auDA comments on the second Draft Proposal of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions

Introduction

.au Domain Administration (auDA) is the industry self-regulatory, not-for-profit manager of Australia's ".au" country code Top Level Domain. auDA is an active participant in ICANN and regularly contributes to deliberations and policy development within the ccNSO.

auDA welcomes the opportunity to provide input to the second Draft Proposal of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG).

auDA welcomes the work of the CWG and, specifically, the significant efforts of the group to deliver an appropriate model for the transition of the IANA naming functions within a very restricted timeframe. auDA also welcomes the CWG's open and consultative process – and the group's willingness and ability to refine its deliberations based upon the input received from the multi-stakeholder community.

auDA notes that this second draft proposal is a significant improvement on the first draft and that auDA broadly supports many principles and structures outlined in it.

However, auDA still has significant concerns about certain elements of the proposal including, but not limited to, the proposed relationship between a Post-Transition IANA (PTI) and ICANN, the composition of the IANA Functions Review Team (IFRT) and the complexity of proposed post-transition structures.

The comments provided below are presented as an effort to contribute to the finalisation of the transition proposal presented by the CWG. In the spirit of the multi-stakeholder model, auDA is willing to collaborate in this work, though notes that significant refinement and compromise will be required to achieve this goal.

For the sake of clarity, we have provided both a general commentary about the CWG document and particular proposals within it, as well as a detailed paragraph-by-paragraph breakdown and analysis.

General comments on the transition of IANA naming functions

Overarching goals

Although the CWG has achieved significant progress over the last few months, it is appropriate, as the group approaches the conclusion of its work, that all stakeholders take a "step back" to assess whether current proposals address the group's initial goals and deliver the best possible structure for the future of the IANA naming functions.

Fundamentally, auDA holds that the National Telecommunications and Information Administration's (NTIA's) decision[1] to relinquish its historical role in relation to the management of key Internet naming, numbering and protocol functions is the culmination of a long transition process that started with the establishment of ICANN in 1998.

ICANN was specifically established to assume those responsibilities from the US government and is a product of the efforts made by the global multi-stakeholder community over the last 17 years. auDA believes that ICANN is currently well-positioned to assume those responsibilities and should retain a pre-eminent role in the management of the Internet's key naming functions into the future, without the restriction of new, untested structures.

In its announcement of 14 March 2014, the NTIA outlined four key principles for any transition proposal. The community's solution must:
- Support and enhance the multi-stakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

The public consultation on the CWG's initial transition proposal of 1 December 2014[2] confirmed that respondents were very satisfied with current arrangements and that any new arrangements should maintain ICANN as the IANA Functions Operator (IFO) at the time of transition. auDA strongly supports this community view and welcome the CWG's acknowledgement and response to this feedback.

In simple terms, the community has expressed support for the work that ICANN is doing and acknowledged the value of it continuing this role into the future.

Noting this acknowledgement, auDA believes that any proposals for the transition of the IANA naming functions should deliver the simplest, most efficient and least disruptive model possible. Cumbersome, unwieldy or unnecessary structures and processes must be avoided. Our detailed comments, below, seek to contribute to such an outcome.

Key principles

Given the four principles outlined by the NTIA, auDA believes that any changes to the management and oversight of the IANA naming functions must reflect the need to "implement mechanisms which could ensure similarly effective oversight and accountability while minimising complexity and costs and maintaining the security, stability and resilience of the DNS and Internet".[3]

---

[1] http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions

[2] https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en

[3] As noted in 111.A.i of https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf

However, auDA notes that the CWG has determined[4] that a transition proposal for the names community would require six separate goals:

- o A contract similar to the current NTIA IANA Functions Contract to perform the IANA Functions post – transition
- o The ability for the multi-stakeholder community to ensure that ICANN acts according to its requests with respect to IANA operations;
- o Separation between operational and policymaking responsibilities and protections for the IFO;
- o A mechanism to approve changes to the Root Zone environment (with NTIA no longer providing oversight);
- o The ability to ensure that the IANA Functions are adequately funded by ICANN;
- o The ability for the multi-stakeholder community to require, if necessary and after substantial opportunities for remediation, the selection of a new operator for the IANA Functions.

With regard to the first assertion of the CWG, auDA does not agree that a contractual relationship is required between ICANN and the PTI that would "give PTI the rights and obligations as the IFO", irrespective of whether the entity is established externally or as a "subsidiary" of ICANN.

