ICANN Board Comments on 2nd Draft Proposal of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions

20 May 2015

The ICANN Board thanks the CWG for the intense work that led to this second draft. As the CWG-Stewardship prepares its proposal for the ICG, the Board has some comments, observations and questions that we believe need to be addressed or clarified prior to the proposal being finalized. In particular, we encourage the CWG to offer specific responses to the NTIA criteria.

The proposal incorporates many high-level concepts that seem to be workable as the board understands the proposal. As we understand:
- The PTI is currently proposed as a wholly-owned subsidiary to ICANN, performing its work under contract with ICANN, and limited to the discrete role of executing instructions from the users of the IANA functions on the implementation of the naming-related IANA functions and root zone management tasks.
- The PTI has no policy role, nor is it intended to in the future, and that while it will have control of the budget amounts ceded to it by ICANN for the performance of the naming-related IANA functions, the funding of the PTI will be provided by ICANN as part of the ICANN budgeting process.
- With the PTI being a lightweight structure, the accountability measures developed for use within ICANN apply; the PTI is not intended to be a replication of the ICANN model.
- CWG external counsel has advised that an internal, ICANN-appointed PTI Board makes the application of ICANN accountability mechanisms far more clear, and consider this an important element of the simplicity of design of an accountable PTI.
- The proposal indicates that the PTI and its board would be limited in scope to the minimum statutorily required responsibilities and powers, and execute instructions as given. The PTI would, of course, retain obligations of assuring that PTI performs to its requirements, including SLEs/SLAs, reviews, etc.

We understand that these are important facets of the CWG proposal, particularly to enable the ability to easily contract out the performance of the IANA Functions if that was determined to be needed in the future. On the basis of the above, we accept that this could be a workable model.

As the PTI idea continues to be formed, we think that it's important that concerns of security and stability in the performance of the IANA Functions in their entirety remain paramount. If there are choices between structures that leave the possibility for a new PTI to change its structure or assert more control in areas that are not

intended, as opposed to a structural design that does not provide the opportunity for that to happen, it is our position that the Internet is best served through a more predictable, fixed design. If there are issues that may arise with regards to any new structure, these should also be assessed in particular with regards to governance, accountability and implementation. It would also be helpful that the proposal further specify it is for the naming community.

The CWG Proposal also seems to have a path towards a lightweight PTI design that provides a clear bound for separability when/if needed, as well as for allowing the naming-related functions to be performed in accountable and transparent ways. We support these principles.

We also believe that the PTI should have the following additional principles at its core in order to support what is not only good for the naming-related community, but for the Internet:

- The PTI must have a clearly drawn framework that defines its remit.

- The PTI's role should be well defined.

- Maintaining the security and stability of the Internet DNS.

- No policy development nor interpretation role.

- Clear paths for coordination with other operating communities.

- Not undermine nor jeopardize ICANN's not-for-profit public benefit status.

- Simplified governance structure to allow easy alignment with current operations of the functions.

- The way in which the PTI exercises its role must be adequately and transparently documented.

- The PTI functions, processes and methods should be fully explained, and subject to peer/community review.

- The PTI should strive to adhere to organizing principles, such as:

  - Advocacy and adherence to open, interoperable standards.
  - Each party is responsible for what they contribute to the Internet.
  - Decision-making should be open to all, and based on merit.
  - Adherence to the Principle of Least Surprise.
  - Stability at the core of the Internet.
  - Permission-less innovation at the edge of the Internet.

In light of the above, in reviewing the proposal, the Board identified some areas where further information or clarification in the proposal would be useful. These include:

1. In which areas does the CWG anticipate the PTI will be separate from ICANN, and where does the CWG see shared services as being allowable (ex: shared office space, HR, accounting, legal, payroll, etc.)? Additionally, we think it would be helpful to clarify the roles and responsibilities of the PTI Board vs. the ICANN Board. For example,

    a. From the proposal, we understand that the ICANN Board could approve an overall budget for the PTI, and the PTI would then manage within that budget, and return to the ICANN Board if more funding was needed. The PTI Board could have ability to enter into contracts within its budget, as needed. Clarifications around these topics and other guidance such as this could be helpful.

    b. What will be the nature of the relationship between the parent (ICANN) and its subsidiary (PTI) and will there be a clear line of reporting between the two entities? Will the duties of the PTI directors coincide with the strategy requirements of ICANN? Will PTI corporate governance be aligned with that of ICANN?

    a. If the PTI were to have, for example, separate legal staffing, what would happen if ICANN and PTI received conflicting legal advice on the implementation of an IANA-related policy? This is another area where clarity on the roles of ICANN Board and PTI Board could be helpful (ex: Would the ICANN Board be required to still perform the review of documentation to consider if proper procedures were followed in evaluating a ccTLD request for delegation or redelegation, and the PTI Board then be responsible for ensuring that the PTI initiates the requisite root zone change?)

With regards to the CWG proposal identifying a path for a new IANA Functions operator (if needed) to take over the operation of the functions under contract with ICANN, we agree this must occur, if needed, in a manner that is as seamless as possible, and in a way that preserves the security and stability of the Internet DNS. In this regard, the Board recommends that the CWG consider some principles for assigning a new IANA functions operator that pick up on the existing NTIA criteria (e.g., supports the multistakeholder model; not Government entity, etc.) as well as building in equal or stronger accountability mechanisms and protections against capture by any other group or entity in that assignment process. Once that new IFO is selected, is it anticipated ICANN hold a contract with the new IFO, through which the policy implementation and review requirements would be imposed on the new IFO?

Other Considerations

- When discussing the IANA Functions throughout the proposal, there is the potential that some of the references could be understood to refer to the IANA functions as a whole, and not just the naming/root zone management related functions. We recommend that the proposal would benefit from more clarity on this.
- Relationship with other operating communities: The CWG proposal has a lot of structure built in for the operation of the naming-related functions. Is it envisioned that PTI will operate the IANA functions as required by the Numbers and Protocol Parameters communities as well as the root zone management function? If so, how can some of this complexity be moderated to allow adequate space for other operational communities to participate, if they wish, while still keeping in line with the narrow technical scope of the IANA functions? Alternatively, is there any provision for their oversight of their IANA functions by separate arrangement with either ICANN or PTI? It seems there are a variety of configurations possible here, but any expectations or constraints on PTI regarding the other IANA functions should be clear in the proposal.
- We note that there are elements of the proposal that are new and may raise issues, including, for example, cost and efficiency, and what controls are in place for accountability and transparency. Are there any PTI-specific accountability mechanisms that need to be developed?
- What is the expected timeline for implementation of the proposal including testing against the NTIA criteria and accountability, and how will this impact the timing of the transition?
- With regards to separability, what steps for an escalation mechanism and separation ensure meeting the criteria set out by NTIA, and are there ways to manage that within the respective operational communities?

If legal separation is the preferred model, the Board acknowledges that there is ongoing discussion within the CWG as to the type of legal entity that should be formed. Any move to a separate entity must include considerations of the control mechanisms in place and the impacts of such a new legal entity. We encourage the CWG to identify of what would be the important aspects of that new entity. ICANN will need to separately research which organizational type is proper for ICANN to create, keeping in mind the CWG's identified criteria.

Development of SLEs/SLAs. The Board notes how important it is that there be appropriate and meaningful SLEs/SLAs for the naming functions customers of the IANA functions, as well as appropriate system design for the root zone updating functions. We encourage the CWG, and in particular the naming-related customers of the IANA functions, to work closely with ICANN staff to make sure that SLEs/SLAs and system design requirements are feasible, attainable and well understood.