# The ICANN GNSO "Business Constituency"

# Comment on IANA Stewardship Transition Proposal

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**Business Constituency Submission**

**GNSO//CSG//BC**

**Public Comment in Response to Proposal to Transition the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions from the U.S. Commerce Department's National Telecommunications and Information Administration (NTIA) to the Global Multistakeholder Community[1]**

**Background**

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

> The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:
> 1. promotes end-user confidence because it is a safe place to conduct business
> 2. is competitive in the supply of registry and registrar and related services
> 3. is technically stable, secure and reliable.

**General Comment**

The BC previously provided comments on ICANN's Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal (CWG-Stewardship)'s first and second draft proposals for transition of the naming related functions.[2] Earlier in 2014, the BC commented on ICANN's proposed process for designing the IANA transition.[3]

The BC thanks the CWG Stewardship for effort put into developing a proposal to transition the naming function. As indicated in previous comments, the BC supports the transition of the IANA functions to the multistakeholder community, provided that such a transition is accompanied by sufficient improvements to accountability, and we believe the IANA Coordination Group's (ICG) proposal contains the building blocks that, with completion of additional details, could result in a workable post-transition plan.

Because important details that would add precision and operational confidence in the Accountability proposal are still under development and will have an impact on the final ICG proposal, the BC welcomes the NTIA announcement on 17-Aug to extend the IANA contract until 30-Sep-2016. This will give the community the time to finalize critical details necessary to satisfy the NTIA criteria for transition.

Below, we offer several targeted comments that either request clarification or seek refinement of particular aspects of the proposal.

**1. While the BC Supports the Creation of a Post-Transition IANA (PTI) as a Separate Legal Entity, PTI Should Have a Limited Remit and Should Be Clearly Accountable to the ICANN Board.**

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[1] ICG public comment page, at https://www.ianacg.org/calls-for-input/combined-proposal-public-comment-period/

[2] *See* BC Comment on CWG Draft Proposal for Transition of Naming-Related Functions, 22-Dec-2014, *available at* http://www.bizconst.org/wp-content/uploads/2015/01/BC-comment-on-CWG-proposal-for-transition-of-naming-related-functions.pdf; BC Comment on CWG 2nd Draft Proposal for Transition of Naming-Related Functions, 20-May-2015, *available at* http://www.bizconst.org/wp-content/uploads/2015/05/BC-on-CWG-2nd-Draft-Proposal.pdf

[3] *See* BC Comment on Draft Principles and Process to Develop a Proposal to Transition NTIA's Stewardship of the IANA Function, 8-May-2014, *available at* http://www.bizconst.org/wp-content/uploads/2014/07/BC-Comment-on-IANA-Transition-Process.pdf.

In its previous comments, the BC advocated that the CWG-Stewardship should define a post-transition (PTI) IANA board with a limited remit—the operational oversight of IANA naming functions. At that time, we noted that this approach is critical in ensuring that PTI does not become a place to re-litigate policy decisions. We continue to believe that ensuring a limited remit and ultimate accountability at the ICANN level are fundamental to the success of PTI.

While the ICG's proposal notes that the PTI board should provide "oversight of the operations of PTI in order to ensure that PTI meets, at a minimum, applicable statutory requirements under California public benefit corporation laws and, importantly, fulfills its responsibilities under the IANA functions contract with ICANN,"[4] it does not explicitly limit either the PTI board's functions or PTI's remit. We note that the CCWG 2nd draft imposes limits on ICANN's mission in paragraph 168:

> The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.

and in paragraph 187:

> ICANN shall have no power to act other than in accordance with, and as reasonably appropriate to achieve its Mission. Without in any way limiting the foregoing absolute prohibition, ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide.

These limitations on ICANN's actions will be enforceable via binding Independent Review Process (IRP) proposed by the CCWG. However, BC Members seek clarification that these limitations are also enforceable for actions or inactions of a wholly-owned ICANN subsidiary such as the PTI.

Moreover, a limited remit should be embodied in the CWG's proposed set of guiding principles for PTI's service level expectations. We urge ICANN to use the contracting process to ensure these limits are established.

For similar reasons, the BC Members continue to believe that the post-transition IANA board should be drawn from the broader ICANN board, rather than including three employees of ICANN or PTI and two independent directors, as is currently proposed.[5] Employees of PTI would not necessarily provide the requisite level of accountability, and the appointment of independent directors creates confusion as to who is ultimately responsible for carrying out the IANA functions. In sum, the proposed structure raises the risk that each board can attempt to avoid responsibility for any operational shortcomings by seeking to hold the other board responsible. If the ICG insists on this PTI board structure, then that choice only makes it more important to explicitly scope and limit the PTI's activities.

