Agreement would be amended by the NTIA to require that Verisign make changes to the root zone at the direction of a designated IANA staff member, and not ICANN]

6. **Funding of OPRC**

   a. <u>Funded by Registries</u>. All ccTLD and gTLD registries will fund the OPRC on a fair and equitable basis to be determined by the OPRC and approved by the ccNSO, GNSO, ALAC and GAC.

7. **Funding of IANA Functions Operator**

   a. <u>Funded by ICANN</u>. As a division of ICANN, the IANA Functions Operator will continue to be funded as it is currently.

8. **Transparency of Decision-Making.** To enhance consistency, predictability and integrity in decision-making of IANA related decisions, ICANN would agree [Q: in what document?] to:

   a. Continue the current practice of public reporting on naming related decisions

   b. Make public all recommendations to the ICANN Board from IANA staff on naming related decisions

   c. Agree to not redact any board minutes related to naming decisions

   d. Have the president and board chair sign an annual attestation that it has complied with the above provisions

   e. IANA functions staff be provided funds to hire independent outside legal counsel to provide advice on the interpretation of existing naming related policy.

   f. These provisions regarding reporting and transparency, along with the availability of independent legal advice, are intended to discourage IANA staff and the ICANN Board from taking decisions that may not be fully supported by existing policy.

9. **Redress and Consequences of Failure to Perform.**

   a. If the IANA Functions Operator fails to perform as required under the SLA or other binding agreements, the SLA will set forth a process for providing notice of breach to the IANA Functions Operator and requiring the IANA Functions Operator to cure the breach. In the event of failure to cure a breach, OPRC may:

      i. Initiate a formal Performance Review to determine the underlying cause of the breach. At the end of such Performance Review, the OPRC may:

1. Allow ICANN to continue as the IANA Functions Operator, subject to any remedial improvements required by OPRC;

2. Initiate an RFP for a new IANA Functions Operator; or

3. If the breach appears to be result of ICANN behavior outside of the IANA group, require the IANA Functions Operator to move outside of ICANN and be established as an independent entity.

10. **Policy Appeal Mechanism**

   a. <u>Independent Review Panel</u>. Where disputes arise as to the implementation of "IANA related policies," for example, disputes over the consistency of ccTLD delegation decisions with accepted policy, there would be recourse to an independent review panel. This need not be a permanent body, but rather could be done the same way as commercial disputes are often resolved, through the use of a binding arbitration process using an independent arbitration firm or a standing list of qualified people (to be developed by the OPRC). In either case, a three person panel would be used with each party to a dispute choosing one of the three panelists, with these two panelists choosing the third panelist.