Comments on the CWG second draft proposal and further process

Introduction

The NTIA initiative to transition the IANA functions to the global multistakeholder community is more than welcome. Indeed, those who participated in the initial 1998 transition to ICANN anticipated that steps would have been taken in this direction before now. It is essential that the current exercise succeed reasonably soon, without taking any risks with the stability of the IANA functions and the DNS in particular.

The CWG has undertaken a vast amount of work over a period of several months, to the credit of the co-Chairs, the Members and Participants and their supporting legal counsel and ICANN staff.

The following comments and suggestions are of an interim nature because the CWG proposal is not yet complete. I shall also avoid repeating comments already made by other respondents to the current Public Consultation. Furthermore, CWG is only one fraction of an overall process, including the CWG, the CCWG and the ICG. Since most of my concerns relate to the interfaces between these distinct processes, I find it impossible to comment definitively on the draft CWG proposals in isolation.

Needless to say that these comments are made in my personal capacity and do not atall engage any entities with which I am currently associated or have been associated with in the past.

1.   The CWG proposal is not yet complete: The existing lacunae and uncertainties, that have already been pointed out by other contributors, really need to be filled in and clarified as soon as possible. Indeed several subgroups (Design Teams – DTs) are still at work. CWG is behind schedule in relation to the original targets and in relation to the parallel proposals from NGO (numbering) and IETF (protocols). Albeit the names community (CWG)'s task was more demanding, however the need for further simplification remains, both in terms of the future structures and organisation that are envisaged and in terms of the manner in which multistakeholder participants and end users of the IANA function will actually create the necessary oversight and checks and balances in the operations of IANA.

2.   The possibility of 'separation':   This option has animated the CWG debates to a large degree and is now reflected in the proposal that the IANA function should be re-assigned to the Post-Transition IANA (PTI), initially within the ICANN organisation, but subsequently possibly subject to re-assignment to an external entity following exhausting existing recourse, a call for proposals (RFP), and negotiated re-assignment of all or some of the IANA functions.

It is argued that this ultimate sanction in the event of failure is an essential component in the accountability of the IANA function (and ICANN) to the Internet community. I must say that I find this scenario implausible. Should matters in IANA ever deteriorate to the extent described (and feared), then long before the worst would be allowed to happen, other authorities would have to have intervened. The ICANN Board, the GAC - and even USG - would not stand by and watch while difficulties escalated. Remedial action would have to be taken long before the whole process of separation, as described, could take effect. Therefore I rather doubt the necessity or wisdom of making structural changes now, to deal with a doomsday scenario that cannot be allowed to materialise, ever.

3.   The 'IANA functions' as a whole: IANA provides technical services to several parts of the Internet. That has been repeatedly described and explained in the preparatory documents to the transition. However, to date, each user community has presented its own view of how the transition would work for them, including eventual separation and migration to a different operator. What happens if there is not agreement among the several groups within IANA? Even within CWG, there is scope for disagreement between the gTLD and ccTLD communities.

At present, I have seen statements of mutual respect and best endeavours to resolve any possible concerns in this area. However, it does appear that it is now down to the ICG to rationalise the distinct proposals that they have received from NRO/RIRs, IETF and the CWG.

Why is this important now? I think that in future, governments, the ICT industries broadly defined and the DNS Registries would, to say the least, become uncomfortable with the prospect of various bits of the IANA floating in different parts of the Internet community. That option should be eliminated now. To borrow an expression "Who do I call if I need to talk to IANA?"

Furthermore, while I accept that the rigorous distinction between the formulation of policy and the execution of the IANA functions must be maintained, I believe that this would be particularly threatened in the event of separation. Depending on the motives and the responsibilities for separation, one may legitimately ask under what circumstances a separated IANA would have to, or be willing to, continue to acknowledge ICANN's authority over policy.

4.   **Accountability and Oversight:**

Accountability: The overlap on questions of accountability between the CWG and the CCWG has proved to be greater than many participants anticipated. Although these issues may have been largely resolved by the most recent communication from the CCWG Chairs to this consultation, it has to be said that the overlap has contributed to duplication and delays in the process.

There are several layers and mechanisms for accountability in the ICANN nexus, not all of which have functioned appropriately in recent years. However, the accumulated results of the Affirmations of Commitments (AoCs) and the current CCWG work must deliver significant improvements.

One principal objective of improved accountability has to be to create a better balance of interests among the multistakeholder community. Although the role of public authorities has been somewhat enhanced in recent years, the weakest link remains the representation of user interests and more generally of civil society. As long as the DNS was being run voluntarily, through not-for-profits and with some price regulation for .com, this was perhaps a tolerable situation, but that is no longer the case. The gTLD space is being fully commercialised, in some cases aggressively so; the need for a countervailing presence of user interests is rapidly rising in consequence.

One may ask what has this got to do with IANA, which operates a narrowly defined technical function? Indeed, but within the present structure IANA depends largely on ICANN's accountability. So much the more, in the - hopefully unlikely – event of separation, the IANA functions risk detachment from the policy making responsibilities incorporated within ICANN. Thus, whether in ICANN or in IANA/PTI, meanwhile user interests will have to be established and maintained more strongly than they are at present.

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Oversight: The economic and social importance of the Internet today is such that no public authority, large organisation other responsible entity can afford to ignore how it works. The demand for relevant oversight will increase, not decrease following the formal withdrawal of the NTIA from the IANA functions. At the very least it has become essential that stable and effective oversight and monitoring functions exist. But in a multi-national and multistakeholder global environment, efficient and credible oversight to build confidence is quite expensive. The ICANN+IANA system ("Warts and all", as was once said) is an important element in building that confidence, world wide.

I would submit in conclusion that it behoves the whole ICG/CWG/CCWG nexus to think in terms, not of their respective structures and interests, but in terms of how the process and the outcome as a whole will appear globally. Will the results contribute to confidence in the Internet, world-wide?

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