RFP3B Draft Proposal V1.0

This is simply an attempt to capture all the information which is applicable to an ICANN Internal option and create a draft proposal to allow readers to see how all the pieces could fit together. Areas where there is no major agreement will still show a proposed implementation based on the information available but will note that this is not based on a major agreement. Readers should not presume that this proposal is in any way pre-approved – this is a draft discussion paper that should be seen as a tool to allow the 3B group to identify areas of convergence, issues and solutions in a holistic framework.

General considerations for an ICANN Internal solution – creating an entity inside ICANN (instead of Contract Co.)

- Would require the creation, via ICANN Bylaw changes, of an SO type Body within ICANN to replace the NTIA oversight of the IANA functions.

  - Why? If there is no Contract Co. there is no one to sign a contract with. If this is the case there should be a method of establishing a formal relationship with ICANN, to codify the requirements of the community with respect to the IANA Function and an official mechanism for transmitting these to ICANN.
  - How? A hybrid of a cross-community working group and an SO type structure could provide such mechanisms. As such in this version of the proposal we will assume the creation of such a hybrid to take on these responsibilities. This would require the ICANN Board to approve a Bylaw change to create this Body. The Bylaws associated with the creation of this Body would enshrine the structure, responsibilities, methods of operation and relationship with IANA, ICANN and its Board

- How would the MRT and CSC fit into this model?

  - Would this be the MRT or the CSC or both? This really depends on the responsibilities of each. From a purely administrative point of view, given the functions of these two entities are intertwined it would seem practical to have them exist within a single entity while clearly defining their respective roles, membership/participants and responsibilities.
  - If they are combined in the new body, what implications would this have for the CSC vs what was in the draft proposal? Actually very little from a functional point of view. The only major change would be clarifying who nominates the members of the CSC and who approves these nominations (it was generally agreed that the key requirement for members of the CSC was competence and that this would require that proposed candidates be vetted by an independent group to ensure the candidates meet the requirements).

- o Would the MRT component of this Body have permanent members? – It would probably be difficult to avoid this as it would probably have some ongoing obligations under the Body's Bylaws such as annual recommendations to the ICANN Board regarding IANA. At a minimum this would require that members are named and meet at least 1 to 3 times per year. An advantage of this is that the MRT function would develop some practice at working together.
  - o Could members of the multistakeholder community, which are not members or associated with the ICANN community, participate in this Body? Yes; the ccNSO is a good example of an SO structure which has multistakeholder participation from outside its ranks via participation of the Regional organizations.

- How would this work vs having a contract in the Contract Co. option?

  - o The Bylaws creating the MRT internal to ICANN would also stipulate that it would have 4 main functions with respect to IANA
  - o The MRT would prepare the IANA Functions Statement of Work (IFSoW) we which would document the communities expectations vs the IANA functions (essentially replacing the NTIA IANA Functions contract). The MRT would prepare such an IFSoW every 3 to 5 years according to a specified open and cross-community process. Once the IFSoW was completed it would be transmitted to the ICANN Board for approval. The Bylaws would include mechanism that would make it difficult for the ICANN Board to refuse the IFSoW. If there was a major disagreement between the MRT and the ICANN Board on approval of an IFSoW this could be referred to an accountability mechanism or considered a serious breach.
  - o In each of the years where the MRT is not presenting a IFSoW to the ICANN Board it would prepare an evaluation of the IANA function vs the IFSoW. The development of the annual evaluation would also be according to a specified open and cross-community process. Once the report was completed it would be transmitted to the ICANN Board and could contain issues or recommendations to ensure ICANN is properly meeting the requirements of the IFSoW. These annual reports could then be used in the preparation of the next IFSoW.
  - o In the case of a significant issue which was a breach of the IFSoW which the MRT could not resolve with IANA or ICANN it could write to the Board to request that it address the situation within a certain time frame.
  - o Separation of IANA – If there is no other option the MRT under very specific conditions could initiate separation procedures (taking the IANA functions out of ICANN).

- How can we prevent the ICANN Board from changing the Bylaws regarding the MRT?

- o Actually there is a requirement for a mechanism to change the Bylaw wrt the MRT – what if the MRT wants to change it?
- o Changing the MRT portion of the Bylaws would require a supermajority of the Board and support of the MRT.

MRT structure

- Areas of major agreement from the CWG internal surveys that are applicable.

