# IANA Stewardship Transition Proposal Assessment Report

National Telecommunications
and Information Administration

U.S. Department of Commerce

June 2016

# IANA Stewardship Transition Proposal Assessment Report

## Table of Contents

**Attachments**:

# IANA Stewardship Transition Proposal Assessment Report

## Section I.      Executive Summary

The Internet, a network of networks, operates based on a system of voluntary standards, best practices, cooperation, and trust.  Like the Internet itself, the multistakeholder model is characterized by its open participation and decentralized processes.  The Internet thrives only through the cooperation of many different parties.  The multistakeholder model reflects this fact by enabling a diversity of stakeholders to participate, fostering a diversity of opinions and ideas.  The result is more creative problem solving.  It is a nimble, flexible approach, much better suited to rapidly changing technologies, business practices, and markets than traditional regulatory or legislative models.

In recognition of this, the U.S. government is a staunch supporter of the multistakeholder model.  The 112th U.S. Congress affirmed its support for this approach in unanimous resolutions to "preserve and advance the successful multistakeholder model that governs the Internet."[1]  More recently, bipartisan Congressional leaders reiterated this position in stating that "[t]he multi-stakeholder model for Internet governance must prevail for more countries around the world to realize the transformative benefits of Internet connectivity."[2]

To support and enhance the multistakeholder model of Internet policymaking and governance, the National Telecommunications and Information Administration (NTIA) announced on March 14, 2014 its intent to transition its stewardship of key Internet domain name functions to the global multistakeholder community.  Specifically, the Internet Assigned Numbers Authority (IANA) functions.[3]  To accomplish this, NTIA asked the Internet Corporation for Assigned Names and Numbers (ICANN) to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the Internet's domain name system (DNS) to the global stakeholder community.  In the announcement, NTIA stated that the transition proposal must have broad community support and address the following four principles:

1. Support and enhance the multistakeholder model;
2. Maintain the security, stability, and resiliency of the Internet DNS;
3. Meet the needs and expectations of the global customers and partners of the IANA services; and
4. Maintain the openness of the Internet.

NTIA further specified that it would not accept a proposal that replaces its role with a government-led or intergovernmental organization solution.

---

[1] *See* H.R.Con.Res. 127, 112th Cong. (2012); S.Con.Res. 50, 112th Cong. (2012).
[2] Reps. Upton (R-MI), Waxman (D-CA), Royce (R-CA), Engel (D-NY), *Re/code*, "Protecting the Internet From Government Control" (Dec. 18, 2014), *available at*: http://recode.net/2014/12/18/protecting-the-internet-fromgovernment-control/.
[3] The IANA functions are a set of interdependent technical functions that enable the continued efficient operation of the Internet.  The three principal IANA functions include: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with DNS root zone management; and (3) the allocation of Internet numbering resources.

In response, the multistakeholder community embarked on a two-year journey to develop a comprehensive proposal for the privatization of the Internet's DNS. ICANN, on behalf of the multistakeholder community, submitted the final IANA Stewardship Transition Proposal to NTIA on March 10, 2016. The proposal represents the largest multistakeholder process ever undertaken. Stakeholders spent more than 26,000 working hours on the proposal, exchanged more than 33,000 messages on mailing lists, and held more than 600 meetings and calls.

NTIA, along with other U.S. Government agencies, has reviewed the plan. As documented in this report, the IANA Stewardship Transition Proposal meets the criteria articulated above. NTIA also evaluated the proposal against relevant principles in the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Framework related to internal controls, as recommended by the U.S. Government Accountability Office (GAO), and finds that the proposal adequately addresses those principles. Lastly, an expert panel of corporate governance experts reviewed the ICANN Accountability proposal and concludes the proposal is consistent with sound principles of good governance. For these reasons, NTIA finds that the IANA Stewardship Transition Proposal meets the criteria necessary to complete the long-promised privatization of the IANA functions.


## Section II.      Background on NTIA's Stewardship Role of the Internet DNS

The DNS is a critical component of the Internet infrastructure. It allows users to identify websites, mail servers, and other Internet destinations using easy-to-understand names (*e.g.,* www.ntia.doc.gov) rather than the numeric network addresses (*e.g.*,170.110.225.163) necessary to retrieve information on the Internet. In this way, it functions similar to an "address book" for the Internet.

In July 1997, President Clinton issued an Executive Memorandum directing the Secretary of Commerce to privatize the DNS in a manner that increases competition and facilitates international participation in its management.[4] In 1998, NTIA issued a Statement of Policy on the privatization of the DNS, also known as the DNS White Paper.[5] The DNS White Paper concluded that the core functions relevant to the DNS should be primarily performed through private sector management. To this end, NTIA stated that it was prepared to enter into an agreement with a new not-for-profit corporation formed by private sector Internet stakeholders to coordinate and manage policy for the DNS. Private sector interests formed NewCo for this purpose, which was subsequently re-named ICANN. In the fall of 1998, NTIA entered into a Memorandum of Understanding (MOU) with ICANN to transition technical DNS coordination and management functions to the private sector.

The MOU did not simply turn over management of the DNS to ICANN. Rather, the

---

[4] The White House, "Memorandum for the Heads of Executive Departments and Agencies," (July 1, 1997), *available at:* http://clinton4.nara.gov/WH/New/Commerce/directive.html.
[5] NTIA, "Statement of Policy, Management of Internet Names and Addresses," (DNS White Paper), 63 Fed. Reg. 31741 (1998), *available at*: http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-managementinternet-names-and-addresses.

MOU outlined a process to design, develop, and test mechanisms, methods, and procedures to ensure that the private sector had the capability and resources to assume important responsibilities related to the technical coordination and management of the DNS. The MOU evolved through several iterations and revisions over time as ICANN tested these principles, learned valuable lessons, and matured as an organization.

In 2009, NTIA and ICANN entered into the Affirmation of Commitments. The Affirmation signified a critical step in the successful transition to a multistakeholder, private sector-led model for DNS technical coordination, while also establishing an accountability framework of ongoing multistakeholder reviews of ICANN's performance. Key elements of the Affirmation include: an endorsement of the multistakeholder, private sector-led governance model; a new commitment by ICANN to act in the interests of global Internet users and not just in the interests of active stakeholder participants that directly benefit from ICANN's decisions; and the establishment of mechanisms and timelines for regular reviews by the ICANN community of ICANN's execution of core tasks. The four subjects of the ongoing reviews are: (1) ensuring accountability, transparency, and the interests of global Internet users; (2) preserving the security, stability, and resiliency of the Internet DNS; (3) promoting competition, consumer trust, and consumer choice in connection with any implementation of generic top-level domains (gTLDs); and (4) meeting the needs of law enforcement and consumer protection in connection with WHOIS implementation and recognition of national laws.

ICANN has made significant progress in fulfilling the commitments established by the Affirmation. To date, two iterations of the Accountability and Transparency Review Team (ATRT) have occurred. These teams, on which NTIA has participated along with a broad array of international stakeholders from industry, civil society, the Internet technical community, and other governments, have served as a key accountability tool for ICANN -- evaluating progress and recommending improvements. Over time, ICANN has improved its performance by implementing key recommendations from the ATRT.

Throughout the various iterations of NTIA's relationship with ICANN, NTIA has never had the legal authority to exercise traditional regulatory oversight over ICANN, nor played any role in the internal governance of day-to-day operations of ICANN.

