CWG-Stewardship 2nd Draft Proposal Input Template

The CWG-Stewardship has developed a template to facilitate your input on the 2nd Draft Proposal as well as subsequent review by the CWG-Stewardship. Use of the template is strongly encouraged, but not required. This template provides the opportunity for general input on the proposal as well as specific comments per section. Please note that there is no obligation to complete all of the sections – commenters may respond to as many or as few as they wish. Following your completion of the template, please save the document and submit it as an attachment to the public comment forum (comments-cwg-stewardship-draft-proposal-22apr15@icann.org). The CWG-Stewardship looks forward to receiving your feedback.

1. Please provide your name:

   Matthew Shears

2. Please provide your affiliation:

   Center for Democracy & Technology

3. Are you providing input on behalf of another entity (e.g. organization, company, government)?

   No

4. If you answered 'yes' to the previous question, please list the entity on whose behalf you are submitting these questions:

General Comments

5. If you have any general comments you would like to provide on the CWG-Stewardship Proposal, please provide these here.

   CDT applauds the intensive work and dedication of the CWG to developing a transition proposal that meets the expectations of the community.

   We commend the CWG for the thoroughness of v2 of the IANA transition proposal and generally support its approach.

   We have concerns that certain key elements remain to be addressed, including the composition and functions of the PTI Board, and the escalation and separation mechanisms, among others.

   We also note the dependencies between the IANA transition proposal, on the one hand, and the accountability enhancements and community empowerment measures being proposed by the CCWG Accountability on the other. With ICANN potentially in an

oversight, contracting and operator role, the success of the proposed transition model – in particular its independence, performance and protection against capture – will depend on those new community powers being in place.

We support the creation of the PTI, CSC and IFR (subject to some details being further addressed).   We believe that these are a manageable and appropriate set of entities/processes.

We would not support efforts to further "internalize" the IANA functions within ICANN. The proposed PTI ensures a level of separation and independence of ICANN and represents a mix of the internal and external models proposed to date.   It also strengthens the separation between the policy making and IANA functions and allows for separability of the IANA functions should the need arise.

Section I - The Community's Use of IANA

6. Do you have any specific comments or input you would like to provide with regards to section I - The Community's Use of the IANA? Section I lists the specific, distinct IANA services or activities the naming community relies on.

    If so, please provide your comments here.

    If applicable, please reference the sub-section your comment relates to.

    None.

Section II - Existing Pre-Transition Arrangements

7. Do you have any specific comments or input you would like to provide with regards to section II - Existing Pre-Transition Arrangements? This section describes how existing IANA-related arrangements work, prior to the transition.

    If so, please provide your comments here.

    If applicable, please reference the sub-section your comment relates to.

    None.

Section III - Proposed Post-Transition Oversight and Accountability

8. Do you have any specific comments or input you would like to provide with regards to section III.A - Elements of this Proposal? This section describes in short the main elements of the proposed post-transition oversight and accountability.

    If so, please provide your comments here.

If applicable, please reference the sub-section your comment relates to.

>   We agree with the elements outlined in the proposal (subject to the further elaboration of some components, as discussed below).

9. Do you have any specific comments or input you would like to provide with regards to section III.A.i - Proposed Post-Transition Structure. This section provides an overview of the different elements of the proposed post-transition structure.

   If so, please provide your comments here.

   If applicable, please reference the sub-section your comment relates to.

>   We note the reference in III.A.i to the results of the December 2014 consultation on v1 of the proposal that suggested "respondents were very satisfied with the current arrangements and that any new arrangements should maintain ICANN as the IFO at the time of transition and implement mechanisms which could ensure similarly effective oversight and accountability… ."   In proposal v2, ICANN would have a distinctly greater role with regard the IANA functions, effectively becoming the provider of oversight, the contracting entity and the operator. This means that ensuring - at a minimum - "similarly effective oversight and accountability" becomes an essential yardstick of the eventual transition.

>   Any lessening of the effectiveness and accountability in the overall transition proposal – and particularly in the related proposals from the Accountability CCWG – will have a deleterious impact on the transition proposal as a whole.   The extent to which the transition model is dependent upon the CCWG's work – and particularly the membership structure - is made abundantly clear in point 2 of the FAQ.

>   CDT supports all the component parts of the transition model as listed in III.A.i.   They form a much discussed and debated whole, that reflects key criteria including meeting the day to day performance needs of customers (through the CSC), reflecting broader multistakeholder perspectives in the overall IANA performance review (through the IFR), and the importance of ensuring the enhanced separation (functional and legal) between ICANN the policy-making entity and the IANA functions operator.

10. Do you have any specific comments or input you would like to provide with regards to section III.A.i.a. - Post-Transition IANA (PTI). This section describes the proposed post-transition IANA.

   If so, please provide your comments here.

   If applicable, please reference the sub-section your comment relates to.

We support this structure as an integral part of the proposal representing a minimum level of separation.

11. Do you have any specific comments or input you would like to provide with regards to section III.A.i.b. - Post-Transition IANA Board. This section describes the proposed Board for the post-transition IANA.

    If so, please provide your comments here.

    If applicable, please reference the sub-section your comment relates to.

