

GNSO gTLD Registries Stakeholder Group Statement

Issue: Cross Community Working Group on Naming Related Functions Draft Transition Proposal

Date: December 22, 2014

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The gTLD Registries Stakeholder Group (RySG) would like to thank the Cross Community Working Group on the IANA Transition Process (CWG-IANA) for their many months of hard work. It is clear from the draft proposal that significant effort and time were spent bringing the community together to develop a proposal for the transition of the IANA Naming Functions.

Below we have divided our comments into four sections:

- I. Overarching comments on the draft proposal
- II. Specific comments on the draft proposal
- III. Answers to specific questions posed by CWG-IANA
- IV. RySG alternative strawman proposal.

Section I: Overarching Comments on the Proposal

Below you will find our review of the CWG-IANA proposal divided into three parts. First, we provide general comments regarding CWG-IANA scope and work to date regarding this draft proposal. Second, we review each of the mechanisms discussed within the draft proposal. Third, we provide responses to questions posed with the posting of the proposal that were separate from the draft proposal.

At a high level, our comments can be summarized as follows:

- The delay by ICANN in acknowledging that the NTIA stewardship transition and accountability discussions were inter-related has resulted in the issues to be discussed under the two processes being conflated;
- The current proposal does not adequately recognize Registry Operators as direct customers of the IANA functions and the importance of a satisfactory and reliable IANA service to their businesses;
- ccTLD and gTLD Registry Operators are well placed to assume NTIA's responsibility for the technical and operational oversight of the IANA Naming Functions Operator;
- Any decision to replace the current IANA Functions Operator should be supported by Registry Operators; and
- The Multi-stakeholder Review Team (MRT) is open to capture and mission-creep.

General Comments

Timing of the IANA Transition Process and the ICANN Accountability Process

One of our concerns lies in the relative timing of the IANA Stewardship Transition Process and the related process on Enhancing ICANN Accountability (Accountability

Process). We initially applauded ICANN's decision to initiate the Accountability Process in association with the IANA Stewardship Transition Process. However, both work streams have been hampered by ICANN's attempts to bifurcate the two processes and create two separate work streams when in reality these two efforts are intrinsically linked. In response to community concerns, in its revisions to the Accountability Process, ICANN conceded that the two processes were dependent, but significant delays to the Accountability Process have still prevented engagement and collaborative work across the two work streams.

We do not believe this is the fault of the CWG-IANA. The CWG-IANA has repeatedly referred to these dependencies and there appears to be a universal, or near-universal, recognition on the part of its members that the IANA Stewardship Transition is properly dependent on the identification and implementation of the measures established within track one of the Accountability Process. These dependencies are also reflected in the draft proposal.

The dilemma is that the two processes are clearly being addressed out of order. In an ideal world, the CWG-IANA would have begun its work following the adoption of recommendations by the Accountability Cross Community Working Group ("Accountability CCWG"). This would have provided a clear understanding of the overarching organizational accountability framework to which ICANN would be subject, *both* as the IANA Functions Operator as well as in housing the structures for policy development for the naming community. It is clear that these two processes need to run concurrently, allowing each work stream to feed into the other to ensure the sharing of information and collaboration across the two streams and account for their interdependencies.

However, because ICANN delayed the start of the Accountability Process by several months, the IANA Transition Process has advanced far ahead without the requisite knowledge of how key ICANN accountability mechanisms will interact with the Transition Proposal. CWG-IANA discussions and the draft proposal itself reflect efforts by some CWG-IANA members to address wider accountability concerns within the CWG-IANA proposal.

The likely consequence of this disjointedness is that it will lead to the creation of duplicative mechanisms or a failure to consider all possible options available to the CWG-IANA. By way of example, the ICANN Board's ability to unilaterally modify its bylaws has solidified the CWG-IANA's general belief that a new contracting entity is needed to fulfill the IANA Requirements currently set forth in the NTIA IANA functions contract. Restrictions on the ICANN Board's ability to alter such bylaws put in place through the Accountability Process could make direct incorporation of these contract provisions into the ICANN Bylaws a more palatable option, meriting consideration by the CWG-IANA.

