

PTI Formation Documents¹

I. PTI Articles of Incorporation				
#	Element	How Element is Incorporated into Articles	CWG Final Proposal	Sidley Comments ²
1	Name	[PTI]	(97) In summary, the CWG-Stewardship recommends: A new, separate legal entity, Post-Transition IANA (PTI), will be formed as an affiliate of ICANN.	
2	Type	California nonprofit public benefit corporation that will be 501(c)(3) exempt	(105, Footnote 5) Based on independent legal advice received, the CWG-Stewardship proposes that PTI will be an affiliate in the form of a California public benefit corporation with a single member and that member will be ICANN, with a Board comprising a majority of PTI Board members appointed by ICANN.	501(c)(3) status not addressed in CWG Final Proposal. ICANN currently has 501(c)(3) tax-exempt status.
3	Purpose	[will reflect language being drafted for ICANN Bylaws]	(181) To provide IANA services to the naming community, the CWG-Stewardship recommends that a new separate legal entity, PTI, be formed as an affiliate of ICANN.	Proposed language from ICANN Bylaws to be reviewed when finalized. <u>California Law</u> : The articles must include the following language from the California Corporations Code (“CCC”): “The corporation is a nonprofit public benefit corporation and is not organized for the private

¹ High level identification of terms; may not include a summary of all terms expected to be in document, but key terms that are needed.

² **Note to CWG**: Please note that cross-references to the ICANN Bylaws refer to the Proposed ICANN Bylaws (April 20, 2016 DRAFT).

I. PTI Articles of Incorporation				
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				<p>gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for (public or charitable [insert one or both]) purposes.”</p> <p>If the organization’s purposes include “public” purposes, those purposes must be further described. In addition, to secure tax-exempt status under Internal Revenue Code (“IRC”) 501(c)(3), the articles must include specific provisions addressing purposes and limitations required under federal and state tax statutes.</p>
4	Member	ICANN	(109) At the outset, PTI will have ICANN as its sole member and PTI will therefore be a controlled affiliate of ICANN.	
5	Director Liability	None (same as ICANN’s Articles)	Not addressed in the CWG Final Proposal	<p>We assume the reference to “None” means no director liability. We agree that a limitation on director liability, to the fullest extent permitted by law, is appropriate.</p> <p><u>ICANN Articles</u>: Section 6 of the Revised ICANN Articles of Incorporation (March 12, 2016 DRAFT) is set forth below (bracketed text is included in the Articles currently in effect but proposed to be deleted since ICANN will not have members).</p> <p><i>Section 6</i>: “To the full extent permitted by the</p>

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				California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation [or its members, should the Corporation elect to have members in the future] for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this Article 6 shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.”
6	Amendment of Articles	[will reflect language being drafted for ICANN Bylaws]	(106) Fundamental bylaws. All of the foregoing mechanisms are to be provided for in the ICANN bylaws as “fundamental bylaws.” A “fundamental bylaw” may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote). See CCWG Final Proposal, Annex 13, Paragraph 12: Governance provisions related to PTI are to be incorporated into the ICANN Bylaws as	<u>California Law</u> : Under California law, amendments to the articles must be approved by the board and the members, and by any other person whose approval is required by the articles. Rather than referring to the same language as is in the ICANN Bylaws, the PTI Articles could reference that the PTI Board and ICANN, as the sole member, have the right to approve amendments to the PTI Articles. The community mechanism would be embodied in Section 16.2 of the ICANN Bylaws which limits ICANN’s rights as the member of PTI to approve amendments without the approval of the

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			Fundamental Bylaws.	<p>Empowered Community (the “EC”), but would not be referenced in the PTI Articles.</p> <p><u>ICANN Bylaws</u>: See Sections 16.2(b) and 25.2(b).</p> <p><i>Section 16.2(b)</i>: “No amendment or modification of the articles of incorporation of PTI shall be effective unless approved by the EC (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI’s articles of incorporation).”</p> <p><i>Section 25.2(b)</i>: “Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a “Fundamental Bylaw Amendment” or an “Articles Amendment”), only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Section 25.2.”</p>

