

CWG-Stewardship 2nd Draft Proposal Input Template

1. Please provide your name:

Sarah Falvey and Aparna Sridhar

2. Please provide your affiliation:

Google Inc.

3. Are you providing input on behalf of another entity (e.g. organization, company, government)?

No

4. If you answered 'yes' to the previous question, please list the entity on whose behalf you are submitting these questions:

N/A

General Comments

5. If you have any general comments you would like to provide on the CWG-Stewardship Proposal, please provide these here.

As a global Internet company, Google depends on ICANN to perform both the Internet Assigned Number Authority (IANA) functions and its broader policy-making duties related to the global Internet in a way that preserves the underlying security, stability, interoperability, resiliency, and openness of the Internet.¹

Google also supports the National Telecommunications and Information Administration's (NTIA) proposal to transition its stewardship role over the IANA functions to the global multistakeholder community, provided that the conditions enumerated by NTIA in its March 14, 2014, announcement regarding the transition are met. These conditions include: (1) ensuring that the transition supports and enhances the multistakeholder model; (2) ensuring that the transition maintains the security, stability, and resiliency of the DNS; (3) ensuring that the transition meets the expectations of affected parties; (4) ensuring that the transition maintains the openness of the Internet; and (5) ensuring that the IANA functions are not transferred to a governmental or intergovernmental authority.

With these goals in mind, we appreciate the work of the Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related

¹ The IANA functions include the administration of the IP address identifiers and the Internet protocol parameters and administration of the Domain Name System (DNS).

Functions (CWG-Stewardship) in developing its second draft proposal, and we recognize that it has responded to community feedback. We supports the CWG-Stewardship's specific efforts to simplify the proposal, including:

- *Reconsidering its original proposal to create a new, stand-alone contracting entity called Contract Co.;*
- *Focusing the Customer Standing Committee on operational oversight by limiting both its membership and its remit; and*
- *Reconsidering its proposal to establish a standing multistakeholder review team.*

We also appreciate that this draft proposal is more detailed in many respects than the first draft, giving stakeholders greater certainty that the functions will continue to be executed effectively post-transition. Below, we make a number of specific suggestions to ensure that further elaboration and refinement of the proposal continues to fulfill the goal of developing a simple post-transition framework that strengthens stability, accountability, and transparency.

- *The CWG-Stewardship should define a post-transition IANA board with a limited remit. Members of the post-transition IANA board should be drawn from the broader ICANN board.*
- *The IANA functions review group should be defined more clearly. Its processes should be open and transparent, its work should be multistakeholder, and its remit should be limited.*
- *The Customer Standing Committee should focus narrowly on operational issues. To guard against mission creep, we recommend that the group remain limited to a small number of members. We also strongly recommend that membership should be limited to the direct customers of the IANA functions.*
- *The CWG-Stewardship should clarify the escalation processes available to direct and indirect customers of the IANA functions.*
- *The CWG-Stewardship should work with the Cross-Community Working Group on Enhancing ICANN'S Accountability (the Accountability Working Group) to ensure proposals are harmonized.*
- *Before implementation, the CWG-Stewardship should share with the community the projected financial impact of any changes it recommends. It should also elaborate on how any increased expenses will be financed.*

Section I - The Community's Use of IANA

6. Do you have any specific comments or input you would like to provide with regards to section I - The Community's Use of the IANA? Section I lists the specific, distinct IANA services or activities the naming community relies on.

The IANA functions are currently managed and maintained effectively. In thinking through the evolution of the stewardship role over the IANA functions, we emphasize three key points: (1) that ICANN and its partners perform the IANA functions well; (2) that future stewardship arrangements should prioritize simplicity; and (3) that broader

accountability improvements are needed but should be addressed primarily through the cross-community working group on accountability.

We have advocated for a simple and straightforward framework for post-transition arrangements for several reasons: (1) A simple framework is more likely to ensure stability of the DNS than a complex one. (2) A simple framework allows clear lines of accountability and enables greater transparency. (3) A simple stewardship framework will allow greater public participation in ICANN processes related to IANA.

Section II - Existing Pre-Transition Arrangements

7. Do you have any specific comments or input you would like to provide with regards to section II - Existing Pre-Transition Arrangements? This section describes how existing IANA-related arrangements work, prior to the transition.

