	STRAWMAN P	ROPOSAL 1	STRAWMAN PROPOSAL 1A	STRAWMAN PROPOSAL 2	STRAWMAN PROPOSAL 3	STRAWMAN PROPOSAL 4	COMMENTS
1	Creation of an Overs	sight Committee,	Creation of an Oversight Committee	Creation of an Oversight Body	Creation of an Oversight Body	Trust model with periodic	
						contract review and	
						(re)assignment	
а	Operational Perform		a. Operational Performance Review	Performance Review and Oversight	Performance Review, Oversight and	The contract would be put into	Guru: I am not able to make sense
	Committee. A new l	•	Committee. A new body, the	Corporation. A new body will be	Stewardship Inc. A new body will be	trust with an administrator	of the trust related laws under
	created to (1) ensure	,	Operational Performance Review	created to (1) ensure continuity and	created to (1) ensure continuity and	having the following	which Strawman 4 is being
	enhancement of the		Committee ("OPRC"), will be created to	enhancement of the performance of	enhancement of the performance of	responsibilities:	contemplated. Which entities are
	current, new and im	proved IANA	ensure continuity and enhancement of	current, new and improved IANA	current, new and improved IANA	 arrange yearly audits 	the the author, trustee and
	administrative and t	echnical	the performance of the administrative	administrative and technical functions –	administrative and technical functions -	 publish the results of 	beneficiary?
	functions – the IANA	naming	and technical functions associated with	the IANA naming services - essentially	the IANA naming services - essentially	yearly audits	
	services - essentially	those described	the IANA naming services by:	those described in the current IANA	those described in the current IANA	 bring into existence a 	
	in the current IANA	contract, (2)	i. developing and	contract, (2) provide oversight over the	contract, (2) provide oversight over the	ICG-like group every	Robert - Is there a need to detail
	provide oversight ov	er the IANA	entering into a Service Level Agreement	IANA Functions Operator, and (3)	IANA Functions Operator, (3) provide a	[3,4,5,n] years to	how recommendations of
	Functions Operator,		(SLA) with the IANA Functions Operator	provide a body to which the IANA	body to which the IANA Functions	review performance	oversight committee/body will be
	a body to which the	IANA Functions	ii. overseeing and	Functions Operator is accountable.	Operator is accountable, and provide	of both the IANA	implemented? for instance, will
	Operator is accounta		enforcing the IANA Functions	That body will be the Performance	stewardship of the Internet according to	function and the	recommendations be binding or
	will be the Operation	nal Performance	Operator's compliance with the	Review and Oversight Corporation	the principles of multistakeholderism, a	auditor function and	subject to review and approval by
	Review Committee ("OPRC").	established SLA; and	("PROC").	competitive market, public	to renew or reassign	another entity
			iii. contracting with		accountability and security and stability.	either.	
			an evaluator to perform the		That body will be the Performance	The administrator	
			authorizations for changes to the root		Review and Oversight Inc. ("PROSI").	could call together	RG - 1-3 all mention the creation
			zone previously performed by the NTIA			the IGC-like group at	of a "new" oversight mechanism.
			(e.g. affirmation that all relevant			any point when a	of a flew oversight mechanism.
			policies were followed).			crisis demanded.	
						The administrator would not be	
						empowered to take any other	RG - should the process itself be
						actions unless expressly given	subject to independent review
						ths duties by a preceding	every 5/10 yrs, etc?
						ICG like panel. If decisions were	
						needed prior to the periodic	
						automatic review, the	Mary: The creation of a new body
						administrator could call one	seems to have gained
						into existence.	acceptability. I do not think it
							should be subject to another
							independent authority. NTIA was
						This would need to be	the ultimate supreme body of
						This would need to be	authority in the IANA function

Greg Shatan 11/13/14 8:33 PM

Comment [1]: Per Olivier Crepin-Leblond's comment below and on 13-Nov

Grace Abuhamad 11/12/14 8:12 PM

Comment [2]: Per Allan's comment on RFP3 list

ocl999 11/13/14 3:32 PM

Comment [3]: I replied that proposal 1 was still for an oversight body - it's just the body takes the form of a committee. IMO a "mechanism" is a system of checks & balances without a committee being involved. Suggest: "Committee" rather than "Body" or "Mechanism"

Greg Shatan 11/13/14 8:33 PM

Deleted: Mechanism

Grace Abuhamad 11/14/14 10:18 PM

Deleted: Body

Avri doria 11/15/14 7:00 AM

Comment [4]: I think any oversight body has an accountability problem that is as serious as the accountability problems we are dealing with at ICANN and just[1]