In bifurcating the IANA Stewardship Transition Process and the Accountability Process, ICANN has essentially forced the CWG-IANA to develop an overly complicated proposal, which will inject more bureaucracy into a technical process that everyone agrees functions effectively today. Instead of trying to address accountability concerns through the IANA Stewardship Transition Process, we urge ICANN to formally link these two processes to ensure that the work moving forward takes into account equities from

both processes so that in the end the community, ICANN, and NTIA have two well informed and robust plans to ensure the Internet's continued growth and evolution.

Role of User Communities

As established in the NTIA announcement and restated in the CWG-IANA Charter, one of the four principles of the IANA Stewardship Transition is that the transition proposal "meet the needs and expectation of the global customers and partners of the IANA services." The key communities here are members of the Internet Engineering Task Force for protocol parameters; the Regional Internet Registries for numbering allocation; and gTLD and ccTLD Registry Operators for the IANA naming functions.

As gTLD Registry Operators, the operational performance and objective execution of the IANA Functions Operator against established service levels, policies, and procedures is paramount to our businesses. Within the ICANN community, this fundamental priority and need is shared by ccTLD Registry Operators.

Our needs and interests as Registry Operators in the IANA Stewardship Transition are summarized as ensuring the following:

- Excellent performance of the IANA Naming Functions against established service levels for implementing changes to the Root Zone continues in the post-transition landscape;
- Continued reporting by the IANA Functions Operator in the post-transition landscape to provide transparency in the performance of the IANA Naming Functions;
- Continuing objective application of community-developed policies by the IANA Functions Operator;
- Protection of the ICANN multi-stakeholder model for policy development for the generic namespace by preventing the interference in, or reopening of, established policies by an IANA oversight body;
- Continued post-transition availability of operational oversight tools such as external audits to monitor the performance of the IANA Naming Functions; and
- A lightweight transition model, providing the requisite oversight and accountability without becoming so cumbersome as to undermine the timely execution of the IANA Naming Functions, or introduce unneeded costs to its customers.

The current operational performance of the IANA naming functions is satisfactory to the community of gTLD Registry Operators. The IANA functions are not broken. It should also be recognized and understood that the IANA Stewardship Transition is taking place because the NTIA is comfortable that current performance by the IANA Functions Operator can continue, even in the absence of their oversight role.

Though the draft proposal states that the "proposed replacement solution should not seek to create another ICANN-like structure with associated costs and complexities," we fear that the model currently proposed may do just that. The consequences may be graver than monetary cost and complexity; at worst, this could jeopardize the operational functions upon which our businesses rely. In the spirit of giving all interested parties a seat at the table through the creation of broad multi-stakeholder committees, the current proposal may in fact put at risk the continued operational performance of the IANA naming functions by exposing these technical functions to undue risk of capture and

external interference. We are also concerned that the complexity of the IANA Naming Proposal could slow the current, timely execution of the IANA naming functions.

To ensure the continued, satisfactory performance of the IANA naming functions, we believe a lighter touch is needed. We believe that the scope of oversight should remain technical and operational. We also believe that the community should trust the ccTLD and gTLD Registry Operators to do what is best for their businesses by taking responsibility for the technical and operational oversight of the IANA Functions Operator.

Section II: Specific comments on the Draft Proposal

The draft proposal (Section 3.2) seeks to create four structures to replace the oversight role played by the NTIA in the execution of the IANA Naming Functions: Contract Co; Multistakeholder Review Team (MRT); Customer Standing Committee (CSC); and an Independent Appeals Panel (IAP). The following comments are provided on the four distinct elements of the proposal.

Contract Co.