Internet Assigned Numbers Authority Functions

In the 1998 DNS White Paper, NTIA announced its intent to ensure the continued secure and stable performance of certain DNS functions, including the IANA functions, initially through contracts, until the transition was complete. The IANA functions are a set of interdependent technical functions that enable the continued efficient operation of the Internet. The three principal IANA functions include: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with DNS root zone management; and (3) the allocation of Internet numbering resources.[6]

The IANA functions were initially performed under a series of contracts between the

---

[6] The IANA functions also include "other services," which refer to the administration of the .ARPA and .INT top level domains.

Department of Defense's Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Terranode Network Technology (TNT). As the TNT project neared completion and the DARPA/USC contract neared expiration, USC entered into a transition agreement with ICANN under which ICANN secured directly from USC all necessary resources, including key personnel, intellectual property, and computer facility access, critical to the continued performance of the IANA functions. In 2000, NTIA then entered into a sole-source, no-cost-to-the-government contract designating ICANN to perform these functions.

NTIA and ICANN entered into subsequent contracts for the performance of the IANA functions in 2001, 2003, and 2006. In July 2012, NTIA awarded ICANN, via a full and open competitive procurement process, the current IANA functions contract. The original base period of performance for this contract was October 1, 2012 to September 30, 2015. The base period has since been extended to September 30, 2016, and NTIA has the flexibility to further extend the contract for another three years. All of the IANA functions contracts have been at no cost to the U.S. Government.

As the IANA functions operator (IFO), ICANN performs administrative responsibilities related to the three primary IANA functions. First, ICANN is the central repository for protocol name and number registries, as defined by the Internet Engineering Task Force (IETF).[7] Second, ICANN coordinates allocations of Internet Protocol and Autonomous System numbers to the Regional Internet Registries (RIRs).[8] Third, ICANN processes root zone file change requests for top level domains (TLDs) and makes publicly available a Root Zone WHOIS database with current and verified contact information for all TLD registry operators. In all three cases, ICANN, as the IFO, applies policies developed by the customers of the IANA functions. The ICANN Board has no authority to make unilateral policy decisions or changes related to performance and operation of the IANA functions.

NTIA's role as the historic steward of the DNS via the administration of the IANA functions contract is limited and clerical in nature. NTIA has no role in the management of Internet numbering resources or Internet protocol parameters functions. For the root zone management function, NTIA verifies that ICANN followed established policies and procedures in processing change requests, and then authorizes implementation of those changes by the root zone maintainer, Verisign. NTIA's role does not involve the exercise of discretion or judgment with respect to such change requests.[9]

From the inception of ICANN, the U.S. Government and Internet stakeholders envisioned that the U.S. Government's role in the IANA functions would be temporary. The DNS White Paper

---

[7] The IETF is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. *See,* https://www.ietf.org.

[8] Regional Internet Registries (RIRs) manage, distribute, and register Internet number resources (IPv4 and IPv6 addresses and Autonomous System Numbers) within their respective regions. *See,* https://www.nro.net/about-the-nro/regional-internet-registries.

[9] For further information on the NTIA role in root zone management and the IANA functions, *see* http://www.ntia.doc.gov/other-publication/2014/ntia-s-role-root-zone-management.

stated that "agreement must be reached between the U.S. Government and the new corporation (ICANN) relating to the transfer of the functions currently performed by IANA."[10]

NTIA has fulfilled this temporary role not because of any statutory or legal responsibility, but as a transitional measure at the direction of the President. Indeed, Congress never designated NTIA or any other agency to be responsible for managing the DNS. Thus, NTIA has no legal or statutory responsibility to manage the DNS. Just as federal agencies can enter into contracts they need to fulfill their missions without specific legislative authority, federal agencies can discontinue obtaining such services when they no longer need them. As NTIA made clear at the time of its Statement of Policy, it intended only to procure the IANA functions services until such time as the transition to private sector management of the Internet DNS was complete.

<u>Final Steps in the Privatization of the DNS – An Important Part of U.S. Support for the Multistakeholder Model of Internet Governance</u>

The multistakeholder model of Internet governance is the best mechanism for maintaining an open, resilient, and secure Internet because, among other things, it is informed by a broader foundation of interested parties and it is more flexible and adaptable to innovation and changing conditions. This model encourages all parties—including businesses, technical experts, civil society, and governments—to participate and to reach consensus through a bottom-up process. ICANN and several other technical organizations embrace and exemplify this model.

The 112th U.S. Congress affirmed its support for the multistakeholder model in unanimous resolutions to "preserve and advance the successful multistakeholder model that governs the Internet."[11] More recently, bipartisan Congressional leaders reiterated this position in stating that "[t]he multi-stakeholder model for Internet governance must prevail for more countries around the world to realize the transformative benefits of Internet connectivity."[12]

Demonstrating its commitment to the multistakeholder approach, on March 14, 2014, NTIA announced its intent to complete the privatization of the domain name system first outlined in 1998. NTIA called upon ICANN to convene a multistakeholder process to develop a transition plan.[13] While looking to stakeholders and those most directly served by the IANA functions to work through the technical details, NTIA established a clear framework to guide the discussion. Specifically, NTIA outlined that the transition proposal must have broad community support and meet four principles.

First, the transition proposal must support and enhance the multistakeholder model. Specifically, the process used to develop the proposal should be open, transparent, bottom-up, and garner broad, international stakeholder support. In addition, the proposal should include measures to ensure that changes made to any of the three IANA administered databases are

---

[10] DNS White Paper, *supra* n. 2.
[11] *See* H.R.Con.Res. 127, 112th Cong. (2012); S.Con.Res. 50, 112th Cong. (2012).
[12] Reps. Upton (R-MI), Waxman (D-CA), Royce (R-CA), Engel (D-NY), *Re/code*, "Protecting the Internet From Government Control" (Dec. 18, 2014), *available at*: http://recode.net/2014/12/18/protecting-the-internet-fromgovernment-control/.
[13] "NTIA Announces Intent to Transition Key Internet Domain Name Functions" (Mar. 14, 2014), *available at*: http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.

consistent with the multistakeholder developed policies and procedures accepted by the IANA functions customers.

Second, the transition proposal must maintain the security, stability, and resiliency of the Internet DNS. For example, the decentralized distributed authority structure of the DNS needs to be preserved so as to avoid single points of failure, manipulation, or capture. In addition, integrity, transparency, and accountability in performing the functions must be preserved. The IANA services also need to be resistant to attacks and data corruption, be able to fully recover from degradation, if it occurs, and be performed in a stable legal environment.

Third, the transition proposal must meet the needs and expectations of the global customers and partners of the IANA services. For example, mechanisms for the adherence to and development of customer service levels, including timeliness and reliability, should be clear, as should processes for transparency, accountability, and auditability. Consistent with the current system, the separation of policy development and operational activities should continue.

Fourth, the transition proposal must maintain the openness of the Internet. The neutral and judgment-free administration of the technical DNS and IANA functions has created an environment in which the technical architecture has not been used to interfere with the exercise of free expression or the free flow of information. Any transition of the NTIA role must maintain this neutral and judgment free administration, thereby maintaining the global interoperability of the Internet.

NTIA also explicitly stated that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.


### Section III.    Multistakeholder Community Response

Following the March 2014 announcement, stakeholders responded with great energy and participation to develop a transition plan that would ensure the stability, security, and openness of the Internet. Since NTIA's announcement, the Internet community has risen to the challenge by developing a transition plan that has achieved broad community support. ICANN delivered the community proposal to NTIA on March 10, 2016, marking the culmination of the largest multistakeholder process ever undertaken. Stakeholders spent more than 26,000 working hours on the proposal, exchanged more than 33,000 messages on mailing lists, and held more than 600 meetings and calls.