Section III - Proposed Post-Transition Oversight and Accountability

8. Do you have any specific comments or input you would like to provide with regards to section III.A - Elements of this Proposal? This section describes in short the main elements of the proposed post-transition oversight and accountability.

Google agrees with the proposal to have the IANA Functions Review Team review the performance of the IANA Functions Operator and identify areas for improvement every five years.² In proposing the creation of this Review Team, the CWG-Stewardship has struck a good balance between the need to evaluate the performance of the IANA Functions Operator with the recognition that it would be inappropriate to create a permanent, standing committee to do so.

In order to ensure that the Functions Review Team remains focused on its core mandate, we urge the following:

- *The Functions Review team should limit its mission to evaluating the performance of the IANA Function Operator and related IANA oversight bodies, and recommending changes where appropriate.*
- *The proposal should require multistakeholder representatives from a cross-section of the ICANN community, with a focus on technical expertise and experience with IANA.*
- *The Functions Review team must act transparently: Its meetings, procedures, and recommendations must be public.*
- *The CWG-Stewardship should include in its proposal a mechanism to ensure that ICANN acts on the IANA Function Review Team's recommendations and periodic*

² CWG Stewardship, Second Draft Proposal at 49.

evaluations of its performance. It is critical that its recommendations are acted upon to promote and preserve the community's trust in the performance and accountability of the IANA Functions Operator. If necessary, the CWG-Stewardship should work with the Accountability Working Group to implement its recommendation.

9. Do you have any specific comments or input you would like to provide with regards to section III.A.i - Proposed Post-Transition Structure. This section provides an overview of the different elements of the proposed post-transition structure.

Please see our more detailed comments below.

10. Do you have any specific comments or input you would like to provide with regards to section III.A.i.a. - Post-Transition IANA (PTI). This section describes the proposed post-transition IANA.

In its draft, the CWG-Stewardship proposes to establish a separate subsidiary within ICANN that will be responsible for performing the IANA functions.³ Google agrees that this approach can strengthen accountability and transparency by ensuring that policymaking and implementation are separated, by allowing the community to better understand how the functions are performed at a more granular level, and by enabling increased transparency regarding budgeting for the performance of the functions, as compared to ICANN's broader policymaking activities.

However, Google supports such an approach only to the extent that the transition proposal avoids "replicat[ing] the complexity of the multistakeholder ICANN Board at the PTI level," and "maintain[s] primary accountability at the ICANN level."⁴ To fulfill this goal, Google recommends that post-transition IANA Board members be comprised of the ICANN board itself or a subset of ICANN board members.

By contrast, establishing a distributed governance structure with an independently appointed board for post-transition IANA would raise significant concerns. Creating two boards would make it difficult to determine who bears ultimate responsibility for ensuring that the IANA functions are performed effectively. Moreover, without any further detail regarding the composition of an independent post-transition IANA board, the multistakeholder community has no guarantee that such a body would be transparently run or responsive to the community's needs, requests, and complaints. While it may be tempting to do so, creating a complex, multistakeholder board at the IANA level will make it more difficult for the public to follow ICANN processes and more difficult to hold IANA accountable for any performance failures.

³ CWG Stewardship, Second Draft Proposal at 20, 21.

⁴ CWG Stewardship, Second Draft Proposal at 22.

11. Do you have any specific comments or input you would like to provide with regards to section III.A.i.b. - Post-Transition IANA Board. This section describes the proposed Board for the post-transition IANA.

The post-transition IANA Board should have a limited remit, and its purview should extend solely to implementation of the IANA functions. Policymaking for the IANA functions should continue to be conducted at the ICANN level.⁵ For example, the post transition-IANA Board should not become a forum in which parties seek to re-litigate policy decisions with a small subset of ICANN Board members. Allowing such relitigation of issues, as sometimes happens today in the ICANN Board's New gTLD Program Committee, creates uncertainty regarding the finality of decisions and often delays implementation of critical decisions. To further encourage a focus on technical and implementation issues, ICANN should prioritize the appointment of members with a strong technical understanding of the IANA functions. Limiting the post-transition IANA Board's remit and making technical expertise a key criterion for membership will allow the group to focus solely on operational excellence in performing the functions and will ensure that the policymaking and execution functions remain separated within ICANN.

13. Do you have any specific comments or input you would like to provide with regards to section III.A.i.c. - IANA Statement of Work. This section describes the proposed IANA Statement of Work, including proposed carryover provisions.

