

Comment on CWG-Stewardship Second Draft Proposal

20 May 2015

Summary of Key Points

InternetNZ:

- Supports the CWG's Second Proposal as being largely consistent with InternetNZ's principles, subject to detail being confirmed
- Supports the overall framework of a separated Post-Transition IANA
- Supports a contract between PTI and ICANN
- Reluctantly acquiesces to ICANN becoming the entity through which community stewardship of the DNS is exercised (through IFR and SRs)
- Supports service level obligations that match current performance, not inadequate current SoW obligations
- Notes that more detail is needed on key components including escalation paths, the PTI, the IANA Functions Review and the Separation Review

Introduction

This is InternetNZ's comment in response to the second Draft Proposal prepared by the Cross Community Working Group on Naming Related Functions.

InternetNZ is a multi-stakeholder membership-based Internet community organisation in New Zealand, which serves the local Internet community in a range of ways including as the designated manager for the .nz country code Top Level Domain.

Staff and members of InternetNZ have been leaders in global domain name policy matters since before ICANN was formed. As an organisation we participate in global Internet Governance debates with a fused technical community/civil society mandate and interest.

As noted in our comment in December 2014 in response to the first proposal, we support the transition of stewardship for the DNS from the United States government to the Internet community.

This Second Draft proposal (simply called the "Draft Proposal" from here) is different in form to the first Draft, but preserves significant commonalities on significant issues. The dead-end of a so-called "internal solution" has again been

rejected by the CWG, and important principles of separability and distributed stewardship are, broadly speaking, upheld.

That said, there are critical matters of detail not yet resolved in the Draft Proposal that are central to whether InternetNZ could support it or not. These include:

- The interaction between the IANA Functions Review and any Separation Review, including the composition of the review teams and the role of IANA customers in decision-making;
- The nature and role of the Post-Transition IANA (PTI) legal entity including its Board;

Until these details are resolved, an overall judgement about the suitability of the proposal cannot be made.

When the proposal is finalised, we will assess it as swiftly as possible and take part in the community and ccNSO deliberations regarding approval or otherwise – in the run-up to ICANN 52 in Buenos Aires and beyond.

We wish the CWG the best of luck in fleshing out the detail on these matters. We note in particular that if the work cannot be completed in time for SO/AC chartering organisation adoption at the upcoming 53rd ICANN meeting in Buenos Aires, we support the point made by Assistant Secretary Larry Strickling – that the community has one chance to get this right; that the 30 Sept date is not a deadline; and that rushing to a conclusion is not in anyone's interests.

That said, we encourage the CWG to proceed as quickly as possible and to aim for BA if that deadline is practical.

This comment is structured as follows: it first compares the Draft Proposal with the principles we set out in our comment on the First Draft Proposal, and then makes specific comments on matters of detail following the form of the questions set out by the CWG in its Public Comment Template.

Where we refer to the IANA functions, unless otherwise specified, we mean the IANA Naming Functions which are the focus of the Draft Proposal these comments respond to.

Principles for the Stewardship Transition

InternetNZ believes that principles are the best basis on which to judge various transition proposals, and takes this approach in its own stewardship of .nz.

In our December 14 comments, we set out the principles outlined in the below table – where we add our comments about how this Draft Proposal measures up against the principles based on the detail provided so far.

Principle	Draft Proposal's relationship to principle
<p>Distributed Stewardship: avoid creating a “single point of failure” in IANA stewardship by ensuring responsibility is spread across several.</p>	<ul style="list-style-type: none"> Proposes a separation between ICANN as policy-maker and the IANA Functions Operator through the creation of the PTI entity Maintains the separation between IANA Functions Operator and Root Zone Maintainer Removes a separation between the IANA Steward and ICANN as policy-maker (as proposed in the First Draft Proposal) by having ICANN as the IANA Steward <p>Overall: this principle is moderately upheld. This judgement may change depending on the nature of the IFR/Separation Review.</p> <p>It would be weakened significantly if:</p> <ul style="list-style-type: none"> the ICANN Board has any decision rights on the outcome of a Separation Review; the structure of PTI allowed ICANN to assert the subsidiary had always to act in the interests of the parent; or PTI or ICANN became the Root Zone Maintainer
<p>Separability: the ability for another institution to operate the IANA functions (other than ICANN).</p>	<ul style="list-style-type: none"> Proposes the creation of an affiliated company (PTI) to operate the IANA functions, giving a degree of functional and legal separation Retains separate Root Zone Maintainer function, an important backstop in assuring separability <p>Overall: this principle is moderately upheld. InternetNZ identified the structural separation of the IANA functions from the rest of ICANN in comments shared during the meetings in Singapore in March 2014. We are pleased to see the CWG-Stewardship featuring this in its Draft Proposal. We have extensive experience operating a separated model like this in .nz, and can offer further detail and experience on this to the CWG on request.</p> <p>This judgement is dependent on detail regarding the following matters:</p> <ul style="list-style-type: none"> Nature of the IANA Functions Review / Separation Review (wrongly done, these could by accident or design render separation impossible) Decision locations and thresholds for separation (if the ICANN Board is involved, or thresholds are too high, the principle becomes ineffective)