Stakeholders organized two work streams to develop the IANA Stewardship Transition Proposal. The first, the IANA Stewardship Transition Coordination Group (ICG) focused on the specifics of the IANA functions themselves. The second, an ICANN Cross Community Working Group (CCWG), determined the accountability enhancements needed at ICANN. The consolidated reports of these two groups constitute the IANA Stewardship Transition Proposal.

The ICG portion of the proposal consolidates separate plans developed by each of the three communities representing the primary IANA functions customers.  On September 8, 2014, the

ICG issued a Request for Transition Proposals to the multistakeholder community, with a proposal submission deadline of January 15, 2015.[14] The ICG requested one proposal for each of the three primary functions, *i.e.*, the domain name, numbering, and protocol parameters-related functions, be developed by the communities and parties most directly affected by each of the primary functions. The ICG proposal establishes multistakeholder oversight and accountability mechanisms for the IFO in its performance of the IANA functions. It also creates enhanced service level agreements and expectations between the IFO and customers of the IANA functions. And, lastly, it institutionalizes mechanisms by which the customers of the IANA functions can replace the IFO in providing these services, if it ever becomes necessary.

The CCWG-Accountability portion of the proposal, developed by appointed representatives from ICANN's Supporting Organizations (SOs) and Advisory Committees (ACs), creates a power sharing structure between the ICANN Board and ICANN community by specifying seven community powers.[15] Board-community conflicts are resolved through an escalation process that requires the support at each step of the process of an increasing number of SOs and ACs. The proposal also enhances ICANN's existing independent review process by establishing an independent, standing review committee comprised of legal and technical experts. In addition, the proposal incorporates core elements of the Affirmation into ICANN's Bylaws, which will enshrine continued accountability and transparency reviews.


**Section IV.    Overview of Proposals**

1.  <u>ICG Proposal to Transition the Stewardship of the IANA Functions</u>

The ICG's proposal development process relied on the active engagement of the customer communities of the three primary IANA functions:

- Domain names (names),
- Internet number resources (numbers), and
- Protocol parameters.

These communities already have direct operational and service relationships with the IFO, as well as the responsibility to develop associated policy. Therefore, the ICG determined that these communities were best placed to propose future stewardship arrangements for the IANA functions post-NTIA and the IANA functions contract. The ICG developed a request for proposals (RFP) that provided a template for the three communities to use. Each of the communities then used their own multistakeholder processes to develop a response to the RFP.

---

[14] IANA Stewardship Transition Coordination Group, "Request for Proposals" (Sept. 8, 2014), *available at:* https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf.
[15] Through the empowered community, ICANN stakeholders can: 1. reject an ICANN budget or operational plan; 2. approve changes to Fundamental Bylaws; 3. reject changes to standard bylaws; 4. remove individual Board members; 5. remove the entire Board; 6. initiate a binding independent review process; and 7. reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of any Post Transition IANA (PTI) separation process.

Upon completion of the individual proposals, the ICG confirmed that the three proposals met NTIA's criteria and that the proposals were workable and had broad community support.

*Names*

The names community organized its efforts through a Cross Community Working Group (CWG). The CWG proposes no material changes to the operations of the names function and will continue to rely on ICANN's existing operational practices. In order to strengthen the existing separation of policy and operations, the CWG proposes to form a new, separate legal entity, Post-Transition IANA (PTI), as an affiliate (subsidiary) of ICANN. PTI is proposed to become the IFO for the names function, under contract with ICANN. In addition to structurally separating ICANN's domain name policy development from the operation of the domain name related function, the creation of PTI will also allow for "separation" should it ever be determined necessary. That is, if the IFO fails to perform and all escalation and remedial actions have been exhausted, the names community has the ability to replace PTI as the IFO. For operational oversight, the CWG proposes a Customer Standing Committee (CSC) for monitoring performance according to contractual requirements and service level expectations. The CWG also proposes periodic multistakeholder reviews, referred to as IANA Functions Reviews (IFRs), as well as the potential for special IFRs conducted out of cycle as necessary.

The CWG does propose to discontinue NTIA's current root zone change validation and authorization role, based on its determination that this role does not significantly contribute to the security or operations of root zone management or the DNS overall. However, with respect to NTIA's role in approving changes to the architecture and operation of root zone management, the CWG proposes this role continue on the grounds that such changes are critical to maintaining the security, stability, and resiliency of the DNS. It proposes that the ICANN Board formally approve such changes, but that approval is to be based on recommendations of a to-be-formed standing committee responsible for ensuring the appropriate individuals and organizations with requisite skill and expertise are involved.

The names proposal is dependent and conditioned on implementation of the ICANN accountability mechanisms proposed by the CCWG-Accountability. The CWG and CCWG-Accountability coordinated their efforts throughout the proposal development period, and the CWG has expressly stated that the accountability measures proposed by the CCWG meet the needs and expectations of the names community proposal.[16]

*Numbers*

The numbers community organized its efforts by creating the Consolidated RIR IANA Stewardship Proposal (CRISP) Team. The CRISP Team proposes no changes to the operations of the numbering-related function, relying exclusively on existing operational practices and

---

[16] A more detailed explanation of the names proposal, including details on the formation and constitution of the proposed entities, can be found on pages 32-156 of the ICG proposal, *available at*: https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf.

building on existing structures.  It proposes that ICANN continue to serve as the IANA functions operator for the numbering-related functions under a contractual Service Level Agreement (SLA) between the RIRs and ICANN.  It further proposes the creation of a Review Committee that will advise and assist the Number Resource Organization's Executive Committee (NRO EC) in periodically reviewing the IFO's performance and adherence to agreed service levels.  The Review Committee will be comprised of community representatives from each region.[17]

*Protocol Parameters*

The protocol parameters community organized its efforts through an IETF IANA Plan working group (IANAPLAN WG).  The IANAPLAN WG proposal makes no changes to the operational or accountability structures currently in place for the protocol parameters functions.  It relies on existing vehicles, policies, practices, and oversight mechanisms that the community has used for over a decade in the performance of the protocol parameters function. Namely, a Memorandum of Understanding (MOU) between the IETF and ICANN, and an annually updated Supplementary Agreement specifies service levels and other performance related details for the protocol parameters function.[18]  As part of the transition, the IANAPLAN WG requests that three acknowledgements be made by ICANN: (1) the protocol parameters registries are in the public domain; (2) ICANN carries out the obligations established under the existing IANA functions contract between ICANN and NTIA that permit a transition to a successor operator (if ever deemed necessary); and (3) ICANN, the IETF, and subsequent IFO(s) work together to minimize disruption in the use of the protocol parameters registries or other resources currently located at iana.org.[19]

*ICG Review and Compilation*

The ICG reviewed and assessed each of the customer communities' proposals as well as the workability of the three plans taken as a whole.  The ICG found that each community developed its respective proposal in an open and inclusive manner, and that the proposals are complete and clear. The ICG also found the proposals to be compatible and interoperable with each other; that they include appropriate and properly supported independent accountability mechanisms for operating the IANA functions; and that they are individually and collectively workable.

---

[17] A more detailed explanation of the numbers proposal can be found on pages 157-186 of the ICG proposal, *available at*: https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf.

[18] The MOU between the IETF and ICANN is formally referred to as RFC 2860, "Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority," *available at*: https://tools.ietf.org/html/rfc2860.  The policy for overall management of the protocol parameters registries is stated in RFC 6220, "Defining the Role and Function of IETF Protocol Parameter Registry Operators," *available at*: https://tools.ietf.org/html/rfc6220.  The annually updated Supplemental Agreements are *available at*: https://iaoc.ietf.org/contracts.html.

