IANA Oversight Transition Proposal

I. **Principles (in addition to those already published by the CWG):**

Replace only what needs to be replaced, and develop new entities only when necessary. Use existing multi-stakeholder mechanisms wherever possible. While the CWG is authorized to create the IANA oversight model, independent, non-policy making bodies should implement it. Existing ICANN organizations can work together to monitor the new model without creating new, permanent organizations.

Of the different oversight roles, the least discussed and potentially most important is to provide a backstop to the IANA-function operator decisions on root-zone management change decisions. If powerful third parties (governments or organizations) protest a legitimate root-zone management change (most likely a re-delegation or registry operator change of control), the oversight function must be of sufficiently high-level to resist significant pressure, provide independent corroboration, and approve the change.

II. **Current regime:**

The IANA-oversight function is comprised of two responsibilities:

- Approval of root zone change requests: Approval of root-zone change requests currently is performed by the NTIA contracts administrator. In contentious changes, the contracts administrator is backed / supported by the NTIA, and other US Government Departments.

- Designator of the IANA-function services provider: the Designator of IANA-function service provider is performed by the NTIA. In this role the NTIA gauges IANA performance and, upon expiration of the IANA agreement, decides whether to issue a Request for Proposals, or renew the agreement.

III. **The Replacement:**

- Administrator. Fulfilling the role of the NTIA Contract Administrator and Quality Assurance function.

- Board of Trustees. Fulfilling the executive role that backs the Administrator in authorizing controversial root-zone change requests and deciding whether to engage with an alternative IANA-function services provider.

The model described here proposes an independent Administrator and Board of Trustees. Alternatively, those two functions can be associated more formally with ICANN. The alternative model might be simpler to implement and less expensive to retain without much effect on performance of the two oversight responsibilities. The alternative is described at the end.

Current IANA Oversight Model
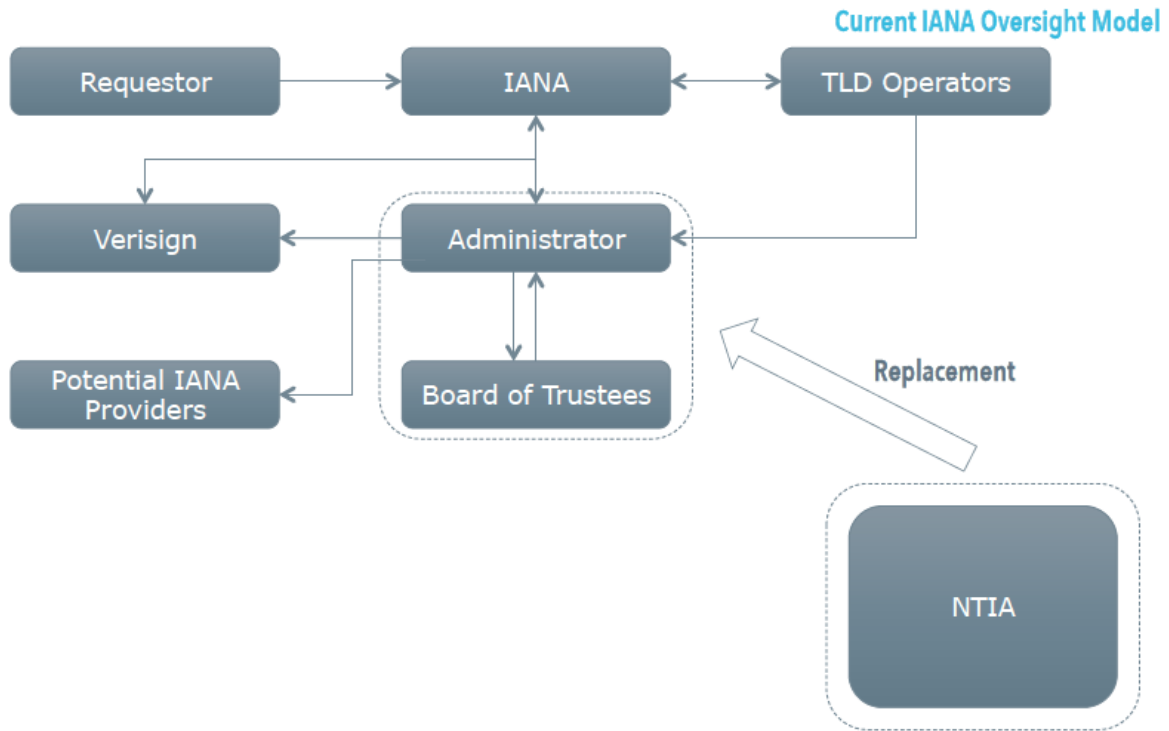
IV. Model Operation:

a. Administrator

- Is an existing organization (not-for-profit) with the ability to contract with the IANA-function services provider.