Principle	Draft Proposal's relationship to principle
Community stewardship: broad multistakeholder stewardship of the IANA functions, including the right to select the IANA functions operator.	<ul style="list-style-type: none"> Proposes the establishment of IANA Functions and Separation Reviews with broad multistakeholder involvement and the power to select the IANA functions operator, but only where performance is unsatisfactory Uses ICANN as the vehicle for these decisions, compared with the First Draft Proposal which suggested a different legal entity (Contract Co) May propose multistakeholder governance of PTI, with details still to be established <p>Overall: this principle is weakly to moderately upheld. Granting the stewardship role to ICANN when ICANN is the policy-maker and is also the Operator concentrates stewardship in ICANN compared with the First Draft Proposal and weakens this proposal.</p> <p>It was clear from comments on the First Draft Proposal that elements of the ICANN community cannot live with stewardship being fully outside ICANN, regardless of the complexities and conflicts created by that refusal. We all have to accept the consequences in terms of accountability and other provisions that will have, as a result, to be more complex and more stringent than would otherwise have been the case.</p> <p>If the IANA Functions and Separation Reviews maintain their broad multistakeholder composition (particularly the latter), and the decision rights to effect Separation do not involve the ICANN Board or the PTI Board with their obvious conflicts of interest, the principle can be seen as moderately upheld.</p>
ccTLD independence in policymaking: retaining policy power for ccTLDs in their local Internet communities, not the global multistakeholder community.	<ul style="list-style-type: none"> No appeal process on matters dealt with in the Framework of Interpretation is proposed by the CWG No apparent infringements to this principle arising from the Draft Proposal. <p>Overall: this principle seems upheld.</p>

In sum, according to the principles that InternetNZ has developed to assess frameworks for the stewardship transition, the Draft Proposal can pass muster – depending on critical matters of detail yet to be worked out.

Specific Comments

This section of our comment provides specific feedback on parts of the proposal, focused on Section III – Post transition oversight and accountability. The questions from the Public Comment Template are the structure used, and are highlighted in what follows.

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.

- a) InternetNZ believes that the overall elements do provide a workable model at the high level, and do mostly (depending on matters of detail) give effect to the Principles we have argued for above, as well as to the Principles and Criteria the CWG developed.

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.

- a) InternetNZ notes that the satisfaction the CWG-Stewardship records with the current operation of the IANA functions (second half of p. 19) is an outcome of the current framework – and the IANA Functions Contract with the NTIA, and all the associated accountability impacts this drives beyond the direct clerical/authorising role of the NTIA.
- b) As such, the current satisfaction the community has with the quality of those functions and their delivery provides no basis for judgement on what future accountability framework is required.
- c) It does provide a basis to argue that the operator should not be changed in the short run, and that the status quo in respect of service performance should be documented and incorporated in the course of the transition.
- d) The **retention of a contract**, which creates binding obligations for service delivery and bright-lines for accountability purposes, is something InternetNZ strongly supports.
- e) The related **structural separation** of the IANA functions into a new legal entity allows this contract model to be effective, and delivers wider benefits to the operation as well – InternetNZ also strongly supports this aspect of the proposal.
- f) We note the dependency on the work of the CCWG-Accountability and look forward to seeing more from the CWG as to how it plans to reconcile its own more advanced timeline for approval with that of the CCWG.

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.

