

# Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship)

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## GLOSSARY

Below are acronyms used throughout the document, presented in order of appearance.

- **CWG-Stewardship**: Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions
- **ICG**: IANA Stewardship Transition Coordination Group
- **IANA**: Internet Assigned Numbers Authority
- **NTIA**: National Telecommunications and Information Administration
- **ccTLD**: Country Code Top-Level Domain
- **gTLD**: Generic Top-Level Domain
- **TLD**: Top-Level Domain
- **IDN**: Internationalized Domain Name
- **DNS**: Domain Name System
- **IETF**: Internet Engineering Task Force
- **RFC**: Request for Comments
- **ICP**: Internet Coordination Policy
- **DRDWG**: Delegation and Redelelegation Working Group
- **FOIWG**: Framework Of Interpretation Working Group
- **GAC**: Governmental Advisory Committee
- **ICC**: International Chamber of Commerce
- **PDP**: Policy Development Process
- **IFO**: IANA Functions Operator
- **PTI**: Post-Transition IANA
- **DNSSEC**: Domain Name System Security Extensions
- **IFR**: IANA Function Review
- **CSC**: Customer Standing Committee
- **CCWG-Accountability**: Cross Community Working Group on Enhancing ICANN Accountability
- **SOW**: Statement of Work
- **AOC**: Affirmation of Commitments
- **IFRT**: IANA Function Review Team
- **RFP**: Request for Proposals

# Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship)

## Abstract

This document is a response from the Internet Names Community to the IANA Stewardship Transition Coordination Group (ICG) Request for Proposals made on September 8, 2014.

Please note that an appendix is included at the end of this document.

## Proposal type

Identify which category of the IANA Functions this submission proposes to address:

Names

Numbers

Protocol Parameters

## I. The Community's Use of the IANA

*This section should list the specific, distinct IANA services or activities your community relies on. For each IANA service or activity on which your community relies, please provide the following:*

**II.A** *A description of the service or activity.*

**II.B** *A description of the customer of the service or activity.*

**II.C** *What registries are involved in providing the service or activity.*

**II.D** *A description of any overlaps or interdependencies between your IANA requirements and the functions required by other customer communities*

### I.A The service or activity

The IANA activities, as described in the current IANA Functions Contract, relevant to the Internet Naming Community are:

- a. Root Zone Change Request Management – not including delegation and redelegation (NTIA IANA Functions Contract: C.2.9.2.a)
- b. Root Zone “WHOIS” Change Request and Database Management (NTIA IANA Functions Contract: C.2.9.2.b)

- c. Delegation and Redelegation of a Country Code Top-Level Domain (ccTLD) (NTIA IANA Functions Contract: C.2.9.2.c)
- d. Delegation and Redelegation of a Generic Top-Level Domain (gTLD) (NTIA IANA Functions Contract: C.2.9.2.d)
- e. Redelegation and Operation of the .INT TLD (NTIA IANA Functions Contract: C.2.9.4)
- f. Root Domain Name System Security Extensions (DNSSEC) Key Management (NTIA IANA Functions Contract: C.2.9.2.f)
- g. Root Zone Automation (NTIA IANA Functions Contract: C.2.9.2.e)
- h. Customer Service Complaint Resolution Process (CSCR) (NTIA IANA Functions Contract: C.2.9.2.g)

Services provided by ICANN's IANA department that are not part of the contractually defined IANA Functions, but which are relevant to the Internet Naming Community are:

- i. Management of the Repository of IDN Practices (IANA service or activity beyond the scope of the IANA Functions Contract)
- j. Retirement of the Delegation of TLDs (IANA service or activity beyond the scope of the IANA functions contract)

For further details concerning each of these IANA activities, please see Annex A.

#### **I.B The customer of the service or activity**

The primary customers of these IANA activities are TLD registry managers, .INT registrants, DNS validating resolver operators. For further details on the customer(s) for each activity, please see Annex A.

#### **I.C Registries involved in providing the service or activity**

TLD registries (including ccTLD and gTLD) are involved in providing the service. For further details on which TLD registry (ccTLD or gTLD) is involved in each activity, please see Annex A.

#### **I.D Overlap or interdependencies between your IANA requirements and the functions required by other customer communities**

The IETF, through its responsibilities for developing the underlying DNS protocol and its extensions, could designate parts of the domain name space for particular protocol-related purposes that may

overlap with usages assigned through ICANN policies. It may also designate portions of the namespace as invalid, illegal or reserved based on evolution of the underlying DNS protocol and its extensions. It may also expand the scope of namespace to be managed through such changes. Additional overlap and/or interdependencies have been identified for each activity in Annex A.

## **II. Existing Pre-Transition Arrangements**

*This section should describe how existing IANA-related arrangements work, prior to the transition.*

### **II.A Policy Sources**

*This section should identify the specific source(s) of policy which must be followed by the IANA functions operator in its conduct of the services or activities described above. If there are distinct sources of policy or policy development for different IANA activities, then please describe these separately. For each source of policy or policy development, please provide the following:*

- *Which IANA service or activity (identified in Section I) is affected.*
- *A description of how policy is developed and established and who is involved in policy development and establishment.*
- *A description of how disputes about policy are resolved.*
- *References to documentation of policy development and dispute resolution processes.*

#### **II.A.i.a. Affected IANA Service (ccTLDs<sup>1</sup>)**

All functions that apply to ccTLDs and modify the Root Zone database or its WHOIS database are affected.

#### **II.A.i.b. How policy is developed and established by whom (ccTLDs)**

RFC1591 was written in 1994 as a "Request For Comments" (RFC) by the original IANA Functions Operator, Jon Postel. It is a short document intended to outline how the DNS was structured at that time and what rules were in place to decide on its expansion. The longest part of it outlines selection criteria for the manager of a new TLD and what was expected of such a manager.