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[4] Internet Assigned Numbers Authority Coordination Group, Proposal to Transition the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions from the U.S. Commerce Department's National Telecommunications and Information Administration (NTIA) to the Global Multistakeholder Community 42 (July 2015) (Proposal).

[5] *Id.* at 42.

**2. The Proposed Separation Review Should Include a Standard for Determining Whether Separation is Appropriate.**

While the BC understands the need to plan for potential separation of IANA functions from ICANN, we reiterate our hope that ICANN's board would remedy problems with IANA operations before separation became necessary. The unprecedented process of separating IANA functions from ICANN could invite intergovernmental organizations to demand "their turn" once ICANN had proved unsatisfactory. Moreover, the BC believes that the strong measures proposed by CCWG-Accountability give the community significant leverage to correct ICANN deficiencies before having to begin a separation process.

The BC supports the inclusion of a separation review in the overall transition plan. However, the ICG should clarify the escalation processes necessary to invoke separation, and adopt a standard for determining when separation may be considered. The current discussion of escalation merely notes the kinds of processes that will need to be developed to accommodate the separation process, and it does not suggest that following all of these processes is mandatory.[6] The discussion of separation contained in Annex L of the CWG-Stewardship's does not clearly explain the processes for attempts to cure deficiencies in operation before the separation process is triggered.

Put another way, the current separation process describes steps that the community must take to ensure that there is community agreement on the need to separate, but it doesn't clearly describe the efforts the community must take to fix any issues through discussion with ICANN or PTI before resorting to separation. Because moving the functions to a new operator would be fundamentally destabilizing, a requirement to engage with PTI and/or ICANN before commencing the separation process should be written into Annex L.

Similarly, Annex L notes only that a separation process can be commenced "if the I[ANA] F[unctions] R[eview] determines that a separation process is necessary,"[7] but provides no guidance as to when such a determination would be appropriate.

We recommend that the CWG-Stewardship establish a substantive standard for separation of the naming functions. For example, the proposal could specify that separation can only take place if the IANA Functions Review team finds that keeping the functions with the current operator raises significant concerns regarding the security, stability, and resiliency of the functions and the security, stability, and resiliency of the domain name system overall. The Separation Cross-Community Working Group would have to make a finding with a higher threshold to invoke separation, and that finding should be specifically endorsed by any community mechanism endorsing separation. Allowing separation for reasons unrelated to security, stability, and resiliency of the IANA functions risks destabilizing the broader domain system in an attempt to solve unrelated problems—an outcome that should be disfavored.

The mechanisms for initiating the SCWG also need additional consideration. The ICG requires supermajority approval by the GNSO and ccNSO, followed by approval by the Board "as well as a community mechanism derived from the CCWG-Accountability process."[8] The CCWG proposal acknowledges this request and agrees to inclusion of bylaws to allow for such community approval, but it defers the specifications to the CWG-Stewardship. As the ICG report is presently open ended on the specifics of this community approval process, we believe the ICG should, therefore, work with the CCWG-Accountability to develop the specifications for this community power.

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[6] *See id.* at 110.
[7] *Id.* at 108.
[8] *Id.*

The CCWG's proposed *Community Mechanism as Sole Member* may not be the right body to launch a Separation Working Group, since the protocol community (IETF) may not be represented. We suggest that the ICG specify that a Separation Working Group, if ever needed, would include the IETF, regardless of whether that group was participating in the Community Mechanism.

Once the ICG or the CWG-Stewardship finalize the grounds for separation and the process for invoking it, the CCWG-Accountability should propose accompanying bylaws amendments to implement the ICG's proposal.

3.  **The Proposal Should Provide Additional Clarity Regarding the Process for Authorizing Root Zone Changes After the Transition.**

The ICG's proposal recognizes that NTIA will not authorize changes to the root zone after the transition.[9] It also suggests "investigat[ing] whether there is a need to increase (and if so, how) the robustness of the operational arrangements for making changes to the Root Zone content to reduce or eliminate single points of failure"[10] and recommends that major architectural and technical changes be granted by the ICANN board upon the "recommendation of a standing committee of [various technical experts]."[11] The process for conducting the robustness study needs to be clarified further, and the ICG must more clearly explain the kinds of changes that would be subject to standing committee review.

