Comments for the Internet Infrastructure Coalition (i2Coalition)

December 22, 2014

The Internet Infrastructure Coalition (i2Coalition) appreciates the opportunity to comment on Cross Community Working Group on Naming Related Functions Draft Transition Proposal. See public comment notice at https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en.

The i2Coalition supports those who build the nuts and bolts of the Internet, and we treat it like the noble profession that it is. Our diverse membership represents both large and small Internet infrastructure providers such as web hosting companies, software services providers, data centers, registrars and registries. We believe the continued growth of the Internet is vital for growing an environment of innovation and seek to engage in ways to foster success of the Internet and Internet infrastructure industry. We seek to influence decision makers to weigh decisions on whether they are good or bad for the Internet economy and its foundational industries. In short, we seek to foster growth within the Internet infrastructure industry by driving others to harness the Internet's full potential.

The i2Coalition has several key goals with ICANN, but chief among them is continuing to build a voice for underrepresented parts of the Internet ecosystem and ensuring that accountability and transparency are paramount. i2Coalition brings unique representation to ICANN as it is made up of companies representing the whole broad ecosystem of Internet infrastructure companies. Today we see a paucity of ICANN engagement from – in particular – web hosts, data centers and cloud infrastructure providers, and we seek to collectively change that.

It is important to note that this segment of the Internet infrastructure ecosystem is predominantly made up of small to medium sized businesses worldwide. Many businesses already well represented at ICANN are large-scale enterprises with different needs than those of the smaller to medium sized businesses that make up the bulk of i2Coalition membership. By bringing these groups to the table, we can help drive forward important efforts, including assisting and promoting the important work of the Security and Stability Advisory Council (SSAC), which seeks to ensure the security and stability of the DNS root.

It is from this context that we seek to provide comment on the Cross Community Working Group on Naming Related Functions Draft Transition Proposal. We support the goal of the National Telecommunications and Information Administration (NTIA) stewardship transition and its goals to preserve the security, stability, resiliency, and openness of the Internet.

However, we also understand that the status quo has been successful in maintaining not just the security and stability of the Internet but in the accountability of ICANN. The NTIA has held ICANN accountable historically through the IANA contract, and we don't want to lose a layer of accountability as NTIA steps aside. We believe that it is possible to create a new, better status quo in which the IANA function is performed by ICANN in a way that makes them truly accountable to the multistakeholder community, but there is a lot of work to do to get there.

There are areas in which the i2Coalition supports the efforts of the Cross Community Working Group (CWG) and areas in which we have ongoing concerns. We have clearly delineated both below:

Areas of support:

1) We support the public posting of all IANA change requests, and the extra layer of transparency that would come from by requiring the public posting of all IANA change requests. However, we must ensure that public postings should not delay the implementation of requests. The process must be informational only, and not a chance to revisit prior decisions on the reasons for or methods of information disclosure.

2) We support the creation of a Customer Standing Committee (CSC) to monitor the performance of the naming functions for problems or technical irregularities, to ensure that the IANA functions operator maintains appropriate service levels for services associated with naming; and to raise and address any performance deficiencies on an ongoing basis related to naming.

We recommend limiting the scope of the CSC to naming issues only. It should be technical in nature and limited to a review of policy implementation. For that reason its membership should be limited to direct customers of the IANA naming functions (gTLD and ccTLD operators) and related experts as that group sees fit — such as liaisons from the Security and Stability Committee (SSAC), the Root Server System Advisory Committee (RSSAC), the Regional Internet Registries (RIRs), the Internet Society (ISOC), the Internet Engineering Task Force (IETF) among others.

Areas of ongoing concern:

We see areas in which the CWG proposal could introduce significant instability and uncertainty in the supervision of the DNS. Specific areas of concern involve significant questions that remain around the establishment of a Contract co., a Multi-stakeholder Review Team (MRT) and an Independent Appeals Panel. We ask for clarification, more work and in some areas a rethinking of the approach currently being taken by the CWG.