Like all RFCs, this is a static document (RFCs are updated by the issuance of a new RFC) there have been two significant attempts to revise it so it can be more easily applied to the current context:

- Internet Coordination Policy 1 (ICP-1)  
This document from the "Internet Coordination Policy" group of ICANN was one of three such documents created by ICANN staff shortly after its creation. It attempted to update operational details over how the DNS was structured and should be run.

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<sup>1</sup> According to the Fast Track Methodology the rules for delegation and redelegation for ccTLD apply to delegation and redelegation of IDN ccTLD.

The ICP-1 document was a source of significant friction between ICANN and the ccTLD community and the ccNSO formally rejected the ICP-1 document (final report of the ccNSO's Delegation and Redelelegation Working Group or DRDWG) arguing that it modified policy but did not meet the requirements for doing so at the time of its introduction in 1999.

- Framework Of Interpretation Working Group (FOIWG) Recommendations

A follow-on to the ccNSO's DRDWG, the FOIWG was joint effort between the ccNSO and the Governmental Advisory Committee (GAC) that also involved representatives from a number of ICANN communities to interpret RFC1591 in light of the Internet of today. In its final report it made a number of recommendations that clarify the application of RFC1591 within the current context.

The ccNSO formally endorsed the FOIWG's Final Report in February 2015 and transmitted it to the ICANN Board. It is currently pending review and adoption by the ICANN Board of Directors.

- Government Advisory Committee (GAC) Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains 2005

This document, also known as the 2005 GAC Principles, which the GAC regards as formal "Advice" to the ICANN Board and as such is subject to the Bylaws provisions regarding such Advice at the time of submission<sup>2</sup>. This Advice was developed privately by the GAC and the first version of these principles was published in 2000 and later revised to produce the 2005 version.

Section 1.2 of this document highlights one of the key principles for governments with respect to the management of the ccTLDs associated with their country or territory code:

*1.2. The main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law.*

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<sup>2</sup> Details at <https://www.icann.org/resources/pages/bylaws-2012-02-25-en#XI>



Also section 7.1 of this document can be directly relevant to delegation and redelegation of a ccTLD:

#### *7.1. Principle*

*Delegation and redelegation is a national issue and should be resolved nationally and in accordance with national laws, taking into account the views of all local stakeholders and the rights of the existing ccTLD Registry. Once a final formal decision has been reached, ICANN should act promptly to initiate the process of delegation or redelegation in line with authoritative instructions showing the basis for the decision.*

- Local laws applicable to ccTLDs, or IDN ccTLDs, associated with a specific country or territory are developed by the governments of those countries or territories

#### **II.A.i.c. How disputes about policy are resolved (ccTLDs)**

Section 3.4 of RFC1591 provided for a dispute resolution mechanism. However the body listed in the document does not currently exist. Most ccTLDs do not have any contracts that specify a dispute resolution mechanism with ICANN.

For those ccTLDs that do not have a contract with ICANN that specifies dispute resolution mechanisms, the ICANN-provided escalation paths available to them are the ICANN Ombudsman and the ICANN Bylaws relating to the Independent Review of ICANN Board Actions (which would only apply to the relevant Board action i.e. delegations and redelegations in this case). Given that these mechanisms are non-binding on the Board or ICANN they are perceived by many ccTLDs as being of limited value.

There are additional sources of accountability for the limited number of ccTLDs that have formal Sponsorship Agreements or Frameworks of Accountability with ICANN. These types of agreements have dispute resolution clauses to settle disagreements between the parties that are relevant to all actions and activities by the Operator for ccTLDs. These typically use the International Chamber of Commerce (ICC).

It is also important to note that local laws applicable to ccTLDs, or IDN ccTLDs, associated with a specific country or territory are developed by the governments of those countries or territories and that disputes with respect to such laws can be handled in courts of competent jurisdiction.

**II.A.i.d. References to documentation of policy development and dispute resolution processes (ccTLDs)**

- RFC1591 - <https://www.ietf.org/rfc/rfc1591.txt>
- ICP 1 - <https://www.icann.org/icp/icp-1.htm>
- FOIWG Final Report - <http://ccnso.icann.org/workinggroups/foi-final-resolutions-11feb15-en.pdf>
- Independent Review Panel (IRP) - <https://www.icann.org/resources/pages/irp-2012-02-25-en>
- ICANN Ombudsman - <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexB>
- GAC Principles 2005 - [https://gacweb.icann.org/download/attachments/28278844/ccTLD\\_Principles\\_0.pdf?version=1&modificationDate=1312385141000&api=v2](https://gacweb.icann.org/download/attachments/28278844/ccTLD_Principles_0.pdf?version=1&modificationDate=1312385141000&api=v2)

**II.A.ii.a. Affected IANA Service (gTLDs)**

Delegation and redelegation of gTLDs.

**II.A.ii.b. How policy is developed and established by whom (gTLDs)**

This is a complex and well-described process that would dwarf this document and as such will not be included. Details can be found at: <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexA>

**II.A.ii.c. How disputes about policy are resolved (gTLDs)**

This is a complex and well-described process that would dwarf this document and as such will not be included. Details can be found at: <http://newgtlds.icann.org/EN/APPLICANTS/AGB>

**II.A.ii.d. References to documentation of policy development and dispute resolution processes (gTLDs)**

- GNSO PDP: <https://www.icann.org/resources/pages/governance/bylaws-en#AnnexA>
- New gTLD Applicant Guidebook: <http://newgtlds.icann.org/EN/APPLICANTS/AGB>

## **II.B Oversight and Accountability**

*This section should describe all the ways in which oversight is conducted over IANA's provision of the services and activities listed in Section I and all the ways in which IANA is currently held accountable for the provision of those services. For each oversight or accountability mechanism, please provide as many of the following as are applicable:*