The creation of an additional legal entity creates an additional burden and level of complexity that may serve to undermine one of ICANN's functions: maintaining the security and stability of the DNS. The CWG's proposal gives rise to concerns regarding jurisdiction and legal status which could be obviated by a structure that remains within ICANN, and which provides appropriate safeguards relating to accountability and transparency through the use of "fundamental" or golden bylaws that the CWG itself has, in part, adopted.

auDA believes that the work of the Cross Community Working Group on Accountability (CCWG) is making significant progress towards delivering upon these goals.

auDA supports the subsequent five goals of the CWG.

Structural details

With regard to more specific issues raised in the CWG's consultation document, auDA supports the establishment of a Customer Service Committee (CSC)[5] and that this should be a small and agile group that is comprised of direct customers of IANA.

auDA believes that the members of this group should be selected based upon their technical experience and direct knowledge of IANA's operational role. auDA also agrees that the CSC should not be a legal entity and that its operations should be defined by relevant governance documents (not articles of incorporation).

---

[4] Also in 111.A.i of https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf

[5] As defined in III.A.ii.a. of https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf

auDA also supports the development of detailed escalation mechanisms, as proposed by the CWG. Clarity with regard to how various types of problems with IANA are raised, addressed, escalated and resolved are critical for the community, IANA staff and ICANN. However, auDA believes that, while the CWG has sought to deliver this level of clarity, paths of escalation must be 100% predictable and, in particular, the path to the triggering of separation (or a separation review) needs to be further developed.

With the development of this level of detail, auDA could support the proposed "separation review" process / mechanism however emphasises that the outcome of any separation process <u>must</u> have the full support of the relevant communities – IANA's registry customers.

auDA supports the concept of an IANA Functions Review (IFR) and IANA Functions Review Team (IFRT). These processes and mechanisms contribute to the transparency and accountability required as part of the transition from current arrangements with the NTIA.

However, the deliberations of the IFRT must not be part of an unnecessarily lengthy and complex process. The IFRT should be clearly tasked with reviewing the operations of the PTI (or other entity) and, if necessary, instructing appropriate remedial actions - a process which the CSC would monitor.

Further, auDA opposes the current balance of representation on the IFRT. While auDA acknowledges that the review team should have broader representation than just the direct customers of IANA, the currently-proposed balance (four customers and eight non-direct customers) should be re-addressed.

Detailed comments on the CWG proposal

auDA notes that much of the CWG's document is either descriptive / narrative in nature or still under-development. Section I responds directly to the NTIA's request for input and is simply a description of the way in which the naming community uses IANA. Section II provides a description of existing arrangements. Sections IV, V and VI are all under development and their finalisation is largely dependent upon the outcomes of the CWG's deliberations on the substantive elements of its work.

As such, auDA has chosen to focus its detailed commentary below upon Section III: Proposed Transition Oversight and Accountability, though we note that we will provide additional input on other elements of the CWG proposal, as they are finalised.

CWG document section	Summary of CWG proposal	auDA comment
III. PROPOSED POST-TRANSITION OVERSIGHT AND ACCOUNTABILITY		
III.A The elements of this *(the CWG's)* proposal	This section is a summary description of proposed changes. - A new separate legal entity, Post Transition IANA (PTI), an affiliate of ICANN. - Contract between ICANN and PTI, granting the latter rights and obligations to serve as the IANA functions operator. - Changes to the root zone environment.	auDA supports a number of the principles proposed by the CWG, however remains unconvinced of the suitability of the proposed execution model. We have provided general comments above and additional detailed comments below.
III.A.i. PROPOSED POST-TRANSITION STRUCTURE This section presents the changes required to replace the oversight and accountability roles currently performed by the NTIA. (Contract processes, performance level establishment and monitoring, issue resolution, RZM responsibilities etc).	The CWG noted the significant levels of public satisfaction with existing arrangements and that any new arrangement should maintain ICANN as the IFO. The CWG noted the need to maintain similarly effective oversight and accountability levels, while minimising complexity and costs and maintaining the security and stability of the DNS. The CWG aims to deliver upon these needs by: - Developing a contract for the performance of the IANA (naming) functions; - Codifying the ability for the community to ensure that ICANN responds to the community's requests with respect to IANA; - Developing "additional insulation" between operational and policy-making responsibilities	auDA agrees with the CWG's observation that the community is satisfied with ICANN's IANA department performance and that ICANN should remain the IANA Functions Operator.[6] Noting this, any changes to the current execution of the IANA functions should deliver minimal functional disruption and should focus upon the security and stability and resilience of the DNS. The principles of ensuring codified community involvement in IANA's ongoing operations, transparency, adequate future funding for IANA, protection from "capture" and a separation between operations and policy are supported.