Avri doria 11/15/14 7:29 AM

Comment [8]: The role of Adminis ... [5]

Avri doria 11/15/14 7:17 AM

Comment [9]: The organizations[6]

Grace Abuhamad 11/17/14 8:42 PM

Comment [5]: Kurt Pritz: Could be [2]

Grace Abuhamad 11/17/14 8:43 PM

Comment [6]: Kurt Pritz: The eval [3]

Grace Abuhamad 11/17/14 8:43 PM

Comment [7]: Kurt Pritz: Could be ... [4]

Avri doria 11/15/14 7:05 AM

Comment [10]: good idea. i would ... [7]

Avri doria 11/15/14 7:06 AM

Comment [11]: while it may be[8]

					accompanied by a binding redress mechanism, which was not under the administrator's control.	approval for the names community especially the cctld. The new body should have such final authority. I think a committee model as specified in 1 would work better. Reason: to avoid the jurisdictional sensitivity.
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.	Committees. PROSI 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 PROSI Board of Directors.		
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.]	The OPRC will be a committee under a separate incorporated or unincorporated entity. [NOTE: A full review of the implications to personal liability and insurability of any committee members and the evaluator not associated with an incorporated entity and/or an incorporated entity and committee members under various jurisdictions needs to be conducted by legal experts to (1) protect individuals who serve on the committee and (2) attract the most qualified individuals to serve as committee members without fear of personal liability.]	Legal Status. PROC will be a non-profit corporation incorporated in the State of California. PROC will not have members.	Legal Status. PROSI will be a non-profit corporation incorporated in the State of California. PROSI will not have members.	The trust will hold the contract.	RG: would be good to get legal comments on the +/- of different legal arrangements being proposed. Mary: A Committee or Forum would provide flexibility as against legal structure. It would be governed by its own chatter Guru: An unincorporated entity will increase the liability of the constituent members. I do not think current and future members will be willing to accept the resulting joint and several liability. Further, the ability of

Grace Abuhamad 11/17/14 8:44 PM

Comment [12]: suggestion by Kurt Pritz

						such entity to contract needs to be verified.
С	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	i. OPRC Articles of Association and Bylaws: The OPRC will operate according to Articles of Association and Bylaws to be created by a drafting team.	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.	Governing Documents. PROSI will operate according to Articles of Incorporation and Bylaws to be created by a drafting team composed of a representative group of stakeholders.	The trust agreement will stipulate to conditions.	RG: is it worthwhile to estimate what the "start-up time" might be for the different options.
	of registries.	ii. OPRC MoU with				
		ICANN: The OPRC will also execute a Memorandum of Understanding (MoU) with the IANA Functions Operator that establishes the group's authority to create and enforce service levels for the performance of the IANA Naming Functions and to appoint an independent evaluator to certify compliance with established policies before undertaking a root zone change. The MoU will also require the separation of policy development from the operational role of the IANA				
		Functions operator.[1]				
		iii. ICANN Bylaws: The Bylaws shall be modified to				
		1. Reflect the role of the OPRC and mandate the IANA Functions Operator's adherence to the terms of the MoU with the OPRC. 2. Require the IANA Functions Operator and any employees involved in the operation of the IANA Functions to implement the IANA Naming Functions in accordance with the policies developed by the ccNSO and Generic Names Supporting Organization (GNSO). 3. Identify a binding appeals mechanism with appropriate redress for parties that have been materially and adversely affected by the failure of the IANA Functions Operator to act in accordance with the authoritative				

Grace Abuhamad 11/17/14 8:44 PM

Comment [13]: Kurt Pritz: "...working at the direction of the OPRC." (Or did you mean at someone else's direction?)

Grace Abuhamad 11/17/14 8:45 PM

Comment [14]: Kurt Pritz: In cases where ICANN has to pursue a license with the US Dept of Treasury to provide a service in a certain country, one of ICANN's duties might be to pursue licenses for the OPRC.