- Is hired by the Board of Trustees for a fee. The fee is paid by ICANN. If ICANN loses the IANA-function contract the Board of Trustees and the ICANN Board will agree on a fee mechanism that, in total, is cost neutral to current ICANN fee payers (i.e., fees paid to ICANN are reduced to fund the Administrator through a direct contract or other mechanism.)

- The specification for Administrator hire is developed by IANA Stewardship Transition Coordination Group (ICG) and ICANN staff, reviewed through public comment and approved by the GNSO, the ccNSO and the ICANN Board.

- Covers the NTIA Contract Administrator role:

  o Reviews IANA-function reports, recommending root-zone management changes for authorization by the Board of Trustees.

  o Monitors on-going IANA-function performance against process control metrics, QA role.

- Compiles periodic (quarterly or annual) performance reports issued by: the IANA-function services provider, a self-formed gTLD group, and a self-formed ccTLD group.
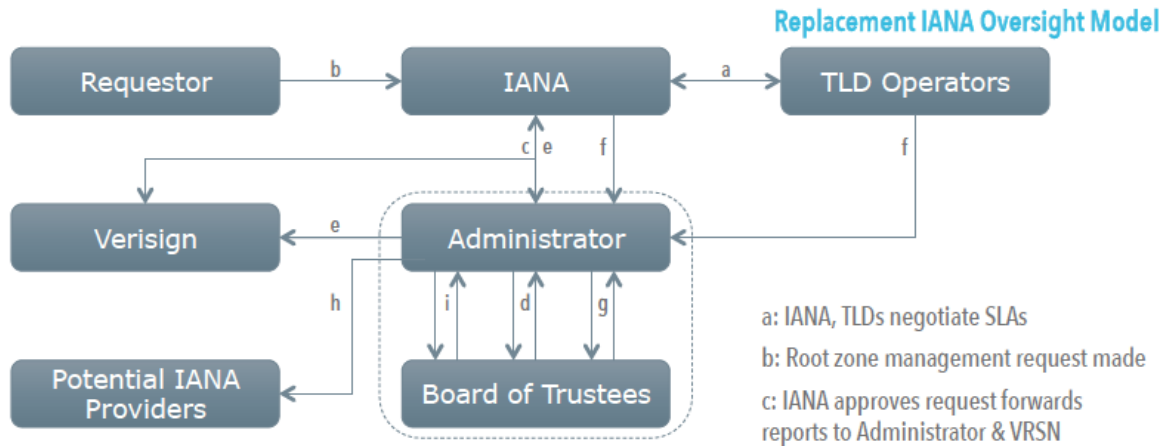
− Recommends to the Board of Trustees whether the IANA-functions contract should be renewed or put out for RFP.

− If releasing an RFP is approved by Board of Trustees, the Administrator conducts an open RFP and reports recommendations to the Board of Trustees.

b. Board of Trustees

− Are selected by the NomCom using criteria initially developed by the ICG and approved and maintained by the GNSO and ccNSO.

− Hires Administrator in an open process.

− Sets the Administrator and IANA-function provider contract term.

− Retains an independent auditor who will review and report on Administrator performance. The review will include public comment and customer input.

− Authorizes root zone management change requests recommended by the Administrator or request additional information. The Board of Trustees does not "reject" changes; the Board "requests additional information" until the IANA-function provider, the Administrator and the Board of Trustees are in agreement. This last type of instance is expected to occur rarely.

− Approves administrator recommendations regarding renewal of the IANA-functions contract, or requests additional information.

− In the case where a new IANA-function provider is to be selected: sets RFP criteria, after consultation with the gTLD registry stakeholder group and the ccNSO, and the opportunity for public comment.

− Approves the recommendation of the Administrator for IANA-functions service provider or requests additional information from the Administrator.