14. Do you have any specific comments or input you would like to provide with regards to section III.A.i.d. - IANA Function Review. This section describes the proposed periodic as well as special review of the IANA Function.

As noted above, Google agrees with the proposal to have the IANA Functions Review Team review the performance of the IANA Functions Operator and identify areas for improvement every five years.⁶ In proposing the creation of this Review Team, the CWG-Stewardship has struck a good balance between the need to evaluate the performance of the IANA Functions Operator with the recognition that it would be inappropriate to create a permanent, standing committee to do so.

In order to ensure that the Functions Review Team remains focused on its core mandate, we urge the following:

- The Functions Review team should limit its mission to evaluating the performance of the IANA Function Operator and related IANA oversight bodies, and recommending changes where appropriate.*
- The proposal should require multistakeholder representatives from a cross-section of the ICANN community, with a focus on technical expertise and experience with IANA.*

⁵ The development of operational procedures related the implementation of the functions should be developed in consultation with the Customer Standing Committee, as set forth more fully below.

⁶ CWG Stewardship, Second Draft Proposal at 49.

- *The Functions Review team must act transparently: Its meetings, procedures, and recommendations must be public.*
- *The CWG-Stewardship should include in its proposal a mechanism to ensure that ICANN acts on the IANA Function Review Team’s recommendations and periodic evaluations of its performance. It is critical that its recommendations are acted upon to promote and preserve the community’s trust in the performance and accountability of the IANA Functions Operator. If necessary, the CWG-Stewardship should work with the Accountability Working Group to implement its recommendation.*

15. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.a. - Customer Standing Committee (CSC). This section describes Customer Standing Committee that is expected to oversee performance of the IANA Functions as they relate to naming services.

We agree that the multistakeholder community must assume NTIA’s stewardship role in monitoring ICANN’s performance to ensure that the IANA functions themselves are being carried out in an accurate and efficient ways. However, we continue to have concerns about creating a new structure to perform these tasks — it will likely increase complexity, bureaucracy, and further obfuscate issues of authority, governance, and dispute resolution. Noting that there is strong support in the community for the creation of a CSC, we offer some suggestions below for ensuring that the CSC provides useful and meaningful oversight over the IANA functions.

Specifically, this committee’s scope should be strictly technical and include only: (1) monitoring the performance of the naming functions for any technical irregularities or issues; (2) ensuring that the IANA functions operator maintains appropriate service levels for services associated with naming; and (3) raising and addressing any persistent performance deficiencies related to naming.

Because the CSC’s remit should be technical and it should have no role in setting or re-evaluating policy, its composition should be limited to the direct customers of the IANA naming functions (gTLD and ccTLD operators) and related experts or liaisons as that group sees fit. Currently, the proposal does not provide clear roles and responsibilities between members of the CSC and liaisons to the CSC, and these roles must be clarified before moving forward.

Finally, the overall membership of the CSC should remain small. It is not necessary for the technical oversight over the IANA functions to be broadly representative in order for the group to accomplish their narrowly stated mission. Also, a smaller group is more likely to be operationally efficient.

16. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.b. - Service Level Expectations. This section describes the proposed service level expectations post-transition.

17. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.c. - Escalation mechanisms. This section describes the different proposed escalation mechanisms as they relate to the naming services.

The CWG-Stewardship's proposal includes a variety of potential escalation mechanisms for both direct and indirect customers of the IANA functions. These include the existing customer service complaint resolution process, a new problem resolution process for persistent performance issues and systemic problems, the existing root zone emergency process, recourse to the ombudsman or to mediation, and invocation of the Independent Review Process being developed by the Accountability Working Group.⁷ While these methods likely meet the needs of both direct and indirect customers of the IANA functions in ensuring that their complaints are addressed, Google suggests that the CWG-Stewardship prepare a comprehensive chart indicating who can seek which types of redress, and whether exhaustion of any particular remedy is required -- either by the complainant, by ICANN, or by the CSC -- before escalating to a subsequent stage of in the dispute resolution process. Without such an understanding, parties with grievances will not know how to navigate these processes and will be unable to take advantage of the dispute resolution mechanisms at their disposal. A chart will also help the Accountability and Stewardship tracks make sure that the various redress mechanisms work well together.

