

IANA STEWARDSHIP TRANSITION CWG RFP SECTION III

STRAWMAN PROPOSAL 2

1. Creation of an Oversight Body

- a. Performance Review and Oversight Corporation. 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 Performance Review and Oversight Corporation (“PROC”).
- i. Committees. PROC may establish committees with primary responsibilities for various aspects of its work, and with membership reflecting the necessary expertise for the particular responsibilities. For example, an SLA Committee could be formed with primary responsibility for monitoring and engaging with the IANA Functions Operator with regard to performance under the SLA; this committee could consist primarily or exclusively of registry operators. Significant decisions by any committee would require the review and approval of the PROC Board of Directors.
- b. Legal Status. PROC will be a non-profit corporation incorporated in the State of California. PROC will not have members.
- c. Governing Documents. PROC will operate according to Articles of Incorporation and Bylaws to be created by a drafting team composed of a representative group of stakeholders.
- d. Board of Directors. PROC’s Board of Directors will be composed of representatives of the stakeholder groups serving on the various PROC committees.

2. Composition of Oversight Body

- a. Registry Operators. PROC will be a multistakeholder organization, with representatives of from registry operators (both ccNSO and non-ccNSO), other GNSO stakeholder groups and constituencies, GAC, SSAC, RSSAC and ALAC, as well as representatives of the “Names Community” not directly involved in ICANN Stakeholder Organizations and Advisory Committees.

3. Documentation to Replace NTIA Contract

- a. IANA Functions and Oversight Agreement. PROC and IANA Inc. (see below) will enter into an IANA Functions and Oversight Agreement (“IFOA”) that will replace those elements of the current IANA Contract deemed necessary or desirable, as set forth in Appendix ___.
- b. Service Level Agreement. As part of the IFOA, PROC and IANA Inc. will enter into a Service Level Agreement for the performance of the technical and administrative IANA functions.
- c. Term. Both the IFOA and the SLA would run for an initial term of three years and would be renewed upon the agreement of PROC and IANA Inc.

4. Status of IANA Functions Operator

- a. Subsidiary of ICANN. The IANA Functions Operator will be organized as a wholly-owned subsidiary of ICANN (“IANA Inc.”). On an operational basis, the IANA Functions Operator will function largely as it presently does.

- b. Enhanced Separability. IANA Inc. will be structured to be readily separable from ICANN, if separation becomes necessary at some future time.
 - c. Legal Status. IANA Inc. will be a non-profit corporation incorporated in the State of California. IANA Inc. will not have members.
 - d. Governing Documents. IANA Inc. will operate according to Articles of Incorporation and Bylaws to be created by a drafting team composed of a representative group of stakeholders.
 - e. Board of Directors. While IANA Inc. is a subsidiary of ICANN, IANA Inc.'s Board of Directors will be composed of representatives of ICANN and of the stakeholder groups in the Names Community.
5. **Method of Oversight**. PROC and its committees would do some or all of the following:
- a. Review IANA Inc.'s performance against the IFOA and against any other policies established to ensure a secure, stable, and resilient internet operating as a single interoperable network.
 - b. Review existing performance metrics, e.g., that 80% of Root Zone File and WHOIS database change requests be processed within 21 days
 - c. Develop the (SLA) for the performance of these technical and administrative functions [to be negotiated with ICANN] [and approved by the multistakeholder community]
 - d. meet periodically with IANA staff to review performance relative to the SLA [and the need for changes to SLA parameters]
 - e. meet [annually] with the president of ICANN to review and approve the budget for the IANA naming services for the next [three] years
 - f. 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 be needed.
 - i. Question: If the PROC 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
 - g. 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 PROC**
- a. Funded by ICANN. Under the IFOA, ICANN will be required to fund PROC pursuant to a budget approved by the PROC Board of Directors, and intended to provide adequate funds for PROC to operate in a manner consistent with ICANN's past practices.

7. Funding of IANA Inc.

- a. Funded by ICANN. As a subsidiary of ICANN, IANA Inc. 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 in the IFOA to:

- a. Continue the current practice of public reporting on naming related decisions
- b. Make public all recommendations to the ICANN Board from IANA Inc. 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 Inc. will 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 Inc. 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 IANA Inc. 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 IANA Inc. and requiring IANA Inc. to cure the breach. In the event of failure to cure a breach, PROC may:
 - i. Initiate a formal Performance Review to determine the underlying cause of the breach. At the end of such Performance Review, the PROC may:
 1. Allow IANA Inc. to continue as the IANA Functions Operator, subject to any remedial improvements required by PROC;
 2. Initiate an RFP for a new IANA Functions Operator; or
 3. If the breach appears to be result of ICANN behavior and not that of IANA Inc., require IANA Inc. to move outside of ICANN and be established as an independent entity.

10. Policy Appeal Mechanism

- a. Independent Review Panel. 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 PROC). 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.