

**Intel Corporation Comments on  
the Cross Community Working Group on  
Enhancing ICANN Accountability 2nd Draft Report**

Intel is pleased to provide these comments on the Cross Community Working Group (CWG) 2nd Draft Proposal of enhancements to ICANN's accountability framework in conjunction with the IANA Stewardship Transition plan. Intel is the largest semi-conductor company in the world and for over forty years, as steward of Moore's law, has designed and manufactured the computing power of the Internet. Intel is not a contracted party of ICANN but the uninterrupted performance of the IANA functions that "maintains the security, stability and resiliency of the DNS" is critical to our business.

**GENERAL COMMENTS**

Intel supports the CCWG second draft report. As a participant in CCWG, we can attest to rigorous and extensive deliberations undertaken by the community, the results of which are reflected in its report. We further applaud the open, transparent, and (most importantly) multi-stakeholder manner in which these recommendations were developed. We believe this is critical for two reasons; first, to respond to a fundamental requirement of the NTIA that the proposal "be developed by the multi-stakeholder community and have broad community support<sup>1</sup>"; secondly, so that the proposal has wide acceptance and legitimacy in the global community.

Intel supports the means chosen for empowering the community- the Community Mechanism as Sole Member Model. We note that the community mechanism is foundational to ensure ICANN's accountability to the global Internet community. Accordingly, we believe any change to the community mechanism, or other major change to the proposal must require another community-wide vetting process in order to comply with the requirement of a multi-stakeholder driven process.

The second draft proposal makes substantial improvements over the first as a direct result of the iterative process interlacing drafting activities with many virtual and face-to-face meetings. Intel urges that this process be maintained throughout the rest of the development process up until its delivery to the NTIA.

**SPECIFIC COMMENTS**

---

<sup>1</sup> Third Quarterly Report on the Transition of the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions; <http://www.ntia.doc.gov/report/2015/third-report-iana-functions-transition>

## **FULFILLMENT OF REQUIREMENTS**

We believe the proposal meets the requirements of the NTIA to:

- Support and enhance the multi-stakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services;
- Maintain the openness of the Internet; and
- Not replace the NTIA role with a government-led or an intergovernmental organization solution.

As mentioned earlier, we believe compliance with the first bullet has been accomplished to date through the open, transparent, multi-stakeholder process used in the development of the proposal. Accordingly, this process must be maintained throughout the rest of the transition in order to remain in compliance. With regard to the last bullet on government control, Intel believes the solution proposed for stress test #18 is both critical and adequate to achieving this goal and supports the draft text as written.

## **ACCOUNTABILITY MECHANISMS**

Intel supports the accountability mechanisms recommended in the proposal, namely: 1) a structure based on a foundational document to guide and enumerate the activity of ICANN's board; 2) an independent review mechanism; and 3) ultimate powers vested in the hands of the community. These are basic governance practices required for stable and sound operation.

## ***PRINCIPLES***

Intel supports the Mission and Core Values and the incorporation of key elements of the Affirmation of Commitments into the revised Mission Statement, Commitments and Core Values. We note that while there is general consensus on including some text Human Rights text, the specific language has yet to be developed. Intel has a long record of strong support for Human Rights and supports its inclusion. However, we echo the concern of multiple participants that care is taken that the inclusion of text does not, in any way broaden ICANN's activity beyond its mission.

## ***FUNDAMENTAL BYLAWS***

Intel support the creation of fundamental bylaws and the view of CCWG-Accountability that the "critical matters" to be embedded in a fundamental bylaw "*are those that define ICANN's Mission, Commitments and Core Values, the requirements of the IANA Stewardship Transition, and the core accountability tools the community requires.*" We note that the first draft proposal included a question regarding whether the

location of ICANN headquarters should be a Fundamental Bylaw. Intel would like to stress that the enforceability elements of the proposal (indeed any proposal) are inextricably linked to the laws under which the legal entity of ICANN is created, and so should receive substantial scrutiny before any change. We note that under the current proposal a change in location, via a modification to the Articles of Incorporation (which already state that ICANN is organized under California law), would require the affirmative vote of at least two-thirds of the Community Mechanism as Sole Member. The result of the first consultation and decision of CCWG has been to not include location of incorporation as a Fundamental Bylaw. Intel is respectful of the multi-stakeholder process and as long as the current proposal retains strong consensus, we support it.

### ***INDEPENDENT REVIEW PROCESS***

Intel supports the proposed IRP. We believe a liberal approach to who may petition the panel, in combination with the ability of the Panel to provide for loser pays/fee shifting in the event it identifies a challenge as frivolous strikes the right balance between due process and mitigation of delaying tactics.

### **SOLE MEMBER MODEL**

As mentioned earlier we, consider the mechanism developed to empower the multi-stakeholder community, the Sole Member Model, central to the entire proposal. A membership model is common and well understood, and so will mitigate much of the risk of transitioning oversight of the IANA functions to the multi-stakeholder community. While providing for the ultimate enforceability by the courts, the single member comprised of the SOs & ACs will impose a substantial level of consideration and discussion by requiring super majorities, before any drastic actions are taken. Moreover the model removes a key concern of the earlier model by eliminating the requirement, found troubling to some SOs and ACs, for individual SOs or ACs to become Unincorporated Associations or some other new legal entity. Accordingly we believe any change to the community mechanism proposal must require another community-wide vetting process in order to comply with the requirement of a multi-stakeholder driven process.

### **COMMUNITY POWERS**

Intel supports the community powers enumerated in the proposal. In particular we strongly support the power to reconsider or reject the budget and strategic operating plans. The “power of the purse” can be a key element in holding executive bodies accountable.

### **STESS TEST 18- THE ROLE OF GOVERNMENTS**

Intel strongly supports the proposed bylaw change as written. The proposed bylaw language will maintain the role of the GAC and its influence, yet satisfy a fundamental requirement from the United States Government that the transition not result in a “government-led” solution. Moreover, advice that did not represent consensus among governments may not be actionable from a practical matter. While we recognize that the proposal does not yet have support of the GAC, Intel believes that the carefully crafted text represents the best chance of adoption by the global community and NTIA, and hence enabling a successful transition.

## **IMPLEMENTATION**

### ***TIMING***

With regard to implementation and timing, we note that the NTIA, after requesting and receiving feedback from the community that it could take until at least September 2016 to complete the transition, plans to extend its IANA contract with ICANN for one year to September 30, 2016<sup>2</sup>. We believe that a year should be adequate time for the transition if ICANN concentrates on implementing those elements, including adopting the requisite bylaw changes, identified by the community and NTIA as preconditions for the transition to occur. However, it is critical that the process employed to date continues. The second draft proposal makes substantial improvements over the first as a direct result of the iterative process interlacing drafting activities with many virtual and face-to-face meetings. Intel urges that this process be maintained throughout the rest of the development process up until its delivery to the NTIA.

---

<sup>2</sup> *ibid*