Greg Shatan 11/17/14 5:26 PM

Comment [15]: [1] Similar to the current NTIA Contract the MoU will require that, the IANA Functions Operator ensure that designated IANA functions staff members will not initiate, advance, or advocate any policy development related to the IANA functions. The IANA Functions Operator staff staff may respond to requests for information requested by interested and affected parties and may request guidance or clarification as necessary for the performance of the IANA functions. [Notes from Revised Proposal]

Grace Abuhamad 11/17/14 8:45 PM

Comment [16]: Avri Doria: Any change to ICANN Bylaws can be undone by the ICAN Board of Directors.

d			policies. [DS1] 4. [NOTE: Restrictions must be put in place to facilitate adoption of these Bylaw amendments and to restrict the Board's ability to change this language within the Bylaws][DS2]	Board of Directors. PROC's Board of Directors will be composed of representatives of the stakeholder	Board of Directors. PROSI's Board of Directors will be composed of representatives of the stakeholder		RG: Is there a need to add language related to one or more of the following: term-limits,
2	6	position of Oversight Body	Composition of Oversight Body	groups serving on the various PROC committees. Composition of Oversight Body	groups serving on the various PROSI committees Composition of Oversight Body	Composition of Oversight Body	capture, geographical and stakeholder representation, skills, selection process, etc
a	Regis the O	try Operators. The members of PRC will be the registry tors, as direct customers of the naming functions.	a. Registry Operators. The members of the OPRC will be the registry operators, as direct customers of the IANA naming functions.	Multistakeholder. 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.	Multistakeholder. PROSI 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.	Multistakeholder on a similar basis to ICG + the outside community to some extent.	Will the GAC (or governments) have issues participating in any of these models? I think that the unincorporated Committee model could pose particular problems for GAC members. Such a committee would likely be treated as an "unincorporated association" for legal purposes, which has little or no legal existence. As such, its members could be jointly, severally and personally liable for any acts of the committee, and also could be deemed to be entering directly into any contracts purportedly entered into by the committee. This is unattractive enough for any participant; for a government, I would think it's a showstopper. I think that an oversight body organized as a non-profit corporation has a better chance of resolving these threshold issues, which still leaves the

Grace Abuhamad 11/17/14 8:47 PM

Comment [17]: Kurt Pritz: This is tricky and has never come into play with IANA. The "binding review process" requirement throughout this document should be tested through different scenarios:

(1) Would we ever have an ICDR panel making binding decisions on whether a ccTLD re-delegation change requests should be granted? The scope of the review has to be appropriately narro... [9]

Greg Shatan 11/17/14 8:47 PM

Comment [18]: [DS1]To the extent that the Independent Review Process is updated to make clear that decisio....[10]

Grace Abuhamad 11/17/14 8:48 PM

Comment [19]: Suggestion by Kurt Pritz

Greg Shatan 11/17/14 5:26 PM

Comment [20]: [DS2]If functions were moved how would this be addressed? [SD comment from Revised Proposal]

Grace Abuhamad 11/13/14 3:40 PM

Comment [21]: Robert Guerra's comment: consider security and stability in this section.

Grace Abuhamad 11/17/14 8:49 PM

Comment [22]: Avri Doria: I believe that any 'oversight' mechanism needs to a multistakeholder mechanism. We a... [11]

Milton Mueller 11/14/14 3:52 PM

Comment [24]: I agree it should be Multistakeholder but believe that as the primary IANA customers ccTLD an ... [13]

Grace Abuhamad 11/17/14 8:49 PM

Comment [23]: Kurt Pritz: This is a workable model that is appropriately focused on customer service. Ther ... [12]

Avri doria 11/15/14 7:10 AM

Comment [25]: We have seen with Netmundial that governments will participate in an unincorporated de....[14]

						question whether individual government reps will be willing to serve as GAC representatives. This also raises the question of what existence the GAC has outside of ICANN, since it was organized to advise the ICANN Board and not to act outside "ICANN-land." Guru: I oppose a registry-only composition. The section "Redress and Consequences of Failure to Perform" does not deal	
3	Documentation to Replace NTIA	Documentation to Replace NTIA	Documentation to Replace NTIA	Documentation to Replace NTIA	Documentation to Replace	with day-to-day oversight. These kinds of oversight issues will involve major policy issues. As a result, the composition of the oversight body can not be technically oriented.	
а	Contract	Contract Memorandum of Understanding. The IANA Functions Operator and the OPRC would enter into a MoU establishing the role of the OPRC as it relates to the performance of the IANA Naming Functions. The MoU will also require the separation of policy development from the operational role of the IANA Functions operator.	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	IANA Functions and Oversight Agreement. PROSI 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	Trust Agreement and any necessary modifications to the existing agreements for compatibility.		4
b	Service Level Agreement. The OPRC and ICANN will enter into a Service Level Agreement for the performance of the technical and administrative IANA functions.	Service Level Agreement. The OPRC and the IANA Functions Operator will enter into a Service Level Agreement for the performance of the technical and administrative IANA Naming Functions. The SLA would run for an initial term of	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.	Service Level Agreement. As part of the IFOA, PROSI and IANA Inc. will enter into a Service Level Agreement for the performance of the technical and administrative IANA functions.	Service level will be governed by existing MOU &c. and redress procedures.		