II. PTI Bylaws				
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1	Purpose	[will reflect language being drafted for ICANN Bylaws]	(181) To provide IANA services to the naming community, the CWG-Stewardship recommends that a new separate legal entity, PTI, be formed as an affiliate of ICANN.	<p>The CWG Final Proposal doesn't specifically set forth a "purpose," but consistency with the ICANN Bylaws (noted below) seems acceptable. CWG to advise and confirm whether to refer to as "Mission"(similar to ICANN).</p> <p><u>ICANN Bylaws</u>: See Section 16.1.</p> <p><i>Section 16.1</i>: "ICANN shall maintain as a separate legal entity a California nonprofit public benefit corporation (["PTI"]) for the purpose of providing IANA services, including providing IANA naming function services pursuant to the IANA Naming Function Contract (as defined in Section 16.3(a)), as well as other services as determined by ICANN in coordination with the direct and indirect customers of the IANA functions. ICANN shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("Member"). For the purposes of these Bylaws, the "IANA naming function" does not include the Internet Protocol numbers and Autonomous system numbers services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services (as contemplated by</p>

³ **Note to CWG:** Please note that cross-references to the ICANN Bylaws refer to the Proposed ICANN Bylaws (April 20, 2016 DRAFT). Please also note that the rows in the chart that are marked with an * and shaded in yellow include additional proposed terms to be included in the PTI Bylaws.

II. PTI Bylaws				
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				Section 1.1(a)(iv) and the root zone maintainer function (as contemplated by Section 1.1(d)(v)).”
2	Transparency	[PTI] shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness	The CWG Proposal is not specific on transparency, but does provide: (158) Transparency: To the extent allowed by external agreements and as necessitated by security and privacy issues, the IFO should operate in a transparent manner.	CWG to advise if language is acceptable. We note that the proposed language tracks the first part of Section 3.1 (Open and Transparent) of the ICANN Bylaws, set forth below. <u>ICANN Bylaws:</u> <i>Section 3.1:</i> “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a)...”
3	Sole Member*	ICANN shall be the sole member of PTI.	(109) At the outset, PTI will have ICANN as its sole member and PTI will therefore be a controlled affiliate of ICANN.	This is consistent with the CWG Final Proposal, which provides that ICANN shall be the sole member of PTI. <u>California Law:</u> Under California law, unless the articles or bylaws provide otherwise, a nonprofit corporation may admit any person or entity to membership.
4	Rights of Member	All rights afforded to members under California law, including approval over: <ul style="list-style-type: none"> the election of directors the disposition of all or substantially all of the 		The CWG Final Proposal is silent on the full scope of ICANN’s powers as a member, but the expectation is that ICANN would have statutory powers with Empowered Community approval and rejection rights as conditions to effectiveness imposed through Section 16 of the

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		<p>Corporation's assets</p> <ul style="list-style-type: none"> • any election to dissolve the Corporation • any amendment or repeal of these Bylaws 		<p>ICANN Bylaws.</p> <p><u>California Law:</u> Under California law, members have certain (1) mandatory rights that may not be altered or constrained (meaning these rights are granted to members regardless of what the governing documents say), (2) mandatory rights that may be altered within statutory limits through provisions in the governing documents and (3) default rights that can be removed or otherwise altered in the governing documents. In addition, certain permitted rights are neither mandatory nor default rights, but may be given to members in the governing documents.</p> <p>Under California law, members have the following <u>mandatory rights that may not be altered or constrained</u>:</p> <ul style="list-style-type: none"> • Set/change board size stated in the bylaws • Remove directors “without cause” • Approve amendments to bylaws • Approve amendments to articles of incorporation • Approve indemnification of a corporate agent • Bring suit to remove any director for specified acts (fraud, dishonesty, gross abuse of authority, and breach of fiduciary duty)

