**Public Comment on IANA Stewardship Transition, Second Proposal**

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DIGILEXIS Consulting would like to thank the Cross Community Working Group on the Stewardship Transition for their diligence and hard work in delivering this second proposal. We welcome the opportunity to share our comment as follows and thank you in advance for your consideration.

**The Emerging Framework - Separation**

Previously, ICANN was both the policy-maker, in this context the DNS policy-maker plus the IFO (NTIA IANA Functions Contract) altogether. Now we are saying let us make the IFO component more distinct and, it is claimed, legally separate while still remaining within ICANN possession, that is, strongly linked to ICANN by ownership ties. As the policy-maker, ICANN will evolve with additional, post-transition accountability arrangements (taken care of by CCWG-Accountability proposal) while the new IFO will carry on with the same role and relationship as the old IFO (ICANN) with the Root Zone Maintainer.

By contract with ICANN, the Post-Transition IANA (PTI) will be the IANA Functions Operator (IFO). For all intents and purposes, it may be useful to detail at one place all the IANA functions that will be performed by IFO while distinguishing only those functions that relate to ICANN mission or within the emerging framework of naming services. In the latter regard, is the IFO role only to validate the change requests to the Root Zone file received and to maintain the Root Zone registry? Will the new IFO integrate the processes previously performed by ICANN departments (other than the IANA department) but which are directly related to the delivery of the IANA functions? (See table in Annex P) In any case the IFO’s specific functions as relating to ICANN work in the emerging environment should be clearly spelled out.

PTI would be a “wholly owned subsidiary” of ICANN – an affiliate, in legal terms. It is said page 21 that “PTI will be a new legal entity in the form of a non-profit corporation or a limited liability company.” However, it appears that the scenario implied in most of the statements about PTI in the proposal is that of a non-profit. Does the CWG-Stewardship intend to elaborate further on the limited liability option for the community to compare and make an informed decision?

For instance if PTI were to be a limited liability company would its ownership be shared by ICANN and other shareholders, with ICANN being the majority shareholder? How would that be organized exactly? Who would get to be a shareholder? What difference or comparative advantage would that bring in this context?

We are of the view that PTI needs to be separate from ICANN both functionally/operationally and legally. However, it is not always clear how legally separate these two are. We understand that in the case being made, a “wholly owned subsidiary” of ICANN, the latter will be allotting the PTI budget. It is even contemplated that the PTI Board will be designated by ICANN (Board?) while avoiding the former “to replicate the complexity of the multistakeholder ICANN Board…” (p. 22). Are we not creating a new “legal fiction” here? The members of the PTI Board to be are humans, too. If the institutional processes that allow their existence and operation are so dependent on ICANN, how do we make sure they will fully and effectively assume the independence that is expected of them? Will that suffice that bylaws and statutes say they are independent in fulfilling their duty for it to be so?

Would PTI have any purpose outside its IFO contract with ICANN? In other words, is it an entity that could survive that contract? Would it still exist as a subsidiary wholly owned by ICANN (at least in the scenario of PTI as nonprofit)? Or would it be dissolved automatically if and when its IFO contract with ICANN is revoked (say, as a result of the IFR recommendation)? Is such process and its consequences out of scope for this proposal? What about the possibility that the same IFO staff, after revocation, may reconstitute themselves in a different entity to be the next IFO? Are they still going to be a “wholly owned subsidiary” of ICANN? In that case is Separation a reliable notion?

**Separation review**

The IANA Function Review (IFR) will be due every 5 years. We believe that the IANA Function Review recommendation for a separation process should be escalated directly to ICANN Board by the IFR Team (they should be well equipped to do a good enough job for that), although it is up to the Board to request advice or opinion directly from the Supporting Organizations and Advisory Committees or to get such advice or opinion by means of a Cross Community Working Group process. In any event an IFR recommendation for the initiation of (IFO) Separation discussion should be carried out by such CWG (which should include the IFR Team members.)

We would also advise that the Customer Standing Committee (CSC) be included as participant in the Separation Review. Perhaps they could also appoint 5 people or at least a couple a liaisons to the Review. The (CSC) is responsible for monitoring IFO performance, particularly in relation to naming services, according to contractual requirements and service level expectations.

**Change to the Root Zone Management Architecture and Operation**

We agree that the entity that will be responsible for approving major architectural and operational changes should consult “with the bodies involved in such changes as well as with those with wide experience in the specific technology or process…”

We also think it is desirable that at some point in that process the wider community – the global community of users – be involved, that is, consulted and widely informed about the changes envisioned and what they entail for or avail to users.

**Jurisdiction**

While not covered by this proposal, we still want to raise the cross-cutting jurisdictional issue relevant, in our view, to the whole current evolution of the Internet governance ecosystem. It really would make a difference to find an international solution which should be as neutral as possible to this issue for two main reasons.

1. Access to the judicial system: the US is probably the country where litigations are the most and routinely part of the political culture and socio-professional life, and yet its judicial system is probably among the most costly in the world. Too many global Internet stakeholders may not readily have access to it, which may result in tipping the system to their disadvantage.
2. As a top world political power, the US often finds itself in the position to take sanctions against its foes around the world which may interfere with Internet related activities, especially when these may even the slightest involve Internet institutions based in the US due to the threat of litigations, although those activities may have nothing whatsoever to do with the reasons for the sanctions. Unfortunately, such situations invite politics back in the Internet governance processes which should be open, fair and equally inclusive of all stakeholders regardless of nations, religions, opinions or wealth.

**Miscellaneous**

With more than one Board being referred to (e.g., PTI Board) in the report/proposal and while it’s true that the Board which is of ICANN is often specified as “ICANN Board,” it still would be helpful to always specify which Board one is referring to in every instance. The use of the mere word ‘Board’ may lead to confusion.

In a number of instances (particularly in the annexed portions), annexes were referenced in a way that does not correspond to the organization of the current document. Obviously portions of this text were drafted separately with their own annexes. Please make sure this kind of inconsistencies be corrected in the next iterations.