Avri Doria 11/16/14 2:13 PM

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Avri Doria 11/16/14 2:13 PM
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Avri Doria 11/16/14 2:13 PM

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		three years and would be renewed upon the agreement of the OPRC and the IANA Functions Operator. ICANN Bylaws. The ICANN Bylaws			
		would be updated to describe the role of the OPRC and define the terms of the MoU between the OPRC and the IANA Functions Operator. The Bylaws would also be updated to include the binding appeals process for parties that were materially and adversely affected by a failure of the IANA Functions Operator to follow policies. Restrictions would be placed on the Board's ability to modify such language in the Bylaws.			
c	Term 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.		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.	Term. Both the IFOA and the SLA would run for an initial term of three years and would be renewed upon the agreement of PROSI and IANA Inc.	Guru: When you say that the IFOA will be for a term of 3 years and renewed thereafter, are you implying that the term of the incumbent operator will be extended upon review, or that there will be a fresh RFP at the end of every term? I strongly feel that there should be a fresh RFP at the end of every term and open applications should be invited through the RFP. If the incumbent operator deserves to be reselected as a result of the RFP, then there will be continuity despite the limited term of the contract. On the other hand, if a presumption of renewal or extension is created, there would

4	Status	s of IANA Functions Operator	Status of IANA Functions Operator	Status of IANA Functions Operator	Status of IANA Functions Operator	Status of IANA Functions Operator	be serious accountability and litigation issues. The fear of litigation could create a chilling effect resulting in the gifting of LANA to ICANN in perpetuity.	*
a	Functi	on of ICANN. The IANA ons Operator will remain a in of ICANN.	Division of ICANN. The IANA Functions Operator will initially be a division of ICANN.	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.	Independent Entity. The IANA Functions Operator will be organized as an independent corporation ("IANA Inc."). On an operational basis, the IANA Functions Operator will function largely as it presently does.	The IANA function remain with ICANN until such time as the trust reassigns those functions to another entity. Contract to be reviewed every [3,4,5,n] years	RG: financial costs vary from option to option. Is it something that needs to be discussed? Guru: It is best if the IANA Functions Operator is a subsidiary of ICANN. This will create structural separation in addition to functional separation. This will also increase the transparency of communications between the policy community and the IANA operator.	
b	maint betwe make more separa	ced Separability. ICANN will ain the current separation en ICANN and IANA, and will the IANA Functions Operator easily separable from ICANN, if ation becomes necessary at future time.	Enhanced Separability. ICANN will maintain the current separation between ICANN and IANA. The ICANN Bylaws will require the separation of policy development from the operational role of the IANA Functions operator in a manner determined by the OPRC and approved by the ICANN Board, Employees involved in the operation of the IANA Naming Functions would be prevented from initiating, advancing, or advocating any policy development related to the IANA functions.	Enhanced Separability. IANA Inc. will be structured to be readily separable from ICANN, if separation becomes necessary at some future time.		Trust can reassign the contract upon review.	MS - I am unclear on what "enhanced separability" means. Either there is separability - the contract can be removed from ICANN - or there is not. If this is to be credible then a mechanism should be created accordingly. A term-limited contract which can be renewed for example.	

Anonymous 11/17/14 11:23 AM

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Grace Abuhamad 11/17/14 8:50 PM

Comment [26]: Avri Doria: This does not seem like separability to me. It appears to approach function separation within the company, but the ability to reassign the

Grace Abuhamad 11/17/14 8:50 PM

Comment [27]: Kurt Pritz: I would delete "permanent."

1) Nothing is permanent; 2) others might urge for greater separation, so leaving it up to the OPRC to make a determination avoids a discussion on this and there is no factual basis to support any one-level of separation. In the long run, it is an OPRC determination anyway.

Grace Abuhamad 11/17/14 8:50 PM

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Grace Abuhamad 11/17/14 8:55 PM

Comment [28]: Suggestion by Kurt Pritz: Could add: "...in a manner determined by the OPRC and approved by the ICANN Board," which is required for a Bylaw change.

