

DT-IPR: DRAFT OF POTENTIAL PRINCIPLES AND REQUIREMENTS FOR OWNER OF IANA TRADEMARKS AND DOMAIN NAMES

DT-IPR has been discussing potential principles and requirements for the post-transition owner of the IANA Trademarks and Domain Names. This is intended as an interim discussion draft for the CWG while the DT's work is in progress. There has been vigorous discussion of various principles and requirements, and the meaning attached to these principles and requirements. This document attempts to reflect the range of views expressed in the DT. Some of the proposed principles and requirements may be seen as incompatible with others; as such, this should not be read as an integrated proposal at this time.

I. Principles and Requirements for the Post-Transition Owner of the IANA Trademarks and Domain Names

1. The working assumption is that the owner will take the form of a Trust (though not necessarily the IETF Trust).
 - a. Should it be a requirement that the names community have an equal say in the administration of the Trust, at least when it comes to managing the IANA trademarks and domain names?
 - i. Achieved through the Trust governance documents
 - ii. Achieved through an advisory board specifically relating to the IANA trademarks and domain names
 - iii. Achieved by contract
 - b. Should it be a requirement that ICANN and/or the names community be a beneficiary of the trust?
2. Owner must be "neutral," but what does neutral mean?
3. What does 'neutral' mean -- several alternatives:
 - a. Owner should not be captured by or under the sole control of the IANA Functions Operator (IFO), and/or
 - b. Owner should be neutral toward the views of the three Operating Communities (OCs)
 - c. Owner should not be dominated by any of the operational communities
 - d. Owner should not be an IFO
 - e. ICANN Board statement relating to neutrality: "ICANN is prepared to transfer full ownership of the IANA-related trademarks to a neutral third party mutually agreed among the operational communities"¹
 - f. Some in the DT contended that (d) was aligned with the other operational communities definition of neutral, and that this narrow definition should also be adopted by the CWG. Others supported the broader definitions.
4. Owner must be "independent," but what does independent mean?
 - a. Owner should be independent of the IFO, and/or
 - b. Owner should be independent of all three OCs

¹ <https://www.icann.org/news/announcement-2015-08-15-en>

- c. “Independent“ concept overlaps with concept of “neutral”
- 5. Owner must be responsive and responsible [accountable] to the three communities in some fashion.
 - a. How responsive do they need to be?
 - b. How much influence should the three OCs have over the actions of the Owner
- 6. Owner must be capable of carrying out the responsibilities expected of a trademark owner and licensor, including:
 - a. Quality Control over services offered by licensee(s) under IANA marks
 - b. Quality Control over how the IANA mark is used and displayed by licensee(s)
 - c. Policing & enforcement of uses of trademark rights by unauthorized third parties
 - d. Maintenance of trademark registrations
- 7. Ownership and management of the IANA trademarks and domain names is different than it would be for a normal commercial entity
- 8. Owner should have experience in holding trademarks, but also experience with issues relating to the Internet.
- 9. Owner must have necessary funding to carry out these responsibilities.
- 10. Owner must have access to employee(s) with experience and to outside trademark counsel.
- 11. Owner must be prepared to facilitate separation if requested by any OC (*see II below for details*)

II. What are the the requirements of the Owner in the event of separation?

- 1. Owner must not create risk to requirement of continued operations, stability and security of the IANA functions in the event of separation.
- 2. Owner must follow the directions of the community or communities initiating separation
- 3. Clear guidelines must be in place so that Owner can comply with orders from operational communities in case of separation and required transfer of licenses (or termination and grant of new licenses).
 - a. This could be operationalised through contract and bylaw requirements as well as the Trust document itself.
- 4. *See also* Sidley comments in relation to trust document requirements.
- 5. Question: How to balance Owner’s obligation to approve any new licensee with the OCs’ right to chose the new licensee (IFO) of their choice?

III. Is the Owner’s control/oversight over the mark(s) (i.e., Quality Control with licensees and Policing/Enforcement with unauthorized users) one of the principles or requirements for the names community?

- 1. A trademark owner has a legal obligation to exercise control/oversight over the marks and the business conducted under the marks, so this must be a guiding principle/requirement.
- 2. However, this should not be the primary priority for the Owner.
- 3. Primary focus should be to ensure that trademarks are being used in a manner consistent with the IANA Function.

4. Quality control needs to be fit for purpose - needs to meet minimum requirements (legal requirements), but should not do more. Quality control has to meet the requirements / needs of all three communities. If any community has a concern about how IANA is performing in relation to trademark, a mechanism needs to be in place to address such concerns.
5. Could quality control also be outsourced/delegated/subcontracted?
 - a. Certain amount of operational control could be subcontracted, for example to operational communities, but ultimate control/responsibility is with the trademark owner.
 - b. Brand owner is required to exercise active quality control to meet minimum requirements.
6. Is it acceptable to the names community if quality control is delegated to the operational communities (according to each OC's responsibilities)?
7. *Question:* Has ICANN had to exercise quality control over uses of the IANA in any kind of licensor/licensee relationship? If so, how has this been done?
8. *Question:* How has IETF Trust exercised quality control with licensees?

IV. Should the needs and requirements of all three OCs should be taken into consideration, and if so, how?

1. Yes, all three communities should be included in a solution, just as the ICG proposal has developed.
2. There are some areas of different understandings: for example, the names community may consider PTI the IFO, whereas the numbers and protocol parameters community considers ICANN the IFO.
3. How can we ensure that the Owner will take the names community's needs and requirements into consideration?
4. Would the CWG require the Owner to be on an equal footing with all three communities?
 - a. For instance, should the Owner be controlled by all three communities?
 - b. We were informed by Andrew Sullivan that the IETF Trust will not change its governance structure - it's not a practical option and not an expected outcome. If requirements cannot be met by IETF Trust it may be more efficient and effective to create a new trust or consider whether there are contractual arrangements that could be put in place to meet the requirements without changing the governance structure.
 - c. If CWG were to start from scratch we might come up with a joint trust of all three communities
 - i. If this is a desired outcome, we would need advice on whether it's feasible within the current timeframe.

V. Is IFO operational control of the iana.org domain name is one of the principles/requirements for the names community?

1. ICANN Board statement relating to iana.org: Transfer of IANA trademarks will be done with the understanding that “ICANN will maintain operational control of the [IANA.ORG](#) domain for as long as ICANN remains the IANA Functions Operator”²
2. Does this Board position raise any issues?
3. Does CWG support this statement? If not, what are the concerns?

VI. What recourse should the names community have if the Owner fails to perform, either operationally or at the time of separation?

1. Dispute resolution procedure?
2. Remove IANA trademarks and domain names from the Owner?

² <https://www.icann.org/news/announcement-2015-08-15-en>