- *Which IANA service or activity (identified in Section I) is affected.*
- *If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way.*
- *A description of the entity or entities that provide oversight or perform accountability functions, including how individuals are selected or removed from participation in those entities.*
- *A description of the mechanism (e.g., contract, reporting scheme, auditing scheme, etc.). This should include a description of the consequences of the IANA functions operator not meeting the standards established by the mechanism, the extent to which the output of the mechanism is transparent and the terms under which the mechanism may change.*
- *Jurisdiction(s) in which the mechanism applies and the legal basis on which the mechanism rests.*

### **II.B.i.a. Which IANA service or activity is affected (NTIA IANA Functions Contract)**

For the purposes of this section, oversight and accountability of the IANA Functions Operator (IFO) refers to independent oversight and accountability. Specifically, oversight and accountability are defined as:

- Oversight (of the IFO performing root zone-related actions and activities) – Oversight is performed by an entity that is independent of the Operator (as defined in the NTIA IANA Functions Contract) and has access to all relevant information to monitor or approve the actions and activities that are being overseen
- Accountability – Accountability provides the ability for an independent entity to impose binding consequences to ensure the IFO meets its formally documented and accepted agreements, standards and expectations.

All IANA Functions described in Section I of this document are affected. Annex B provides an overview of

oversight mechanisms that are found in the NTIA IANA Functions Contract.

**II.B.i.b. If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (NTIA IANA Functions Contract)**

These oversight and accountability mechanisms in the NTIA IANA Functions Contract do not affect the policies listed in Section II.A.

**II.B.i.c. The entity or entities that provide oversight or perform accountability functions (NTIA IANA Functions Contract)**

The NTIA is currently responsible for providing this oversight. There is no description regarding how the individuals who perform these functions are selected, removed or replaced.

**II.B.i.d. A description of the mechanism (NTIA IANA Functions Contract)**

One of the official accountability mechanism included in the NTIA IANA Functions Contract is the ability to cancel or not renew the contract. In addition, there is also a customer complaint mechanism built into the contract.

**II.B.i.e. Jurisdiction and legal basis of the mechanism NTIA IANA Functions Contract)**

The jurisdiction of the mechanism is the United States of America.

**II.B.i.f. Which IANA service or activity is affected (NTIA acting as Root Zone Management Process Administrator)**

NTIA exercises oversight by reviewing all requests and documentation provided by the IANA Contractor for changes to the root zone or its WHOIS database to validate that IANA has met its obligations in recommending a change. NTIA can refuse to authorize the request. It affects all IANA Functions that modify the root zone and database or its WHOIS database.

**II.B.i.g. If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (NTIA acting as Root Zone Management Process Administrator)**

This does not affect the policies listed in Section II.A

**II.B.i.h. The entity or entities that provide oversight or perform accountability functions (NTIA acting as Root Zone Management Process Administrator)**

The NTIA is currently responsible for providing this oversight. There is no description regarding how the individuals who perform these functions are selected, removed or replaced.

**II.B.i.i. A description of the mechanism (NTIA acting as Root Zone Management Process Administrator)**

The accountability is exercised by the NTIA by not approving a change request by IANA for the root zone or its WHOIS database.

**II.B.i.j. Jurisdiction and legal basis of the mechanism ((NTIA acting as Root Zone Management Process Administrator)**

The jurisdiction of the mechanism is the United States of America.

**II.B.i.k. Which IANA service or activity is affected (Binding arbitration included in TLD contracts)**

Most gTLD registries as well as a few ccTLD registries have contracts (for ccTLDs also called Sponsorship Agreements or Frameworks of Accountability) with ICANN. All of these contracts provide for binding arbitration of disputes (The standard gTLD contract language begins with: *“Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce.”*) All IANA Functions which modify the Root Zone file or database are affected

**II.B.i.l. If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (Binding arbitration included in TLD contracts)**

This does not affect the policies listed in Section II.A

**II.B.i.m. The entity or entities that provide oversight or perform accountability functions (Binding arbitration included in TLD contracts)**

For most gTLDs the language is: *Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the*

*International Chamber of Commerce. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or 7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator.*

For the few ccTLDs with a contract, the language relating to this is usually a version of the following: *Each party shall nominate one arbitrator, and the two arbitrators so nominated shall, within 30 days of the confirmation of their appointment, nominate the third arbitrator, who will act as Chairman of the Arbitral Tribunal.*

**II.B.i.n. A description of the mechanism (Binding arbitration included in TLD contracts)**

The results of the arbitration are binding on both parties.

**II.B.i.o. Jurisdiction and legal basis of the mechanism (Binding arbitration included in TLD contracts)**

For gTLDs the arbitration will be conducted in the English language and will occur in Los Angeles County, California, USA.

For ccTLDs that have dispute resolution clauses with ICANN, the place of arbitration needs to be agreed to by both parties. Typically there is language inserted that identifies the law that will be relevant in evaluating each party's actions, such as the law of the country in which the ccTLD is operated for ccTLDs, and the laws of California for ICANN's actions.

**II.B.i.p. Which IANA service or activity is affected (Applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

The NTIA IANA Functions Contract clearly establishes the importance of the GAC Principles 2005 in the delegation and redelegation of ccTLDs.

As such Section 1.7 of the GAC Principles 2005 clearly sets the stage for such oversight by governments:

*1.7. It is recalled that the WSIS Plan of action of December 2003 invites “Governments to manage or supervise, as appropriate, their respective country code top-level domain name”. Any such involvement should be based on appropriate national laws and policies. It is recommended that governments should work with their local Internet community in deciding on how to work with the ccTLD Registry.*

Within the context provided by Section 1.2 of the same document:

*1.2. The main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law.*

Given the IFO currently seeks government approval for all ccTLD delegations and redelegations governments usually limit the use of their power in these matters to redelegations where the local government is requesting a change of ccTLD manager which is not supported by the current manager.

ccTLD delegations and redelegations are affected.

