SIDN's response in the Public Consultation on the Draft Transition Proposal by the CWG on Naming Related Functions

1. SIDN's main objectives on the IANA oversight transfer

SIDN is the manager for the .nl ccTLD and provides backend registry services to the .amsterdam gTLD and the .aw ccTLD. As a TLD manager SIDN is a direct user of the IANA services. SIDN is a not for profit organisation working through its TLD and other services on a single, secure, stable and open internet, that is accessible for all.

SIDN welcomes the step from the NTIA to transfer the oversight over the IANA function to the multi-stakeholder community as a positive step forward.

SIDN is in general quite content with the way the IANA services are currently and in the past have been provided by ICANN. As we and the millions of users of our services, heavily depend on the IANA services, our main objective in this process is make sure that the function stays as stable and of the same quality as it has been for years now.

Stability is therefore the main driver for our following comments and suggestions. Besides that, we seek safeguards with respect to the quality of service that we as registries need to receive, at the same time making sure that the IANA function remains a strictly administrative function and that the proposal does not create policy.

The objectives of SIDN may seem rather defensive but given the importance of the IANA function and the fact that today it all works well, we feel that to be the best approach.

2. Alternative solution

SIDN applauds the enormous amount of work done by the CWG and the time and effort its members and participants are putting into this. SIDN itself is active as a participant in the CWG and has voiced its concerns with regard to the current proposal and fuelled the present discussion on the alternative, simpler, approach. We, as others, felt that the group was too fast in its choice to working out only one in our view far from optimal direction for a solution while disregarding a much better one.

Replicating the external NTIA like structure, the proposal seems to be based on a strong lack of trust in the current ICANN structure and more specifically the accountability of the CEO and board. Instead of focusing on the necessary enhancement of the existing accountability structure, the proposal tries to find a solution in setting up a completely new structure.

We not only feel that the proposed new structure contains issues that prove difficult to solve, but are first and foremost convinced that an internal-to-ICANN solution, based on enhanced accountability, is not only possible, but easier to develop and implement as it builds onto what has been successfully developed by the community over the years.

One concern we have with the current proposal is the idea of a Contract Co. The initial driver for the Contract Co. was to keep things as simple as possible and replicate the current contractual structure, replacing NTIA as contracting party by Contract Co. Another driver seems to be the whish by some to make it as easy as possible to separate the IANA function from ICANN.

While we agree that the possibility of separating IANA from ICANN should be part of the proposal, we only see separation as the very ultimate remedy. A last resort option, and not one that, as some even suggest, has to be a standard option that will even be used to publicly tender the IANA function each 3 or 5 years.

The IANA function is part of ICANN and as long as ICANN operates the IANA function as well as it does today, there is no reason whatsoever to change this. Separating the IANA function from ICANN will always create risks to the stability and quality of the service.

At the same time we fully agree that effective oversight and control and a - worst case - way out of ICANN is necessary. However, all of these can be realized without setting up a Contract Co., the creation of which introduces issues with regard to its core stability. We hereby specifically refer to: the choice of the country under which laws it will be set up and act, the risk of capture, the yet to be defined formal relation with the MRT and the risk of all kinds of litigation and claims with which the single small entity will have to deal with.

We suggest that if it is possible to organize the Contract Co. in a way that makes sure that its board has to follow all decisions taken by the MRT (probably because its bylaws say so), a similar design can ensure that the ICANN board (also via its bylaws) has to respect the decisions of the MRT or a similar structure.

In our view the solution therefore should be found in an alternative plan, in which the oversight will be organized within ICANN, simultaneously enhancing ICANN's accountability.

We see the rough outlines of such a plan as follows.

As many do, we feel that the current ICANN board structure is far from ideal. We have suggested before that the ICANN board should consist of independent professionals, only selected on their skills and expertise, instead of the current situation where the board is partly chosen by its SO's and AC's and partly by the NomCom.

Above this newly structured board, a new multi-stakeholder oversight body can then be placed. The members of this multi-stakeholder body will be elected by the different stakeholder groups (e.g. their chairs) and will, different from the current ICANN board members, remain accountable to their constituency only during their entire term. To be effective this new body should have in extremis the right to dismiss the ICANN board or part thereof. This body could also be given the final say over a transfer of the IANA function, if necessary without consent of the board. Following the CWG proposal, an MRT like structure could be that body.

These rough outlines would still need a lot of detailing and it will be essential to synchronise this work with the work of the recently started Cross Community Working Group on Enhancing ICANN Accountability. We are convinced however that it is a much better solution than the Contract Co. plan, better for the stability and quality of the IANA function and at the same time better for the future of ICANN as a global multi-stakeholder organisation.