[19] The current IANA functions contract between NTIA and ICANN specifies in Sections C.7.3 and I.61 requirements associated with any potential transition to a successor IANA functions operator, *available at*: http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf.  A more detailed explanation of the protocol parameters proposal can be found on pages 187-209 of the ICG proposal *available at*: https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf.

Specific to whether the three proposals meet the NTIA criteria, the ICG found that the proposals:

- Demonstrate broad community support as evident in the open and inclusive multistakeholder community processes conducted and resulting community consensus proposals;
- Support and enhance the multistakeholder model as the proposals leverage existing multistakeholder arrangements, processes, and concepts in defining post-transition oversight and accountability mechanisms;
- Maintain the security, stability, and resiliency of the Internet DNS as the proposals preserve existing operational practices;
- Meet the needs and expectations of the global customers and partners of the IANA services since it was the customers that developed the proposals;
- Maintain the openness of the Internet as the proposals require that the IANA services, associated policy development, and IANA registries remain fully open and accessible just as they are today; and
- Do not replace NTIA's role with a government or inter-governmental organization as the proposals rely solely on existing multistakeholder processes and arrangements.

Notably, the ICG indicated its unanimous support for the proposal and recommended its implementation.[20]

2.  CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations

The CCWG-Accountability group developed recommendations to enhance ICANN's accountability to the global Internet community.  After two years of dedicated work, the CCWG produced consensus recommendations that preserve existing structures, but enhance the ability of the community to hold ICANN's Board accountable to the Internet community and ICANN's Bylaws.  The proposal strengthens ICANN's reconsideration and independent review processes, makes several modifications to ICANN's mission and core values, and incorporates important portions of the Affirmation.  In addition, the proposal qualifies the community's new enforcement powers with a defined engagement and escalation path that ensures any decision to use them is done with broad community support.  The main elements of the proposal are outlined below.

*Establishment of Community Powers*

The ICANN community currently consists of three SOs and four ACs that develop policies for approval by the ICANN Board.  Together, these bodies comprise the DNS policymaking community.[21]  The CCWG-Accountability's proposal builds on this existing community

---

[20] A more detailed explanation of the ICG assessment and contribution can be found on pages 3-31 of the ICG proposal, *available at*: https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf.

[21] The ICANN SOs and ACs include: the Generic Names Supporting Organization (GNSO), which develops policies for gTLDs and includes business users, intellectual property interests, and civil society groups; the Country

structure by empowering the community to reject ICANN strategic plans and budgets, including the IANA functions budget; reject changes to ICANN Bylaws; remove individual Board Directors; recall the entire ICANN Board; initiate binding independent review processes; and reject ICANN Board decisions related to reviews of the IANA naming functions. Four Decisional Participants (out of the GNSO, ccNSO, ASO, ALAC, and GAC) must join to reject a budget, reject an ICANN Board decision associated with the IANA naming functions, or recall the entire Board. At least three Decisional Participants must joint to initiate a binding independent review process, remove an individual Board Director, or reject or approve a bylaw. In no case can more than one Decisional Participant object to using a community power.

*Execution of Community Powers*

In order to execute any of the community powers, the community must participate in a process that escalates a petition to use the powers through different phases of engagement. At the outset, a single Decisional Participant in the community can petition to use a community power. The petition cannot advance until the initiating party receives support of at least one other Decisional Participant. If this threshold is met, ICANN will organize a community forum, which provides an opportunity for the community and the ICANN Board to discuss the issue, with the goal of resolving the issue through dialogue. However, if the issue cannot be resolved in the community forum, Decisional Participants have 21 days to vote whether they want to exercise the community power. As detailed above, different powers require different thresholds of community support.[22]

The CCWG-Accountability proposal establishes that the community powers will be exercised by a Sole Designator defined under California law. This Sole Designator is referred throughout the proposal as the "Empowered Community," which will have the right to enforce community decisions in California courts. The Sole Designator's role is enshrined as a Fundamental ICANN Bylaw. Enforcement of a community power in a California court is a last-resort mechanism meant to be used only after every other means of resolving an issue between the community and the ICANN Board has been exhausted.

---

Code Names Supporting Organization (ccNSO), which develops policies for country code top-level domains (ccTLDs) and includes ccTLD registries; the Address Names Supporting Organization (ASO), which develops policies for IP addresses and includes the five RIRs; the Security and Stability Advisory Committee (SSAC), which provides advice on the integrity of the Root Server System and includes the 13 DNS root server operators; the Root Server System Advisory Committee (RSSAC), which provides advice on the security and integrity of the Internet's naming and address allocation systems, and is comprised of 30 DNS industry experts; the Governmental Advisory Committee (GAC), which provides advice on public policy issues and includes 110 governments and 35 observers from intergovernmental groups; and the At-Large Advisory Committee (ALAC) which provides advice as the voice of Internet users and includes academics, civil society, and consumer advocates.

[22] It is important to note that because of the elevated deference GAC advice receives from the ICANN Board, the GAC may not participate in an initial vote to reverse a Board decision on GAC advice. However, if an independent review finds that a Board decision related to GAC advice was not made in accordance with ICANN's Bylaws, the GAC may participate in a vote to recall the ICANN Board absent compliance with the community's decision.

*Standard and Fundamental Bylaws*

The proposal creates a new class of ICANN Bylaws, called "Fundamental" Bylaws. Unlike standard ICANN Bylaws, which require a 2/3 vote of the Board for amendment, approval of Fundamental Bylaws would require a 3/4 vote of the Board and positive assent of the ICANN community. The CCWG-Accountability decided to create this new class of bylaws to ensure that bylaws having to do with ICANN's structure, mission, and accountability -- including elements of the Affirmation -- could only be changed if there was a high level of community consensus support. This was seen as a way to increase stability and confidence in the ICANN system.

*ICANN's Mission and Core Values*

The proposal limits ICANN's mission to coordinating the development and implementation of policies designed to ensure the stable and secure operation of the DNS. It also recommends that the mission explicitly exclude the regulation of services that use the DNS or the content carried on these services. However, ICANN retains the ability to negotiate and enforce agreements, including Public Interest Commitments (PICs), with contracted parties. The proposal also recommends that ICANN's core values in the ICANN Bylaws be modified to include preserving and enhancing the stability and openness of the DNS and the Internet. It also limits ICANN's obligations to "those within ICANN's mission that require, or significantly benefit from, global coordination." ICANN's core values will also include a requirement to "employ open, transparent, bottom-up, multistakeholder processes."[23]

*Enhancing ICANN's Reconsideration and Independent Review Process*

The proposal enhances ICANN's independent review process to include hearing claims that ICANN's Board has acted in violation of its bylaws, resolve claims that PTI has acted in violation of its contract with ICANN, and resolving claims that document disclosure decisions are inconsistent with ICANN's Bylaws. The community will also be able to use this process to challenge Board decisions. In addition, the proposal institutes a standing panel of experts, independent of ICANN's SOs and ACs, to hear complaints. For the reconsideration process, the timeframe for filing requests will be expanded, as will the scope of permissible requests. The proposal also increases the transparency of reconsideration proceedings and extends the deadline for the Board to respond to requests.

*Incorporation of Affirmation of Commitments*

The Affirmation obligated ICANN to make accountable, transparent decisions in the public interest, as well as to undergo four regular reviews performed by the community. These reviews

---

[23] *See* The IANA Stewardship Transition Proposal, CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations, Pg 34, para 134; *available at*: https://www.icann.org/en/system/files/files/iana-stewardship-transition-package-10mar16-en.pdf.

relate to accountability and transparency; WHOIS policy; security and stability; and competition and consumer trust. The CCWG-Accountability proposal enshrines these reviews in ICANN's Bylaws.