С		Legal Status. IANA Inc. will be a non-profit corporation incorporated in the State of California. IANA Inc. will not have members.	Legal Status. IANA Inc. will be a Swiss non-profit association, and would request that the Swiss government grant it immunity of jurisdiction.		RG: (1) For IANA Inc. are there other jurisdictions worth exploring? Switzerland has been often mentioned, however other locations might be possible as well RG: (2) for IANA inc, might we instead want to use more generic language that opens up possibility to other jurisdictions - Ie. IANA will seek a host-country agreement that grants it special status, such as immunity, etc
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.	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.		RG: Are there core-values that are worth mentioning that should be incorporated into governing documents ? le. multi-stakeholder, openness, transparency, etc
е		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.	Board of Directors. IANA Inc.'s Board of Directors will be composed of representatives of the stakeholder groups in the Names Community.		
5	od of Oversight. The OPRC do some or all of the ing:	Method of Oversight. PROC and its committees would do some or all of the following:	Method of Oversight. PROSI and its committees would do some or all of the following:	Not oversight. contract renewal + redress mechanisms and a continuation of the current MOU structure.	
а		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.	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.		MS - Both of these "oversight" roles appear to be politicizing the function. Changes to the RZ should be the result of MS pdps and agreed - any review of them should have occurred prior to IANA implementing the changes. We seem to be making more of

Avri doria 11/15/14 7:12 AM

Comment [29]: Indeed these should be captured in the principle documents and the principles document are a critical part of an response.

Greg Shatan 11/14/14 8:15 PM

Comment [30]: Avri, Can you clarify which MOU you are referring to with regard to names? Also, can you clarify how "not oversight" would work? Would the contract lie dormant unless it was renewal time or a third party (e.g., a registry) brought some sort of complaint?

Avri doria 11/14/14 8:48 PM

Comment [31]: Yes, NTIA's main function is to renew/re-assign the contract. Except for then it is time for review and renewal, the contract renewal function should indeed remain dormant.

When things go wrong a there need to appeal and binding methods of redress, but that is not an oversight function.

I don't see as any other oversight is needed. And I think that having an oversight committe sitting around finding tasks for itself would be a bad thing that would result in mission creep.

avri

					the clerical function than is
					necessary.
b	Review existing performance	a. Monitor existing performance	Review existing performance metrics,	Review existing performance metrics,	
D	metrics, e.g., that 80% of Root Zone	metrics (e.g., that 80% of Root Zone File	e.g., that 80% of Root Zone File and	e.g., that 80% of Root Zone File and	
	File and WHOIS database change	and WHOIS database change requests	WHOIS database change requests be	WHOIS database change requests be	
	requests be processed within 21	be processed within 21 days);	processed within 21 days	processed within 21 days	
	days	be processed within 21 days),	processed within 21 days	processed within 21 days	
С	Develop the (SLA) for the	Develop the (SLA) for the performance	Develop the (SLA) for the performance	Develop the (SLA) for the performance	
C	performance of these technical and	of these technical and administrative	of these technical and administrative	of these technical and administrative	
	administrative functions [to be	functions and determine performance	functions [to be negotiated with ICANN]	functions [to be negotiated with IANA	
	negotiated with ICANN] [and	indicators [to be negotiated with the	[and approved by the multistakeholder	Inc.] [and approved by the	
	approved by the multistakeholder	IANA Functions Operator] and approved	community]	multistakeholder community]	
	community]	by the RySG and ccNSO	Community	inditistakenoider community]	
 	communityj	a. Receive regular performance			
		reports from the IANA Functions			
		Operator and review IANA's			
		performance of the Naming Functions;			
		b. Initiate an independent audit of the			
		performance of the IANA Naming			
		Functions up to once per calendar year			
		to be carried out by an independent			
		auditor agreed to by the OPRC and the			
		IANA Functions Operator and funded by			
		the IANA Functions Operator.			
		c. Request explanations and/or other			
		documentary materials from the IANA			
		Functions Operator in the case of any			
		performance deficiencies with respect			
		to the performance of the Naming			
		Functions identified within regular			
		reports or independent audits;			
		reports of independent addits,			
d	meet periodically with IANA staff to	Meet periodically with IANA staff to	meet periodically with IANA staff to	meet periodically with IANA Inc. staff to	
u	review performance relative to the	review performance relative to the SLA,	review performance relative to the SLA	review performance relative to the SLA	
	SLA [and the need for changes to	discuss and otherwise address any	[and the need for changes to SLA	[and the need for changes to SLA	
	SLA parameters	performance deficiencies; [and consider	parameters]	parameters]	
	SLA parameters	the need for changes to SLA	parameters	parameters	
		_			
	meet [annually] with the president	parameters; Meet [annually] with the President and	meet [annually] with the president of		
е	,,,		, , , ,		
	of ICANN to review and approve the	CEO of ICANN to review and approve the elements of the Operating Plan and	ICANN to review and approve the		
	budget for the IANA naming services	the elements of the Operating Plan and	budget for the IANA naming services for		