**II.B.i.q. If the policy sources identified in Section II.A are affected, identify which ones are affected and explain in what way (Applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

This does not affect the policies listed in Section II.A

**II.B.i.r. The entity or entities that provide oversight or perform accountability functions (Applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

Local law should prevail unless the decision has a global impact.

**II.B.i.s.            A description of the mechanism (Applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs))**

Variable depending on the specific government.

**II.B.i.t.            Jurisdiction and legal basis of the mechanism Applicability of local law for the administration by the IANA Functions Operator of ccTLDs associated with a specific country or territory (ccTLDs)**

Jurisdiction lies in that of the country or territory concerned.



### **III. Proposed Post-Transition Oversight and Accountability**

*This section should describe what changes your community is proposing to the arrangements listed in Section II.B in light of the transition. If your community is proposing to replace one or more existing arrangements with new arrangements that replacement should be explained and all of the elements listed in Section II.B should be described for the new arrangements. Your community should provide its rationale and justification for the new arrangements. If your community's proposal carries any implications for existing policy arrangements described in Section II.A, those implications should be described here. If your community is not proposing changes to arrangements listed in Section II.B, the rationale and justification for that choice should be provided here.*

#### **III.A The elements of this proposal**

The sections below describe how the transition will affect each of the naming functions identified and what changes, if any, the CWG-Stewardship recommends addressing these effects. In summary, the CWG-Stewardship recommends:

- A new separate legal entity, Post-Transition IANA (PTI), would be formed as an affiliate of ICANN. The existing IANA naming functions, administrative staff and related resources, processes, data and know-how would be legally transferred into PTI.
- ICANN would enter into a contract with PTI, granting PTI the rights and obligations to serve as the IFO for the naming functions. This contract would also include service level agreements for the naming functions.
- Changes proposed to root zone environment and relationship with root zone maintainer

In developing this response the CWG-Stewardship has been mindful of the “Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Naming Related Functions” as developed and agreed by the CWG-Stewardship as included in Annex C.

Note, this section provides the high-level recommendations that should be read in conjunction with the relevant annexes which provide additional details.

##### **III.A.i. PROPOSED POST-TRANSITION STRUCTURE**

The objective of Section III is to present the changes required to replace the oversight and accountability performed by the NTIA via the NTIA IANA Functions Contract and NTIA’s role as

Root Zone Management Process Administrator for the naming functions.

Specifically the oversight and accountability roles of the NTIA include the following:

- In relation to the IANA Functions Contract:
  - Contract process including selection of operator and cancellation of the contract (accountability);
  - Formal definition of the requirements and expectations of IANA by the NTIA – statement of work (oversight);
  - Establishment and external monitoring of quality control and performance evaluation mechanisms (oversight);
  - Issue resolution (accountability);
- In relation to NTIA's role as Root Zone Management Process Administrator:
  - Approval of all changes to the content of the Root Zone (oversight and accountability);
  - Approval of all changes to the Root Zone environment such as the implementation of DNSSEC (oversight and accountability);
  - Approval of all external communications and reporting by IANA to external parties – not ICANN staff or Board (oversight and accountability);

The public consultation on the CWG-Stewardship's initial transition proposal of 1 December 2014 confirmed that the respondents were very satisfied with the current arrangements and that any new arrangements should maintain ICANN, as the IFO at the time of transition and implement mechanisms which could ensure similarly effective oversight and accountability while minimizing complexity and costs and maintaining the security, stability and resiliency of the DNS and Internet.

In order to meet community expectations for the stewardship of the naming related IANA Functions, the CWG-Stewardship, working on the premise that there is current satisfaction with ICANN's IANA department performance and that ICANN should remain the IANA Functions Operator, agreed that a transition proposal for the names community would require the following elements:

- A contract similar to the current NTIA IANA Functions Contract to perform the IANA Functions post-transition;

- The ability for the multistakeholder community to ensure that ICANN acts according to its requests with respect to IANA operations;
- Additional insulation, as needed, between operational and policymaking responsibilities and protections for the IFO;
- A mechanism to approve changes to the Root Zone environment (with NTIA no longer providing oversight);
- The ability to ensure that the IANA Functions are adequately funded by ICANN;
- The ability for the multistakeholder community to require, if necessary and after substantial opportunities for remediation, the selection of a new operator for the IANA Functions.

The CWG-Stewardship has also agreed that approval of all changes to the content of the Root Zone would no longer need authorization and external communications and reporting would no longer need external approval post-transition. This 2<sup>nd</sup> draft proposal attempts to meet all the above requirements by:

- Creating PTI, a separate legal entity that would be a “wholly owned subsidiary” of ICANN – in legal terms, an “affiliate.” The creation of PTI ensures both functional and legal separation within the ICANN organization.
- Establishing a contract between PTI and ICANN that would give PTI the rights and obligations as the IFO.
- Establishing a Customer Standing Committee (CSC) that is responsible for monitoring IFO performance according to contractual requirements and service level expectations, resolving issues directly with the IFO or escalating them if they cannot be resolved.<sup>3</sup>
- Establishing a series of issue resolution mechanisms to ensure that problems are resolved effectively.
- Ensuring ICANN accepts input from multistakeholder community with respect to the annual IANA operations budget.
- Establishing a framework to approve changes to the Root Zone environment (with NTIA no longer providing oversight).
- Establishing a multistakeholder IANA Function Review (IFR) to conduct periodic and

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<sup>3</sup> The CSC would not need to be a legal entity. The CSC could be provided for under the ICANN governance documents and could also be provided for in the ICANN-PTI IANA Functions Contract.

special reviews of PTI.<sup>4</sup> The results of the IFR are not prescribed or restricted and could include recommendations to the ICANN Board to terminate or not renew the IANA Functions Contract with PTI.

It is important to note that this proposal is significantly dependent on the results of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) for ICANN level accountability requirements. The co-chairs of the CWG-Stewardship and the CCWG-Accountability are effectively coordinating their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations will meet the requirements the CWG-Stewardship has communicated to them. As such any elements in this proposal that are dependent on the results of the CCWG-Accountability work will be identified as such.

