

CWG-Stewardship 2nd Draft Proposal Input Template

1. Please provide your name: The Non-Commercial Stakeholders Group. (NCSG)
2. Please provide your affiliation:

NCSG is one of four stakeholder groups in the Generic Names Supporting Organization. We have over 500 members in 97 countries representing individuals and nonprofit organizations devoted to civil liberties and human rights, development, education, research and charitable causes.

3. Are you providing input on behalf of another entity (e.g. organization, company, government)? Yes.
4. This input is provided on behalf of the entire NCSG.

General Comments

NCSG members have been active participants in the IANA stewardship transition process. In addition to representatives on the CWG and CCWG, NCSG members have contributed inputs, hosted workshops, chaired drafting teams, developed shared processes for consideration of proposals and volunteered hundreds of hours of time.

The NCSG supports the requirements of the ICG to maintain a transparent and accountable process throughout the stewardship transition. We note with support the recent statement on Contracts and Other Agreements from the ICG calling for transparency.¹

The NCSG supports the creation of a separate legal entity to house the names-related IANA functions. We believe that structural separation of the IANA functions into a legal affiliate has several beneficial features, which we summarize below. We do not believe that the CCWG Accountability enhancements alone can ensure the future independence and performance of the IANA functions nor guarantee the imperative of separation between policy-development and the IANA functions into the future. Legal and structural separation is key. Still, many details about this proposal have yet to be filled in. Given the need for quick action, we urge the CWG and the broader community to accept a legally separate affiliate Post Transition IANA (PTI) model as the basis for the ongoing development of the IANA stewardship transition.

The benefits are:

- 1) It strengthens the separation of ICANN's policy making role from the IANA functions operator. Such separation was required by the NTIA contract, but once the NTIA withdraws, that separation could be undermined. Such separation is also a part of the numbers and protocols proposals, making the names arrangements symmetrical with the principles outlined in RFC 7500.²
- 2) The potential to change IANA functions operators is an essential feature of the post-transition accountability mechanisms. Separability is a principle accepted by the CWG and specifically proposed by both the protocols and numbers communities. Unless the assets, staff and operations associated with IANA are already separated from the rest of ICANN, separability is not a feasible option. Thus, PTI removes one of the potential barriers to a change in IANA functions operators.
- 3) The proposal includes periodic review of the IANA Functions Operator, this periodic review is crucial to

¹ <https://www.ianacg.org/icg-statement-on-contracts-and-other-agreements/>

² <https://tools.ietf.org/rfc/rfc7500.txt>

- ensuring the continued accountability, security and stability of the DNS
- 4) If the PTI has its own board or management, responsibility for the core technical mission of the IANA will be more focused. Currently, responsibility for IANA is bundled in with responsibility for all the other things ICANN does.
 - 5) It represents an acceptable compromise, perhaps the only acceptable middle ground, between the advocates of an 'internal' and 'external' solution.

Section I - The Community's Use of IANA

5. 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 description of the names community's use of the IANA functions in Sections I.A (a) - (j) and I.B is accurate and, based on our analysis, complete. NCSG wishes to add, however, that operation of the .INT top level domain should not be considered part of the names-related IANA functions. The .INT TLD is a top level domain, not a function that involves the DNS root zone. This function should be divested from the IANA functions operator and delegated to an independent entity. We believe neither ICANN nor the IANA functions operator should be involved in running a TLD.

Further, we believe there may be a mistake in the interpretation of Section I.C. I.C asks "what registries are involved in providing the service or activity." We believe that the registries referenced there are the names-related IANA functions. If this is true, it is a mistake to say these services are provided by TLD registry operators.

Section III - Proposed Post-Transition Oversight and Accountability

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. If so, please provide your comments here.

Currently, two corporate forms are being considered for the PTI, a nonprofit public benefit corporation (PBC) or a limited liability corporation (LLC), with a single member, ICANN, at its outset. PBCs have well understood governance structures and legal requirements, while LLCs are largely defined by operating agreements thereby offering greater flexibility in governance structure.

The NCSG believes that forming the PTI as a PBC will be easier to implement and more likely to ensure various measures of good corporate governance.

If PTI is a Public Benefit Corporation that secures nonprofit status, it will by default be bound by a nondistribution constraint, prohibition of inurement and private benefit, and restrictions on transfers of its assets upon (possible) dissolution. If the LLC form was chosen, these constraints and other baseline responsibilities for the PTI board or management would need to be debated, agreed upon and written into PTI governing documents. In addition, a way to ensure that the PTI governing board or management could not simply amend the governing documents to circumvent the constraints would also be needed. In other words, the LLC form makes the implementation of PTI much more complex and risky.