*Role of Governments*

The CCWG-Accountability proposal maintains the advisory status of the GAC, and makes a series of recommendations that codify the GAC's current working methods. Specifically, the proposal maintains that the ICANN Board must give special consideration only to consensus GAC advice, defined specifically as advice to which no GAC member formally objects. ICANN's Bylaws require the Board to notify the GAC when it has decided not to follow consensus GAC advice and try, in good faith, to reach a mutually agreed upon solution with the GAC. No other SO or AC receives this elevated level of deference from the Board.

The proposal codifies the GAC's current practice. In addition, the proposal recommends that the Board must achieve a 60 percent vote to reject GAC consensus advice. The GAC may, but is not required to, participate in decisions to use the community powers, except in cases when the subject of a petition to use the powers is GAC advice.

*SO and AC Accountability*

The proposal recommends that the organizational effectiveness reviews required by ICANN's Bylaws include new criteria to review how SOs and ACs are accountable to their constituencies and stakeholders. Post-transition, the CCWG-Accountability will work out specifically how to implement this new mandate. The proposal also recommends that the accountability and transparency reviews required by ICANN's Bylaws include new criteria to review the effectiveness of the GAC's interaction with the ICANN community, complementing the existing mandate to review the effectiveness of the GAC's advice to the ICANN Board.

**Section V.      Proposal Assessment Process**

In reviewing and assessing the IANA Stewardship Transition Proposal, NTIA utilized a number of resources and tools. Namely, the DNS Interagency Working Group of U.S. government agencies developed a methodology to assess whether or not NTIA's criteria are met. [24] NTIA also looked at internal control frameworks as proposed by the GAO and incorporated relevant aspects into the overall proposal assessment. Lastly, NTIA utilized the expertise of corporate

---

[24] NTIA convenes the DNS Interagency Working Group at least monthly to coordinate and develop policies and positions on DNS-related issues. NTIA utilized this group to engage U.S. federal government agencies on matters related to the IANA Stewardship Transition, including proposal review and assessment. Participating agencies include: NTIA, U.S. Department of Defense, U.S. Department of Justice, Federal Bureau of Investigation, Federal Trade Commission, U.S. Department of State, U.S. Patent and Trademark Office, U.S. Department of the Treasury, U.S. Department of Homeland Security, U.S. Department of Health and Human Services, National Institute of Standards and Technology, General Services Administration, National Economic Council, National Security Council, and the White House Office of Science and Technology Policy.

governance experts to confirm whether the CCWG-Accountability proposal reflected corporate governance best practices.  The process and methodologies associated with these resources and tools are detailed below.


1.  NTIA Criteria Assessment

In conducting its assessment, NTIA relied upon the criteria from its March 2014 announcement and subsequent articulations of what the criteria meant.  Namely, that the transition proposal must:

1.  Support and enhance the multistakeholder model.
2.  Maintain the security, stability, and resiliency of the Internet DNS.
3.  Meet the needs and expectations of the global customers and partners of the IANA services.
4.  Maintain the openness of the Internet.

In addition to these four stated criteria, NTIA also asserted that the proposal must have broad community support and must not replace the NTIA role with a government-led or an inter-governmental organization solution.

In determining how best to evaluate the proposals against these criteria, NTIA worked with other U.S. government agencies to develop a set of detailed questions specific to the above criteria that could guide proposal assessment.  These questions, provided more specificity for the broadly stated criteria and were ultimately used as the basis for NTIA's criteria assessment.  NTIA devised a template chart as a tool to document the assessment and completed a chart for each proposal.[25]  NTIA applied each question to the proposals and made a determination as to whether the proposals sufficiently addressed them.  If the determination was that the proposal sufficiently addresses the question, a justification for that assessment was provided as well as citations in support of the justification.


2.  GAO Recommendation

In August 2015, GAO released its Congressionally requested review of IANA stewardship transition implications.  Specifically, GAO looked at the multistakeholder community process to develop a transition proposal, contemplated risks related to the transition, and considered NTIA's plans to evaluate the transition proposal against its core goals.[26]  In its review, GAO noted that the proposal development working groups did not specify the use of a risk management framework to assess risks, but GAO found that the working groups' approaches to considering

---

[25] For the ICG proposal, NTIA assessed each of the three component parts (names, numbers, and protocol parameters) to ensure that each of these received the necessary level of scrutiny.
[26] U.S. Government Accountability Office, "Internet Management: Structured Evaluation Could Help Assess Proposed Transition of Key Domain Name and Other Technical Functions," (Sept 18, 2015), *available at*: http://www.gao.gov/products/GAO-15-642.

and addressing risks to be consistent with general risk-management principles.[27]   With respect to NTIA's evaluation plans, GAO recommended in its final report that NTIA consider relevant internal control frameworks, such as the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework, and use relevant portions to help guide the proposal assessment.[28]

NTIA adopted GAO's recommendation as a tool to supplement its review of the IANA Stewardship Transition Proposal.  NTIA looked at the COSO framework and focused on the following areas specifically referenced in the GAO report:

- Organizational Environment: According to GAO, examining the overall environment created by the proposed changes could help NTIA determine the extent to which the proposal meets the core goals of the transition.  NTIA used the COSO principles for the "control environment" and judged the proposal against a series of relevant questions to assess how the proposed processes and structures set the tone for accountability and meeting the organization's goals. [29]

- Risk Assessment: GAO recommended that NTIA consider using the COSO "Risk Assessment" framework to evaluate the extent to which the multistakeholder community identified risks and the extent to which proposed mechanisms serve as appropriate accountability activities to manage those risks.

- Monitoring:  GAO recommended that NTIA use the "monitoring" component of the COSO framework to determine the extent to which the ICG and CCWG-Accountability proposals incorporate sufficient monitoring requirements.

In documenting this COSO-based assessment, NTIA utilized a template chart.  Similar to the NTIA criteria assessment, each COSO-based assessment question was applied to the proposals as well as to ICANN's existing practices where appropriate.  NTIA made a determination as to whether the practices and/or proposals sufficiently address each question.  If the practices and/or proposals sufficiently address the questions, a justification for that assessment was provided as along with citations in support of the justification.

---

[27] Ibid, pgs 25-26.
[28] Ibid, pg 3.
[29] As a resource, NTIA utilized "Appendix A – 2013 Framework Questionnaire: Probing Questions and Key Concepts" as a guide in developing COSO assessment questions.  This is an appendix to the Ernst & Young "Transitioning to the 2013 COSO Framework for External Financial Reporting Purposes," (March 2014), *available at*:http://www.google.com/url?url=http://www.ey.com/Publication/vwLUAssets/COSOTransitionQuestionnaire_EE 0946_27March2014/%24FILE/COSOTransitionQuestionnaire_EE0946_27March2014.pdf&rct=j&frm=1&q=&esrc =s&sa=U&ved=0ahUKEwj_rNDrhrTMAhUGrD4KHZA3DB4QFggUMAA&sig2=ZrG8owI6kVfyx_0zvotN9g&us g=AFQjCNF_fwpCYRE5F6ASPzaZby4Pin5TYQ.

3. Corporate Governance

In addition to the GAO recommendation, NTIA asked leading experts on corporate governance to conduct an independent review and assessment of the CCWG-Accountability proposal. These corporate governance experts were asked to consider:

- Whether the proposal is consistent with principles of good corporate governance; and
- The potential for subversion or capture of ICANN by governments or third-party

In conducting its review and assessment, the corporate governance experts drew from frameworks and leading scholarship across the fields of corporate, nonprofit, and multistakeholder governance, to create a framework of good governance principles by which to evaluate the CCWG-Accountability proposal.