### **III.A.i.a. Post-Transition IANA (PTI)**

In order to legally “ring fence” the IANA naming functions both functionally and legally from the ICANN entity, the CWG-Stewardship recommends the creation of a Post-Transition IANA (PTI). PTI would be a new legal entity in the form of a non-profit corporation or a limited liability company. The existing IANA naming functions department, administrative staff and related resources, processes, data and know-how would be legally transferred to PTI.<sup>5</sup>

At the outset, PTI would have as its sole member ICANN. PTI would be a “wholly owned subsidiary” of ICANN – in legal terms, an “affiliate” of ICANN if PTI is a California public benefit corporation without owners. ICANN would provide funding and administrative resources to PTI through an agreed upon budget.

A contract would be entered between PTI and ICANN, which would give PTI the rights and obligations as the IFO. The contract would provide for automatic renewal, but subject to potential non-renewal by ICANN if recommended by the IANA Function Review (see further details below).

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<sup>4</sup> The IANA Function Review (IFR) would be convened periodically (first review two years after the transition is complete, and thereafter at least every five years at most). It could also be convened for a special review under certain circumstances further described in the escalation mechanisms (section III.A.ii.c.). The review could be provided for under the ICANN governance documents and could also be provided for in the ICANN-PTI IANA Functions Contract.

<sup>5</sup> In the case of any existing ICANN contracts, MoUs or other arrangements that relate to the IANA functions, they could be assigned to and assumed by PTI, replaced by new arrangements at the PTI level or remain at ICANN with a subcontract to PTI.

### **III.A.i.b. PTI Board**

As a separate legal entity, PTI would have a board of directors or managers. The PTI Board could be an ICANN-designated board and have the minimum statutorily required responsibilities and powers. The CWG-Stewardship expects that this would 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 concerning the PTI and the PTI Board would be addressed through the overarching ICANN accountability mechanisms.<sup>6</sup>

### **III.A.i.c. IANA Statement of Work (carryover of provisions noting updates)**

The issues currently addressed in the NTIA ICANN Functions Contract and related documents would be addressed either in the ICANN-PTI contract or in ICANN bylaws and governance documents. Furthermore, the CWG-Stewardship expects that a number of existing provisions of the NTIA IANA Functions Contract will be carried over to the PTI Contract in the form of a Statement of Work (SOW), taking into account updates that will need to be made as a result of the changing relationship post-IANA Stewardship Transition as well as other recommendations outlined in Section III. An overview of provisions expected to be carried over can be found in Annex E.

### **III.A.i.d. IANA Function Review**

The CWG-Stewardship recommends that the SOW review be done as part of the IANA Function Review (IFR). The IFR would not only take into account performance against the SOW, but would be obliged to take into account multiple input sources into account including community comments, CSC evaluations, reports submitted by PTI, and recommendations for technical or process improvements. The outcomes of reports submitted to the CSC, reviews and comments received on these reports during the relevant time period will be included as input to the IFR.

The first IFR is recommended to take place no more than 2 years after the transition is completed. After the initial review, the IFR should occur every 5 years. The IANA Function Review should be outlined in the ICANN Bylaws and included as a “fundamental bylaw” as part of the work of the CCWG-Accountability and would operate in a manner analogous to an Affirmation of Commitments (AOC) review. These “fundamental bylaws” would be ICANN bylaws that would require the approval of the multistakeholder community to amend. The approval of a

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<sup>6</sup> CCWG-Accountability Dependency – see <https://community.icann.org/x/TSYnAw>

fundamental bylaw could also require a higher threshold than typical bylaw amendments, for example, a supermajority. The members of the IANA Function Review Team (IFRT) would be selected by the Supporting Organizations and Advisory Committees and would include several liaisons from other communities. While the IFRT is intended to be a smaller group, it will be open to participants in much the same way as the CWG-Stewardship.

While the IFR will normally be scheduled based on a regular 5 year cycle with other ICANN reviews, a Special Review may also be initiated following the CSC raising concerns with the GNSO and/or the ccNSO or by concerns raised by TLDs directly with the ccNSO or the GNSO. In the event of a Special Review being proposed, the ccNSO and GNSO should consult with both members and non-member TLDs, in the light of the consultations, the Councils can decide by a supermajority to call for a special review.

For further details, please see Annex F.

### **III.A.ii. PROPOSED OVERSIGHT & ACCOUNTABILITY REPLACEMENT**

#### **III.A.ii.a. Customer Standing Committee (CSC) - Overseeing performance of IANA Functions as they relate to naming services**

The CWG-Stewardship recommends the creation of a Customer Standing Committee (CSC) to monitor the performance of PTI with the following mission:

“The Customer Standing Committee (CSC) has been established to perform the operational responsibilities previously performed by the U.S. Department of Commerce National Telecommunications and Information Administration as it relates to the monitoring of performance of the IANA naming function. This transfer of responsibilities took effect on [date].

The mission of the CSC is to ensure continued satisfactory performance of the IANA function for the direct customers of the naming services. The primary customers of the naming services are top-level domain registry operators. Root server operators are also direct customers and Internet users are indirect customers.

The mission will be achieved through regular monitoring by the CSC of the performance of the IANA naming function against agreed service level targets and through mechanisms to engage with the IANA Functions Operator to remedy identified areas of concern.

The CSC is not mandated to initiate a change in the IANA Functions Operator, but could escalate to the ccNSO and/or the GNSO, which might then decide to take further action using agreed consultation and escalation processes (see Annex J).

The complete proposed charter of the CSC can be found in Annex G.

### **III.A.ii.b. Service Level Expectations**

The Service Level Expectation (SLE) Design Team (DT) is comprised of 3 gTLD Registry representatives and 3 ccTLD Representatives. The DT has been in contact with ICANN, including IANA staff.