Additionally, the NCSG recommends that the CWG, with broader consultation, should consider expanding the membership of the PTI to include the IETF and RIRs (or their chosen representative legal entities). As currently proposed, enormous power is concentrated with ICANN the corporation as the sole member. Particularly if PTI took the LLC form, there is a risk that ICANN could fundamentally alter, abridge or even eliminate PTI board or management responsibilities. Expanding the membership of PTI would diminish this risk.

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. If so, please provide your comments here. If applicable, please reference the sub-section your comment relates to.

Regardless of the corporate form chosen for PTI, its board or management must have duty of loyalty, duty of care and duty of obedience including fiduciary responsibility to the PTI. Doing so will help ensure that the PTI board or management, while still complying with its various contracts with the names, numbers, and protocols communities and limited mission, remains focused on implementation of the IANA registries, and makes decisions in the best interests of the organization. This arrangement would best maintain the separation of IANA registry implementation from DNS policy making currently required by the NTIA contract.

While not explicitly stated in the CWG proposal, we believe the PTI should provide IANA registry services to names, numbers and protocols communities. Given this operational responsibility, the NCSG believes that the PTI board or management should be composed of representatives from each of the supporting policy making organizations and the PTI itself. For example, the IETF liaison and Address Supporting Organization representative to the ICANN board, along with one representative from the Generic Names and ccTLD Supporting Organizations, in addition to the PTI Executive Director, should compose the PTI board or management. The selection and removal of these representatives should occur according to processes determined by the respective organizations (i.e., IETF, ASO, GNSO, ccNSO, PTI). In this manner, the PTI board or management would be directly accountable to the relevant stakeholders and not be self perpetuating.

12. 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.

We do not have any specific comments relating to this section.

13. 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.

We believe that the IANA Function Review (IFR) is a critical part of the overall transition proposal. First and foremost it establishes the imperative of having periodic reviews, 2 years post transition and then every 5 years thereafter. The IFR (including explicit mention of the special reviews and the periodicity) should be enshrined in the ICANN bylaws as a fundamental bylaw - as is proposed in the consultation document.

This review process is an essential part of ensuring that the IANA functions meet both the performance expectations of the community and are subject to an appropriate level of scrutiny to ensure the IANA functions and their operation remain fit for purpose. We agree that the review process should incorporate inputs from the CSC, the PTI and others as appropriate. We note that that the composition of the PTI Board as we have outlined above in #9 will also ensure that the views of the broader community and customers of the IANA functions are taken into account in the review.

We agree that the IFR does not need to be a standing committee although a mechanism should be identified to ensure that if a special review is called for the IFR can be quickly and efficiently put in place.

14. 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 do not have any specific comments relating to this section.

15. 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.

We do not have any specific comments relating to this section.

16. 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. If so, please provide your comments here. If applicable, please reference the sub-section your comment relates to.

While we agree that the CSC should address issues of concern related to performance directly with the IFO, there may be inconsistencies between the review processes related to the CSC and its responsibilities and the IFR. According to the consultation document p. 58 “in the event that a material change in the IANA naming services or operations would be beneficial, the CSC reserves the right to call for a community consultation...” seems to be duplicative of the IFR and in particular the special review that is a component of the IFR. In addition the proposed CSC consultation process seems at odds with the IFR in that any result of the consultation would be approved by the ccNSO and RySG, a much smaller subset of the community than involved in an IFR. Our preference would be for any such material changes be reviewed as a part of the IFR special review process.

The process for addressing “systemic problems” on p 68 needs to be further elaborated as this is a key part of any escalation process. While it may be convenient to footnote to “IRP and CCWG Accountability WS 1 mechanisms”, filling this escalation gap with a fully spelled out and credible community based process that is proven and effective will be essential prior to the finalization of the proposal.

17. 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. If so, please provide your comments here. If applicable, please reference the sub-section your comment relates to.

We fully support the addition of a fundamental bylaw to enable separation of PTI from ICANN or ending the contract with PTI and switching to a new IFO.

We believe that rebidding the contract for the names-related IANA functions should not be made so difficult, complex and time-consuming as to give PTI a de facto monopoly on the service.

We also question why the recommendations of an IFR, when developed through recognized community processes and subsequent to the exhaustion of all remedial processes, would have to be approved by the Board. Rather, if the Board has specific issues with the recommendations these should be subject of a process of discussion to find common ground. Hopefully, the Board would have been made aware of the challenges that the community is trying to address and such recommendations should come as no surprise for the Board and therefore have their agreement.

18. 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.

We do not have any specific comments relating to this section.

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

We do not have any specific comments relating to this section.