Grace Abuhamad 11/17/14 8:54 PM

Comment [32]: Suggestion by Kurt Pritz
Grace Abuhamad 11/17/14 8:54 PM

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Grace Abuhamad 11/17/14 8:57 PM

Comment [33]: Kurt Pritz: The approval should be required and there should be language the reviewer should ensure the budget is sufficient AND necessary (i.e., just right)

			Γ		T	
ļ	for the next [three] years	Budget related to IANA naming services	the next [three] years			
ļ		for the upcoming fiscal year and the				
		next [five] years .				
f	On a periodic basis, e.g., every 3 to 5	On a periodic basis, e.g., every 3 to 5	On a periodic basis, e.g., every 3 to 5	On a periodic basis, e.g., every 3 to 5		MS - Is this periodic basis
ļ	years, initiate a review of the IANA	years, initiate a review of the IANA	years, initiate a review of the IANA	years, initiate a review of the IANA		adequate? Should this not be on
ļ	naming services to consider whether	naming services to consider whether	naming services to consider whether	naming services to consider whether		an as needed basis?
,	new (e.g., the addition of DNSSEC	new (e.g., the addition of DNSSEC	new (e.g., the addition of DNSSEC	new (e.g., the addition of DNSSEC		
ļ	represents an example of a 'new	represents an example of a 'new	represents an example of a 'new	represents an example of a 'new service'		
,	service' that was introduced) or	service' that was introduced) or	service' that was introduced) or	that was introduced) or improved		
ļ	improved services (e.g., further	improved services /SLAs (e.g., further	improved services (e.g., further	services (e.g., further improvements to		
ļ	improvements to root zone	improvements to root zone automation)	improvements to root zone	root zone automation) are needed.		
ļ	automation) are needed.	are needed.	automation) are needed.	·		
ļ	, , , , , , , , , , , , , , , , , , , ,		,			
		An annual review should be conducted in				
g	l					
ļ		an open and transparent fashion and				
,		provide an opportunity for interested				
,		parties to raise new or additional				
ļ		services of interest or other potential				
,		improvements to the Service Level				
ļ		Agreement. The OPRC shall review and				
ļ		analyze these proposals and should use				
ļ		such recommendations to inform				
ļ		changes to the IANA Service Levels				
ļ		provided that such recommendations				
ļ		are within the remit of the OPRC. The				
ļ		OPRC shall be focused on changes				
ļ		related to the technical and operational				
ļ		execution of the IANA Naming				
ļ		Functions; changes that seek to				
ļ		introduce policy by way of the OPRC or				
ļ		supersede or undermine the existing				
ļ		policy development structures for				
ļ		ccTLDs and gTLDs shall be considered				
,		outside of scope.				
,		·				
h	Any proposed new or improved		Any proposed new or improved services	Any proposed new or improved services		
	services would be reviewed by the		would be reviewed by the ccNSO,	would be reviewed by the ccNSO, GNSO,		
,	ccNSO, GNSO, ALAC and GAC before		GNSO, ALAC and GAC before being	ALAC and GAC before being		
,	being implemented		implemented	implemented		
ļ	being implemented		implemented	implemented		
	Act as a final review of changes to	Independent Evaluator. Appoint or	Act as a final review of changes to the	Act as a final review of changes to the		
i i	Act as a lilial review of changes to					

Grace Abuhamad 11/17/14 8:57 PM

Comment [34]: Kurt Pritz: This should essentially be a continual monitoring with new / improved services to be recommended at any time

Grace Abuhamad 11/17/14 8:58 PM

Comment [35]: suggestion by Kurt Pritz

Greg Shatan 11/17/14 5:40 PM

Comment [36]: 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)]?

Grace Abuhamad 11/17/14 8:58 PM

Comment [37]: Suggestion by Kurt Pritz: If the above review is continual, then this review could be, "An annual review should be conducted..."

Grace Abuhamad 11/17/14 8:58 PM

Deleted: This

Greg Shatan 11/17/14 5:56 PM

Comment [38]: [CG1]Apparently some ccTLDs cannot pay a U.S. based organization.