  - o There should be a Multi-stakeholder Review Team, not only drawn from the ICANN community, to carry out the tasks as defined in the CWG Draft Proposal.
  - o The MRT should not recreate another ICANN.
  - o There should be multistakeholder representation on the MRT.
  - o The MRT should have a continuous existence (regardless of how often it meets).
  - o The composition and size of the MRT should be difficult to alter or amend.
  - o Circumstances for re-awarding the IANA Functions Contract should be limited to issues of non-performance relating to the IANA Functions, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms.
  - o Transitioning the IANA Naming Functions outside of ICANN should only be undertaken as warranted by serious and persistent issues of non-performance.
  - o There is no support for issuing regular RFPs for the IANA Functions.

- Responsibilities

  - o Prepare an initial IANA Functions statement of work to replace the IANA functions contract with the NTIA. The IANA Functions Statement of Work (IFSoW) would be produced as part of the MRT start up as part of an open consultative process and would be submitted to the ICANN Board for approval. New statements of work would be required every 3 years but the MRT could extend this for an additional 3 year period once. (note – Many CWG participants have noted that in ICANN Internal option would require a formal mechanism to replace the IANA Functions Contract).
  - o Perform all the relevant functions identified in the NTIA Functions Contract. These include (from the CWG draft transition proposal of December 1st, 2014):

    - *C.2.12.a Program Manager (evaluation of).*
    - *C.3.2 Secure Systems Notification (evaluation of).*
    - *C.4.1 Meetings – (perform) Program reviews and site visits shall occur annually.*
    - *C.4.5 (participate in the development of, receive and review) Customer Service Survey (CSS)*
    - *C.4.4 (receive and review) Performance Standards Reports*

- - *C.4.7 (provide) Inspection and Acceptance of IFSoW*
  - *C.5.1 Audit Data – (receive and review annual report)*
  - *C.5.2 (receive and review) Root Zone Management Audit Data*
  - *C.5.3 External Auditor (ensure performance of, receive and review results)*
  - *C. 6 Conflict of interest requirements (annual validation that the contractor is meeting stated requirements)*
  - *C. 7 Continuity of Operations (annual validation that the contractor is meeting stated requirements)*

- Prepare annual recommendations on IANA for the ICANN Board vs IFSoW. These recommendations would be developed by the MRT via an open process based on CSC evaluation of performance vs SLAs, other standard reports and the MRT's analysis of ICANN/IANA meeting the requirements of the IFSoW. (failure by ICANN to accept the recommendations or implement them if they are accepted could be considered a significant breach of the IFSoW).

- With respect to the CSC (if the CSC is placed under the auspices of the MRT):

  - Develop and approve any changes to the charter of the CSC.
  - Vet nominations to the CSC
  - Receive monthly IANA performance reports from the CSC.
  - Review and approve proposed changes to the IANA SLAs.
  - Undertake actions required to deal with issues escalated by the CSC.

- Managing the transition process (early draft)

  - Circumstances for re-awarding the IANA Functions Contract should be limited to issues of non-performance relating to the IANA Functions, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms.
  - Transitioning the IANA Naming Functions outside of ICANN should only be undertaken as warranted by serious and persistent issues of non-performance.
  - Definition of these condtions.
  - Process for undertaking the transition process (public consultations, SO and AC approval etc.)

- Membership (no agreement yet)

  - Relevant results of the CWG internal surveys:

- There should be a Multi-stakeholder Review Team to carry out the tasks as defined in the CWG Draft Proposal (Agree 78%, Disagree 22% - MAJOR AGREEMENT).
- The MRT should not recreate another ICANN (Agree 100%, Disagree 0% - MAJOR AGREEMENT).
- Adequate care should be taken to restrict the growth dynamics of the MRT (Agree 100%, Disagree 0% - MAJOR AGREEMENT).
- There should be multistakeholder representation on the MRT (Agree 93%, Disagree 7% - MAJOR AGREEMENT).
- There is a danger that an MRT drawn entirely from ICANN's policy making and policy advisory organizations will politicize the IANA naming functions (Agree 75%, Disagree 25% - MAJOR AGREEMENT).
- The MRT should be kept small in number, e.g., no more than a dozen representatives (Agree 70%, Disagree 30%).

o Note – the Bylaws would stipulate that the MRT could not undertake to change the IANA functions operator without meeting a number of conditions. One of these would be that some of the original chartering organizations of the CWG would be required to show formal support this proposed action by the MRT (as demonstrated by a formal vote of each or these organizations as per their internal procedures for holding such votes). Why? See explanation below.

o Number and association of members (even distribution model):

- gTLD Registries: 1
- ccNSO Registries: 1
- RrSG: 1
- CSG: 1
- NCSG: 1
- GAC: 1
- ALAC: 1
- RSSAC: 1
- SSAC: 1
- IANA Operator liaison: 1
- IETF liaison: 1
- NRO/RIR liaison: 1
- 2 members nominated by the ICANN noncom to represent the multistakeholder community that is not directly involved or associated with the above entities.
- Total = 11 members, 3 liaisons.