**Section VI. Assessment Summaries**

Applying these assessment tools, NTIA reaches the following conclusions with respect to the transition plans:

1. NTIA Criteria Assessment

*ICG*

NTIA looked at each component part of the ICG proposal –names, numbers, and protocol parameters.   Based on its assessment, NTIA finds that each of these proposal components meets NTIA's criteria as detailed in the attached assessment charts (Attachments 1, 2, and 3).  The ICG conducted its own assessment as well, with which NTIA concurs.

Names Proposal

The names proposal *supports and enhances the multistakeholder model* because it relies and builds upon the existing multistakeholder processes and structures for the performance of the names function, its associated accountability structures, and related policymaking.  The proposal depends on the existing ICANN multistakeholder structure by relying on the existing policymaking groups within ICANN and keeping policymaking separate from performance of the IANA functions.  Operational oversight will be the responsibility of ICANN and the multistakeholder CSC and IFR teams.  The proposed standing body for recommending changes to root zone architecture or operations will also be multistakeholder in its composition.  All of these new bodies, as well as the associated processes and mechanisms such as problem escalation, are rooted in the principles of transparency and openness.

The names proposal *maintains the security, stability, and resiliency of the Internet DNS.* By embedding the proposed approach (including the new bodies) within ICANN, the approach is therefore bound by ICANN core values, which explicitly include security, stability, and

resiliency of the DNS.[30] The proposal does not change ICANN's current operations of the naming function, which is critical to maintaining stability. In addition to not proposing significant change to operations, the proposal establishes a process by which to consider and approve any future changes to the architecture of the root zone management system that may impact the security, stability, and resiliency of the DNS. The proposal gives the ICANN Board the ultimate approval authority for changes, but that decision must take into consideration the recommendation(s) of a standing body consisting of technical and operational experts. The proposal adequately avoids single points of failure and manipulation by maintaining the root zone maintainer role (currently performed by Verisign); adopting an approach to oversight and review that relies on multistakeholder constituted committees and teams; and grounding decision making and operations in transparency and openness.

The names proposal *meets the needs and expectations of the global customers and partners of the IANA services,* most notably because the customers and partners developed and approved the proposal. Throughout the process, customers indicated they were satisfied with ICANN's current level performance of the naming function, which was confirmed in the December 2014 public comment period on the first draft proposal.[31] Accordingly, the CWG proposed that the provision of the naming service be performed in essentially the same manner as it is today. The proposal calls for sufficient levels of IFO accountability as well as performance oversight and review of the naming function. The proposal offers customers access to problem resolution mechanisms with prescribed escalation paths should the IFO not address issues satisfactorily. Of particular importance to the names community, the proposal allows for separability in the unlikely case that the IFO fails to perform and the community has exhausted all escalation mechanisms.

The *openness of the Internet is maintained.* The names proposal maintains the impartial and apolitical administration of the naming function in that the CWG proposes no significant changes to root zone management policies and operations. The proposal also enhances the current separation of policy and operations by creating PTI, thus insulating the performance of the naming functions from more politically-based policy discussions.

The proposal *does not replace the NTIA role with a government-led or an inter-governmental organization solution.* The naming community firmly grounds its proposal in multistakeholder bodies, processes, and decision making. PTI will be an affiliate of ICANN, a not-for-profit organization. The composition of the PTI Board will be made up of ICANN staff and two additional independent directors from the community. PTI staff will be comprised of the existing ICANN IANA Department staff. The members of the CSC will primarily be customers of the naming function, but other ICANN stakeholders have the option to serve as liaisons. The IFR teams will consist of representatives from the ICANN stakeholder community as well as liaisons from the numbers and protocol parameters communities. As members of the ICANN multistakeholder community, government representatives will have the opportunity to participate in this approach and the various bodies to be formed. Namely, the CSC is proposed to include

---

[30] *See* "Section 2. CORE VALUES" of ICANN's Bylaws, *available at*:https://www.icann.org/resources/pages/governance/bylaws-en#I

[31] *See* Report of Public Comments, *available at*: https://www.icann.org//en/system/files/files/report-comments-cwg-naming-functions-draft-transition-30jan15-en.pdf.

non-mandatory liaisons, one of which could come from the GAC if it chooses to provide one. The IFR teams are proposed to include one GAC representative as well. However, the proposed structure of participation does not allow any opportunity for dominance by governments or any other single stakeholder community. Further, the proposal eliminates NTIA's root zone verification role and does not replace it with a government-led or intergovernmental solution.

Lastly, the names proposal clearly demonstrates *broad community support*. The CWG was chartered by the ICANN Generic Names Supporting organization (GNSO), GAC, country-code Names Supporting Organization (ccNSO), At-Large Advisory Committee (ALAC), and the Security and Stability Advisory Committee (SSAC), each of which appointed members. All other interested parties were invited and were able to fully participate. The CWG conducted numerous public meetings, consultations, webinars, presentations, and other mechanisms by which to engage stakeholders. This included over 100 calls and meetings, two public consultations, and more than 4,000 emails. The CWG offered clear opportunities for engagement through meeting announcements and agendas made readily available in advance; a public Wiki page with all pertinent information on meetings and proposal drafting; and meetings made open to remote participation either through telephone and/or Adobe Connect. The names proposal itself went through much iteration based on transparent and public consultation and feedback. The chartering organizations ultimately approved the final proposal with no dissenting views.

Numbers Proposal

The numbers proposal *supports and enhances the multistakeholder model* by relying on the existing multistakeholder approaches and processes currently utilized in the provision of the numbering function. Namely, the numbering community remains responsible for policy development and the proposal gives operational oversight to the numbering community through a new SLA contract with the RIRs (not-for-profit, membership-based organizations accountable to their respective communities). Further, the proposed Review Committee is to be comprised of representatives from each of the RIRs. Similar to the names proposal, the numbers proposal bases its approach and SLA heavily on the principles of transparency and openness. The processes and policies the RIRs develop are open, transparent, bottom-up, and inclusive of all stakeholders.

The numbers proposal *maintains the security, stability, and resiliency of the Internet DNS*. The numbers proposal calls for no changes to the current operations, practices, or policy structures associated with the numbers function. The reliance on existing processes and mechanisms, combined with enhanced performance review, preserves and strengthens the approach under which the numbering service is performed while maintaining the current security, stability, and resiliency of the DNS.

The numbers proposal *meets the needs and expectations of the global customers and partners of the IANA services* because numbers customers developed the proposal. The RIRs are satisfied with the ICANN IANA Department's current level of performance of the numbers function, which supports the proposal's reliance on current processes and mechanisms. As proposed, the customers (as part of the RIR community) had the opportunity to participate in the drafting of the SLA and to identify service level expectations moving forward. The SLA will stipulate dispute

resolution as well as the continued separation of policy development, performed today by the RIRs, from performance of the numbers function. The customers of the numbers function also have the opportunity to participate in the review committee charged with assisting the Number Resource Organization's Executive Committee in performance reviews. Of particular importance to the customers of the numbers function is the ability to separate from the IFO if deemed necessary. The SLA with ICANN allows for this potential separation, but the SLA also provides for continuity and stability in the operation of the numbering service under this and other potential circumstances.

