Draft for Design Team consideration

Chronology of CWG-Stewardship work on IANA IPR since submission to ICG:

Call Date	Summary of CWG Discussion	Questions for Design Team	Notes
Statement of 2 July	In Buenos Aires, there was some concern over the draft text in the CWG proposal -- the text appeared to be in conflict with the other communities. CWG issued a statement to clarify that the text was draft only. CWG intended to deal with IPR further in implementation.	N/A	
6 August call	CWG tasked Sidley with producing a memo on this issue. Sidley examined three structures and presented them on the 6 August call: ● ICANN maintains ownership of rights ● PTI becomes owner of rights ● a Trust (could be IETF Trust) becomes owner of rights	*Note: Based on later statements (see 1 September statement), the CWG decided to proceed with the trust option.* 1. What should be the requirements of the Trust to ensure continued operations, stability and security of the IANA functions in the event of separation?	**Question 1**: What should be the requirements of the Trust to ensure continued operations, stability and security of the IANA functions in the event of separation? ● Need to meet the requirement of continued operations, stability and security of the IANA functions in the event of separation. ● Requirements need to work now as well as at the time of possible separation ● Trust must follow the directions of the community or communities initiating separation ● Requirements specifically in relation to separation ○ Need to have clear guidelines in relation to licensing procedure in place for the Trust to comply with orders from operational communities in case of separation and required transfer of licenses, including enforcement procedure.

			○ This could be operationalised through contract and bylaw requirements as well as the Trust document itself. *See also* Sidley comments in relation to trust document requirements.
6 August call	The main takeaway from Sidley was that the owner of the mark needs to exercise some control/oversight of the mark(s).	2. Does the Design Team consider this one of the principles or requirements for the names community? 3. Does the Design Team think that the needs of all three operational communities should be taken into consideration in exercising control/oversight of the IPR?	**Question 2**: Does the DT consider control/oversight over the mark(s) one of the principles or requirements for the names community? ● Trademark owner has a legal obligation to exercise control/oversight over the marks and the business conducted under the marks. ● Should not be the priority or one of the main elements. ● Main focus should be that trademark is used by the authorised communities in a manner consistent with the IANA Function. ● Consider asking ICANN -- what kind of quality control has been exercised over the years? ● Quality control needs to be fit for purpose - needs to meet minimum requirements (legal requirements). **Question 3:** Does the Design Team think that the needs of all three operational communities should be taken into consideration in exercising control/oversight of the IPR? ● Yes, all three communities should be included in a solution, just as the ICG proposal has developed. ● There are some areas of different understandings: for example, the names community considers PTI the IFO, whereas the numbers community considers ICANN the IFO. ● What is meant by neutral?

			• **Action item**: inquire with ICANN about whether they have licensed the trademarks, and if so, how have they exercised quality control. • **Action item**: Greg to share document that details the different trademark registrations
6 August call	The CWG agreed that it would be useful to understand how the IETF trust manages existing trademarks.	4. What information remains to be provided to the Design Team?	**Question 4:** What information remains to be provided to the Design Team? • confirm list of trademarks with ICANN • confirm list of domain names with ICANN • any other legal advice from Sidley?

20 August call	The CWG agreed on: a neutral/independent trust and the communities can focus on requirements for this trust during implementation.	5. What does the Design Team propose to be the defining qualities of a neutral/ independent trust that will serve in this role?	**Question 5:** What does the DT propose to be the defining qualities of a neutral/independent trust that will serve in this role?
			• DT encouraged to provide input on what the requirements should be of the trust to hold the IANA trademarks and domain names
			• Trust should be "neutral" - key principle
			  ○ What does neutral mean?
			• Trust needs to be responsive and responsible [accountable] to the three communities in some fashion (will need to be detailed at a later stage).
			• may want advice from Trust Lawyers
			• may want to consider how time efficient to set up new entity
			• Capable of acting like a trademark owner, including:
			  ○ Quality Control over services offered under IANA marks
			  ○ Quality Control over how the IANA mark is used and displayed

			○ Policing & enforcement of trademark rights (both should be done with a "not too strong" touch). ● Should have experience in holding trademarks, but also issues as they relate to the Internet. ● Needs to have necessary funding to carry out these responsibilities. ● Needs access to employee(s) with experience and to outside trademark counsel.
Statement of 1 September	"Accordingly, the CWG hereby formally confirms that its position is consistent with that of the other two respondents to the ICG RFP in that it has no objection to the IANA trademarks and the IANA domain names (iana.org, .com and .net) being transferred to an entity independent of the IANA Functions Operator. For the avoidance of doubt, we view the CWG position as also consistent with the ICANN Board statement of 15 August 2015 on the same subject."	6. Does the Design Team confirm that IFO operational control (and transfer) of domain names is one of the principles/requirements for the names community? 7. Can the Design Team specify the elements that would define a neutral/independent trust?	**Question 6:** Does the Design Team confirm that IFO operational control (and transfer) of domain names is one of the principles/requirements for the names community? ● question is about whether the DT agrees with the operational control of the iana.org domain name remains with the IFO ● Need to go back to Board proposal and confirm what it says **Question 7:** Can the Design Team specify the elements that would define a neutral/independent trust? ● See response to question 5 ● Continue to flesh this out ● Clarify what neutral / independent means