May 20, 2015

Jonathan Robinson
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Co-chairs of the Cross Community
Working Group on Naming Related Functions

Re: Response by CIRA to the Cross Community Working Group (CWG) On Naming Related Functions Public Consultation on the Second Draft Transition Proposal

The Canadian Internet Registration Authority (CIRA) is the private, not-for-profit corporation responsible for the operation of the .CA country code top-level domain. CIRA is a member of the Country Code Names Supporting Organisation (ccNSO) and a member of CENTR, the Council of European National Top Level Domain Name Registries. I commend the members of the working group on their considerable work to date, and I am pleased to have the opportunity to comment on behalf of CIRA on the CWG's second draft transition proposal.

In my opinion, this revised proposal illustrates the strengths of the multi-stakeholder model – the CWG incorporated much of the commentary provided by the community on the December 2014. As a result, this second draft is much improved. With some refinements, I believe it can form the basis of a final proposal from the naming community in this historic IANA stewardship transition. I also sense that it is gathering considerable consensus within the community.

The following commentary identifies both those aspects of the proposal that CIRA believes to be adequate, as well as areas that need further clarification and refinement.

Customer Standing Committee (CSC)

I was pleased to see that the CSC has been retained from the December proposal, and support the fact that it be co-chaired by appointees representing the GNSO and ccNSO. This recognizes the fact that it is the direct customers of IANA that should lead the monitoring its operational performance.

CIRA supports the inclusion of the Internet Architecture Board, as the operator of .ARPA, as well as liaisons from the route server community on the CSC.

Service Level Expectations

I fully support the CWG's work to further elaborate service level expectations (SLEs) for the performance of the IANA functions. I look forward to reviewing these SLEs once they are completed.

Customer Complaint Resolution

CIRA agrees that the existing customer complaint resolution processes and mechanisms need to be strengthened, allowing for the possibility of mediation and review by the CSC. I have noted that the final step available in the case of an individual customer complaint is to seek redress with an Independent Review Panel (IRP). I understand the IRP is under review by the CCWG, so this, as noted in the proposal, creates a dependency between the work of the CWG and the CCWG, something I will discuss later in this letter.

IANA Functional Review Team (IFRT)

I believe there is a need to hold broad, regular reviews of the operation of the IANA functions, just as the NTIA has periodically carried out by soliciting community input. For this reason, I support the proposed IFRT and the frequency of its reviews – initially in two years, then every five years.

While I recognize and accept the need for broad participation in the IFRT, including representatives of the multi-stakeholder community, further discussion is required to determine whether the proposed composition of the IFRT represents the right balance. Consideration should be given to ensuring the direct customers of IANA (that is, top-level domain registries) represent the majority of the composition of the IFRT panel. Moreover, the representation of the ccTLD community should be equivalent to that of the GNSO community.

I support the inclusion of a non-ccNSO aligned ccTLD manager on the IFRT. However, the proposal does not identify how this member would be chosen. CIRA recommends that the ccNSO Council have this responsibility, as it is the entity that is in the best position to do so.

While the ccTLD community has been fortunate to have two non-ccNSO members volunteer for CWG membership, we must be cognizant that we cannot be assured that suitable non-ccNSO ccTLD managers will always present themselves for participation on the IFRT. This should not preclude ccTLD full participation. To ensure adequate ccTLD representation on this important team, I recommend that any non-ccNSO ccTLD representatives be chosen by the ccNSO Council, provided candidates with relevant knowledge and experience present themselves.

Problem Resolution Processes

I note that if recommendations made by the CSC do not lead to acceptable improvements by the IANA functions operator, the CSC may, through the Problem Resolution Process, escalate the issue to the ccNSO and/or the GNSO. These organizations would have the authority to decide to take further action using agreed upon consultation and escalation processes, including the IRP and the CCWG-Accountability Work Stream 1 accountability mechanisms (once completed).

While I am generally supportive of this process, greater clarity and detail are required, including determining whether the ccNSO and/or the GNSO could access the IRP in this situation.