Equally importantly, the CWG-Stewardship must further clarify the procedures for moving the IANA functions to a new operator. This process is termed "separation review" in the draft proposal, and some ideas for implementing a potential separation are set forth in Annex L.⁸ As the group rightfully recognizes, transitioning the IANA functions away from the current operator could itself create significant risks for the stability and security of the DNS. As such, the community should fully understand how such a separation may be invoked before agreeing to establish separation procedures. As currently drafted, Annex L fails to provide any meaningful detail regarding these processes. When providing additional detail, the CWG-Stewardship should specify precisely when separation procedures may be invoked, how they can be invoked, how a stand-alone would be funded, and how the proposed escalation and transition mechanisms ensure the security and stability of the DNS. We recognize that the CWG-Stewardship is discussing this issue and look forward to reviewing and commenting on this proposal when it is more fully developed.

18. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.d. - Separation review. This section describes the separation review that can be triggered by an IANA Function Review if needed

⁷ CWG Stewardship, Second Draft Proposal at 25-26, Annexes I, J, K.

⁸ CWG Stewardship, Second Draft Proposal at Annex L.

As noted above, the CWG-Stewardship's proposal includes a variety of potential escalation mechanisms for both direct and indirect customers of the IANA functions. These include the existing customer service complaint resolution process, a new problem resolution process for persistent performance issues and systemic problems, the existing root zone emergency process, recourse to the ombudsman or to mediation, and invocation of the Independent Review Process being developed by the Accountability Working Group.⁹ While these methods likely meet the needs of both direct and indirect customers of the IANA functions in ensuring that their complaints are addressed, Google suggests that the CWG-Stewardship prepare a comprehensive chart indicating who can seek which types of redress, and whether exhaustion of any particular remedy is required -- either by the complainant, by ICANN, or by the CSC -- before escalating to a subsequent stage of in the dispute resolution process. Without such an understanding, parties with grievances will not know how to navigate these processes and will be unable to take advantage of the dispute resolution mechanisms at their disposal. A chart will also help the Accountability and Stewardship tracks make sure that the various redress mechanisms work well together.

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19. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.e. - Framework for transition to successor IANA Operator. This section describes the proposed framework for a transition to a successor IANA Operator to ensure continuity of operations.

Please see our comments on escalation mechanisms and separation review set forth in our answers to questions 17 and 18.

20. Do you have any specific comments or input you would like to provide with regards to section III.A.iii.a. - Proposed changes to root zone environment and relationship with root zone maintainer. This section describes the

⁹ CWG Stewardship, Second Draft Proposal at 25-26, Annexes I, J, K.

¹⁰ CWG Stewardship, Second Draft Proposal at Annex L.

proposed changes to the root zone environment and the relationship with the Root Zone Maintainer.

21. Do you have any specific comments or input you would like to provide with regards to section III.A.iv.a. - ccTLD Delegation Appeals. This section describes the proposed recommendation in relation to a ccTLD delegation appeals mechanism.
22. Do you have any specific comments or input you would like to provide with regards to section III.A.iv.b. - IANA Budget. This section describes the recommendations in relation to the IANA Budget.

Many of the CWG-Stewardship's proposals may increase the overall cost of performing IANA functions effectively. For example, establishing a subsidiary will require ICANN to incur legal fees associated with incorporating a new entity, and secretariat services are likely to be required for both the CSC and the IANA functions review teams. While these costs may or may not be substantial, the CWG-Stewardship should prepare an assessment of the financial impact of the changes. We understand that the CWG-Stewardship plans to assess the following financial factors after the proposal is finalized for supporting organization/advisory committee approval and again after approval by the IANA Stewardship Transition Coordination Group (ICG):

- *Identification of any existing IANA naming services related cost elements that may not be needed after the IANA Stewardship Transition, if any;*
- *Projection of any new cost elements that may be incurred as a result of the IANA Stewardship Transition and in order to provide the ongoing services after the transition; and*
- *A review of the projected IANA Stewardship Transition costs in the FY16 budget to ensure that there are adequate funds to address significant cost increases if needed to implement the transition plan without unduly impacting other areas of the budget.¹¹*

While we understand that the CWG-Stewardship has not conducted such an analysis to date because the proposal is still being evaluated by the broader community, Google underscores the need for the community to understand the cost considerations associated with the proposal before implementation takes place.