- a) InternetNZ supports the creation of Post-Transition IANA as a legal entity distinct from ICANN, to give clear bright-lines in respect of decision making (the “ring-fence” comment on p. 21) and to ensure that ICANN does not over time risk absorbing the IANA functions in a way that could make future separation, if required, practically impossible to achieve.
- b) InternetNZ (a membership based, non-profit organisation legally structured as an Incorporated Society) has operated the .nz ccTLD through wholly owned subsidiary companies since 2002 – a policy / regulatory entity (Domain Name Commission Ltd – www.dnc.org.nz) and a registry/DNS operator (NZRS – www.nzrs.net.nz) and so has over a decade of experience to offer in managing subsidiary companies in operating critical Internet resources.
- c) Besides the contracts with the companies (called Operating Agreements in our system), there is an annual Statement of Expectations from the parent that sets out particular short-term requirements of the company. It responds with a Statement of Direction and Goals that sets out how the company will meet the Expectations, and the financial resources required to do so. These are approved by the parent’s board.
- d) Whether this model is followed or another approach taken, it is imperative that PTI is designed in a fashion that leaves it limited in scope and role, unable to expand that scope and role, and enforceably committed to implementing the policy decisions given to it by the relevant function policy body (in the case of names, ICANN).
- e) InternetNZ recommends that the CWG provide as much information as possible about the institutional set up for the proposed affiliate, and is happy to offer staff and governors to assist any particular CWG-Stewardship or Design Team work that could find our direct experience useful.

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.

- a) The PTI Board must be a Board of Directors. The membership is a critical matter of detail that must be spelled out and consulted on with the community prior to the proposal being finalised for approval by the SOs and ACs.
- b) Existing ICANN mechanisms should be used to populate the PTI Board. For instance, it could consist of direct appointees from the ccNSO and the GNSO, an appointee by the ICANN Board, and three appointees by the

ICANN Nominating Committee. In no case should a PTI Board member be an ICANN Board member.

- c) If the other operational communities chose to contract directly with PTI for services, they could also select a member of the Board.
- d) InternetNZ supports not making the PTI Board a replica of the ICANN Board or adopting some other multistakeholder approach. PTI exists to be the Functions Operator, not to make policy. It needs to maintain a narrow operational focus on delivering for the IANA customer/s.

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.

- a) The IANA Function Review (IFR) is a vital part of the Proposal and InternetNZ supports it being incorporated in the ICANN Bylaws as a Fundamental Bylaw, unable to be changed except by high thresholds of co-agreement between the ICANN Board and the Community (as set out in the CCWG-Accountability's first public comment report).
- b) InternetNZ supports the IFR being a multistakeholder group, but does not believe that registries (either ccTLDs or gTLDs) have adequate representation in the proposed composition in Annex F (at p. 52). At the least there should be three representatives of ccTLD and gTLD registries, without allowing registries to become a majority of the IFR's members.
- c) It is not clear why the IANA Functions Operator (PTI) should provide the Secretariat functions for the IFR. The IFO is the main target of the review, and the IFO should be a narrowly focused technical operations body. It would appear to be more sensible to provide secretariat support for the IFR through ICANN, which is structured and resourced to support such reviews as part of its overall policy work.
- d) In respect of a "special review", InternetNZ queries whether this is the same as the concept of a Separation Review. If so, more detail is needed in this part of the proposal, and if not, more detail is needed elsewhere.

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.

- a) InternetNZ supports the role and composition proposed for the Customer Standing Committee. Day to day oversight of the IANA functions should predominantly be by the users of these functions.
- b) The constitutional documents for the CSC must make clear how inappropriate ICANN influence on the CSC or its functions can be assured.

- c) It should be noted for clarity that the GAC Liaison proposed for the CSC should not be from the same entity as a government-operated TLD.

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 (p. 24).

- a) As noted by the CWG-Stewardship, users of the IANA functions are generally happy with the current level of service provision.
- b) That service provision is significantly better than required by the IANA Functions contract, and is partly an outcome of the IANA Functions contract's overall accountability impact on ICANN as IFO.
- c) In the new world following the end of the IANA Functions contract, there can be no assumption that service levels will continue at the current high levels without adequate alternatives being put in place.
- d) InternetNZ does not want service levels to worsen as part of the IANA Stewardship transition.
- e) As such, we strongly support the work of the Design Team working on service level expectations. New SLEs that are appropriate given current service levels must form part of the transition, to assure customers that IANA service won't deteriorate immediately following transition or over the longer term.

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 (p. 25).