o   Why this model? – It seemed that the importance of the membership of the MRT was proportional to the amount of authority it would have vs allocation the IANA functions contract to another operator. This issue is crucial to many involved in this process but it was also pulling the CWG towards recreating another ICANN to deal with this specific, and hopefully exceptional, issue. This is a significant concern given the CWG internal survey results identified as a major agreement that the MRT should not recreate another ICANN. Directly related to this issue in the Other Comments was the comment that SO and AC approval should be required for initiating the process to replace the IANA functions operator (and possibly naming a new one). In trying to integrate these inputs it is hoped that ensuring that the MRT does not have the power to unilaterally change IANA functions operator would make membership less of a contentious issue. The CWG internal survey which noted 70% support for an MRT with a size of 12 was also taken into account as significant. It also seemed logical to have all the original chartering organizations represented, the RSSAC and the subcomponents of the gNSO who made good cases for being represented on the MRT. Finally using the ICANN nomcom to ensure external to ICANN multistakeholder representation would seem to represent an effective method for ensuring such participation which does not require inventing anything new to do so.

o   Best efforts should be made to ensure that individual members:

   ▪   Have sufficient expertise to participate in the applicable subject matter;
   ▪   Commit to actively participate in the activities of the CWG on an ongoing and long-term basis; and
   ▪   Where appropriate, solicit and communicate the views and concerns of individuals in the organization that appoints them.

CSC structure

- Statistical analysis of the Results of the public consultation on the CWG draft proposal with respect to the CSC: 90% in favour of a CSC.

- Areas of major agreement from the CWG internal surveys that are applicable.

  o   There is a need for a CSC which is a standing committee of nominated individuals that are qualified and committed to the task.

- The primary responsibility of the CSC is to monitor IANA performance and resolve any such issues with IANA directly. Should the CSC be unable to resolve a performance issue it can escalate the issue to the MRT.
- The CSC may develop SLAs without the MRT (but may need to get these approved by the MRT).
- The CSC should not in any way prevent registry operators from dealing directly with IANA on performance issues or vice versa.
- The membership of the CSC should:

  - Be limited in size
  - Members must be dedicated, qualified and vetted.
  - Could have a majority of registry operators
  - Should include additional individuals outside the naming community who have relevant technical expertise

- Responsibilities

  - Review monthly performance reports from IANA.
  - Prepare and distribute monthly assessment of IANA performance.
  - Address performance issues directly with IANA.
  - If performance issues cannot be resolved with IANA escalate the issues to the MRT.
  - Prepare draft SLAs for the IFSoW.
  - Prepare an annual IANA performance analysis.
  - Participate in the preparation of the MRT's annual IANA report.
  - Participate in the drafting of IFSoW.

- Membership (no agreement yet)

  - Relevant results of the CWG internal surveys:

    - The CSC membership should primarily consist of ccTLD and gTLD registry operators with related experts, e.g. representatives of the SSAC, the RSSAC, the RIRs, ISOC and the IETF (Agree 88%, Disagree 12% - MAJOR AGREEMENT).
    - If the CSC is only tasked with monitoring IANA performance (and not with resolving performance issue), the CSC may consist predominantly of registries (Agree 80%, Disagree 20% - MAJOR AGREEMENT).
    - The CSC should include additional individuals outside the naming community who have relevant technical expertise (Agree 86%, Disagree 14% - MAJOR AGREEMENT).

  - Number and association of members:

- gTLD Registries: 2
- ccTLD Registries: 2
- RSSAC: 1
- SSAC: 1 (could be only liaison)
- MRT/MS (GNSO (non-registry), GAC, ALAC): 1 (may also act as liaison to MRT, but will not be only a liaison)
- Total = 7.

Notes and issues:

- If the model of an SO cross-community working group is retained a full set of draft Bylaw modifications can be developed rapidly. This would also require documenting start-up and transition arrangements.
- The issue of separation of IANA is not addressed in this version of the document. This will have to be included in later versions based on legal advice and further discussions of the CWG.
- Dispute resolution mechanisms between the MRT and the ICANN Board will be required (helping to avoid the so called Nuclear Option). Currently these are not included in this version of the proposal but references will be made to the CCWG Track 1 work as having to provide mechanisms to resolve the types of issues that can be described in a next version of this document.
- The model presumes adequate separation between ICANN and IANA as noted in the CWG draft proposal of December 2014.
- The IAP is not included in this version of the document. The CWG will decide if this is required in this document.
- The issue of NTIA's authorization function is not addressed in this document given there is no clear direction regarding this. This can be included in further versions of this document when there is some general agreement as to how to proceed with this.