We also appreciate the CWG-Stewardship's recognition of the need to increase budgetary transparency around the IANA functions. Understanding these costs will be necessary to determine whether management is being appropriately funded and to provide projections for further technical projects to improve the operation of the IANA functions. Further, should the IANA functions effectively become their own legal entity within the larger ICANN organizational framework, it makes sense to create a separate budget and budgeting process solely for the operation and management of this

¹¹ CWG Stewardship, Second Draft Proposal at 90.

subsidiary. The stewardship proposal should also specify that the funds currently collected from registries and registrars to support the naming functions must be transitioned to post-transition IANA, as any underfunding of IANA could be profoundly destabilizing for the DNS. Budgetary separation will also provide greater clarity as to the overall operational costs of managing the IANA functions, which up to this point has been lacking.

23. Do you have any specific comments or input you would like to provide with regards to section III.A.iv.c. - Regulatory and legal obligations. This section describes the regulatory and legal obligations post-transition and how these are expected to be met.

24. Do you have any specific comments or input you would like to provide with regards to section III.B. - Implications for the interface between the IANA Functions and existing policy arrangements. This section describes the expected implications for the interface between the IANA Functions and existing policy arrangements as a result of the proposed transition arrangements.

Section IV - Transition Implications

25. Do you have any specific comments or input you would like to provide with regards to section IV. - Transition Implications. This section is expected to describe the CWG-Stewardship views as the implications of the changes it proposed in Section III.

Section V - NTIA Requirements

26. Do you have any specific comments or input you would like to provide with regards to section V. - NTIA Requirements. This section is expected to describe how the proposal community's proposal meets these requirements.

Section VI - Community Process

27. Do you have any specific comments or input you would like to provide with regards to section VI. - Community Process. This section is expected to describe This section should describe the process the community used for developing this proposal.

Annexes

As Google has already addressed the majority of these specific questions above, we have deleted these questions for brevity.

Other Comments

28. Are there any other comments or issues you would like to raise for the consideration of the CWG-Stewardship?

As both the CWG-Stewardship and the Accountability Working Group recognize, their processes are interdependent. To that end, Google recommends that the two groups coordinate closely to ensure that they identify all interdependencies and eliminate redundancies. For example, Google is pleased to note that the CWG-Stewardship now suggests that parties seeking individual redress in connection with a failure to properly perform the IANA functions can avail themselves of the Independent Review Process being developed by the Accountability Working Group. Relying on the process being developed in the Accountability Working Group, rather than developing a separate appeals process for IANA-specific actions and decisions, eliminates delays and reduces the risk of forum-shopping and inconsistent adjudications.

At the same time, the CWG-Stewardship is now dependent on the Accountability Working Group to fully develop this recommendation. This is only one example of the numerous instances in which the CWG-Stewardship will need to rely on the Accountability Working Group. To be clear, Google does not regard these interdependencies as indicating any flaw in the process; rather, they generally suggest that the two groups have minimized structural and operational changes. Nevertheless, they do highlight the need for very close coordination, especially as both proposals are being developed and finalized in parallel.

Please see our more formal comments in letter form attached as ANNEX 1.



May 20, 2015

Via Electronic Mail: comments-cwg-stewardship-draft-proposal-22apr15@icann.org

Re: 2nd Draft Proposal of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions

Introduction

As a global Internet company, Google depends on ICANN to perform both the Internet Assigned Number Authority (IANA) functions and its broader policy-making duties related to the global Internet in a way that preserves the underlying security, stability, interoperability, resiliency, and openness of the Internet.¹²

Google also supports the National Telecommunications and Information Administration's (NTIA) proposal to transition its stewardship role over the IANA functions to the global multistakeholder community, provided that the conditions enumerated by NTIA in its March 14, 2014, announcement regarding the transition are met. These conditions include: (1) ensuring that the transition supports and enhances the multistakeholder model; (2) ensuring that the transition maintains the security, stability, and resiliency of the DNS; (3) ensuring that the transition meets the expectations of affected parties; (4) ensuring that the transition maintains the openness of the Internet; and (5) ensuring that the IANA functions are not transferred to a governmental or intergovernmental authority.

Throughout the transition process, Google has emphasized three key points: (1) that ICANN and its partners perform the IANA functions well; (2) that future stewardship arrangements should prioritize simplicity; and (3) that broader accountability improvements are needed but should be addressed primarily through the cross-community working group on accountability. We have advocated for a simple and straightforward framework for post-transition arrangements for several reasons: (1) a simple framework is more likely to ensure stability of the DNS than a complex one; (2) a simple framework allows clear lines of accountability and enables greater transparency; (3) a simple stewardship framework will allow greater public participation in ICANN processes related to IANA.

