Chairs' Foreword: Towards a Final Proposal
22 April 2015

Today, the ICANN Cross Community Working Group responsible for the naming related portion of the IANA Stewardship Transition (CWG-Stewardship)[1] seeks public comment on its 2nd draft proposal for the transition of the stewardship of the IANA Functions Contract from the U. S. Department of Commerce's NTIA to the global multistakeholder community. The draft proposal has been prepared in order to pave the way for a response (the Final Proposal) to the IANA Stewardship Coordination Group (ICG) request for proposals.

The CWG-Stewardship, formed only six months ago, is composed of 19 members appointed by the ICANN Supporting Organizations and Advisory Committees and an ever-growing list of individual participants.[2] The group began its work in October 2014, and has held 42 plenary meetings, and many more subgroup meetings, to date.

Public comment following the posting of the CWG-Stewardship's 1st draft proposal in December clearly indicated that the group needed to further develop the details of its proposal and provide the community with a revised proposal. The CWG-Stewardship heeded the ICANN community's request and now presents its 2nd draft to the community for a 28-day Public Comment period.

> **Clarification Note**: In the following few pages, the Chairs took it upon themselves to summarize the content of the 2nd draft, explain its development, and address areas for further work. This foreword is a summary only and does not purport to present content in the format requested by the ICG. The draft proposal is the document on which we seek feedback, since it is this document that the CWG-Stewardship will deliver to the ICG.

DEVELOPMENT OF THE 2nd DRAFT PROPOSAL

The following provides context for the development of the 2nd draft proposal.

The CWG-Stewardship published its 1st draft proposal for Public Comment on 1 December 2014. At the conclusion of the Public Comment period, the CWG-

---

[1] In March 2014, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship role of the IANA Functions and related Root Zone Management. ICANN was called upon to facilitate this process, and in June 2014, after a series of community consultations, ICANN announced the creation of the IANA Stewardship Transition Coordination Group (ICG), responsible for preparing a transition proposal reflecting the differing needs of the various affected parties of the IANA Functions. The ICG announced its Request for Proposals in September 2014, available here: https://www.icann.org/news/announcement-3-2014-09-03-en.

[2] When the CWG-Stewardship held its first meeting, there were 19 SO/AC members and 57 individual participants. Today there are 131 individual participants. A full list of members and participants is available here: https://community.icann.org/x/1QrxAg.

Stewardship reviewed and analyzed the feedback received. A number of the comments received expressed concern over what was viewed as an overly complex structure that lacked details and assurances on accountability.

In response, the CWG-Stewardship, with the support of the IANA Stewardship Transition Coordination Group (ICG),[3] extended its original timeline and began to study several alternative structural models not fully considered in the first draft proposal. By the end of February, the CWG-Stewardship had identified seven post-transition structural models,[4] which were sent to independent legal counsel for analysis.[5]

Seeing the need to focus on the operational aspects of the proposal, and limiting further discussion on structural models until independent legal counsel input was available, the CWG-Stewardship shifted into a revised working methodology with small, expertise-based subgroups, known as Design Teams (DTs). The output of these DTs has been integrated into the 2nd draft proposal. Fifteen DTs were commissioned and completed their work prior to the release of the 2nd draft.[6] Many of the DTs received expert input and consultation from individuals external to the CWG-Stewardship, including from Top Level Domain managers, NTIA staff, ICANN's IANA department staff, CTO and CFO, and from the law firm Sidley Austin LLP.

With notable progress on the operational aspects of the 2nd draft, the CWG-Stewardship returned to post-transition structural considerations. During a face-to-face meeting of the CWG participants in Istanbul in late March, the group managed to narrow the seven structural models to two variants of an internal to ICANN model. Then, last week, with further discussion and legal input, the group agreed to focus on a structure that perpetuates and strengthens the separation between the policy development (for policies then implemented through the IANA Functions) and the operational aspects performed by the IANA Functions Operator, while maintaining continuity of the operator, and subject to the substantial accountability and governance mechanisms available within ICANN.

CONTENTS OF THE 2ND DRAFT PROPOSAL

To meet community expectations for the stewardship of the naming related IANA Functions, the CWG-Stewardship, working on the premise that there is current

---

[3] The ICG had initially requested responses to its RFP by 15 January 2015.

[4] The 7 models in consideration were: 2 fully external (Contract Co. and External Trust); 2 fully internal (ICANN with enhanced accountability and governance and Internal Trust); and 3 integrated model variants (Free Standing; Unincorporated Association; Affiliate). For further detail on the discussion around the models, please see meetings #31 and #32 which took place in Istanbul: https://community.icann.org/x/1QonAw.