1) Our concerns around the creation of a Contract Co. are that as currently designed, the Contact Co. would be a shell organization that would only have a meaningful role in the ICANN ecosystem if the multistakeholder review team decided to transfer the contract to a new entity. Creating a shell entity limits its attractiveness as a target for potential capture. On the other hand, it may hamper the contracting entity's leverage in negotiations. NTIA, the predecessor entity to the Contract Co., could invoke the power and resources of the United States Government to withstand external pressures, lawsuits, and other challenges to its role as contractor.

We have concerns about the rebidding process, and need to ensure that a predictable, open, and transparent process remains that assures the continued stability of the IANA functions. Parameters need to be set for the timing of any potential rebidding. We oppose the introduction of very short contract terms with frequent rebidding processes because such an approach would be costly, time-consuming, and disruptive to the naming community.

We have concerns about the level of discretion accorded to Contract Co. In revoking IANA contract. The model proposed by the CWG does not establish much-needed guidelines or limitations on the circumstances under which the IANA Functions could be transitioned to a new operator. The circumstances for re-awarding the IANA functions contract should be limited to issues of non-performance, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms. Transitioning the IANA Functions outside of ICANN would be costly and disruptive not only to registry operators but to all parties that rely on a smoothly functioning DNS. Such an option should only be exercised if ICANN fails to perform the functions adequately.

Recommendations:
The CWG should engage in further discussion and conduct additional legal analysis, which is needed to identify and mitigate any risks associated with moving the contracting role currently played by the NTIA to the new Contract Co. Further, we also think that a legal analysis will be required to assess where Contract Co. should be incorporated and the implications of deciding upon that legal jurisdiction.

2) Our concerns regarding the Multi-Stakeholder Review Team (MRT) center around its ability to limit its mandate to truly technical concerns. In the current proposal, the MRT retains discretion over contracting decisions related to the IANA functions, including deciding when a rebidding process should be opened, as well as managing and determining the outcome of that resulting request for proposal process. Granting this much power over a set of technical and implementation functions to the MRT could allow for capture and re-litigation of already decided

non-technical policy decisions. In particular, including a broad variety of technical and non-technical stakeholders on a review team that is supposed to supervise purely technical functions could detract from the focus on operational performance and expose the IANA functions to the possibility of interest capture and policy reformulation. Though the exact composition has yet to be determined, a large body that includes a variety of interests could also be susceptible to external lobbying by entities that want the body to play a role in influencing or enforcing policies developed within the GNSO and ccNSO and implemented by the IANA functions operator.

Recommendations:
It is clear that the MRT could operate as a successful check on over-reaching or negligence by the ICANN Board. However, the proposal does not make clear how the power of the MRT would itself be checked in the event of an overreach by that group. Without an answer to this question, the proposal merely displaces, rather than solves, a key issue regarding accountability.

Before agreeing to establish an MRT, the community should require a clearer explanation of the MRT's mandate and composition, including bylaws or other organizational documents.

3) Our concern around the development of an Independent Appeals Panel is centered on concerns regarding bifurcation of the appeal mechanism. First, the discussion regarding appeal mechanisms should take place in a holistic fashion. The ability of aggrieved parties to seek review of ICANN's actions should be improved across the board -- not just with respect to the IANA functions.

Recommendations:
This discussion should take place in the Accountability Working Group. A broader review mechanism with binding outcomes and appropriate redress should be implemented through the Accountability Process, and this mechanism could and should also cover the appeals referred to in the draft proposal for as long as ICANN continued to act as the IANA Functions Operator. Separation of these mechanisms could lead to unnecessary duplication of processes, forum shopping, and a risk of inconsistent adjudications on the same topic.

We thank the CCWG for the opportunity to comment, and hope that our areas of support and concern are taken under advisement as this process continues.