The DT was asked to review the current IANA functions operations, to record the status-quo in terms of current performance to highlight where IANA is performing well and further to highlight any gaps and issues that it considered in need of further clarification prior to transition from NTIA's oversight.

The DT also identified gaps in the current documentation used specifically that some Registry Managers prefer to interact with IANA via formal documentation sent by facsimile and some via phone calls. As little is known about these two latter categories, IANA staff are preparing a complete set of current work-flow methods to assist the DT undertake its work.

A set of documents that describe the current work flow processes undertaken for IANA Root Zone Management will be reviewed by the DT after release is approved.

In the interim period and independent of IANA, the DT has conducted an analysis based on historical transactions, using a limited set of real-world activity from published IANA Performance Reports and transaction logs provided by ccTLD Registries interacting with the IANA.

The historical transactions are from September 2013 to January 2015 period, which provided approximately 565 total data points – only 27 transactions took longer than 9 days and 13 took longer than 12 days. It should also be highlighted that some/much of the delay is as a result of the Registry not

responding to IANA to authorize the change request – so the delay is not necessarily within IANA's control. 4 transactions took longer than 1 year (which is not necessarily a problem if the stability of the DNS is assured).

The DT anticipates having the Service Level Expectation documentation for the post-transition environment completed within one month following receipt of the additional IANA documentation. The current interim findings can be found at: <https://community.icann.org/x/CA4nAw>.

For further details, please see Annex H.

### **III.A.ii.c. Escalation Mechanisms**

The CWG-Stewardship recommends requiring the continuation, with minor modifications, of a progressive set of escalation steps that can be performed for emergency situations as well as customer service complaints and a new problem management process, as applicable, for individual TLD registry operators, or others with relevant IANA Functions operational issues. Three processes are recommended:<sup>7</sup>

1. Customer Service Complaint Resolution Process

This process is for anyone who has a complaint about IANA services.<sup>8</sup> The CWG-Stewardship has modified the current process used by ICANN by adding some steps at the end.

2. Problem Resolution Process (for IANA naming services only)

This is a new process created for persistent performance issues or systemic problems associated with the provision of IANA naming services.<sup>9</sup>

3. Root Zone Emergency Process

This process is for TLD managers in cases where expedited handling is required and is the same as the process currently used by ICANN, but reflects the post-transition environment.

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<sup>7</sup> Note, nothing in these processes prevents a TLD an operator to pursue other applicable legal recourses that may be available.

<sup>8</sup> This process exists today for all IANA services, but the CWG-Stewardship changes intend to apply only to the IANA naming services.

<sup>9</sup> It is beyond the scope of the CWG-Stewardship to propose processes that affect other IANA services customers (protocol parameters and numbers). However, should there be an interest in expanding this process to include those customers, those discussions could be held at a later date.



The details of these processes, including proposed modifications to the existing processes to reflect the transition, can be found in Annexes I (Customer Service Complaint Resolution Process), J (Problem Resolution Process (for IANA naming services only)) and K (Root Zone Emergency Process).

#### **III.A.ii.d. Separation Review**

The CWG-Stewardship recommends that a fundamental bylaw be created to define a Separation Review that can be triggered by an IFR if needed. This would only occur if other escalation mechanisms and methods have been exhausted. This process may include a cross community of the ICANN Supporting Organizations and Advisory Committees which would be formed to review the issues and make recommendations. The recommendations would need to be approved by the ICANN Board and would be subject to all escalations and appeals mechanisms.

There would be no prescribed action for the Separation Review. It would be empowered to make a recommendation ranging from “no action required” to the initiation of an RFP and the recommendation for a new IFO.

For further details please see Annex L.

#### **III.A.ii.e. Framework for Transition to Successor IANA Functions Operator (Continuity of Operations)**

The CWG-Stewardship recommends the continuation, with modifications, of the current transition framework for the IANA Functions should it be, for whatever reason, necessary for the IANA Functions to be transitioned from the incumbent IFO to a successor IFO. This framework would be set forth in a new contract between ICANN and the IANA Functions Operator (based on this proposal, the IFO would be PTI) and would be based upon the current NTIA-ICANN contract clause C.7.3 “Plan for Transition to Successor Contractor”. The transition framework should be part of the operations and management of the IANA Functions going forward and be considered part of the operator’s business contingency and continuity of operations planning.<sup>10</sup> This is a framework only and it is expected – as per the following recommendations – that a full plan will be developed post-IANA Stewardship Transition. The principles and recommendations for the future evolution of the Framework for Transition to Successor IANA Functions Operator include:

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<sup>10</sup> The CWG-Stewardship notes that the ICANN Contingency and Continuity of Operations Plan (CCOP) was not able to be released as requested through the DIDP process due to security and stability related concerns.

1. The integrity, stability and availability of the IANA Functions must be the core concern during any transition of the IANA Functions;
2. The transition framework must be further developed into a detailed, fully functional, transition plan within 18 months from the completion of the IANA Stewardship Transition;
3. The budget for IANA operations should be augmented with specific funding for the detailed transition plan development referred to in 2 (above);
4. The process established for the potential transitioning of the IANA Functions to an operator other than the incumbent should specifically recognize that the detailed transition plan referred to in 2 (above) must be in place before the commencement of the transitioning process;
5. Both the incumbent and the successor IANA Functions operators will be required to fully engage in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable transition of the IANA Functions; and
6. Once developed, the full Transition to Successor IANA Functions Operator Plan should be reviewed every year by IANA staff, in conjunction with the CSC/Community as necessary, to ensure that it remains up to date and reviewed every five years to ensure that it remains fit for purpose.

For further information, please see Annex M.