3. Independent Appeals Panel (IAP)

SIDN in general welcomes the idea of an IAP but notes that this is not replacement of an existing structure but creating a new one. Which introduces the question if it is a precondition for the successful transition of the IANA stewardship. We feel it is not and suggest that detailing of an IAP proposal be postponed to a later moment.

In detailing the IAP, a distinction should be made between gTLD's and ccTLD's. Where it may be possible to define a single IAP entity and IAP procedure for the gTLD's, this will not be the case for ccTLD's. We for example could, in line with the subsidiarity principle, accept and possibly welcome an appeals process for IANA decisions regarding .nl if it were in the Netherlands under Dutch law with a Dutch panel of independent relevant legal experts where ideally this structure would be set up in consultation with the .nl internet community. This could work for us but it is not said that a comparable solution would work for other ccTLD's. The IAP should therefore be tailored to the needs of the specific ccTLD.

We note that it is vital that the IAP should be the sole forum for appeals with regard to IANA naming decisions. It should therefore replace, as far as one would recognize it as being currently applicable, the Independent Review of Board Actions procedure in the bylaws of ICANN.

4. Customer Standing Committee and Multi-stakeholder Review Team

Essentially SIDN is of the opinion that both structures should be as lightweight as possible. The IANA function is an administrative function only and the oversight should therefore be limited to specifically that function. We do not see why the CSC should be composed of others than the registries, as it supposed to deal with the day-to-day business. As expert it should be upon the CSC to set the service levels using open, transparent and inclusive consultations and oversee IANA's performance on the service levels. The role of the MRT should be, as originally proposed, be limited to those situations where the MOU/agreement itself needs to be changed including the situation where IANA non-compliance with the MOU/agreement is such that separation might be necessary.

For practical reasons we feel that the MRT should be a standing committee so that it will always be available if necessary, but at the same time stay as much dormant as possible. With regard to both structures safeguards with regard to capture and mission creep are extremely important. A lot of further detailing with regard to these structures is necessary.

Last point on these new structures is that none of them should replicate the role of the Root Zone Management Process Administrator role NTIA currently has. The public posting of all change requests should be sufficient to avoid clear mistakes missed by IANA and the registry manager concerned. The CSC nor the MRT nor an independent certification from a counsel should have a role with regard to ccTLD delegation and redelegation request. What might help in this respect is the publication by IANA of the complete intended delegation/redelegation decisions for public comment prior to taking the final decision.

5. Key Contracting Provisions

SIDN supports an alternative solution where there will not be a contractual relation. At the same time, also in that solution a number of arrangements will have to be in place comparable to what is suggested now as contract terms in the CWG proposal. Given the different approach of the alternative solution, we limit our comments to those most relevant.

B.2 Cost/Price – This is clearly highly controversial for ccTLD's as there is currently no obligation to pay for the IANA services. SIDN however pays ICANN on a voluntary basis a significant amount of money for amongst others the IANA services, and expects that it will continue do so after the oversight transition. At the same time SIDN would also want to have substantial influence on the budget of IANA and the height of its contribution. In our opinion this is rather a CSC than a MRT matter.

C.2.8 [service levels]- We suggest that the CSC should determine the Service Levels after an open public consultation like the NTIA did in the last RFP round.

[Independent Evaluator] – As stated above SIDN does not support the role of an Independent Evaluator.

C.2.9.2. Perform Administrative Functions … - As stated above we do not see a role for the Administrator.

C.2.9.2.c Delegation and Redelegation of a ccTLD – last bullet should not use the word "recommendation" but "decision". In line what we have said above, it shall be directly submitted to the RZM for execution.

C.2.11 and C.4.7 – All reports should be public so there should not be an approval process for publication in these instances

Budget Meetings – MRT should be CSC

6. Root Zone Maintainer agreement

The whole transition of IANA oversight to the multi-stakeholder community makes only sense if also the NTIA – Verisign RZM agreement will be part of it. If all other oversight mechanisms fail to make the IANA function operator perform its tasks as required, the ultimately remedy of separating the IANA function from ICANN must be available. In that case arrangements also need to be in place that make sure that the RZM accepts the separated IANA as the new administrative authority with regard to the root zone administration. On the condition of adequate oversight over and accountability of ICANN (as per sub 2 above), the role of NTIA with regard to the RZM agreement can be taken over by ICANN, making the IANA service provider the new contract party for Verisign. From a stability perspective it at the same time should be clear that replacing the current RZM should not be part of the current process.