Special Review & Separation Review

The section on 'separation review' states that a possible outcome of an IANA Function Review may include a recommendation that could ultimately lead to separation of the IANA function from its operator. I accept that this aspect of the proposal requires further work, and will follow its development closely and provide input as appropriate. That being said, I the proposal should more clearly layout the process by which separation of the IANA function from ICANN could be effected.

CIRA recommends that this aspect of the proposal be designed to ensure that such a decision to recommend a process that could lead to separation is not taken lightly. It should only occur after a significant consultation with the community, including an appropriate role for the direct customers of IANA. The current text suggests that a 'supermajority vote' of both the ccNSO and the GNSO would be required. I support this provision, though certain questions remain unanswered. 'Supermajority' needs to be defined in this context, and clarity is needed to ensure it is a supermajority of the ccNSO Council, as obtaining a supermajority of all 150+ ccNSO members (over 100 if this were by a two thirds majority) would be impossible to achieve.

Root Zone Management

I fully support the recommendation to discontinue the 'authorization function' now played by the NTIA in respect of root zone changes. I also support the recommendation to keep the Root Zone Maintainer function, currently performed by Verisign, separate from the IANA functions operator.

Post Transition IANA (PTI)

As a wholly-owned subsidiary of ICANN or an affiliate constituted to perform the IANA functions under contract, I believe the PTI will ensure the necessary legal separation between PTI's operational responsibilities and ICANN's policy role. It also satisfies the need for the presentation of a separate and detailed budget for the performance of the IANA functions, as well as ensures the necessary financial reporting to provide enhanced transparency in this regard.

I was pleased to see that the CWG moved away from the 'Contract Co.' approach identified in their December proposal. This new approach – the PTI – appears to be less complex, and I support the CWG's decision to rely on the work of the CCWG to develop the necessary accountability measures for ICANN as a whole.

The size and composition of PTI's board directors remains outstanding. As this issue is critical to the overall thrust of the current proposal, I would like to outline how CIRA believes the PTI Board should be constituted:

1. I envisage the PTI to be an operational extension of ICANN and as such the principles of good governance demand that ICANN and the ICANN Board be the focus of overall accountability for PTI, not PTI itself. It follows that the PTI board of directors should be as small as possible, and that it be appointed by ICANN. As this proposal includes sufficient accountability mechanisms in respect of PTI's operational performance, in the form of problem resolution measures, there is no incremental value, and indeed only increased complexity, in having non-ICANN appointees on the PTI board. I have always supported a lightweight and streamlined mechanism to replace the NTIA's current stewardship role. Furthermore, non-ICANN appointees on the PTI would increase the potential for capture by an outside entity.

2. While the discussion of the relative merits of a limited liability corporation (LLC) versus a California-based not-for-profit is ongoing, I favour a LLC as it requires a smaller number of directors.

3. On the issue of whether the PTI should be established in a jurisdiction outside of the U.S., I fail to see any value in taking such a step. Furthermore, I would be inclined to oppose it as I believe it would add to the complexity of the proposal and its execution.

Timing Issues and Linkages to CCWG

At the timing of the release of the CWG's second proposal a large number of issues remained outstanding; some 40 individual items as catalogued by the CWG's counsel Sidley in their 'Punch List' document. This includes such critical issues as the form PTI and the composition of its board, how special reviews would be triggered and the elaboration of the 'separation process'. Will the CWG be holding a further public consultation when these critical aspects of the proposal have been determined?

There are also a number of aspects of the CWG's proposal that are conditioned on the outcomes of the CCWG process related to broader ICANN accountability, work that may not achieve a reasonable level of stability in its recommendations until after the date by which the SO/ACs will be asked to approve the CWG's final proposal. This may present a challenge, as the SO/ACs will be asked to approve the CWG's proposal in the absence of key aspects that a number of the aforementioned mechanisms are contingent upon.

Once again, I commend the members of the CWG for their hard work and diligence in the development of this proposal. I look forward to seeing the proposal become finalized for submission to the IANA Transition Coordination Group in a timely manner.

Sincerely,

Byron Holland
President and CEO