With these goals in mind, we appreciate the work of the Cross-Community Working Group

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to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship) in developing its second draft proposal, and we recognize that it has responded to community feedback. We supports the CWG-Stewardship’s specific efforts to simplify the proposal, including:

- Reconsidering its original proposal to create a new, stand-alone contracting entity called Contract Co.;
- Focusing the Customer Standing Committee on operational oversight by limiting both its membership and its remit; and
- Reconsidering its proposal to establish a standing multistakeholder review team.

We also appreciate that this draft proposal is more detailed in many respects than the first draft, giving stakeholders greater certainty that the functions will continue to be executed effectively post-transition.

Below, we make a number of specific suggestions to ensure that further elaboration and refinement of the proposal continues to fulfill the goal of developing a simple post-transition framework that strengthens stability, accountability, and transparency.

- The CWG-Stewardship should define a post-transition IANA board with a limited remit. Members of the post-transition IANA board should be drawn from the broader ICANN board.
- The IANA functions review group should be defined more clearly. Its processes should be open and transparent, its work should be multistakeholder, and its remit should be limited.
- The Customer Standing Committee should focus narrowly on operational issues. To guard against mission creep, we recommend that the group remain limited to a small number of members. We also strongly recommend that membership should be limited to the direct customers of the IANA functions.
- The CWG-Stewardship should clarify the escalation processes available to direct and indirect customers of the IANA functions.
- The CWG-Stewardship should work with the Cross-Community Working Group on Enhancing ICANN’S Accountability (the Accountability Working Group) to ensure proposals are harmonized.
- Before implementation, the CWG-Stewardship should share with the community the projected financial impact of any changes it recommends. It should also elaborate on how any increased expenses will be financed.

1. The CWG-Stewardship should define a post-transition IANA board with a lightweight board structure and a limited remit.

In its draft, the CWG-Stewardship proposes to establish a separate subsidiary within ICANN that will be responsible for performing the IANA functions.¹³ Google agrees that this approach can strengthen accountability and transparency by ensuring that policymaking

¹³ CWG Stewardship, Second Draft Proposal at 20, 21.

and implementation are separated, by allowing the community to better understand how the functions are performed at a more granular level, and by enabling increased transparency regarding budgeting for the performance of the functions, as compared to ICANN's broader policymaking activities.

However, Google supports such an approach only to the extent that the transition proposal avoids "replicat[ing] the complexity of the multistakeholder ICANN Board at the PTI level," and "maintain[s] primary accountability at the ICANN level."¹⁴ To fulfill this goal, Google recommends that post-transition IANA Board members be comprised of the ICANN board itself or a subset of ICANN board members.

By contrast, establishing a distributed governance structure with an independently appointed board for post-transition IANA would raise significant concerns. Creating two boards would make it difficult to determine who bears ultimate responsibility for ensuring that the IANA functions are performed effectively. Moreover, without any further detail regarding the composition of an independent post-transition IANA board, the multistakeholder community has no guarantee that such a body would be transparently run or responsive to the community's needs, requests, and complaints. While it may be tempting to do so, creating a complex, multistakeholder board at the IANA level will make it more difficult for the public to follow ICANN processes and more difficult to hold IANA accountable for any performance failures.

In addition, the post-transition IANA Board should have a limited remit, and its purview should extend solely to implementation of the IANA functions. *Policymaking* for the IANA functions should continue to be conducted at the ICANN level.¹⁵ For example, the post transition-IANA Board should not become a forum in which parties seek to re-litigate policy decisions with a small subset of ICANN Board members. Allowing such relitigation of issues, as sometimes happens today in the ICANN Board's New gTLD Program Committee, creates uncertainty regarding the finality of decisions and often delays implementation of critical decisions. To further encourage a focus on technical and implementation issues, ICANN should prioritize the appointment of members with a strong technical understanding of the IANA functions. Limiting the post-transition IANA Board's remit and making technical expertise a key criterion for membership will allow the group to focus solely on operational excellence in performing the functions and will ensure that the policymaking and execution functions remain separated within ICANN.

2. The CWG-Stewardship should make clear that IANA Function Review Team will perform its limited duties in an open, multi-stakeholder way that directly leads to performance improvements.