The numbers proposal *maintains the openness of the Internet* in that it does not propose changes to the existing and proven operation of the numbers function. Further, the proposal maintains the existing implementation of policies developed via open, transparent, and bottom-up policy making and operational processes upon which the open Internet relies. NTIA's assessment finds that since no changes are proposed to the technical or operational methods associated with the provision of the numbering function, the impartial and apolitical nature of administrating the numbering function is maintained. The proposal further removes subjective decision making by the IFO by retaining policy development authority with the RIRs.

The numbers proposal *does not replace the NTIA role with a government-led or an intergovernmental organization solution*. NTIA today plays no role in the operation of the numbering function. The numbers proposal replaces the NTIA stewardship role with the RIRs, per an SLA contract with ICANN. As noted previously, the RIRs are nonprofit organizations accountable to their community. While government entities rely on number resources and have the ability to participate in RIR activities, there is no opportunity for governments to take control due to the multistakeholder and geographically-distributed basis of the RIRs.

Lastly, the numbers proposal clearly demonstrates *broad community support*. The numbers community conducted an open, transparent, and bottom-up process modelled after the existing process for numbers policy development at the regional and global levels. Proposal development was conducted in two distinct, but concurrent, phases: 1) regionally through the RIRs, and 2) globally through the CRISP Team. Discussions were open to all interested parties. The discussions were open and transparent, with all discussions archived. Clear opportunities for engagement were offered, with the RIRs and CRISP Team each having dedicated web pages for posting advance and archived information on meeting dates, teleconferences, and public comment opportunities. The final proposal is a direct result of numerous meetings, teleconferences, and online dialogue. Two drafts of the numbers proposal were published for public comment and amended based on input received.

Protocol Parameters Proposal

The protocol parameters proposal *supports and enhances the multistakeholder model* in that it relies on existing multistakeholder structures, practices, and vehicles. Specifically, the proposal relies upon the IETF for oversight, which is an organization that is open to everyone. The protocol parameters community also developed its proposal through a multistakeholder process and, moving forward, the IETF will continue to utilize the multistakeholder process to make any future changes to the protocol parameters function.

The protocol parameters proposal *maintains the security, stability, and resiliency of the Internet DNS*. The proposal calls for continued reliance on the existing and proven structures, practices, and vehicles that the community has used in the performance of the protocol parameters function. NTIA's assessment finds that the existing practices and accountability mechanisms are sufficient to protect against any potential disruption to the security, stability, and resiliency of the Internet DNS (or that of the protocol parameters registries).

The protocol parameters proposal *meets the needs and expectations of the global customers and partners of the IANA services*, in that the protocol parameter customers developed and approved the proposal. According to the proposal, ICANN's current level of performance in protocol parameter operations are meeting the needs of the customers, and the proposed approach simply maintains the existing processes. As per existing practice, the Supplemental Agreement between ICANN and the IETF will be reviewed and amended yearly to ensure that service levels and operational performance continue to meet the needs of the protocol parameters customers. Similar to the names and numbers proposals, the protocol parameters proposal includes the ability to replace ICANN with a different IFO in the unlikely event the protocol parameters community deems it necessary.

The protocol parameters proposal *maintains the openness of the Internet*. The proposal maintains the existing open framework that allows anyone to participate in the development of IETF standards, including the policies associated with the protocol parameter registries. Based on NTIA's assessment, no changes are proposed that would negate the existing impartial and apolitical administration of the registries and the continued reliance on the MOU and Supplemental Agreements.

The protocol parameters proposal *does not replace the NTIA role with a government-led or an inter-governmental organization solution*. NTIA today plays no role in the operations of the protocol parameters function. The IETF proposes to replace NTIA's stewardship role with the existing practices and structures performed by the IETF, as well as the MOU and Supplemental Agreement between the IETF and ICANN.

Finally, the protocol parameters proposal demonstrates *broad community support*. In the terms used by the IETF, the protocol parameters proposal attained "rough consensus" of the IANAPLAN WG and the IETF community as a whole as determined by established long standing IETF practice and process.[32] Participation in the proposal development process was open to all and opportunities for engagement were regularly provided through public announcements, agendas, mailing lists, public comment consultations, and meetings.

*CCWG-Accountability*

NTIA reviewed each recommendation in the CCWG-Accountability proposal, and finds that the recommendations meet NTIA's criteria as detailed in the attached assessment chart (Attachment

---

[32] ICG Stewardship Transition Proposal, page 204, para 3097.

4). The CCWG-Accountability conducted its own assessment as well, with which NTIA concurs.

The proposal clearly *supports and enhances the multistakeholder model*, the spirit of which is woven into all of the proposal's recommendations. At the heart of the proposal is the establishment of a power sharing structure between the ICANN Board and community. The community's new powers to challenge Board decisions, and enforce decisions in court, reflect this power sharing arrangement. Further, by incorporating central elements of the Affirmation of Commitments into ICANN's Bylaws, the proposal strengthens ICANN's fidelity to the multistakeholder model.

The CCWG-Accountability proposal effectively maintains *the security, stability, and resiliency of the Internet DNS* in that the proposed accountability measures do not affect any operational activities of ICANN which could directly or indirectly affect the security, stability, and resiliency of the Internet DNS. In addition, the proposal will enshrine in ICANN's Fundamental Bylaws a commitment to the security, stability, and resiliency of the Internet DNS. Many of the community's enforcement powers can be triggered if ICANN makes a decision in contravention of its responsibility to maintain the security and stability of the Internet DNS.

The CCWG-Accountability proposal helps ICANN *meet the needs and expectations of the global customers and partners of the IANA services* as it incorporates all the accountability mechanisms requested by the names community that it deemed necessary to support performance of the naming function. This includes enshrining in ICANN's Bylaws the requisite operational oversight, review, and appeal mechanisms called for in the names proposal. It also provides the names community greater visibility into the IANA functions budget, with the opportunity to approve or veto the budget if the community deems it necessary. Further, the amended bylaws incorporate the necessary governance provisions related to PTI, which will be responsible for the performance of the naming function.

The CCWG-Accountability proposal *maintains the openness of the Internet* in many ways. The proposal creates the ability for the ICANN community to challenge any decisions that infringe on the neutral and judgment-free administration of the DNS, and the operational openness of the DNS and the Internet. By enshrining these values as Fundamental Bylaws, as well as elements of the Affirmation, the community would need a supermajority vote among ICANN's SOs and ACs, which all must concur with the decision internally, to make changes.

In addition, the proposal *does not replace the NTIA role with a government-led or inter-governmental organization solution*. Under the proposal, there is nothing that increases the role of governments over the DNS or ICANN as an organization. The bylaws retain the prohibition on government officials serving as voting members of the ICANN Board. Governments remain advisory through the GAC. As is currently the case, the Board is free to reject GAC advice. Today, the Board does give special consideration to consensus GAC advice. However, the proposal codifies current practice through a bylaw change that defines consensus as agreement to which no one formally objects. The GAC may not exercise a role as a Decisional Participant of the Empowered Community when the issue of contention is the Board's action on GAC advice. In other situations, the GAC is one of five potential participants on a decision to use the

community's enforcement powers. But, there is no situation where the GAC could unilaterally invoke the community powers over the objections of the rest of the ICANN community.

The CCWG-Accountability proposal received *broad community support*. The proposal development process featured three public comment periods. After each public comment period, the recommendations were modified to take into account public comments. Ahead of the penultimate draft report, each recommendation was given several formal readings until sufficient edits and modifications were made to achieve consensus. The 28 members accountable to the CCWG's Chartering Organizations, the 172 individual participants, and the Chartering Organizations themselves, have approved the transmission of this plan as an acceptable plan to enhance ICANN's accountability.