Greg Shatan 11/17/14 5:57 PM

Comment [39]: [DS2]Possibility of funding based upon a designated percentage of registry fees. For gTLDs this would be a set percentage of the total fees. ccTLD managers could determine whether to contribute to the OPRC and/or ICANN.

а	Funded by ICANN. As a division of ICANN, the IANA Functions Operator will continue to be funded as it is currently.	Funded by ICANN. As a division of ICANN, the IANA Functions Operator will continue to be funded as it is currently.	Funded by ICANN. As a subsidiary of ICANN, IANA Inc. will continue to be funded as it is currently.	<u>Funded by ICANN</u> . IANA Inc. will be funded by registries, through fees charged to the registries pursuant to IFOA.	Funded by Contract holder. 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:	Transparency of Decision-Making. To enhance consistency, predictability and integrity in decision-making of IANA related decisions, ICANN would agree in its Bylaws to:	Transparency of Decision-Making. To enhance consistency, predictability and integrity in decision-making of IANA related decisions, ICANN would agree in the IFOA to:	Transparency of Decision-Making. To enhance consistency, predictability and integrity in decision-making of IANA related decisions, IANA Inc. would agree in the IFOA to:	Transparency of Decision- Making	
а	Continue the current practice of public reporting on naming related decisions	Continue the current practice of public reporting on naming related decisions	Continue the current practice of public reporting on naming related decisions	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	Make public all recommendations to the ICANN Board from IANA staff on naming related decisions	Make public all recommendations to the ICANN Board from IANA Inc. on naming related decisions	Make public all recommendations by IANA Inc. on naming related decisions		
С	Agree to not redact any board minutes related to naming decisions	Agree to not redact any board minutes related to naming decisions absent a justifiable cause identified in the Board Minutes. Where a justifiable cause exists, only the specific information of concern should be redacted.	Agree to not redact any board minutes related to naming decisions	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	Have the president and board chair sign an annual attestation that it has complied with the above provisions	Have the president and board chair sign an annual attestation that it has complied with the above provisions	Have the president and board chair sign an annual attestation that it has complied with the above provisions		
		Submit to the outcome of a binding appeals process available to parties that believe that they have been materially and adversely affected by the failure of the IANA Functions Operator to carry out the IANA Naming Function in accordance with the applicable policies and procedures.				
е	IANA functions staff be provided	Require that the IANA Functions	IANA Inc. will be provided funds to hire	IANA Inc.'s budget will be sufficient to		
	funds to hire independent outside legal counsel to provide advice on the interpretation of existing naming	Operator hire independent outside legal counsel to provide advice on the interpretation of existing naming	independent outside legal counsel to provide advice on the interpretation of existing naming related policy.	allow it to hire outside legal counsel to provide advice on the interpretation of existing naming related policy.		
	related policy.	related policy, as needed.	CARRING Harring related policy.	CASCING Hairing related policy.		

Grace Abuhamad 11/17/14 9:00 PM

Comment [40]: Kurt Pritz: Could be: "the MoU with the OPCR," these seem like contractual provisions that might change from time to time.

f 9 a	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. Redress and Consequences of Failure to Perform. 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	Redress and Consequences of Failure to Perform. a. The SLA will set forth a process to address failure of the IANA Functions Operator to perform as required under the SLA or other binding agreements including providing notice of breach to the IANA Functions Operator and	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. Redress and Consequences of Failure to Perform. 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	These provisions regarding reporting and transparency, along with the availability of independent legal advice, are intended to discourage IANA Inc. and its Board from taking decisions that may not be fully supported by existing policy. Redress and Consequences of Failure to Perform. 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	Redress and Consequences of Failure to Perform	
	requiring the IANA Functions Operator to cure the breach. In the event of failure to cure a breach, OPRC may:	requiring the IANA Functions Operator to cure the breach. The IANA Functions Operator shall be expected to explain the reason(s) underlying its failure to meet the established service levels and what steps are being taken to avoid future deficiencies. In the event of failure to cure a breach or multiple recurrences of failure, OPRC may, in accordance with an escalation path defined in the MoU[DS1]:	to cure a breach, PROC may:	cure a breach, PROSI 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:	Initiate a formal Performance Review to determine the underlying cause of the breach. At the end of such Performance Review, the OPRC may:	Initiate a formal Performance Review to determine the underlying cause of the breach. At the end of such Performance Review, the PROC may:	Initiate a formal Performance Review to determine the underlying cause of the breach. At the end of such Performance Review, the PROSI may:		
1.	Allow ICANN to continue as the IANA Functions Operator, subject to any remedial improvements required by OPRC;	Allow ICANN to continue as the IANA Functions Operator, subject to any remedial improvements required by OPRC;	Allow IANA Inc. to continue as the IANA Functions Operator, subject to any remedial improvements required by PROC;	Allow IANA Inc. to continue as the IANA Functions Operator, subject to any remedial improvements required by PROSI; or		
2.	Initiate an RFP for a new IANA Functions Operator; or	Initiate an RFP for a new IANA Functions Operator, subject to approval by the GNSO and ccNSO; or	Initiate an RFP for a new IANA Functions Operator; or	Initiate an RFP for a new IANA Functions Operator.		RG: Do we need to provide any additional details on the "threshold" that would need to

