

The CRISP Team Observation on IPR

The Concept behind the Proposal Element on IPR

Taking a look back in history, IPR on the IANA functions did not originally belong to ICANN. It was owned by the University of Southern California, which has been transferred to ICANN in the course of its establishment. With the change in the environment of the IANA functions with NTIA's stewardship transition, it is logical to consider arrangements surrounding the marks as a part of the transition proposal.

The number resources community proposes to move the IANA-related IPRs to the community with that transition, just like the oversight of the IANA functions are to be transferred to the community. Further to this the numbers community proposes that these assets are to be moved to a stable place independent from an IFO. This is seen as an important element of the accountability mechanisms proposed by the number resources community, based on the contractual relationships with the IFO.

Following these considerations it is important to note that it is the communities that should designate a licensee for the use of the IANA related IPRs, and not the entity that holds the IPRs. The role of that entity should be limited to being a "container" to hold the IPRs. Licensing of the use of the IPR must be consistent with community's decision to use a particular operator for corresponding IANA services.

We have listed the IETF Trust an option, as the CRISP Team has observed to be a rational holder of the IPR: The root of the IANA functions come from the RFCs developed in the IETF. They also have an existing trust, with expertise and experience on managing the IPRs, operated in a transparent manner: <http://trustee.ietf.org/>

Observation on Sidley's Scenarios

Scenario 1: not consistent since RIRs are signing the contract with ICANN.

Scenario 2: not consistent since PTI is IFO itself.

Scenario 3: consistent.

Observations per Scenarios

As a general point, we see that the Sidley report is carried out from the names community perspective and looking at potential advantages and disadvantages for the names community. This is understandable given the analysis is conducted by the law firm chosen by the CWG, and we would like to share some additional observations per scenarios as below.

1. The IETF Trust

- The most logical holder as explained in the concept behind the proposal.
- It would not create inconsistency with the number resources community proposal.
- No concern about stability as the trust exists and manages the mark today
- It is a body with expertise in IPR management.
- The IETF Trust is neutral and declares public interests as defined in ARTICLE II. PURPOSE OF TRUST, 2.1 Purpose.
- They are willing to let the operational communities to use the mark and the domain.

2. An independent Trust

- It would not create inconsistency with the number resources community proposal
- However, it still requires discussions in the number resources community whether this is an acceptable solution, given it was not a specific option discussed
- Potential concerns about impact on timelines to agree on the criteria, composition which leads to delaying of submission to NTIA until an agreement is reached if they need to be defined.
- It adds unpredictable element which could affect stability, and there are issues to consider such as how do we ensure expertise, funding
- The main concern observed with this option is the risk of delaying the overall process timeline, if details need to be agreed and implemented pre-transition

3. ICANN

- Not consistent with the proposal and requires to have discussions in the number resources community if CWG reaches consensus on this option

- Potential concerns on the impact to timelines by requiring the number resources community to discuss and the ICG to make revision in the proposal, with the next round of public comment with new concept
- It would not have element of unpredictability as ICANN currently is the holder of the mark and the domain, no concern about the stability
- As ICANN is not the source of the IANA registry, the argument can be made that it is not the rightful owner of the IPRs, and that they should be transferred to the community as part of this transition.
- ICANN is bottom up community policy making forum only for the names community.

4. PTI

- Not consistent with the proposal and likely to be difficult to get consensus to reconsider it, even if CWG reaches consensus on this option.
- Makes no logical sense for PTI to own the mark, given it is a service operator delegated to provide the service.

In addition to legal analysis, would like to highlight the rationale for the holder of IPR (in light of the history and root of the IANA functions), impact on timelines and stability per scenario, as consideration factors when comparing options.

Request for the Next Step

We look forward to hearing from the CWG's position in a timely manner, so any coordination if needed between the operational communities can move to the next step, as soon possible.

Please note that any action that would involve consulting the number resources community, would require an additional process of consultation period. The CRISP Team is concerned that unless there is a resolution to this by the CWG very soon, there will be limited time for the number resources community to have discussions on any additional consideration needed, and reach an agreement needed without affecting the timelines.

We would to confirm and hear from the CWG:

- The timelines for the CWG to reach conclusion on the IPR

- The CWG' s view on how this will be in line with the ICG process
- On your position on the IPR, in order to take our next action if needed

We are happy to be of an assistance, should the CWG need any additional information or clarification from the CRISP Team.