Replacement IANA Oversight Model

a: IANA, TLDs negotiate SLAs

b: Root zone management request made

c: IANA approves request forwards reports to Administrator & VRSN

d: Administrator reviews/authorizes change (certain cases: recommends to Board of Trustees, who authorize change)

e: Administrator informs VRSN & ICANN change is authorized, VRSN makes change

f: IANA & TLDs make performance reports to Administrator

g: Administrator makes recommendation to renew contract or conduct RFP; Board agrees or asks for additional analysis

h: Administrator conducts RFP in accordance with terms agreed by Board and subject to public comment

i: Administrator makes recommendation on new IANA provider; Board agrees or asks for additional analysis

V. Implementation / Assumptions / Rationale:

− The Board of Trustees is comprised of independent, high-level members: executives, former ICANN Board members, former senior government officials and recognized world-community leaders. A parallel example might be the Advisors to the Cross Community Working Group on Enhancing ICANN Accountability.

Rationale: High-level members are required in the rare event that there is governmental or public protest to a legitimate change. The Board's most important role will be to approve legitimate changes despite pressure to do otherwise. The root zone change management role is relatively simple and easy to accomplish. The benefit the USG has provided is to act as a backstop to IANA decisions when there is controversy. A high-level, globally diverse Board dedicated to the multi-stakeholder approach is the best model for retaining the backstop.

− The Board of Trustees will authorize root-zone management changes in the same process and using the same criteria the NTIA does now.

Rationale: One could propose a model without a Board of Trustees, the IANA-function operator or an Administrator could approve root-zone management changes without further review. Nearly all changes are routine and require no further review so the establishment of a Board of Trustees for this purpose is a close call. However, a Board of Trustees will add value for contentious changes where independent corroboration of ICANN recommendations will defend root-zone management changes against government, societal or organization intervention.

– Trustees are nominated for staggered terms set by the NomCom using their traditional methods (including use of nominations and search firms). The NomCom will take public nominations and recommendations during its deliberations.

Rationale: This will allow ICANN to use existing and independent means for maintaining this Board of Trustees. The NomCom is a multi-stakeholder body.

– The ICANN Board, taking public input, will consider and approve ICG recommended criteria for nomination to the Board of Trustees. The ICG will use the input of the various stakeholder groups to create the criteria. If additional clarity is required, the ICANN Board will reconvene the ICG or a group comprised of SO/AC leadership. (The criteria can be modified through standard Supporting Organization policy processes.)

Rationale: A small group can develop clear criteria consistent with the goals of this model to provide high-level membership only.

– The Administrator does most of the "leg-work" for the Board of Trustees (so the Board can act quickly and easily):

   o organizing change management reports

   o providing periodic IANA-function performance reports, recommending whether corrective action is required

   o compile a performance report at the end of the contract term recommending either that the contract should be renewed or a request for proposals will be issued.

Rationale: We are more likely to attract high-level members to the Board of Trustees if the work and recommendations are well organized for them; and less likely if the task requires extensive analysis and time.

Rationale: In practice, the Administrator approves the change requests and the Board of Trustees plays an active role only in the case of controversial ccTLD re-delegations, gTLD changes of control or controversial change requests. As the model develops, it is likely the Administrator will become the entity authorizing requests.

– There should be a strong renewal presumption in the IANA-function services agreement, based upon performance. If performance goals are met or if corrective action is taking place, the contract will be renewed. An RFP will issued if the incumbent IANA-services provider cannot perform to the negotiated SLAs and so cannot be awarded the contract.

Rationale: This is intended to avoid lightly-taken or speculative bid periods and the significant costs attending them. If an RFP is issued it will be because ICANN can no

longer perform the function, as demonstrated through a clearly defined escalation process of attempted corrective action and failures.

Rationale: Because the IANA-function contract is a no-fee contract, the primary issue for consideration is performance. If performance meets the customer-negotiated requirement, there should be no need to find another provider. If there is a sense that ICANN spends too much on the IANA-function, the issue should be addressed through the existing, open budgeting process.

Rationale: The strong-renewal presumption will leave in place intangible IANA services currently performed at ICANN. For example, in addition to responding to and processing change requests, the current IANA function provider performs a strong community role in coaching TLD operators through successful change processes, improving their operations, and safeguarding overall stability. This cooperation took years to construct and cannot easily be replaced.

−   The Administrator will develop the corrective action escalation processes, subject to public comment for approval by the Board of Trustees.

Rationale: There must be a very clear performance standard and escalation steps. It will be most clear if those who have to use the standards and escalation process develop it.