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				<ul style="list-style-type: none"> • Bring suit to appoint a provisional director if an even number of directors are deadlocked, thereby preventing proper conduct of corporate affairs or risking impairment/loss of corporate business or property • Bring suit against a third party in the corporation’s name (a “derivative suit”), including an action to remedy a breach of charitable trust or against a director for self-dealing • Approve merger or sale or disposition of all or substantially all assets, if the transactions are outside the normal course of corporate activities • Petition for court-ordered involuntary dissolution of the corporation or elect to voluntarily dissolve • Receive certain reports • Inspection rights • Member resignation • Be protected from liability for the corporation’s debts, liabilities or obligations • Attend regular meetings of members; call special meetings of members; receive notice of meetings of members • Take action by unanimous written consent of members, in lieu of acting at member

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				<p>meeting</p> <ul style="list-style-type: none"> • Request inspectors of election • Request use of secret ballots for election of directors at a meeting • Avoid liability for member dues, assessments or fees pursuant to governing documents by resigning promptly on receiving notice of obligation <p>Under California law, members have the following <u>mandatory rights that may be altered</u> within statutory limits:</p> <ul style="list-style-type: none"> • Fill board vacancies • Amend governing documents to terminate all memberships • Receive due process in member expulsion, suspension and termination <p>Under California law, members have the following <u>default rights</u> that are granted to members by the statute, but can be removed or otherwise altered in the governing documents:</p> <ul style="list-style-type: none"> • Elect directors • Certain voting mechanisms
5	Member Action	ICANN may act by written consent or at a member meeting	Not addressed in the CWG Final Proposal	<u>California Law</u> : Under California law, the right of members to act by unanimous written consent is a mandatory right that may not be altered or constrained.

II. PTI Bylaws				
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				In the for-profit context, it is fairly common to have wholly-owned subsidiaries with a single shareholder act by written consent. Here, since PTI has a sole member, having ICANN act through a written consent would be consistent with California law and an efficient means by which ICANN can act.
6	Board Composition	<p>Five directors appointed by ICANN:</p> <ul style="list-style-type: none"> • Three persons employed by ICANN (“ICANN Directors”) • Two persons not employed by ICANN or [PTI], who will be nominated by ICANN’s Nominating Committee (“Independent Directors”) 	<p>(112) The construct of the PTI Board will be a range of 3-5 people to be appointed by ICANN as the sole member of PTI. The PTI Board could be comprised of three directors who are employed by ICANN or PTI (for example, the ICANN Executive responsible for PTI, the ICANN CTO and the IANA Managing Director), and two additional independent directors. The two additional directors must be nominated using an appropriately rigorous nomination mechanism (e.g. through the use of the ICANN Nominating Committee). The CWG-Stewardship expects that this will avoid the need to replicate the complexity of the multistakeholder ICANN Board at the PTI level and maintain primary accountability at the ICANN level. Any issues that arise</p>	<p>The CWG Final Proposal provides that three directors could be employed by ICANN <u>or PTI</u>, but the ICANN proposed term is limited to directors employed by ICANN. As a result, “<u>or PTI</u>” should be added to the proposed term. The PTI Bylaws should also clarify that no more than two of the three ICANN/PTI appointed directors may be employees of PTI (see below).</p> <p>In addition, to ensure that PTI is a controlled entity of ICANN, the bylaws should provide ICANN, as the member, with the right to appoint and remove the PTI Manager both in the management role as PTI Manager and as a director of PTI.</p> <p><u>California Law</u>: Under California law, the right to elect directors is a default right and may be taken away from members (e.g., the governing documents may provide for directors to be selected by one or more designators or by the board itself). If the governing documents</p>

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			<p>concerning the PTI and the PTI Board will therefore be able to be ultimately addressed through the overarching ICANN accountability mechanisms. [FN 9] [Footnote 9: CCWG-Accountability Dependency – see https://community.icann.org/x/TSYnAw]</p>	<p>provide for statutory members but do not state how directors are chosen, then the directors are elected by the members. Members who elect directors must be given reasonable and appropriate director nomination procedures.</p> <p>Under California law, no more than 49% of the directors may be “interested persons,” which include any person compensated by the corporation for services rendered to it (other than as a director) during the previous 12 months and certain family members of interested persons. As a result, not more than two of the five directors may be paid employees of PTI.</p>
7	Board Qualifications	<ul style="list-style-type: none"> Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making; Persons with an understanding of [PTI]’s purposes and the potential impact of the 	<p>(114) The CWG-Stewardship recommends that the PTI Board skill set be evaluated as a whole and not on a per member basis, while also ensuring that each individual member is suitable and appropriately qualified to serve as a director of PTI in his or her own right. Accordingly, the PTI Board’s complete skill set should be balanced and cover an appropriate and complete composite of executive management, operational, technical, financial and corporate governance</p>	<p>Only the third bullet in the ICANN proposed terms column comes from the CWG Final Proposal. Please advise if the other requirements/restrictions, which come from Sections 7.3, 7.4 and/or 8.4 of the ICANN Bylaws, are acceptable.</p> <p>Please note that the ICANN Bylaws also include criteria concerning cultural and geographic diversity and provide that no person who serves on the EC Administration shall be considered for nomination or designation to the ICANN Board (Section 7.4(d)).</p>