Grace Abuhamad 11/17/14 9:02 PM

Comment [41]: suggestion by Kurt Pritz

Greg Shatan 11/17/14 5:54 PM

Comment [42]: [DS1]Need to determine enforcement mechanisms short of automatically moving the function

						be reached to trigger a new RFP?
						Guru: In Strawman 1, there is no
						termed contract and there is no
						fresh RFP at the end of every
						term as presently done by NTIA. From what I understand, in
						Strawman 1, the IANA Functions Operator can only be changed in
						case the following Boolean is
						satisfied: ((failure to cure a
						breach) OR (multiple recurrences
						of failure)) AND (failure not
						attributable to names
						community) AND (remedial
						improvements not possible).
						Given that the incumbent IANA
						operator will have multiple
						points of arguments against a
						OPRC decision to initiate a RFP,
						including the arguments that the
						breach is attributable to the
						names community, the breach
						can be remedied etc - doesn't
						any decision to change the IANA
						Functions Operator subject the
						entire process to a lot of
						litigation since this is all so
						subjective? I fear this creates a
						litigation chilling effect situation
						as a result of which the IANA
						functions will almost perpetually
						reside in ICANN.
						MS: agree that
3.	If the I	breach appears to be result of	If the breach appears to be the result of	If the breach appears to be result of		
	ICANN	behavior outside of the IANA	ICANN malfeasance outside of the IANA	ICANN behavior and not that of IANA		
	group	require the IANA Functions	group, require require additional	Inc., require IANA Inc. to move outside		
		tor to move outside of ICANN	separation measures, up to and include	of ICANN and be established as an		
		e established as an	the establishment of a legally and	independent entity.		
	indep	endent entity.	operationally separate entity,			

Grace Abuhamad 11/17/14 9:03 PM

Comment [43]: suggestion by Kurt Pritz

Grace Abuhamad 11/17/14 9:03 PM

Deleted: behavior

Grace Abuhamad 11/17/14 9:04 PM

Comment [44]: Suggestion by Kurt Pritz

Grace Abuhamad 11/17/14 9:04 PM

Deleted: the IANA Functions Operator to move outside of ICANN and be established as an independent entity.

10	Policy Appeal Mechanism	Policy Appeal Mechanism	Policy Appeal Mechanism	Policy Appeal Mechanism	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 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.	Independent Review Panel. Where disputes arise as to the implementation of "IANA related policies," (e.g., disputes over the consistency of ccTLD delegation decisions with accepted policy) there would be recourse available to affected parties through a binding appeals process that includes redress. This appeals process should be provided for within the ICANN Bylaws. While this process could be called upon by a registry operator that believes that it was adversely affected by a delegation or a determination not to delegate, the process would also be available to other stakeholders that believe that they were materially or adversely affected by a failure of the IANA Functions Operator to carry out (or refuse to carry out) a root zone change in accordance with established policy. [DS1]	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.	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 PROSI). 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.		RG: In the case of ccTLD redelgation disputes that might arise, would any one option be easier/harder for govts prefer?
11		Accountability				
		The transition must not take place until (1) the requisite accountability mechanisms have been identified by the CWG on Enhancing ICANN Accountability ("Accountability CCWG"), (2) mechanisms that the community determines are necessary pre-transition have been put in place and (3) agreements and other guarantors are in place to ensure timely implementation of mechanisms that the Accountability CCWG decides may be implemented post-transition.				

Greg Shatan 11/17/14 6:00 PM

Comment [45]: [DS1]Safeguards need to be developed to avoid abuse of this to the extent possible. Deployment of this should be limited to instances of failure to comply with the established policy.