−   SLAs will be developed through negotiation between self-formed TLD groups and ICANN.

Rationale: Use existing stakeholder mechanisms; give the customer the voice.

−   Policy changes to this approach will be made by the GNSO and ccNSO through their normal policy processes.

Rationale: Uses ICANNs existing multi-stakeholder approach. Establishment of the MRT will burden an already-over-burdened volunteer community, putting the MRT's long-term viability in doubt. ICANN's policy-makers should not be in the role of implementers or operations. The CWG and its progeny should create a model, oversee its establishment, monitor and recommend changes through existing policy processes.

−   Implementation changes to this approach can be recommended by ICANN staff, by the ICANN community through the Supporting Organizations and Advisory Committees, and by the Administrator. Recommended changes will be considered by the Board of Trustees.

Rationale: This provides an open, clear path for improvement with recommendations coming from anywhere in the ICANN community.

  – Appeals: there need not be an appeal mechanism.

  Rationale: A root-zone management change requires the agreement of three entities: the IANA-function operator, the Administrator and the Board of Trustees. It would be difficult and impractical to create an organization that could effectively supplant the judgment of all three. If a root-zone change request is denied at any step of the way, the requestor is asked for additional information and the request can proceed through processing. If the IANA-function operator does not provide adequate consideration of a request, the requestor can (and has successfully in the past) request intervention by the ICANN Board, and then make an intervention request to the Board of Trustees (that ultimately decides whether to issue an RFP for a replacement operator).

Replacement IANA Oversight Model: Assumptions
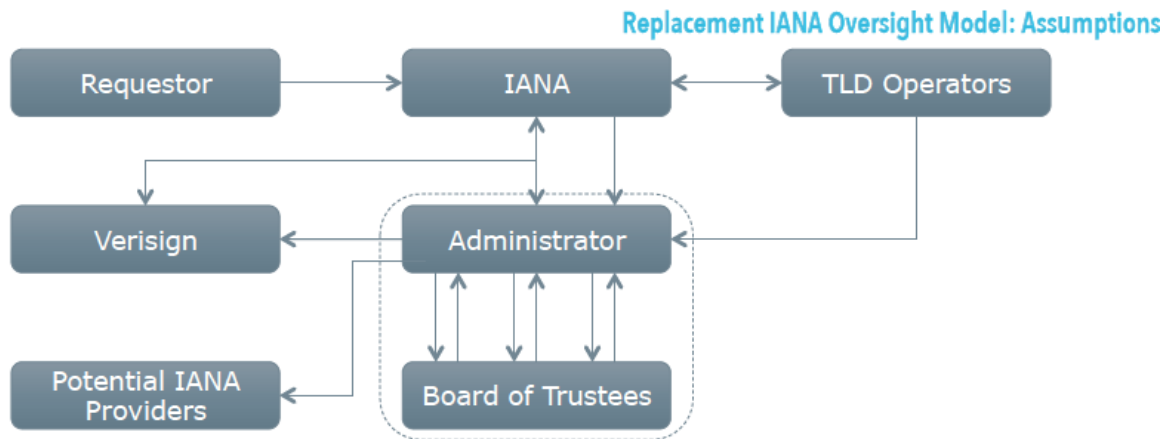
Administrator: already formed organization; ability to contract; performs services for a fee

Board of Trustees: high-level executives or former officials; pro-multistakeholder; appointed by NomCom

TLDs: self-formed customer group(s) (similar to or same as CSC)

Assumptions: Board high-level, immune from influence or interference; hires Administrator after public participation

　　　　Administrator does most of legwork; can be replaced by Board of Trustees

　　　　Strong IANA contract renewal presumption

　　　　ICANN cannot bid on RFP: to discourage speculative RFPs; only issued when ICANN can no longer perform

VI.   Alternative Model:

As stated under section III above, an alternative model would more closely tie the Administrator / Board of Trustees role to ICANN. The benefits would be: saving in administration cost while retaining an effective oversight function. The Administrator and the Board of Trustees would lose some independence but the implementation and operation path is clearer.

The hallmarks of this alternative model (i.e., the differences between this model and the one proposed above):

- The Administrator / Q.A. function and the Board of Trustees would essentially report to the ICANN Board.

- The IANA-services contract would expire. There would be no contract so long as ICANN provided the service.

- Same as the proposal above, if ICANN were unable to perform, the Administrator and Board of Trustees would combine to find a new IANA-function services provider.