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		<p>[PTI]'s decisions on the global Internet community, and committed to the success of [PTI];</p> <ul style="list-style-type: none"> • Persons who, collectively, have executive management, operational, technical, financial and corporate governance experience; • Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; and with policy-implementation procedures; and • Persons who are able to work and communicate in written and spoken English; • Not: 	<p>experience.</p>	<p>The PTI Bylaws should contain a definition of “independent” for purposes of what constitutes an “independent” director.</p>

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		<ul style="list-style-type: none"> ○ official of a national government or a multinational entity established by treaty or other agreement between national governments; ○ person who serves in any capacity (including as a liaison) on any Supporting Organization Council or Advisory Committee; or ○ person who serves on the Nominating Committee 		
8	Director Terms	<ul style="list-style-type: none"> ● ICANN directors will serve until replaced by ICANN. ● Independent directors will serve three-year terms. ● No limit on number of terms a Director can serve. 	Not addressed in the CWG Final Proposal	<p>CWG to advise if any preference on length of terms (4 years or less) and term limits.</p> <p>Please note that the PTI Manager should sign a “springing resignation” to resign when he/she is no longer the PTI Manager (even if term would continue).</p> <p><u>California Law</u>: Under California law, for public benefit corporations with statutory members, the maximum term for elected directors is four years. However, the number of times a director</p>

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				<p>may be reelected is not limited.</p> <p><u>ICANN Bylaws</u>: The ICANN Bylaws provide for staggered three-year terms for directors. See Section 7.8(a). The ICANN Bylaws further provide that directors may not serve more than three consecutive terms, and a person designated to fill a vacancy in a term shall not be deemed to have served that term. See Section 7.8(e).</p>
9	Director Removal	<ul style="list-style-type: none"> • ICANN may remove a director at any time. • Vacancies will be filled by ICANN or the Nominating Committee, as applicable. 	Not addressed in the CWG Final Proposal	<p>The ICANN proposed term references the filling of vacancies by the Nominating Committee. Under the PTI Bylaws, ICANN elects all of the directors, including the directors nominated by the Nominating Committee, so ICANN would fill any vacancies, but the appointments would be under the process set forth in the ICANN Bylaws, including the role of the Nominating Committee.</p> <p>CWG to consider whether to eliminate board power to fill vacancies and give the power solely to ICANN, as the member.</p> <p><u>California Law</u>: Under California law, members have the right to remove directors elected by the members “without cause” – this is a mandatory right that may not be altered or constrained. The board may remove directors</p>

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				<p>“for cause,” even those elected by members or designated by a third party. Members with the right to remove a specific director may always fill the vacancy created by removal. But for vacancies caused by reasons other than removal (e.g., resignation, death, incapacity, etc.), unless the governing documents state otherwise, the board has the power to fill such other vacancies.</p> <p>Under California law, “without cause” means removal for any reason deemed sufficient by the voting members, other than reasons specified in the statute as “for cause,” and “for cause” means unsound mind, felony conviction, court breach-of-duty judgment, missing required number of meetings, and failure to meet any required director qualifications.</p> <p><u>ICANN Bylaws</u>: The ICANN Bylaws provide that the Board may remove any director who has been declared of unsound mind by a final order of court, convicted of a felony or been found by a final order or judgment of a court to have breached any duty under Sections 5230 through 5239 of the CCC. See Section 7.11(a).</p>
10	Board Meetings*	<ul style="list-style-type: none"> • Regular meetings • Special meetings • Notice requirements 	Not addressed in the CWG Final Proposal	The PTI Bylaws should include process requirements for Board meetings.