---

[6] Noted on p.19 of https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf

	- Developing a mechanism to approve changes to the Root Zone post-NTIA; - Ensuring adequate funding for IANA; - Ensuring the ability of the community to select a new IFO.	However, auDA questions the CWG's interpretation that these goals can only be delivered through the establishment of a distinct legal entity (whether as a subsidiary of ICANN or otherwise). auDA would welcome clarification from the CWG regarding whether these goals could not also be delivered as or more effectively by a solution based upon the development of ICANN-internal structures such as creating a separate IANA division within ICANN.
III.A.i.a. Post-Transition IANA (PTI)	The CWG proposes a legal and functional "ring fence" around the IANA naming functions and ICANN, proposing a new legal entity, either an NFP or LLC. ICANN would provide funding and administrative resources.	auDA notes that the structure proposed by the CWG is designed to maintain a distinct level of separation (and separability) between ICANN and the PTI. auDA disagrees that this goal necessarily requires the establishment of a separate legal entity. The establishment of a separate PTI (either as an NFP or LLC) creates a range of issues and complexities relating to the entity's relationship with ICANN. That is, the development of PTI would essentially replicate many of the concerns associated with the previously-proposed establishment of a "Contact Co." – a proposal that received strong opposition from the community. Further, auDA believes that the establishment of a distinct legal entity runs counter to the CWG's acknowledgement of the community's support for

		minimising disruption and avoiding complexity during, and following, the transition process.[7]
		The establishment of a PTI will solely address requirements of the naming community that currently relies upon IANA. Current advice from the numbering (RIRs)[8] and protocol (IETF)[9] communities does not envisage the same degree of separation as proposed by the naming community. This creates a potential disconnection between the three responsibilities IANA is tasked with.

auDA believes that suitable safeguards and accountability mechanisms can be developed under the auspices of ICANN and enforced through the work of the CCWG on Accountability and "fundamental" bylaws that the CWG itself has itself frequently[10] referred to in its proposal.

Despite these overarching concerns, auDA acknowledges that the majority of ICANN's |

---

[7] Noted on p.19 of https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf

[8] https://www.nro.net/wp-content/uploads/ICG-RFP-Number-Resource-Proposal.pdf

[9] http://tools.ietf.org/html/draft-ietf-ianaplan-icg-response-09

[10] First noted on p.22 of https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf and also as part of proposals for a separation review on p26 (III.A.ii.d)

		stakeholder community may agree to the CWG's proposal regarding an affiliate separate legal entity. In that case a number of important details are missing from the proposal. Despite the continued efforts of the CWG, auDA believes it is unclear whether issues of jurisdiction, structure and scope of the PTI have been adequately addressed. Questions also remain regarding the PTI's administrative and functional interactions with ICANN, including the management and transfer of assets between the parties, the management of staff, and their employment status and rights. Questions exist on the structure of the PTI Board (see below). Finally, should the community support the establishment of a new affiliate / subsidiary structure, auDA believes, based on the principles of efficiency and simplicity, that such an affiliate should be an LLC established in the State of California.
III.A.i.b. PTI Board	The CWG proposes that, as a separate legal entity, PTI would have a Board of directors or managers. The PTI Board could be an ICANN-designated board and have the minimum statutorily required responsibilities and powers.	See our comments above, specifically regarding auDA's belief that a legally-separated PTI is not necessarily the only, or best, solution. auDA proposes that the concept of a separate legal entity is being promoted by some members of the

| | | CWG and community under the assumption that the PTI Board should be established as a "community Board", with representatives from a broad cross-section of IANA's current stakeholder group.

auDA believes that the assumption of such a "community Board" is not correct. The CSC (discussed below) should be a technically-focussed group of direct IANA customers. Mechanisms for review (also discussed below) should be the responsibility of the community. However, assuming a contractual relationship between ICANN and the PTI is agreed, the PTI Board must be corporate in nature, holding relevant expertise (including relevant liaisons) and assuming responsibility for contractually-defined responsibilities between ICANN and the PTI.