¹⁴ CWG Stewardship, Second Draft Proposal at 22.

¹⁵ The development of operational procedures related the implementation of the functions should be developed in consultation with the Customer Standing Committee, as set forth more fully below.

Google agrees with the proposal to have the IANA Functions Review Team review the performance of the IANA Functions Operator and identify areas for improvement every five years.¹⁶ In proposing the creation of this Review Team, the CWG-Stewardship has struck a good balance between the need to evaluate the performance of the IANA Functions Operator with the recognition that it would be inappropriate to create a permanent, standing committee to do so.

In order to ensure that the Functions Review Team remains focused on its core mandate, we urge the following:

- The Functions Review team should limit its mission to evaluating the performance of the IANA Function Operator and related IANA oversight bodies, and recommending changes where appropriate.
 - The proposal should require multistakeholder representatives from a cross-section of the ICANN community, with a focus on technical expertise and experience with IANA.
 - The Functions Review team must act transparently: Its meetings, procedures, and recommendations must be public.
 - The CWG-Stewardship should include in its proposal a mechanism to ensure that ICANN acts on the IANA Function Review Team's recommendations and periodic evaluations of its performance. It is critical that its recommendations are acted upon to promote and preserve the community's trust in the performance and accountability of the IANA Functions Operator. If necessary, the CWG-Stewardship should work with the Accountability Working Group to implement its recommendation.
- 3. The CWG-Stewardship should provide clear recommendations on the role, scope, and remit of the Customer Standing Committee (CSC) to guard against mission creep.**

We agree that the multistakeholder community must assume NTIA's stewardship role in monitoring ICANN's performance to ensure that the IANA functions themselves are being carried out in an accurate and efficient ways. However, we continue to have concerns about creating a new structure to perform these tasks — it will likely increase complexity, bureaucracy, and further obfuscate issues of authority, governance, and dispute resolution. Noting that there is strong support in the community for the creation of a CSC and we offer some suggestions below for ensuring that the CSC provides useful and meaningful oversight over the IANA functions.

Specifically, this committee's scope should be strictly technical and include only: (1) monitoring the performance of the naming functions for any technical irregularities or issues; (2) ensuring that the IANA functions operator maintains appropriate service levels for services associated with naming; and (3) raising and addressing any persistent performance deficiencies related to naming.

¹⁶ CWG Stewardship, Second Draft Proposal at 49.

Because the CSC's remit should be technical and it should have no role in setting or re-evaluating policy, its composition should be limited to the direct customers of the IANA naming functions (gTLD and ccTLD operators) and related experts or liaisons as that group sees fit. Currently, the proposal does not provide clear roles and responsibilities between members of the CSC and liaisons to the CSC, and these roles must be clarified before moving forward.

Finally, the overall membership of the CSC should remain small. It is not necessary for the technical oversight over the IANA functions to be broadly representative in order for the group to accomplish their narrowly stated mission. Also, a smaller group is more likely to be operationally efficient.

4. The CWG-Stewardship should clarify the escalation processes available to direct and indirect customers of the IANA function.

The CWG-Stewardship's proposal includes a variety of potential escalation mechanisms for both direct and indirect customers of the IANA functions. These include the existing customer service complaint resolution process, a new problem resolution process for persistent performance issues and systemic problems, the existing root zone emergency process, recourse to the ombudsman or to mediation, and invocation of the Independent Review Process being developed by the Accountability Working Group.¹⁷ While these methods likely meet the needs of both direct and indirect customers of the IANA functions in ensuring that their complaints are addressed, Google suggests that the CWG-Stewardship prepare a comprehensive chart indicating who can seek which types of redress, and whether exhaustion of any particular remedy is required -- either by the complainant, by ICANN, or by the CSC -- before escalating to a subsequent stage of in the dispute resolution process. Without such an understanding, parties with grievances will not know how to navigate these processes and will be unable to take advantage of the dispute resolution mechanisms at their disposal. A chart will also help the Accountability and Stewardship tracks make sure that the various redress mechanisms work well together.