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				<u>California Law</u> : Under California law, there is no statutory requirement on how often the board meets.
11	Quorum	Majority of Directors then in office	Not addressed in the CWG Final Proposal	Majority of directors is typical for a quorum; however, consider whether a higher threshold than three of five should be required. For example, four of five ensures that the PTI Manager and either the ICANN Directors or the Independent Directors could not act without the other two.
12	Board Action	<ul style="list-style-type: none"> Majority vote of directors at a meeting where a quorum is present. Board can act by unanimous written consent. 	Not addressed in the CWG Final Proposal	<p>Majority vote of directors at a meeting where a quorum is present is typical; however, consider whether a higher threshold (i.e., four of five) is preferable, given the breakdown of ICANN Directors and Independent Directors, as described in Item 11 above.</p> <p>It is typical for boards to have the flexibility to act by unanimous written consent.</p>
13	Director Compensation	None other than reimbursement for expenses	Not addressed in the CWG Final Proposal	<p>Typically, directors of wholly-owned subsidiaries are not compensated, but may want to consider compensation for the two independent directors. CWG to advise.</p> <p><u>ICANN Bylaws</u>: The ICANN Bylaws provide that each of the ICANN directors, except for the President, shall be entitled to receive compensation for his/her services as a director,</p>

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				and if the Board determines to offer a compensation arrangement to one or more directors, the Board must follow the process described in the Bylaws to pay an amount that is not an excess benefit under the standards set forth in the IRC. The ICANN Bylaws also provide that the Board may authorize the reimbursement of actual and necessary reasonable expenses incurred by directors performing their duties as directors. See Section 7.22.
14	Board Committees	<ul style="list-style-type: none"> Audit Committee 	Not addressed in the CWG Final Proposal	<p>It is typical to authorize the board to form committees in accordance with applicable law; CWG to advise if ability to form committees should also require member approval.</p> <p>Recommend adopting a separate Audit Committee Charter to document committee’s rights and responsibilities.</p> <p><u>California Law:</u> Under California’s Nonprofit Integrity Act of 2004 (the “Act”), nonprofit public benefit corporations with annual gross revenue of \$2 million or more must obtain an annual audit from an independent certified public accountant, and the boards of these organizations must appoint an audit committee. Under the Act, the audit committee may include non-board members, but may not include any</p>

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				<p>member of the corporation’s staff including the president or CEO or treasurer or CFO, or any person with a material financial interest in any entity doing business with the organization. The duties of the audit committee are set forth in the Act. The Act also requires the board or a board committee to review and approve (as just and reasonable) the compensation of the president or CEO and treasurer or CFO.</p> <p>Under the CCC, membership in a committee is limited to two or more voting directors. A committee exercising the authority of the board may not include as members persons who are not directors.</p>
15	Officers	<ul style="list-style-type: none"> • Chair (Director) – selected by ICANN • President – selected by Board • Secretary – selected by Board • Treasurer – selected by Board • Other officers selected by the Board 	Not addressed in the CWG Final Proposal	<p>CWG to advise (i) whether the term of office for officers should be one, two or three years, (ii) whether to limit officers to those required by statute or permit additional officers at the discretion of the board and (iii) whether the removal of officers will be a board or member decision.</p> <p>We assume the PTI Manager will be the President, in which case, the proposed term should be revisited to provide that ICANN as the sole member selects the President.</p> <p><u>California Law</u>: Under California law, the</p>

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				<p>corporation must have a chair of the board or a president (and may have both), a secretary, and a CFO or treasurer (and may have both), and no person serving as the secretary, treasurer or CFO may serve concurrently as the president or chair of the board. If the articles or bylaws provide for election of any officers by the members, the term of office of the elected officer will be one year, unless the articles or bylaws provide for a different term that may not exceed three years.</p> <p><u>ICANN Bylaws</u>: See Sections 15. 1, 15.2 and 15.3.</p> <p><i>Section 15.1 (Officers)</i>: “The officers of ICANN shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN.”</p> <p><i>Section 15.2 (Election of Officers)</i>: “The officers of ICANN shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the</p>