20. 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.

We do not have any specific comments relating to this section.

21. 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.

We do not have any specific comments relating to this section.

22. 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.

We do not have any specific comments relating to this section.

23. 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.

The single sentence in the proposal is far from adequate nor does it reflect the importance that many of the stakeholders in ICANN's community and outside have bestowed on this principle.

We would like to re-emphasize the absolute imperative of ensuring the separation between the policy development processes and the IANA functions. Given that under the current proposal the ultimate oversight of the IANA functions rests with ICANN - the community and the Board - ensuring that the affiliate is not only legally separate but that it is independent in its governance is essential. The PTI Board is/should be responsible for the performance of the IANA functions - and therefore have the ability to address any deficiencies - which in turn requires that it be adequately independent of ICANN, but representative of the community, in its composition as we have noted above. The role of ensuring the neutrality, effectiveness and independence of the IANA functions will fall to the PTI - so its Board should be empowered to take measures to ensure that independence and separation between policy and the IANA functions remain sacrosanct.

Section IV - Transition Implications

24. 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.

We do not have any specific comments relating to this section.

Section V - NTIA Requirements

25. 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 community's proposal meets these requirements and how it responds to the global interest in the IANA functions.

We do not have any specific comments relating to this section.

Section VI - Community Process

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

If applicable, please reference the sub-section your comment relates to.

The hiring of legal counsel by the CWG was productive and on the whole the advice of the Sidley-Austin team has been helpful and neutral. Going forward, however, the CWG chairs should make sure that Sidley advice remains related to our evolving needs and they do not become advocates for specific solutions.

Annexes

27. Do you have any specific comments or input you would like to provide with regards to section Annex A - The Community's Use of the IANA - Additional Information.

We do not have any specific comments relating to this section.

28. Do you have any specific comments or input you would like to provide with regards to section Annex B - Oversight mechanisms in the NTIA IANA Functions Contract.

We do not have any specific comments relating to this section.

29. Do you have any specific comments or input you would like to provide with regards to section Annex C - Principles and criteria that should underpin decisions on the transition of NTIA Stewardship for names functions.

We do not have any specific comments relating to this section.

30. Do you have any specific comments or input you would like to provide with regards to section Annex D - Xplane Diagram.

We do not have any specific comments relating to this section.

31. Do you have any specific comments or input you would like to provide with regards to section Annex E - IANA Contract provisions to be carried over post-transition.

We do not have any specific comments relating to this section.

32. Do you have any specific comments or input you would like to provide with regards to section Annex F - IANA Function Reviews.

We do not have any specific comments relating to this section.

33. Do you have any specific comments or input you would like to provide with regards to section Annex G - Proposed charter of the customer standing committee (CSC).

We do not have any specific comments relating to this section.

34. Do you have any specific comments or input you would like to provide with regards to section Annex H - Service level expectations.

We do not have any specific comments relating to this section.

35. Do you have any specific comments or input you would like to provide with regards to section Annex I - IANA Customer Service Complaint Resolution Process for Naming Related Functions.

We do not have any specific comments relating to this section.

36. Do you have any specific comments or input you would like to provide with regards to section Annex J - IANA Problem Resolution Process (for IANA naming services only).

We do not have any specific comments relating to this section.

37. Do you have any specific comments or input you would like to provide with regards to section Annex K - Root Zone Emergency Process.

We do not have any specific comments relating to this section.

38. Do you have any specific comments or input you would like to provide with regards to section Annex L - Separation Review.

We do not have any specific comments relating to this section.

39. Do you have any specific comments or input you would like to provide with regards to section Annex M - Framework for transition to a successor IANA operator.

The ability of the incumbent operator to seamlessly separate the IANA functions on a technical level is critical to the stability and security of the DNS. The detailed fully functional transition plan should be developed as a priority and be subject to either a community review, an SSAC review or review by an independent authority for its applicability, depth of content and its ability to be executed if required.

40. Do you have any specific comments or input you would like to provide with regards to section Annex N - Proposed changes to root zone environment and relationship with root zone maintainer.

We do not have any specific comments relating to this section.

41. Do you have any specific comments or input you would like to provide with regards to section Annex O - ccTLD Appeals Mechanism Background and Supporting Findings.

We do not have any specific comments relating to this section.

42. Do you have any specific comments or input you would like to provide with regards to section Annex P - IANA Operations Cost Analysis.
If so, please provide your comments here.
If applicable, please reference the sub-section your comment relates to.

We do not have any specific comments relating to this section.

43. Do you have any specific comments or input you would like to provide with regards to section Annex Q - IANA Budget.

We do not have any specific comments relating to this section.

Other Comments

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