- The ICANN Board would be obligated to facilitate the search.

- When a new provider is selected, the contract and its trappings would be re-installed. The contract could be between the Administrator and new IANA-function services provider or ICANN and the IANA-function services provider. That decision could be made at that time.
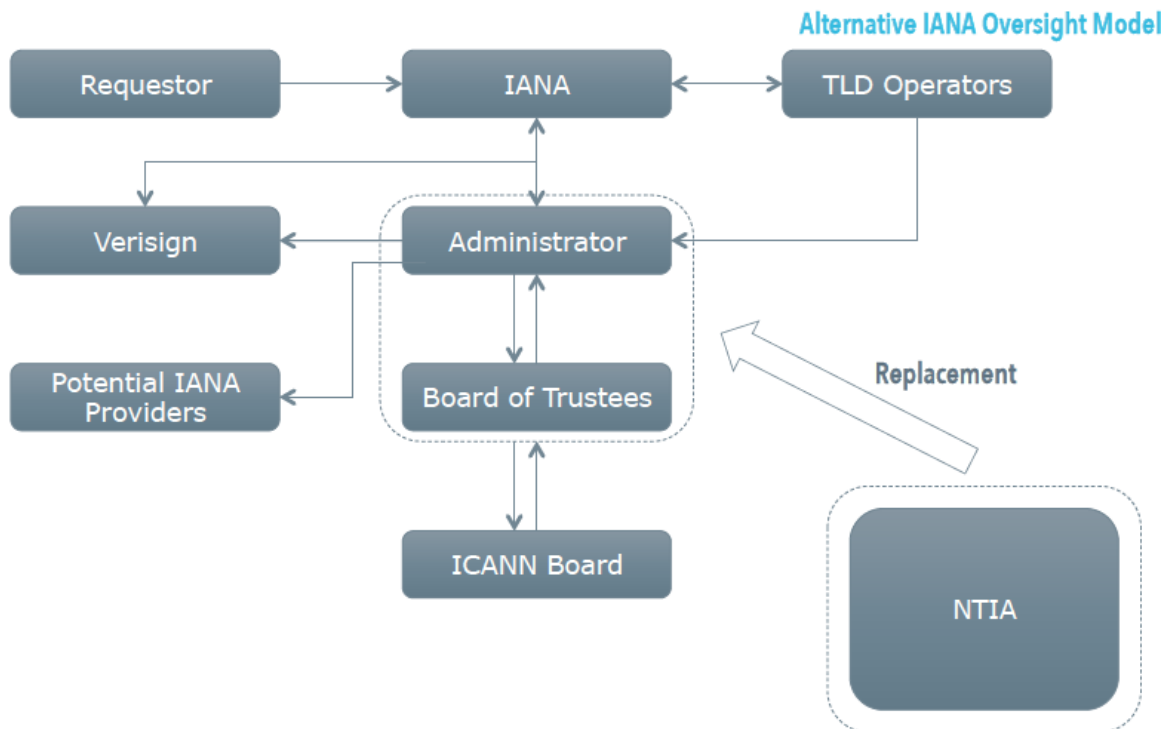
The rationale for this approach is:

- It is highly likely that ICANN will provide this routinized, no-cost service for a long time. The cost of formal contract maintenance and oversight is unnecessary until a new provider is sought. This is an unlikely and probably distant in time event.

- The Board of Trustees, if populated by high-level people, will maintain its independence of the ICANN Board.

- If a clear set of performance and escalation criteria are developed, the decision to re-bid the IANA-function contract will be largely objective. (If ICANN is not performing and cannot perform, it will be clear to everyone.)

- The power and independence of the Board of Trustees might be embedded in the ICANN Bylaws.

- There are reasons why ICANN might retain the contractual relationship with the new provider:

    o Ensure the new provider adheres to ICANN policy

    o Provide ICANN with weight in the Internet ecosystem discussion

    o Provide a communications forum for the IANA function and its customers

    However, if ICANN has lost the services agreement, there are likely to be larger, unanticipated issues with the ICANN model, so the decision should be left to that time.

- Resourcing the Administrator and Board of Trustees functions will be easier under the ICANN Board umbrella.
- The negotiation of SLAs and their enforcement is the same.

However, some independence is lost. A prerequisite for the implementation of this alternative proposal is successful implementation of Accountability measures (i.e., to the satisfaction of IANA customers) being developed elsewhere.