Notwithstanding, the above observations, auDA notes the CWG has published little information on the nature, structure, size, composition, responsibilities and appointment mechanisms for the PTI Board. auDA is unable to support the proposed PTI and PTI Board structure and overall model, until greater detail is made available for consideration.

For example: Under the terms of the contract with USG, for ccTLD delegations and re-delegations, the ICANN Board reviews documentation to consider if proper procedures were followed in evaluating the |
|---|---|---|

		request. Which Board (if any) would be obligated to do that sign off?
III.A.i.c. IANA Statement of Work	The CWG asserts that issues currently addressed in the IANA functions contract would be addressed "either" in an ICANN-PTI contract or in ICANN bylaws and governance documents. The CWG states that current functional provisions will be carried over in the form of a "Statement of Work" (SOW).	auDA supports the concept that a clear Statement of Work (as a mechanism to enshrine current SLAs), is appropriate and essential. Should ICANN's stakeholder community agree that a separate legal entity is the preferred model for the future management and "oversight" of the IANA function, we agree that a contractual solution is appropriate. However, auDA believes that whilst the SOW could exist under a contractual arrangement it could also exist under amended ICANN bylaws. As stated previously, auDA believes that amendments to existing bylaws provide the most efficient mechanism to achieve the agreed goals. The effectiveness of these bylaw provisions would be enhanced by the work and eventual recommendations of the CCWG on accountability. auDA notes that the CWG has proposed the use of fundamental bylaws as a mechanism for ensuring the long-term effectiveness and relevance of the IFR. This being the case, auDA questions why all of the mechanisms and supporting documents for a PTI

		could not be developed through the fundamental bylaw model.
III.A.i.d. IANA Function Review	Revision and review of the SOW would occur as part of an IANA Function Review (IFR). The review would also take into account other stakeholder input and comments from the CSC (see below). The IFR would be convened periodically (first review after two years and thereafter every five years, or less). The structure for these reviews would be outlined in "fundamental bylaws". These can only be changed with community approval. Members of the Review Team (IFRT) would be selected by SOs and ACs and liaisons from other communities. Special reviews (out-of-cycle) could be triggered with the supermajority support of the ccNSO / gNSO.	Once again, auDA supports the broad principle of periodic review of the work of the IANA Functions Operator. This is a key element of ensuring ongoing accountability, transparency and responsiveness to the community. auDA supports many of the details outlined in Annex F of the CWG's report. However, the overarching structures for the implementation of the stated principles give rise to concerns. On logistical details, auDA is concerned at the proposed structure and composition of the IFRT[11]. Currently, only one ccNSO member and one "non-ccNSO" ccTLD are proposed as participants on the IFRT, and the gNSO's Registry Stakeholder Group (RySG) are also only afforded two "seats". The remaining eight positions on the IFRT would be held by other stakeholders. Given that IANA's remit is inherently technical, auDA supports the concept of direct customers maintaining a significant role in all oversight mechanisms relating to IANA's operations post-transition. auDA proposes

---

[11] As defined on p52 of the CWG report.

| | | that both ccTLD and gTLD registry representation be increased to three members from each group. This would not represent a majority stake on the IFRT, nor overly inflate the size of the IFRT, though would provide a greater degree of customer engagement.

With regard to the triggering of "special", out-of-cycle reviews, additional clarity is required regarding the need for "supermajority" support of both the ccNSO and gNSO. The term "supermajority" can be interpreted in a variety of ways and, in its most literal sense, would require the engagement and support of most of the ccNSO and gNSO.

Has the CWG considered circumstances where support is received from one community and not the other? Would such a circumstance lead to the refusal to proceed with a special review? Does this, in turn, mean that the threshold for commencing a special review has been set too high? |
|---|---|---|
| **III.A.ii. PROPOSED OVERSIGHT & ACCOUNTABILITY REPLACEMENT** | | |
| III.A.ii.a. Customer Standing Committee (CSC) | The CWG recommends the creation of a Customer Standing Committee (CSC) to monitor the performance of PTI.