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				<p>Chairman of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.”</p> <p><i>Section 15.3 (Removal of Officers):</i> “Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all Directors. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.”</p>
16	Indemnification	<p>[PTI] shall indemnify its directors, officers, employees and other agents to the fullest extent permitted by law so long as they act in good faith and in a manner they reasonably believed to be in [PTI]’s best interests and not criminal.</p> <p>Directors shall not be personally liable for debts or liabilities of [PTI].</p>	Not addressed in the CWG Final Proposal	<p>Indemnification provisions are customary and best practice to encourage the best candidates to serve.</p> <p>The PTI Bylaws should also include a provision allowing the board to adopt a resolution authorizing the purchase and maintenance of insurance, similar to the provision included in ICANN’s Bylaws set forth below.</p> <p><u>California Law:</u> Under California law, no indemnification is permitted, if the agent hasn’t met certain standards of conduct. The suggested approach is appropriately limited to</p>

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				<p>“to the fullest extent permitted by law”.</p> <p><u>ICANN Bylaws</u>: See Section 20.1.</p> <p><i>Section 20.1</i>: “ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person’s acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN’s best interests and not criminal. For purposes of this Article 20, an “agent” of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of</p>

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				insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.”
17	Fiscal Year	July 1st through June 30th (Same as ICANN’s)	Not addressed in the CWG Final Proposal	A consistent fiscal year end for ICANN and PTI seems logical for purposes of consistency of audit, financial statement preparation and budget process.
18	Budget and Strategic Plan*	<ul style="list-style-type: none"> PTI shall develop and annually update a four-year strategic plan. PTI shall submit the annual PTI operating plan and budget to ICANN at least nine months in advance of the fiscal year. On a monthly basis, PTI’s actual performance shall be measured against the PTI budget and reported to the PTI Board. 	(163) In relation to PTI, the CWG-Stewardship recommends that PTI should develop and annually update a four-year strategic plan, which should outline strategic priorities, while PTI should also have a yearly budget that is reviewed by the ICANN community. A fully approved budget should be developed on an annual basis. PTI should submit a budget [FN 22] to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier	<p>The CWG Final Proposal includes certain requirements concerning the PTI budget and strategic plan. CWG to consider whether to include in the PTI Bylaws or PTI-ICANN Contract.</p> <p><u>ICANN Bylaws</u>: See Section 22.4(b)(i).</p> <p><i>Section 22.4(b)(i)</i>: “(b) IANA Budget (i) At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual budget of PTI and the IANA department, which budget shall include itemization of the direct costs for ICANN’s IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions</p>

II. PTI Bylaws				
#	Element	How Element is Incorporated into Bylaws	CWG Final Proposal	Sidley Comments ³
			<p>timeframe than the overall ICANN Budget. PTI’s actual financial performance should be measured monthly against the PTI budget, and should be reported to the PTI Board.</p> <p><i>[Footnote 22: In developing its budget, the CWG-Stewardship recommends that PTI review best practices of other similar organizations.]</i></p>	<p>provided by ICANN to PTI and ICANN’s IANA department for the next fiscal year (the “IANA Budget”), which shall be posted on the Website. Separately and in addition to the general ICANN planning process, ICANN shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI’s performance of the IANA functions for the next fiscal year (“PTI Budget”). ICANN shall require PTI to consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, the IAB and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN shall require PTI to submit the PTI Budget to ICANN as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN Budget.”</p>
19	Reporting Requirements*	<ul style="list-style-type: none"> • Independent financial audit • Annual report 	<p>(163) In addition to any statutory requirements, it is the view of the CWG that an independent financial audit of PTI’s financial statements must also be required.</p>	<p>The CWG Final Proposal requires an independent financial audit of PTI’s financial statements.</p> <p><u>California Law:</u> Under California law, a nonprofit public benefit corporation has certain reporting requirements including sending an annual report to its members and board of directors, and if annual gross revenue exceeds \$2 million,</p>