### **III.A.iii. ROOT ZONE ENVIRONMENT AND ROOT ZONE MAINTAINER**

#### **III.A.iii.a. Proposed changes to root zone environment and relationship with Root Zone Maintainer**

In relation to the Root Zone Management Process Administrator role that is currently performed by NTIA, the CWG-Stewardship recommends that this role be discontinued post-transition. As a result of this discontinuation the CWG-Stewardship recommends:

1. Changes to the Root Zone Content and the associated WHOIS database.

Post-transition no authorization for TLD change requests is needed. As such there is a need to:

- a. Ensure that the transaction software and associated processes and procedures used by IANA and the Root Zone Maintainer (currently Verisign) to request and process changes no longer require NTIA approval.
- b. Ensure that post transition, the Root Zone Maintainer can and will make changes to the Root Zone as requested by IFO.
  - i. The NTIA has said that there will be a parallel but separate transition process (yet to be defined) to disengage the NTIA from the Root Zone Maintainer. If that transition is not completed prior to the IANA Stewardship Transition, the Cooperative Agreement will likely have to be amended by the NTIA to allow Verisign, acting as the Root Zone Maintainer, to implement changes to the root zone requested by the IFO without requiring approval from the NTIA.
  - ii. If the Root Zone Maintainer transition is completed prior to, or in conjunction with, the IANA Stewardship Transition, the new arrangements must provide a clear and effective mechanism to ensure that PTI can have its change requests for the Root Zone implemented in a timely manner by the Root Zone Maintainer (possibly an agreement between the Root Zone Maintainer and IANA).
- c. Determine if additional checks/balances/verifications are required post transition
 

The CWG-Stewardship recommends that a formal study be undertaken post transition to investigate whether there is a need to increase (and if so, how) the robustness of the operational arrangements for making changes to the Root Zone content to reduce or eliminate single points of failure. This study should include a risk analysis and cost/benefit analysis factoring in the history and possibility of such problems.

## 2. Changes to the Root Zone Management Architecture and Operation.

Per the NTIA IANA Functions Contract, NTIA approval was required for the implementation of all changes to the Root Zone environment such as DNSSEC as well as many classes of changes to IFO processes (including what may be published). As such:

- a. The CWG-Stewardship recommends replacement of this approval function be provided for major architectural and operational changes. The entity responsible for such approvals will establish a process which allows for consultation with the bodies involved in such changes as well as with those with wide experience in the specific technology or process to ensure

that prudent but effective changes are made. The replacement approval function should coordinate with the NTIA at the time of transition to transfer relevant information about any ongoing major architectural and operational changes so that any such ongoing activities are not negatively impacted by the transition.

- b. The CWG-Stewardship recommends that for changes internal to IFO and for those related to reports and communications, no external approval shall be needed. Such decision should be made, where appropriate, in consultation with the community, or the approval function referenced in sub-section a.
- c. The CWG-Stewardship recommends that post transition IFO budgets must support IFO's capability to investigate, develop and deploy the type of Root Zone enhancements required to keep the Root Zone and its management evolving.

### 3. Principle regarding transparency of actions by IFO

The CWG-Stewardship recommends that, to the extent allowed by external agreements and as necessitated by security issues and the need to respect business confidentiality, the IFO should operate in a transparent manner.

### 4. Control of Root Zone Management.

Currently updating the Root Zone requires the active participation of three parties, the IFO, the Root Zone Maintainer and the NTIA. The IFO receives change requests from various sources, validates them, and sends them to the Root Zone Maintainer who, once they are authorized by the NTIA, updates the Root Zone File, DNSSEC signs it, and distributes it to the Root operators.

Post transition there will only be the IFO and the Root Zone Maintainer. The CWG-Stewardship is not recommending any change in the separation between the two at this time. The CWG-Stewardship is recommending that should there be a proposal to combine the two or make other changes in their respective roles in root zone modification, that it be subject to wide community consultation.

For further details, please see Annex N.

### **III.A.iv. OTHER**

#### **III.A.iv.a. ccTLD Delegation Appeals**

The CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and redelegations in the IANA Stewardship Transition proposal. For further information, please see Annex O.

#### **III.A.iv.b. IANA Budget<sup>11</sup>**

In order for the multistakeholder community to steward the IANA Functions, the CWG-Stewardship recommends that:<sup>12</sup>

1. The IFO's comprehensive costs should be transparent for any future state of the IANA Function.
2. Future Fiscal Year (FY) ICANN Operating Plans & Budgets, and if possible even the FY16 ICANN Operating Plan & Budget, include at a minimum itemization of all IANA operations costs in the FY ICANN Operating Plan & Budget to the project level and below as needed.

Further details on the expected detail, based on the information provided in relation to the FY15 budget, can be found in Annex H. Furthermore, the CWG-Stewardship has identified a number of items for future work that can be found in Annex P.

#### **III.A.iv.c. Regulatory and Legal Obligations**

The process for handling the requests for statutory waivers or licenses relating to its legal obligations in its place of business (such as, from the U.S. Department of the Treasury's Office of Foreign Assets control) is a generally-applicable legal obligation regardless of who is serving as the IANA Functions Operator. ICANN already has a process in place for seeking any necessary licenses, and will continue to work with contacts at relevant authorities to identify ways to streamline those requests. A statutory waiver may be possible if a new statute authorizes the transition. Such a statutory waiver could provide that the President may not use trade sanctions with respect to the IANA Functions Operator. For licenses or waivers that relate to the IANA Function, ICANN commits that any licenses or waivers it seeks would also be sought for the IANA

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<sup>11</sup> CCWG-Accountability Dependency – see [include link to latest communication]

<sup>12</sup> The names registries have long requested budget transparency and detail. See for example the work of the ccNSO SOP.

Functions Operator and for the Root Zone Maintainer as well, so that a single request for any applicable entity is required.

### **III.B Implications for the interface between the IANA Functions and existing policy arrangements**

For the IANA naming services, the proposal seeks to retain the functional separation between the policy development processes and the IANA Functions.