2. <u>COSO Assessment</u>

NTIA finds that the IANA Stewardship Transition Proposal, as well as the entities proposed to be responsible for the performance of the IANA functions (ICANN and PTI), generally adhere to the COSO principles with respect to organizational environment (control environment), risk assessment, and monitoring. While not every COSO-based assessment question is specifically addressed in the proposal, NTIA finds overall that the proposal and the entities responsible for IANA functions performance are in compliance with the principles. There are a number of areas that the community could consider and potentially address during implementation, which NTIA specifies in the attached COSO assessment chart (Attachment 5), but NTIA does not view these as shortcomings in the proposals presented.

*Organizational Environment.* Looking at the COSO principles associated with the organizational environment (what the GAO refers to as the "control environment") and after applying questions associated with those principles to the entities responsible for the IANA functions, NTIA finds that ICANN already has in place the necessary processes and structures that help "set the tone" for the organization toward accountability, including how the ICANN Board of Directors carries out its responsibilities and how the organization's structure helps achieve its goals. The CCWG-Accountability proposal reinforces this and allows the community to hold the Board accountable to its commitments and responsibilities. The CCWG-Accountability proposal also enshrines meaningful accountability reviews in ICANN's Bylaws.

With respect to PTI, the ICG proposal did not always contain the level of detail needed to answer whether or not the proposed entity will possess the necessary processes and structures as identified by COSO. This is largely due to the fact that it was premature for the ICG to work out such details prior to NTIA's review and approval of the proposal. For example, the community has not articulated explicit details and expectations for the PTI Board to "lead by example" and "demonstrate the importance of integrity and ethical values." In its assessment chart, NTIA identified these question areas as "yellow" with the expectation that they will be considered during the implementation phase. In keeping with this assumption, NTIA makes a number of recommendations for the community to consider, if they have not already. For example, the community could consider documenting standards of conduct expected of the PTI Board as they pertain to ethical values and integrity. Despite these identified issues, NTIA finds that, on the

whole, PTI is on track to be compliant with COSO-based principles as they apply to the organizational environment.

*Risk Assessment*.  NTIA applied the COSO risk assessment principles to the ICG and CCWG-Accountability proposals.  These risk assessment principles help to ascertain whether the proposals identified and analyzed the risks and how best to manage those risks.  In its assessment, NTIA finds that the proposals adequately defined objectives and identified how those objectives would be achieved.  Where risks were identified for achieving stated objectives, the proposals articulated how those risks were analyzed and managed.  For example, "stress tests" were included that assessed the adequacy of existing and proposed accountability mechanisms available to the ICANN community.  The stress test exercise identified risks and then proposed new or amended existing accountability mechanisms to mitigate them.  The proposals also identified, analyzed, and responded to existing and potential future changes that could impact operations of the IANA functions or ICANN's accountability.  For example, the ICG proposal recognized that an approval role was required for cases where significant changes to root zone management were needed. The naming community proposed that the ICANN Board have that approval role, subject to recommendations from a to-be-formed standing committee comprised of technical and operational experts.  Based on its assessment, NTIA finds that the proposals are consistent with the COSO principles on risk assessment.

*Monitoring*.  The COSO monitoring principles focus on the need to establish and perform monitoring activities as well as to evaluate the results of those activities and fix any identified deficiencies.  NTIA finds that the ICG and CCWG-Accountability proposals more than adequately incorporate these monitoring principles.  For the ICG proposal, each operational component proposes monitoring in the form of standing bodies responsible for day-to-day operational oversight, such as the CSC, as well as periodic reviews, such as the annual audit that is utilized for the protocol parameters.  The results of these reviews will also be evaluated.  The CSC will be charged with reviewing audit results and the annual audit for the protocol parameters function will be reviewed for purposes of determining how the Supplemental Agreement is to be modified annually.   All three of the operational communities also identify how deficiencies are to be remediated with multiple actions available to them. For the CCWG-Accountability proposal, accountability, transparency, and security reviews are enshrined in ICANN's Bylaws that will allow adequate periodic monitoring of these issues throughout the system.  In addition, the existing independent Organizational Reviews will monitor how SOs and ACs (excluding the GAC) are performing as members of the community.


3.  Corporate Governance Report

The corporate governance experts concluded that the CCWG-Accountability proposal is generally consistent with sound principles of good governance (Attachment 6). In recognition that ICANN has a unique governance structure, the experts found that the accountability proposal reflects that uniqueness, and is tailored to enhance the accountability of that structure in ways that address the unique needs of ICANN and its stakeholders.

The experts acknowledge that, throughout the CCWG-Accountability proposal, the choice to emphasize consensus and dialogue over expediency and efficiency is present. The most significant example is the escalation process of the Community Powers, which supplements the day-to-day ICANN processes that are based on multistakeholder dialogues. They note that while this emphasis on multistakeholder processes, dialogue, and consensus might not be well-suited for companies that prioritize efficiency and profits, or nonprofits that pursue a singular mission on behalf of a single, well-defined constituency, they are well-matched to the special needs and role of ICANN.

Further, the experts considered the potential for governments or other third-parties to capture ICANN or otherwise threaten ICANN's accountability. The experts illustrate how the CCWG-Accountability proposal, being consistent with principles of good governance, lessen the risk of such a threat to ICANN's accountability. In their assessment, the experts find the prospects for a takeover of ICANN by a single government, a group of governments, or one or more economic actors to be extremely remote.

The experts conclude that with respect to the broad categories of governance principles, the CCWG-Accountability proposal generally follows good governance principles. Importantly, while the proposal tilts toward more inclusion, it safeguards against paralysis and encourages the continued, stable operation of ICANN and the IANA functions. The experts express confidence that the proposal incorporate strong protections that will contribute to enhancing ICANN accountability.

## Section VII.   ICANN Bylaw Changes

On May 27, 2016, ICANN notified NTIA that its Board had approved all of the bylaw amendments necessary to implement the ICG and CCWG-Accountability proposals.[33]  The Board took this action following a 30-day public comment period on draft bylaw changes and on the basis of statements by ICANN's General Counsel and independent counsel advising the community that the bylaw changes were consistent with the transition plans.

## Section VIII.  Conclusion

Based on its multi-faceted assessment of the proposal, NTIA finds that the IANA Stewardship Transition Proposal meets NTIA's established criteria, relevant COSO-based principles, and corporate governance best practices.  The U.S. government agencies participating in the NTIA-led DNS Interagency Working Group, as well as senior officials participating in a regular interagency process for review of global Internet matters, all support NTIA's conclusion that the IANA Stewardship Transition proposal meets our criteria.

The Obama Administration is committed to doing everything within its power to preserve and protect the open and free global Internet, which has revolutionized the world. The events of the last two years, starting with NTIA's announcement, through the months of planning by the

---

[33] *See* "Approval of New ICANN Bylaws for IANA Stewardship Transition," May 27, 2016.

global Internet community culminating in this plan, have strengthened the multistakeholder process and have boosted the support of governments for the model around the world.  NTIA applauds all those who participated in and contributed to this unprecedented process for successfully reaching consensus on this proposal.  Not only is ICANN stronger as a result of this effort, but a successful outcome will serve as an example to the world of the power of the multistakeholder model to address challenging Internet governance issues.

**Attachments:**

Attachment 1  ICG/Names Proposal NTIA Criteria Assessment Chart
Attachment 2  ICG/Numbers Proposal NTIA Criteria Assessment Chart
Attachment 3  ICG/Protocol Parameters Proposal NTIA Criteria Assessment Chart
Attachment 4  CCWG-Accountability Proposal NTIA Criteria Assessment Chart
Attachment 5  COSO Assessment Chart
Attachment 6  Corporate Governance Report