II. PTI Bylaws				
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				<p>audited financial statements must be made available for inspection by the Attorney General and the public.</p> <p>California nonprofit public benefit corporations must also file certain biennial reports with the Secretary of State and certain annual reports with the Attorney General.</p>
20	Transfer of Assets*	Any sale, transfer or other disposition of the corporation's assets, other than in the ordinary course of the corporation's business, shall require approval by ICANN before the transaction.	(108) No further transfer of assets from PTI to another entity will be allowed unless specifically approved by ICANN.	<p><u>ICANN Bylaws</u>: See Section 16.2(d)(ii).</p> <p><i>Section 16.2(d)(ii)</i>: “(d) ICANN shall not take any of the following actions (together with the PTI Bylaw Amendments, “PTI Governance Actions”) if such PTI Governance Action has been rejected by the EC pursuant to the procedures described in Section 16.2(e).</p> <p>...</p> <p>(ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA Naming Function Separation Process that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.”</p>
21	Books and Records	[PTI] shall keep adequate books and records	Not addressed in the CWG Final Proposal	<u>California Law</u> : Under California law, a corporation must keep adequate and correct books and records of account, minutes of the proceedings of its members, board and

II. PTI Bylaws				
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				committees of the board, and a record of each member’s name, address and class of membership.
22	Inspection	Directors have an absolute right to inspect the books, records and documents of [PTI]	Not addressed in the CWG Final Proposal	<p>The PTI Bylaws should also address member rights to inspect.</p> <p><u>California Law:</u> Under California law, members have the right to inspect certain documents on a showing that the request is related to interests as a member, and individual directors have unlimited inspection rights.</p> <p><u>ICANN Bylaws:</u> The ICANN Bylaws provide for inspection rights for directors and for Decisional Participants. See Sections 7.21 and 22.7. Section 7.21 describing inspection rights for directors is set forth below.</p> <p><i>Section 7.21:</i></p> <p>“(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN.</p> <p>(b) ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.”</p>
23	Amendment	[will reflect language being drafted for ICANN Bylaws]		CWG to consider whether to restrict the board’s approval rights and provide that only ICANN as the member may amend or that only ICANN can

II. PTI Bylaws				
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				<p>amend fundamental PTI bylaws. Note that ICANN’s ability to amend is constrained through the ICANN Bylaws.</p> <p><u>California Law</u>: Under California Law, the right of members to approve amendments to the bylaws is a mandatory right that may not be altered or constrained. However, the board’s right to approve bylaw amendments can be restricted through the governing documents.</p> <p><u>ICANN Bylaws</u>: See Sections 16.2(c) and 16.2(d).</p> <p><i>Section 16.2(c)</i>: “ICANN shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a “PTI Bylaw Amendment”) if such PTI Bylaw Amendment has been rejected by the EC pursuant to the procedures described in Section 16.2(e):...”</p> <p><i>Section 16.2(d)</i>: “ICANN shall not take any of the following actions (together with the PTI Bylaw Amendments, “PTI Governance Actions”) if such PTI Governance Action has been rejected by the EC pursuant to the procedures described in Section 16.2(e)....”</p>

III. PTI Conflict of Interest Policy				
#	Element	Description	CWG Final Proposal	Sidley Comments
1	Purpose	To define the policy regarding conflicts of interest		<p>This is not contemplated by the CWG Final Proposal. ICANN to advise where the model for this policy is derived from (e.g., the ICANN Conflict of Interest Policy?).</p> <p>IRS Form 990 requires disclosure of whether the organization has adopted a written conflict of interest policy; however, a conflict of interest policy is not required under California law or applicable tax laws.</p>
2	Policy/ Procedure	Requirement to adhere to high ethical standards and not engage in conduct that creates an actual or potential conflict, or create the appearance of a conflict, with the interests of the company; Prohibition on conduct that undermines, damages, impairs or interferes with business or relationship with customers; Protecting trade secrets and confidential information		
3	Disclosure Process	Requirements for disclosure to company, procedures for addressing a conflict and		

III. PTI Conflict of Interest Policy				
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		identification of how the situation can be remedied if a conflict is found		