#### **IV. Transition Implications – under development**

*This section should describe what your community views as the implications of the changes it proposed in Section III. These implications may include some or all of the following, or other implications specific to your community:*

- *Description of operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*
- *Description of any legal framework requirements in the absence of the NTIA contract.*
- *Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.*
- *Description of how long the proposals in Section III are expected to take to complete, and any intermediate milestones that may occur before they are completed.*

#### **IV.A Operational requirements to achieve continuity of service and possible new service integration throughout the transition**

*This section should describe what your community views as the implications of the changes it proposed in Section III.*

- *Description of operational requirements to achieve continuity of service and possible new service integration throughout the transition.*
- *Risks to operational continuity and how they will be addressed.*

Operational Requirements for Service Continuity and Integration Throughout Transition:

- IANA Service Level Expectations
- CSC
- Architectural Change Oversight/Approval

Risks to Operation Continuity and Mitigation:

- Relationship between the NTIA, IANA and the Root Zone Maintainer
- Framework for Transition to Successor IANA Functions Operator (Continuity of Operations)
- Escalation Mechanisms beyond CSC
- Periodic Review of the IANA Functions

#### **IV.B Description of any legal framework requirements in the absence of the NTIA contract**

*This section should describe what your community views as the implications of the changes it proposed in Section III.*

- *Description of any legal framework requirements in the absence of the NTIA contract.*

Legal Framework Requirements:

- Relationship between the NTIA, IANA and the Root Zone Maintainer
- IANA Service Level Expectations
- IANA Problem Management Escalation Process

#### **IV.C Workability of any new technical or operational methods**

*This section should describe what your community views as the implications of the changes it proposed in Section III.*

- *Description of how you have tested or evaluated the workability of any new technical or operational methods proposed in this document and how they compare to established arrangements.*

Testing and Evaluation of New Technical or Operational Methods Proposed:

- Review of relevant CCWG-Accountability Stress Tests
  - Failure to Meet Operational Expectations
    - 1. Change authority for the Root Zone ceases to function, in part or in whole.
    - 2. Authority for delegations from the Root Zone ceases to function, in part or in whole.
    - 11. Compromise of credentials.
    - 17. ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by technical community or other stakeholder groups.
    - 21. A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD Manager.
  - Legal/Legislative Action
    - 19. ICANN attempts to redelegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.
    - 20. A court order is issued to block ICANN's delegation of a new TLD because of a complaint by an existing TLD operator or other aggrieved parties.
  - Failure of Accountability to External Stakeholders
    - 25. ICANN delegates or subcontracts its obligations under a future IFO agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.
- SAC-069 Review



#### **IV.D Length the proposals in Section III are expected to take to complete, and any intermediate milestones that may occur before they are completed**

*This section should describe what your community views as the implications of the changes it proposed in Section III.*

- *Description of how long the proposals in Section III are expected to take to complete, and any intermediate milestones that may occur before they are completed.*

Proposal Implementation Length and Intermediate Milestones:

- Develop Timeline for Implementation based on Section III details and consider with CCWG Work Stream 1 implementation plans.

#### **V. NTIA Requirements - under development**

*Additionally, NTIA has established that the transition proposal must meet the following five requirements:*

- *Support and enhance the multistakeholder model;*
- *Maintain the security, stability, and resiliency of the Internet DNS;*
- *Meet the needs and expectation of the global customers and partners of the IANA services;*
- *Maintain the openness of the Internet.*
- *The proposal must not replace the NTIA role with a government-led or an inter-governmental organization solution.*

*This section should explain how your community's proposal meets these requirements and how it responds to the global interest in the IANA functions.*

This proposal addresses each of the NTIA's requirements as follows:

##### **V.A Support and enhance the multistakeholder model**

[To be completed]

##### **V.B Maintain the security, stability, and resiliency of the Internet DNS;**

[To be completed]

##### **V.C Meet the needs and expectation of the global customers and partners of the IANA services;**

[To be completed]

**V.D Maintain the openness of the Internet.**

[To be completed]

**V.E The proposal must not replace the NTIA role with a government-led or an inter-governmental organization solution.**

[To be completed]

**VI. Community Process (DRAFT and under development)**

*This section should describe the process your community used for developing this proposal, including:*

- *The steps that were taken to develop the proposal and to determine consensus.*
- *Links to announcements, agendas, mailing lists, consultations and meeting proceedings.*
- *An assessment of the level of consensus behind your community's proposal, including a description of areas of contention or disagreement.*

**VI.A The steps that were taken to develop the proposal and to determine consensus.**

**VI.A.1 Establishing the CWG-Stewardship**

- CWG-Stewardship charter:  
<https://community.icann.org/display/gnsocwgdstwrdsHP/Charter>

**VI.A.2 Members and Participants**

- <https://community.icann.org/pages/viewpage.action?pageId=49351381>

**VI.A.3 Working methods of the CWG-Stewardship**

- To be added

**VI.A.4 Determining Consensus**

- To be added

**VI.B Links to announcements, agendas, mailing lists, consultations and meeting proceedings**

**VI.B.1 Meetings**

- Full CWG –Stewardship (meeting dates, agendas, participants and meeting notes) -  
<https://community.icann.org/display/gnsocwgdstwrdsHP/Meetings>

**VI.B.2 Public Consultations**

- 1 December public consultation on first CWG-Stewardship draft transition proposal:

<https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en>

- February 2015 - Discussion document for ICANN52 meeting:

<https://community.icann.org/pages/viewpage.action?pageId=52889457>

**VI.B.3 Webinars and other public presentations**

- (URL TBC)

**VI.B.4 Mailing list archives:**

<https://community.icann.org/display/gnsocwgdstwrdsdp/Mailing+List+Archives>

**VI.B.5 Correspondence (URL TBC)**

**VI.B.6 Outreach:**

<https://community.icann.org/display/gnsocwgdstwrdsdp/Outreach+Tracking+CWG-Stewardship>

- VI.C An assessment of the level of consensus behind your community's proposal, including a description of areas of contention or disagreement.**