The CSC would perform the operational (emphasis added) responsibilities previously performed by the NTIA. | auDA strongly supports the concept of a CSC for the day-to-day monitoring of the IFO. This group must be small and agile and should be comprised of direct |

	The CSC would not be a legal entity and would exist as a "standing committee". It could not initiate a change of IFO itself, but could escalate problems / concerns to the ccNSO and gNSO. The charter and roles of the CSC are outlined in Annex G of the CWG report.	registry customers. As such, the membership composition proposed by the CWG[12] is acceptable. Critical to the success of the CSC is members' ability to contribute the necessary time and expertise to the process. While, as stated above, members of the PTI Board (or alternative structure) should possess relevant management, legal and organisation-management expertise, members of the CSC must have technical and operational expertise, reflective of the CSC's direct operational oversight function and associated requirements of community stakeholders.
III.A.ii.b. Service Level Expectations	The CWG has engaged a Design Team (DT) for the development of Service Level Expectations, comprised of three gTLD and three ccTLD representatives. This group has not yet concluded its work.	auDA welcomes the DT's commitment to working with IANA staff to develop a set of SLE's for the post-transition environment. It is critical that the perspectives and experience of current IANA staff are acknowledged and reflected in final documentation. However, auDA questions whether the development of re-defined SLEs is essential prior to the IANA transition. The current transition process is significantly complicated and auDA proposes that the maintenance of the "status quo" regarding SLEs is

---

[12] See p 59 of the CWG report

| | | adequate and further goals relating to continuous improvement should be addressed post-transition.

auDA welcomes the opportunity to comment in detail, when the DT's work (or other post-transition work) is finalised. |
|---|---|---|
| III.A.ii.c. Escalation Mechanisms | The CWG recommends a set of escalation steps for the resolution of emergencies and customer complaints relating to the IANA functions. These are outlined, in detail, in Annexes I, J and K of the current CWG proposal.
The processes would include CSC resolution, problem resolution and root zone "emergencies" | auDA welcomes the detailed work done by the CWG on the development of escalation procedures for a range of scenarios, including "ordinary" customer complaints (including identification of staff contact information for escalations) and emergency situations where a critical failure of the IFO has occurred.

These procedures are critical to the success and robustness of the post-transition environment. |
| III.A.ii.d. Separation Review | The CWG recommends that a fundamental bylaw be created to define a Separation Review that can be triggered by an IFR, if needed.

This would only occur if other escalation mechanisms and methods have been exhausted.
This process may include a group of SOs and ACs which would be formed to review the issues and make recommendations. The recommendations would need to be approved by the ICANN Board and would be subject to all escalations and appeals mechanisms. | There is a lack of detail on the proposed separation process, particularly regarding the role of SOs and ACs in said process. It is unclear what could trigger separation (or a separation review) and escalation paths at this extreme stage of review must also be made clearer. |

	There would be no prescribed action for the Separation Review. It would be empowered to make a recommendation ranging from "no action required" to the initiation of an RFP and the recommendation for a new IFO	
III.A.ii.e. Framework for Transition to Successor IFO	The CWG recommends the continuation of the current transition framework for the IANA Functions, should it be necessary for the IANA Functions to be transitioned from the incumbent IFO to a successor IFO.	auDA supports this position.
III.A.iii. ROOT ZONE ENVIRONMENT AND ROOT ZONE MAINTAINER		
III.A.iii.a. Proposed changes to root zone environment and relationship with Root Zone Maintainer	In relation to the Root Zone Management Process Administrator role that is currently performed by NTIA, the CWG recommends that this role be discontinued post-transition. Further, the CWG recommends a series of mechanisms for dealing with future RZ changes, including no authorisation for TLD / WHOIS change requests and architecture and operational changes (such as the introduction of DNSSEC)	auDA notes and supports the changes proposed to the RZM Administrator role.
III.A.iv. OTHER		
III.A.iv.a. ccTLD Delegation Appeals	The CWG recommends not including any appeal mechanism that would apply to ccTLD delegations and redelegations in the IANA Stewardship Transition proposal.	auDA supports the current exclusion of appeals mechanisms relating to the delegation and redelegation of ccTLDs from the current CWG process.
III.A.iv.b. IANA Budget	The CWG recommends that the IFO's costs should be transparent for any future state of the IANA	auDA supports the transparency and itemisation of IANA-related costs but notes concerns expressed

	Function and that ICANN's FY16 Operating Plan and budget itemise costs relating to IANA operations.	above regarding complexities associated with "moving" these costs to a PTI, as currently envisaged by the CWG. auDA believes that similar levels of budgetary and asset-management clarity can be delivered through ICANN-internal divisions.