- a) InternetNZ supports detailed escalation procedures being set out in advance of the transition, so that both the IFO and the community can be confident that a robust framework is in place to deal with any issues.
- b) More detail should be provided before the proposal is finalised, than that set out in Annexes I, J and K.
- c) InternetNZ also would like to see clear explanations for each process as to how vexatious or eccentric complaints can be dealt with in a manner that does not waste everyone's time and money. This may include a channel for complaints from members of the public (as opposed to those from IANA functions users/customers) to be directed to the ICANN Ombudsman.

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 (p. 26).

- a) The following comments are caveated with the acknowledgement that the CWG-Stewardship is still developing this Review.
- b) InternetNZ presumes that this Separation Review is the same as that discussed in conjunction with the IANA Functions Review. We note and support the flow of reviews: that a Separation Review can be triggered only by a Functions Review.
- c) The details for a Separation Review must be developed and should be subject to community consultation before the proposal is finalised.
- d) InternetNZ strongly recommends that the need for a Separation Review if established by the IFR should lead to a community-convened CWG, not one convened by the ICANN Board. What would happen if the Board chose not to convene such a CWG?
- e) InternetNZ also strongly recommends that, where the findings of a Separation Review relate to requiring an RFP to select a new IANA Functions Operator, there be no role for the ICANN Board in approving the decision. This applies provided a Separation Review is comprised in a suitably multistakeholder manner. In such a situation ICANN, as the owner/member of the PTI IFO, would have an unmanageable conflict of interest and would face very grave difficulties in dealing with such a recommendation in an appropriate way.
- f) It is unlikely that Board approval subject to the mechanisms the CCWG-Accountability is proposing (review and redress processes) is appropriate in this situation. That is why the CWG that conducted such a Separation Review must be the binding forum making the decision.

19. Do you have any specific comments or input you would like to provide with regards to section III.A.iii.a. - Proposed changes to root zone environment and relationship with root zone maintainer. This section describes the proposed changes to the root zone environment and the relationship with the Root Zone Maintainer (p. 27).

- a) InternetNZ supports the ending of the Authorisation role currently carried out by the NTIA.
- b) In respect of subsection 4 on page 29, as referred to in the discussion of Principles in this comment, InternetNZ strongly supports a blanket rule that ICANN or the IFO should not ever be able to become the Root Zone Maintainer. The separation of these roles and the retention of the Maintainer role in a separate company is fundamental to avoiding the creation of a single point of failure in the root. It would be preferred if the ICANN Mission was clear that operating the primary Root Zone was out of scope for ICANN, as this would then ensure any changes to this situation

(per the proposals of the CCWG-Accountability) would require community co-decision in a transparent manner through changes to a Fundamental Bylaw.

- c) There simply needs to be a clear contractual link between the IFO and the RZM that obliges the root to reflect the decisions of the IFO. That would logically be between ICANN and the RZM. If a new IFO was selected, ICANN (as the steward of the DNS in this Proposal) would oblige the RZM to follow the instructions of the new IFO.

20. Do you have any specific comments or input you would like to provide with regards to section III.A.iv.a. - ccTLD Delegation Appeals. This section describes the proposed recommendation in relation to a ccTLD delegation appeals mechanism (p. 30).

- a) InternetNZ supports the ccNSO developing relevant global policies on ccTLD delegation matters, including appeals mechanisms, consistent with the findings of the Framework of Interpretation work recently concluded. It is not appropriate for the CWG-Stewardship to propose mechanisms to deal with these.
- b) InternetNZ is making its views known in the ccNSO regarding the importance of progressing such work.

21. Do you have any specific comments or input you would like to provide with regards to section III.A.iv.b. - IANA Budget. This section describes the recommendations in relation to the IANA Budget.

- a) The IANA Functions Budget should indeed be rendered transparent, with resourcing supplied by ICANN.
- b) The CWG-Stewardship could consider the InternetNZ experience. The analogy would operate as follows:
 - a. ICANN's annual setting of expectations for PTI would include its views about the level of resources required to operate in the coming year.
 - b. The PTI Board would respond to the expectations set by ICANN for its year's operation and the SLE framework it is operating in, and propose (with full transparency) its annual Operating Budget as part of its annual operating plan. It would have to explain any significant variations from the expectations ICANN had set.
 - c. ICANN would approve and then fund that Operating Budget, from general ICANN resources and contributions (as IANA is funded today).
 - d. Concerns about the cost of the IANA Functions Operator would be addressed by the IANA Functions Review.

Given the remainder of the proposal is still Under Development, InternetNZ will not offer further comments at this time.

InternetNZ

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