

## CWG-Stewardship 2<sup>nd</sup> Draft Proposal Comments from Nominet UK

### **Introduction**

Nominet is the registry for .uk Internet domain names. It is also the registry for the .wales and .cymru gTLDs and an ICANN accredited registrar. Nominet is an active participant in ICANN.

Nominet welcomes the opportunity to contribute to the CWG-Stewardship consultation on its second draft proposal. Nominet has taken an active role in the work of the CWG and submitted comments in response to the first draft proposal.

Comments are submitted on behalf of Nominet by Eleanor Bradley, Chief Operations Officer.

### **Summary and High-Level Observations**

We believe that the current proposal shows significant progress from the first draft and addresses many of our concerns with the initial work. We recognise that considerably more work is needed in refining (and simplifying) the proposal and in clarifying the wording.

#### Customer Standing Committee

We welcome the clear references in the document to the importance of basing post-transition arrangements around the requirements of the customers. This acknowledges that the IANA functions operation is a critical service for registries and its effective operation is of direct concern to TLDs.

As such we welcome the recommendations for a Customer Standing Committee and the role of that committee in first-level interaction with the IANA functions operator on issues related to the provision of the service. In particular, we welcome its primary role in addressing problems before they become serious. This solution-based approach to underpin the stewardship of the IANA functions is, we believe, vital.

Through the draft proposal, given the technical and operational nature of this committee's role, we believe that the direct customers of the service should have a major say in any key decision.

#### Service Level Expectations

We are concerned at the lack of progress in establishing the current service level commitments for the provision of the service. This is a key element for the oversight of the new service. The starting point for the SLEs should be that included in the current contract, subject to any necessary updating because of the withdrawal of the NTIA.

While it might be "nice" to increase commitments to recognise the current performance of the IANA functions operator, we believe that this should be resisted *unless* there are clear operational reasons for change. On the other hand, we think there needs to be a clear statement on processes to amend and update the SLEs post transition and in response to customer requirements.

We would note that SLEs need to be appropriate to the needs of the customers: they should be based on operational requirements *only*. We would also note that not all service levels will have equal weight in assessing the performance of the operator. Service levels can have a direct impact on the cost of providing the service and this should be considered in setting commitments.

#### Multi-stakeholder Involvement

Other elements of the proposal have a direct role for the wider multi-stakeholder community. This is important: we believe that multi-stakeholder oversight is key to guaranteeing wider accountability and the good stewardship of the function. However, this “oversight” by the community should be supportive of direct customer needs: we would not expect it have a view contrary to the good performance of the system.

Hence, we strongly believe that, for changes that fundamentally impact the operation of the service to customers, decisions need to be endorsed by the operational community. We would hope that conflict between user needs and the multi-stakeholder community’s vision would not happen and that divergence of views would be addressed early in any process, recognising that decisions should be closely focussed on the effective operation of the IANA functions service.

### Improved definition

A number of details still need to be defined: a number of these are crucial to the acceptability of the proposal. In particular:

1. Clarity of roles: We are concerned that the proposal in this draft is again based on many different organisational and functional elements. In particular, the complexity of the proposed model could be a barrier to understanding what issues are dealt with where. (We raised this issue for the first consultation draft.) Our support for this proposal is on the basis that the roles and responsibilities of each organisation and functional element are clearly defined and do not overlap with other parts of the structure.
2. Use existing structures wherever possible: We should look to embedding as many of the functions as we can within existing structures. We believe that this will help engagement in stewardship mechanisms.
3. Appropriate accountability: Accountability for actions needs to be clearly identified. Issues should be addressed at the point of failure. (For example, decisions made by ICANN on delegation and redelegation of gTLDs – which are then given as instructions to the IANA functions operator for implementation – are the responsibility of ICANN and not of the IANA functions operator. Such issues should be addressed through ICANN enhanced accountability processes.) An entity should *never* be held accountable for a decision over which it has no power.
4. Clear accountability: The final proposal needs to clarify where accountability lies. It should avoid multiple levels of accountability as this can be confusing and frustrating and a barrier to effective engagement.
5. Accountability and structure of the PTI Board: We note that the nature of the Board of the Post Transition IANA (PTI) has still not been resolved. We would be seriously concerned if there were overlaps of accountability of the PTI Board with other elements of the structure. Its authority should be clearly different from that of the ICANN Board.
  - a. We believe that the PTI Board should be responsible for operational decisions of the PTI, resource management and forward planning, as well as interaction with the ICANN Board. It should be answerable to the parent company, ICANN.
  - b. As such the PTI Board should be a small management board with a limited and targeted role.
  - c. The ICANN Board should be held responsible for the operation of its subsidiary (affiliate).
  - d. We believe that it would be difficult to separate authority between a multi-stakeholder board for the PTI and the multi-stakeholder ICANN Board, with the risk of dispute over their relative roles. Multi-stakeholder engagement and accountability should be at the ICANN Board level.