The final proposal should include a non-exclusive list of examples of root zone changes that would be subject to standing committee review, to improve clarity on the minimum number of areas that require this procedural protection. In addition to these process improvements, as a substantive matter, the standing committee should also be required to specifically report on its findings that major operational changes would improve the security, stability, and resiliency of the DNS or of performance of the IANA functions. These details will be critical for transparency, and community review of these critical decisions.

We further believe that the transition plan should explicitly establish which entity will be chosen as Root Zone Maintainer after transition.

The ICG also acknowledges that that a new agreement is needed between the Root Zone Maintainer (RZM) and IFO when NTIA withdraws from the Root Zone Management process, and NTIA has subsequently announced such an agreement.[12] The proposed approach appears reasonable.

In particular, we support the three month testing period with monthly reports documenting activities performed and also the final ICANN and Verisign joint written report detailing the outcome of the testing of the Root Zone Authentication (RZA) mechanisms and the transition plan.

However, the BC notes that NTIA is not submitting this proposal for public comment. Given the criticality of root zone management, the BC believes that the ICG should request the Security and Stability Advisory Committee (SSAC) to review NTIA's proposal to ensure the approach is technically sound and compatible with the ICG proposal.

4.  **The ICG should request community approval regarding the potential for division of the IANA functions among multiple operators.**

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[9] *Id.* at 48.

[10] *Id.*

[11] *Id.* at 48-49.

[12] *See* Verisign/ICANN Proposal in Response to NTIA Request, *available at* http://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf

The design of the ICG work plan, in which the three distinct communities developed plans for the performance of the various functions, has led to the possibility that the performance of those functions could one day be divided among three distinct operators.[13] Each community provides for the opportunity to find a new IFO should the need arise, but because the ICG has not addressed whether the three proposed separation processes are dependent upon the views of the entire community, it seems possible that three distinct IFOs could one day exist. The Business Constituency supports the principle of severability of the IANA functions, and we are not necessarily opposed to a future in which the three functions are performed separately. We do note, however, that the latter is a subject that has not been explicitly agreed upon by the community. We believe the ICG should clarify the dependencies among the three separation processes and ask for affirmative community approval if its intent is indeed to allow for the possibility of separating the three primary IANA functions.

5. **Before the Transition Takes Place, the ICG Should Explain More Clearly How the Naming, Numbering, and Protocol Parameter Proposals Fit Together.**

The BC appreciates that each community—naming, numbering, and protocol parameters—developed and submitted proposals to the ICG separately. However, the BC urges the ICG to harmonize the proposals further before they are implemented. In particular, the BC seeks clarification regarding how the numbering and protocol parameters communities will interact with the new PTI entity. While explication of these relationships need not delay the transition, they should be spelled out in greater detail to allow each community fuller understanding of how the post-transition landscape will look as a whole.

6. **Changes in Stewardship Must Be Accompanied by Improvements to ICANN's Accountability.**

Finally, the BC emphasizes that the acceptability of the ICG's proposal is fundamentally contingent on ensuring that improvements to ICANN's framework for accountability are adopted in parallel. The two proposals are interlinked and depend on each other on various important elements such as: ICANN and IANA budget; community empowerment mechanisms; IANA Functions Review; the Customer Standing Committee; the creation of appeal mechanisms relating to the IANA functions, and the clarity concerning when such appeal mechanisms would be available; establishment of fundamental bylaws, etc.

The CCWG-Accountability process is progressing well, but as with the ICG proposal, there remain important areas that require detailed resolution. As Assistant Secretary Lawrence Strickling has specifically recognized, the two processes must go hand-in-hand, and the BC agrees.[14]

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This comment was drafted by Aparna Sridhar, Andrew Harris, Ellen Blackler, Stephen Coates, Steve DelBianco, and Claudia Selli.

It was approved in accordance with the BC charter.

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[13] Proposal at 108, 158, 187.

[14] *See* Lawrence Strickling, Remarks at The Media Institute, 29-Sep-2014 (as prepared for delivery) ("The two work streams on the IANA transition and enhanced accountability are directly linked and NTIA has repeatedly said that both issues must be addressed before any transition takes place."), *available at* http://www.ntia.doc.gov/speechtestimony/2014/remarks-assistant-secretary-strickling-media-institute