Equally importantly, the CWG-Stewardship *must* further clarify the procedures for moving the IANA functions to a new operator. This process is termed "separation review" in the draft proposal, and some ideas for implementing a potential separation are set forth in Annex L.¹⁸ As the group rightfully recognizes, transitioning the IANA functions away from the current operator could itself create significant risks for the stability and security of the DNS. As such, the community should fully understand how such a separation may be invoked before agreeing to establish separation procedures. As currently drafted, Annex L fails to provide any meaningful detail regarding these processes. When providing additional detail, the CWG-Stewardship should specify precisely when separation procedures may be invoked, how they can be invoked, how a stand-alone would be funded, and how the proposed escalation and transition mechanisms ensure the security and stability of the DNS.

¹⁷ CWG Stewardship, Second Draft Proposal at 25-26, Annexes I, J, K.

¹⁸ CWG Stewardship, Second Draft Proposal at Annex L.

We recognize that the CWG-Stewardship is discussing this issue and look forward to reviewing and commenting on this proposal when it is more fully developed.

5. The CWG-Stewardship and the Accountability Working Group must work together to harmonize their proposals.

As both the CWG-Stewardship and the Accountability Working Group recognize, their processes are interdependent. To that end, Google recommends that the two groups coordinate closely to ensure that they identify all interdependencies and eliminate redundancies. For example, Google is pleased to note that the CWG-Stewardship now suggests that parties seeking individual redress in connection with a failure to properly perform the IANA functions can avail themselves of the Independent Review Process being developed by the Accountability Working Group. Relying on the process being developed in the Accountability Working Group, rather than developing a separate appeals process for IANA-specific actions and decisions, eliminates delays and reduces the risk of forum-shopping and inconsistent adjudications.

At the same time, the CWG-Stewardship is now dependent on the Accountability Working Group to fully develop this recommendation. This is only one example of the numerous instances in which the CWG-Stewardship will need to rely on the Accountability Working Group. To be clear, Google does not regard these interdependencies as indicating any flaw in the process; rather, they generally suggest that the two groups have minimized structural and operational changes. Nevertheless, they do highlight the need for very close coordination, especially as both proposals are being developed and finalized in parallel.

6. The CWG-Stewardship should prepare a statement highlighting the financial impact of its proposal.

Many of the CWG-Stewardship's proposals may increase the overall cost of performing IANA functions effectively. For example, establishing a subsidiary will require ICANN to incur legal fees associated with incorporating a new entity, and secretariat services are likely to be required for both the CSC and the IANA functions review teams. While these costs may or may not be substantial, the CWG-Stewardship should prepare an assessment of the financial impact of the changes. We understand that the CWG-Stewardship plans to assess the following financial factors after the proposal is finalized for supporting organization/advisory committee approval and again after approval by the IANA Stewardship Transition Coordination Group (ICG):

- Identification of any existing IANA naming services related cost elements that may not be needed after the IANA Stewardship Transition, if any;
- Projection of any new cost elements that may be incurred as a result of the IANA Stewardship Transition and in order to provide the ongoing services after the transition; and

- A review of the projected IANA Stewardship Transition costs in the FY16 budget to ensure that there are adequate funds to address significant cost increases if needed to implement the transition plan without unduly impacting other areas of the budget.¹⁹

While we understand that the CWG-Stewardship has not conducted such an analysis to date because the proposal is still being evaluated by the broader community, Google underscores the need for the community to understand the cost considerations associated with the proposal before implementation takes place.

We also appreciate the CWG-Stewardship's recognition of the need to increase budgetary transparency around the IANA functions. Understanding these costs will be necessary to determine whether management is being appropriately funded and to provide projections for further technical projects to improve the operation of the IANA functions. Further, should the IANA functions effectively become their own legal entity within the larger ICANN organizational framework, it makes sense to create a separate budget and budgeting process solely for the operation and management of this subsidiary. The stewardship proposal should also specify that the funds currently collected from registries and registrars to support the naming functions must be transitioned to post-transition IANA, as any underfunding of IANA could be profoundly destabilizing for the DNS. Budgetary separation will also provide greater clarity as to the overall operational costs of managing the IANA functions, which up to this point has been lacking.

Conclusion

Google recognizes the importance of the stability and security of the IANA functions. As a result, we support the transition of NTIA's limited stewardship role over the IANA functions to the multistakeholder community and appreciate the work of the CWG-Stewardship in devising transition arrangements. We look forward to working with the CWG-Stewardship in refining these proposals and ensuring that post-transition stewardship arrangements promote stability, accountability, and transparency in the performance of the IANA functions.

¹⁹ CWG Stewardship, Second Draft Proposal at 90.