- e. We would want to see very clear definitions of the roles and responsibilities of the two boards in their accountability for the performance of the post-IANA transition model,
6. Wider engagement of the PTI, the CSC and the IFRT: There should be a clear obligation on the PTI Board and the IANA team to continue the regular briefings and outreach to the wider community, preferably (but not necessarily only) at ICANN meetings, where most of the relevant stakeholders are already engaged. Other parts of the oversight structure (the Customer Standing Committee, the IANA Functions Review Team when appropriate) should also engage in these outreach processes.
7. Wider engagement on decision making (escalation, reviews): All fundamental decisions related to the IANA functions operation and oversight should be verified through an open consultation. This is fundamental to multi-stakeholder engagement. Too much of the current proposal fails to make explicit reference to this outreach as a part of decision-making processes.

### **Detailed Comments on Elements of the Proposal**

#### III.A.i.

- Footnote 3. We do not believe that the CSC should be a separate legal entity, but should be based within existing structures.
- Final bullet (p. 21: “Establishing a multistakeholder IANA Function Review”): we believe that the IFR should be established using existing models within ICANN, whether based on the Affirmation of Commitments reviews or the cross-community working group model). Fundamental to both of these mechanisms is the outreach to the wider community – we would welcome an explicit statement of this principle in any review process.

#### III.A.i.d

Given the role of the IFR to maintain operational excellence for IANA services, we believe that the IFRT should bring in a strong representation from operational customers. The review should be focussed on performance and development, looking at delivery against agreed service levels and operational requirements and making recommendations for improvements in the contract.

#### III.A.ii.a.

We welcome the approach adopted for the Customer Standing Committee. We see this as the key part of the oversight mechanism, based on working with the IANA functions operator to address issues of concern in a cooperative way.

The CSC should be predominantly an expert committee focussed on resolving any problems. Membership should be appropriate for this role. The effectiveness of the committee will depend on membership with good technical and operational expertise.

However, we also recognise that there will be a significant workload for members of the committee. Given the heavy demands in ICANN on volunteer efforts, serious thought needs to be given to ensuring good level engagement in this key accountability structure.

#### III.A.ii.b.

We are concerned that there is little detail about the service level expectations. Bearing in mind that these will be the basis for measuring the effectiveness of the PTI, these metrics should be clearly specified as soon as possible.

The service levels in the current contract should be the basis for the post transition environment unless it is clear that they are no longer appropriate. The stewardship transition should not be an opportunity unilaterally to

establish new levels without clear justification. SLEs should not be set higher simply to reflect current levels of performance, but based on operational need.

However, it is important to establish a process to keep the SLEs under review post transition and to agree and implement new commitments as and when needed.

#### III.A.ii.d.

We support the plan for a separation mechanism in the case of refusal by, or inability of, the PTI or IANA Boards to correct serious and persistent failure of the IANA functions operator.

It is a measure of last resort. We welcome the approach of the proposal to base stewardship on resolving issues and on remedial action: “a Separation Review ... would only occur if other escalation mechanisms and methods have been exhausted.”

We would, however, suggest that this step should only be started following an open consultation and with the support of the ccNSO and the RySG. While the review team should be broadly multi-stakeholder in nature, it should include strong representation from registries.

Having decided to go ahead with a rebid of the IANA functions operator role, the development of an RfP needs to be carried out in an open consultative manner and the final approval should be required from the ccNSO and the RySG.

#### III.A.iii.a.1.

We fully agree that, post-transition, no authorization for TLD change requests is needed. We would suggest, however, that the IANA functions operator check the accuracy of all proposed changes with the appropriate registry operator. Any checks, balances and verifications should be done with the final customer.

The study proposed under c. should be carried out between the IANA functions operator and direct customers.

#### III.A.iii.a.2.

“The entity responsible for such approvals” is not identified.

#### III.A.iv.b.

We welcome greater clarity on budgets: this is an important part of accountability. Decisions by the PTI, or recommendations by the CSC or the multi-stakeholder community (such as through the IFR) can have significant implications on the cost of the service and these costs are born by the registries (and, eventually, by registrants). It is important that value for money is taken into account as a factor in making any recommendation for change.

### Annex F

While we welcome the idea of a multi-stakeholder review team, we would note that there should be a strong representation from the customers of the service.

The model proposed in Annex F is, we believe, poorly balanced between customer and non-customer interests and expertise, and between the ccNSO and the GNSO. A selection based on the cross-community working group model would be an appropriate way to select membership.

If the model in Annex F is used, we would suggest increasing registry representation to four members each for both ccTLDs and gTLDs to ensure a strong input based on operational requirements. The membership could then be: four ccTLDs (of which at least one non-ccNSO) and 4 RySG with the remainder as defined in Annex F

An alternative, if it is important to keep membership to 12, would be to increase ccTLD registry participation to three (encouraging diversity of registries) and reducing GNSO membership to four, balancing more fairly the ccNSO and GNSO input into the process.

#### Annex L

We do not understand in what way the role of a separation review differs from that of the special review described in Annex F: that process would seem adequate and appropriate for informing decisions, subject to open consultations and clear decision thresholds.

We see no good reason why, in the case of continued poor performance of the PTI (which, when other escalation mechanisms and methods have been exhausted, is the only reason for separation), the PTI would transfer out of ICANN (and hence out of the general oversight structure of ICANN. Should separation of the IANA functions operator role from ICANN be necessary, this should be through an RfP-led process and the ICANN PTI subsidiary/affiliate should be wound up.

On the other hand, a process for the development of an RfP to replace a failing operator is needed.