

## **NOTE**

### **Comments regarding the Cross Community Working Group (CWG) On Naming Related Functions - Public Consultation on Draft transition Proposal 1 December 2014.**

We welcome the opportunity to provide comments to the Draft Transition Proposal developed by the Cross Community Working Group (CWG) on Naming Related Functions.

We would also like to thank the CWG and the global multistakeholder community for carrying out this important and extensive work within such a challenging deadline.

#### *General remarks*

In general, we would like to underline that IANA and ICANN are central institutions in the administration one of the world's critical infrastructures and therefore have the responsibility for a global public good and for acting in the global public interest. Thus, ensuring an effective and well-functioning Internet Governance regime is of highest importance, and an inclusive, transparent and accountable multistakeholder model, where all stakeholders can participate effectively is instrumental to this end.

Moreover, the transition of the Stewardship for the IANA functions to the global multistakeholder community and the Enhancing ICANN Accountability processes are important steps in enhancing global legitimacy into the management of the DNS. Adequate accountability mechanisms must be in place before the transition takes place. This includes making sure there is coherence between the IANA transition proposal and the two accountability processes, for example by developing a roadmap for enhancing ICANN's accountability in the longer term. In order to ensure legitimacy to the process and outcome, ensuring equal participation from stakeholders from all regions worldwide is essential.

#### *Draft Transition Proposal*

With regard to the Draft Proposal, we believe the outline of four new structures is a good starting point. However, we should strive to develop a regime, which is as lightweight as possible. There is still much work to be carried out and it will be of outmost importance to pay careful attention to the details when developing the proposal further.

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As an overall principle it is paramount that the new regime has inbuilt independence. As such, it must be ensured that the regime has adequate independent checks and balances as well as review and redress mechanisms. Another important part of this work is to ensure that the new institutional setup does not allow for any form of capture.

Appeals and Redress: Critical to making sure that the new institutional setup is adequately accountable is the establishment of binding and effective appeals/redress mechanisms that are, non-discriminatory, affordable and independent. An effective appeal system will also depend on who can appeal a decision and on what grounds.

Oversight and Review: Establishing an independent and effective oversight is a key element to an accountably new setup. In order to ensure adequate independence, a solution could be to establish the IANA Periodic Review Team as an Expert Committee/Advisory Council (with expertise in i.e. international law, good governance, and issues related to the DNS) independent of ICANN. The IANA Periodic Review Team could be chosen by the multistakeholder community, including governments. In this regard we would like to underline that we do not believe that the principle of independence is fulfilled if the Committee/Council would consist only, or mainly, of people from the ICANN-community.

From our point of view it is positive that the Draft Transition Proposal implies that most decisions will be taken at the technical level, aiming at automating as many procedures as possible and minimizing the need for involvement from other entities/parties.

With regard to the creation of an IANA Customer Standing Committee (CSC) and in light of the proposed operational nature of the CSC, its responsibility of conducting an operational review and the fact it does not have any enforcement power, it is our general view that governments do not have to have a seat in the CSC. However, this would require that robust checks and balances are put in place, including independent/external entities. It would also require that the responsibility of governments in ensuring the global public interest and public policy is respected. In general, carving out the appropriate role for governments in the new setup will be of highest importance. Also, increased transparency, including the publishing of all decisions is very important.

AOC Reviews: As one of the main accountability mechanisms in place today, the reviews called for in the Affirmation of Commitments between ICANN and the US Department of Commerce should be retained, preferably by including them in the ICANN Bylaws. The modalities could be discussed further by the Cross Community Working Group on Accountability.

Separation of policy and implementation: Regarding the question of separation of IANA from ICANN, we believe it is important to strengthen the separation of ICANN's policy function and the IANA operations. Moreover, a mechanism should exist that allows for a transition of the IANA functions from ICANN, if this is deemed necessary in the future. A fundamental element of the current governance structure is the possibility of awarding the contract to another entity and this should be continued in the new setup.

We would also like to stress the importance of safeguarding that ICANN stays within its mandate in the new setup.

Country Code Top Level Domains: As regards the administration of ccTLDs sovereignty must be respected. This also entails that redelegation and delegation of ccTLDs should be conducted according to national rules and procedures, including respecting national authorities and appeals mechanisms, where such rules and mechanisms exist.

Stress Test: Furthermore stress testing of the final proposal before the transition will be of crucial importance.

We are looking forward to continue working with all of you on this important matter.

Kind regards,

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