[5] The CWG-Stewardship began its search for independent, non-ICANN, legal counsel on 15 January and, after conducting an extensive search, chose to retain Sidley Austin LLP on 6 March 2015. More information about the engagement is available here: https://community.icann.org/x/8g8nAw.

[6] For a detailed list of each of the DTs and their scope of work, please see here: https://community.icann.org/x/qgwnAw.

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 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 IANA Functions Operator;

- 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 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 2nd draft proposal attempts to meet all the above requirements by:

- Creating a Post-Transition IANA (PTI) that is a separate legal entity in the form of an affiliate that would be a "wholly owned subsidiary" of ICANN. For the IANA naming services, the creation of PTI ensures both functional and legal separation within the ICANN organization: a contract would be entered between PTI and ICANN that would give PTI the rights and obligations as the IANA Functions Operator. The IANA Functions would continue to reside within ICANN, subject to accountability mechanisms already in existence and those being developed by the CCWG-Accountability.

- Establishing a Customer Standing Committee (CSC) that is responsible for monitoring IANA Functions Operator performance according to contractual requirements and service level expectations, resolving issues directly with the IANA Functions Operator or escalating them if they cannot be resolved.[7] The CSC can also trigger a special review of PTI if needed.

---

[7] 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.

- Establishing a series of issue resolution mechanisms to ensure that problems are resolved effectively. This escalation path includes modifications to current IANA resolution processes, as well as a new phase for problem management, which includes responding to persistent performance issues or systemic problems. Along the escalation path, there is a key dependency on the CCWG-Accountability output, since the escalation path assumes some ICANN accountability mechanisms.

- Ensuring ICANN accepts input from the 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 multi-stakeholder IANA Function Review to conduct periodic and special reviews of PTI.[8] The results of the IANA Function Review are not prescribed or restricted and could include recommendations to the ICANN Board to not renew the IANA Functions Contract with PTI.

DEPENDENCIES ON THE CCWG-ACCOUNTABILITY

The CWG-Stewardship's proposal has dependencies on and is expressly conditioned upon the CCWG-Accountability process. Specifically, the proposal requires ICANN accountability in the following respects:

- Ability for the community to have more rights regarding the development and consideration of the ICANN budget;

- Empowering the multistakeholder community to have certain rights with respect to the ICANN Board, including the ICANN Board's oversight of the IANA operations, specifically, the ability to appoint and remove members of the ICANN Board, and to recall the entire Board;

- The IANA Function Review, created to conduct periodic and special reviews of the IANA Functions, should be incorporated into the ICANN bylaws;

- The CSC, created to monitor the performance of the IANA Functions and escalate non-remediated issues to the ccNSO and GNSO, should be incorporated into the ICANN bylaws.[9]

---

[8] The IANA Function Review would be convened periodically (first review two years after the transition is complete, and thereafter every five years at most). It could also be convened for a special review under certain circumstances. The Review could be provided for under the ICANN governance documents and could also be provided for in the ICANN-PTI IANA Functions Contract.
[9] If the ccNSO and/or GNSO are not currently empowered to address matters escalated by the CSC, this should also be contemplated by the ICANN bylaws.

- Accountability processes that the CCWG-Accountability is enhancing, such as the Independent Review Panel, should be made applicable to IANA Functions and accessible by TLD managers, if they wish to take advantage of these mechanisms.

- All of the foregoing mechanisms are to be provided for in the ICANN bylaws as "fundamental bylaws" requiring community ascent in order for amendment.

FURTHER WORK

The CWG-Stewardship has made significant progress in just six months, and will continue to work tirelessly until the anticipated delivery of its final proposal to the ICG in June 2015. Between now and then, there are a few milestones still to be achieved including a thorough analysis of this 2nd Public Comment period, finalization of the proposal within the CWG-Stewardship, and submission of the proposal to the chartering SO/ACs for their approval.

During the Public Comment period, the CWG-Stewardship will continue to assess the implications of the proposed post-transition structure (section IV) and the fulfillment of NTIA requirements (section V). These sections depended largely on the completion of Section III and therefore are in outline form only at this time.

Additionally, the CWG-Stewardship will continue to coordinate with the CCWG-Accountability to ensure that the dependencies on which the CWG-Stewardship proposal is contingent are adequately developed.