    We believe that the composition and expertise of the PTI Board should be dictated by the limited functions and duties the Board has to fulfill.   The PTI Board is responsible for both the IANA functions operator and the affiliate. With regard to the IANA functions operator, the Board is accountable for its performance and its responsiveness to customers. The Board must therefore be empowered to respond to customers, to make appropriate changes in the way the IANA functions are implemented, to address performance issues as identified by the CSC, the IFR, etc. As much as is possible, issues relating to the day-to-day management and performance of the IANA functions should be addressed by the IANA team, but the overall responsibility for management and performance of IANA functions lies with the PTI Board. This necessitates that the Board or some subset thereof, have the appropriate and relevant expertise to exercise those responsibilities.

    It follows that we remain unconvinced by the need to have an "insider" PTI Board comprising ICANN staff and/or Board members. The PTI Board should, through specific instruction, include members that have relevant expertise: in addition to appropriate ICANN staffing (possibly in the form of the ICANN CTO), the Board should include the manager of the IANA functions team, a representative of the GNSO, the ccNSO and possibly other communities, if appropriate. The PTI Board has to be empowered to be able to do its (boring and operational) job, both as the party responsible for the affiliate and as the party responsible for the performance of the IANA functions.

12. Do you have any specific comments or input you would like to provide with regards to section III.A.i.c. - IANA Statement of Work. This section describes the proposed IANA Statement of Work, including proposed carryover provisions.

    If so, please provide your comments here.

    If applicable, please reference the sub-section your comment relates to.

    None.

13. Do you have any specific comments or input you would like to provide with regards to section III.A.i.d. - IANA Function Review. This section describes the proposed periodic as well

as special review of the IANA Function.

If so, please provide your comments here.

If applicable, please reference the sub-section your comment relates to.

> The IFR is a central element in the overall proposal and is an appropriate review mechanism for ensuring that the broader Internet community has an opportunity to contribute to the assessment of the performance (and more) of the IANA functions operator.   We fully support the two-year post transition IFR and then periodic five year reviews thereafter. This periodicity is an essential component of ensuring the accountability, performance and reliability of the IANA functions.

> CDT also supports the IFR's inclusion as a fundamental bylaw.   While we agree that the IFR does not need to be a standing entity, there needs to be a mechanism for ensuring that it can be quickly and effectively assembled should a Special IFR be called for (which we understand to be an interim IFR that can be called for in exceptional circumstances). The membership of the IFR/SIFR should be broader than that of the CSC and should involve the SOs and ACs, as is outlined in the proposal. We do not support the PTI/IFO providing the secretariat for the IFR, particularly as the IFR will be reviewing the performance of the PTI/IFO. Further, we do not see any reason why an IFR should not be able to make the same recommendations as a SIFR, up to and including separation – perhaps this is intended but it is not clear in the text.

> We note in points 4 and 5 of accompanying FAQ that the Board would review recommendations from the IFR and either adopt, modify or reject them. We question whether it is appropriate that the Board's has the ability to reject IFR (community) recommendations. We would suggest that the CWG look again at this and discuss whether it would be more appropriate that the Board adopt or if there is disagreement ask for further clarification/seek to find common ground with the IFR on its recommendations.

14. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.a. - Customer Standing Committee (CSC). This section describes Customer Standing Committee that is expected to oversee performance of the IANA Functions as they relate to naming services.

If so, please provide your comments here.

If applicable, please reference the sub-section your comment relates to.

> None.

15. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.b. – Service Level Expectations. This section describes the proposed service level expectations post-transition.

If so, please provide your comments here.

If applicable, please reference the sub-section your comment relates to.

> None.

16. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.c. - Escalation mechanisms. This section describes the different proposed escalation mechanisms as they relate to the naming services.

If so, please provide your comments here.

If applicable, please reference the sub-section your comment relates to.

> We have some concerns that Problem Management step 3 on page 68 - where it is suggested that the CSC escalates to the ccNSO/GNSO - is adding a layer of escalation that may not be necessary. If requests for remedial actions are not being addressed by the IANA functions operator then there is, one must accept, a breakdown in the relationship and trust between the customers and the IANA functions operator. If this is the case, and remedy is not possible, it would seem appropriate for the CSC to call for a SIFR. A trusted relationship between the CSC and the IANA functions operator is absolutely essential to the stability, security and resiliency of the DNS.

> Further, the lack of detail relating to how systemic problems will be addressed is concerning. We would suggest that systemic issues/problems should be subject to an SIFR and not just left to the 5 year IFR. Again, the stability, security and reliability of the DNS are paramount, and systemic problems - which are precisely the potential issues this stewardship framework is designed to address - must be dealt with as soon as they are identified.

17. Do you have any specific comments or input you would like to provide with regards to section III.A.ii.d. - Separation review. This section describes the separation review that can be triggered by an IANA Function Review if needed

If so, please provide your comments here.

If applicable, please reference the sub-section your comment relates to.

> As noted earlier, we fully support separation as a key element of the proposal and support its inclusion as a fundamental bylaw.

> However, the separation review text needs greater elaboration and further discussion. For example, if a separation review is needed should it not be initiated through the community rather than the ICANN Board? We are uncomfortable with the proposed role of the ICANN Board in the separation review given that PTI is an affiliate of ICANN

and the Board is the PTI contractor/provider of oversight. For the same reasons we are not convinced that the ICANN Board should have to approve the recommendations of the community with regard to separation.   If the community were at a stage where the escalation and appeals mechanisms had been exhausted – and the room for maneuver very limited – ensuring the continuity of the DNS through separation could well be the only option left, and that is a decision that the community should take itself.

<center>END OF COMMENTS.</center>