

GNSO Registrars Stakeholder Group Statement

Re: Cross Community Working Group (CWG) on Naming Related Functions Draft Transition Proposal

Date: December 22, 2014

Ref: <https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en>

General Comments:

First, it should be acknowledged the the CWG on naming functions has done an impressive amount of work in an incredibly short period of time, while also under intense scrutiny. The volume and tone of dialog has been both positive and constructive; the members of the CWG should be commended.

Broadly, from a Registrar perspective, we desire a proposal that ensures the security and stability of the IANA functions. Our Registry partners rely on the IANA functions, and so does our collective business. That business also relies on a global trust in the IANA functions, ensuring a single, unified DNS. We should note here that the role Registries play with respect to the IANA functions affords them a unique view and special interest. Their pivotal place, and the importance of the IANA functions to their business (and subsequently ours) should afford Registries increased representation and oversight throughout the transition proposal. In general, it would seem sensible to afford the contracted parties an elevated role in the oversight of the IANA functions.

Overall, there has been a considerable amount of progress. In general, the proposed structure and approach of the transition is good. We nonetheless have some concerns and suggestions that will be made below.

Accountability, Separability & the Contracting Co. Comments:

The issue of accountability pervades all aspects of the proposal. Unfortunately, as many others will undoubtedly note, the timing of the Accountability CWG and it's work has created needless complexity and unanswered questions for the Naming CWG. Without knowing what accountability mechanisms are being proposed or put in place, it is difficult to assess some aspects of the proposal. This is not a criticism of the CWG, but is a public acknowledgement of the failure of ICANN itself to initiate the required work in a timely fashion.

The foremost example of the challenge that the accountability lag has presented is around the notion of separability. The proposal puts forth a new, distinct entity whose primary responsibility is to enter into a contract with the IANA functions operator. There has been considerable discussion of whether or not this is strictly necessary. As it stands, and given the present state of accountability within ICANN, Registrars believe that this Contracting Co. must exist. With the existence of a Contracting Co, the possibility exists (although at the moment it may be remote) to remove the IANA functions from within ICANN. To be clear, the RrSG supports the possibility of separation, and the ultimate accountability measure that a potential loss of contract would imply for ICANN.

The proposed simplicity or lightness of the Contracting Co. is a good idea, and reduces the importance of jurisdiction. However, we suggest further legal analysis of an appropriate jurisdiction and would propose that the U.S. would be ideal, as it maintains something akin to the status quo. Canada, or the U.K. would be acceptable alternatives, though Switzerland, and the status and cost associated with that would be problematic.

Multistakeholder Review Team (MRT) Comments:

The exact composition of the MRT is not yet known, and it will be crucial to get this right. The MRT needs to be robust enough to avoid capture from external forces, while at the same time lean enough to avoid scope creep. It's important that policy development remain within the existing structures (like the GNSO), and that the MRT remains focused on implementation, RFPs and rebidding. The spectre of the MRT developing into a parallel ICANN is not one to take lightly.

We would strongly encourage further work to identify a suitable composition, as well as ensure that the scope of the MRT activities are carefully bounded. As mentioned above, contracted parties whose day to day business relies on the security and stability of the IANA functions are ideally situated to oversee these functions.

Independent Appeals Panel(IAP) Comments:

The IAP component of the proposal is crucial, and it's location outside of both ICANN and the IANA oversight functions is necessary. It's stated that the IAP may be used to assess the decisions and actions of the IANA functions operator, as well as any policy implementation actions. Like the MRT, the activities and actors for the IAP must be carefully scoped. The wording in the proposal that the IAP is open to "other parties who feel that they were affected by an IANA action or decision" is unfortunately broad, and the interpretation of this will surely be stretched by parties with an agenda. It would seem sensible for implem

Comments to Specific Questions in the Proposal:

Specific ICANN Alternative Solution

As mentioned above, we *firmly* believe that the separation of the IANA Functions Operator from ICANN remain a possibility, and as such a solution purely internal to ICANN is unacceptable.

Conclusion:

Again, the Registrar community would like to thank the CWG for their efforts and the opportunity to provide input. We'd like to reinforce our concerns around the potential danger of overloading the Multistakeholder Review Team; careful selection of membership and clear boundaries for operation are required. Lastly, we would also strongly encourage the CWG to continue their work, ensuring that accountability is kept foremost in mind.