

Public Comment Review Tool – CWG-Stewardship 2nd Draft Proposal – Version 7 May 2015

DISCLAIMER: Submissions have been broken out into the relevant subject headings to facilitate review and discussion by the CWG. Note that in certain cases comments may have been summarized and/or references made to other comments from the same author to avoid duplication. You are encouraged to review the full submissions that can be found here: <http://forum.icann.org/lists/comments-cwg-stewardship-draft-proposal-22apr15/> and report any omissions or errors that may have unintentionally occurred.

#	Who / Affiliation	General Direction (supportive of the mechanism or not) / Suggested Changes	Concerns/ considerations/ rationale/ new issues	CWG Response (which may include new information as a result of the continued discussions) / Recommended action
General Comments				
1.	Richard Hill	Proposal is incomplete / None (or see PTI section)	Since details concerning the separation between ICANN and PTI are not provided in the draft proposal, it is not possible to say at this stage whether or not the proposal provides for sufficient separation of the IANA function from ICANN. That is, the proposal is incomplete. (Note, see also comments in PTI section)	
2.				
Section I – The Community’s Use of IANA				
3.				
4.				
Section II – Existing Pre-Transition Arrangements				
5.				
6.				
Section III – Proposed Post-Transition Oversight and Accountability - PTI				
7.	Richard Hill	Lack of details / further information on nature of separation and rationale	As noted above, I don't understand how PTI would be really separate from ICANN if it is fully controlled by ICANN, which is what the description above appears to imply. Nor do I understand how, in such a setup, an	

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			agreement between ICANN and PTI would be construed as a real contract between two independent entities, rather than an internal arrangement between ICANN and one of its subsidiaries.	
8.	Richard Hill	Lack of details / clarity on PTI incorporation	I don't see any references to where PTI would be legally resident/incorporated, nor to the jurisdiction that would apply to PTI and to agreements between PTI and ICANN. As I've stated before, this is a key issue. If PTI is resident in the USA, it would be subject to US law, which has significant implications, in particular if, as is proposed, PTI has full authority over changes to the root zone file. For example, the US Congress could pass a law that would force PTI to delete some particular ccTLD from the root zone.	
9.				
10.				
Section III – Proposed Post-Transition Oversight and Accountability – PTI Board				
11.	Richard Hill	Lack of details / clarity on PTI Board and relationship with ICANN	If ICANN designates the PTI Board, then how is PTI independent from ICANN? For sure it is legally separate, but, as noted above, that does not necessarily result in "real" separation. Again, consider that FOO SA (a Swiss corporation that is wholly owned by FOO, Inc., a US corporation), is not really separate from FOO, Inc. Especially if (as is commonly the case in the real world) the board of FOO SA is named by the board of FOO, Inc.	
Section III – Proposed Post-Transition Oversight and Accountability – CSC				
12.				

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Section III – Proposed Post-Transition Oversight and Accountability – Root Zone Maintainer Function				
13.	Richard Hill	Concerned about concentration of power	PTI would decide on all changes to the root zone file. If PTI is a wholly-owned subsidiary of ICANN (which is what is proposed), then that means that, in effect, ICANN is in control of the root zone file. In my view, this creates a dangerous concentration of power. In particular if ICANN and PTI are legally resident in the USA, because they would be subject to US private law, meaning to US Congress and US court interpretations of US laws.	
Section IV – Transition Implications				
14.				
15.				
Section V – NTIA Requirements				
16.				
17.				
Section VI – Community Process				
18.				
19.				
Annex C – Principles and Criteria				
20.	Richard Hill	Unknown / Add principles on jurisdiction and intellectual property	I don't see anything in that Annex regarding jurisdiction and intellectual property rights. As indicated above, I think that these are very important issues that should be reflected in Annex C. For example, it should be explicitly stated that the intellectual property rights regarding the IANA function should be transferred to an independent entity, as proposed by the numbers community.	

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			And it should be explicitly stated that the IFO should be granted immunity of jurisdiction (but subject to suitable binding arbitration) or, failing that, be incorporated/registered/resident in an a neutral jurisdiction, such as Switzerland.	
21.				
22.				
Annex E – IANA Contract provisions to be carried over post-transition				
23.	Richard Hill	Unknown / Add provisions on intellectual property and data rights	The existing provisions on intellectual property rights and data rights should be added.	
24.				
Annex F – IANA Function Reviews				
25.	Richard Hill	Not supportive / IFR should include stakeholders outside of the ICANN community	<p>The proposed review team consists entirely of stakeholders from ICANN. This is not representative of the global multistakeholder community, which is broader than ICANN.</p> <p>The NTIA's intent is "to transition key Internet domain name functions to the global multistakeholder community". The current proposal is not consistent with that intent, because it proposes to transition a key element, the review process, to the ICANN community, which is much narrower than the global multistakeholder community.</p>	
26.				

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Other Comments				
27.	Richard Hill	Unknown / provide further information concerning IANA trademark	I don't see any references to who would own the IANA trademark (currently owned by ICANN) and the IANA.ORG domain name. Nor any references to who (if anybody) owns the rights to the IANA databases.	