We believe that some form of a contract with the IANA Functions Operator is necessary to establish key requirements of the IANA Functions Operator currently provided for within the NTIA agreement. As such, a contracting entity is likely a requirement of any IANA Stewardship Proposal for the naming community. We agree that this entity should be incorporated so as to protect its Directors and staff from personal liability and that this entity should be lightweight in order to minimize costs.

gTLD registrants are the primary contributors of funding to ICANN (the current IANA Functions Operator) via fees collected and paid by gTLD Registry Operators and gTLD Registrars. The RySG would oppose a proposal for the IANA Naming Transition that yielded significant cost increases to gTLD Registry Operators and their customers, whether through increased ICANN fees or a requirement by registries to independently fund a new entity. However, there are tradeoffs at play in making Contract Co. a shell company, which merit further consideration. The role of awarding the contract, which would be assumed by Contract Co., is currently played by the U.S. Government, by way of the NTIA, an entity with the power and resources to withstand external pressures, lawsuits, and other challenges to its role as contractor. We believe that further discussion and legal analysis is needed to identify and mitigate any risks associated with moving the contracting role currently played by the NTIA to a shell entity. Further, we agree with many within the CWG-IANA that a legal analysis will be required to assess where Contract Co. should be incorporated and the implications of deciding upon that legal jurisdiction.

We support the provisions of the draft proposal that would allow a rebidding process to be initiated at any time if the Customer Standing Committee (CSC) identified significant non-performance issues. We believe that further discussion is required over how regular re-contracting or rebidding processes for the IANA Naming Functions should take place. Historically this process was carried out by NTIA at the end of each usually four-year contract term for the IANA functions. It was a relatively predictable, open, and transparent process. We would oppose the introduction of very short contract terms with frequent rebidding processes, as we believe that this would be costly, time-consuming,

and disruptive to the naming community. Notwithstanding, we believe that well-reasoned arguments have been made within the CWG-IANA for how regular periodic re-bidding processes could provide for greater stability and predictability in the contracting functions.

The current model does not establish much-needed guidelines or limitations on the circumstances under which the IANA Naming Functions could be transitioned to a new operator. We believe that the circumstances for re-awarding the IANA Functions contract should be limited to issues of non-performance, such as a failure to execute against established Service Level Agreements or non-adherence to contract terms. Transitioning the IANA Naming Functions outside of ICANN could be costly and disruptive to registry operators and their customers, and should only be undertaken as warranted by persistent issues of non-performance. The parties best equipped to identify these issues and make performance-based decisions in the context of a rebidding process are the direct customers of the IANA Naming Functions: gTLD and ccTLD Registry Operators.

Multi-Stakeholder Review Team

As registry operators and direct customers of the IANA function, we believe that a primary focus for the MRT should be the operational performance of the IANA Functions Operator. As direct customers of the IANA function, we believe that registry operators are in the best position to examine and determine if the service levels and operational performance of the IANA Functions Operator is satisfactory and worthy of continuance, or whether they are sufficiently deficient that an alternative operator should be sought.

In the current proposal, the MRT retains:

- Discretion over contracting decisions related to the IANA Functions
- Deciding when a rebidding process should be opened
- Determining the outcome of any rebid Request for Proposal (RFP) process

As such the MRT has considerable decision-making authority over the IANA functions, with insufficient checks and balances on this authority. The broad composition suggested for the MRT could also detract from focusing on operational performance and expose the IANA naming functions to the possibility of interference in, or reopening of, established policies by an IANA oversight body.

Though the exact composition of the MRT has yet to be determined, we envision that a body that provided seats to all interested stakeholders (inside and outside the ICANN community) could end up being large in size and bring into play considerations other than operational performance. With this expanded size and set of interests, the MRT would be more susceptible to external lobbying, or to internal capture, by members that want the body to play a role in influencing or enforcing policies developed within the GNSO and ccNSO and implemented by the IANA Functions Operator. Similarly, the composition of the MRT could be manipulated to enable the goal of some to take the IANA function out of ICANN, regardless of whether the current service levels and operational performance is being undertaken to the satisfaction of its direct customers.

With these concerns in mind, we believe that the composition of the MRT should adequately reflect the direct customers of the IANA function, namely TLD registry

operators; and the primary focus for the MRT should be concerned with operational performance. The TLD registry operators should guide measurement.

Aside from the composition and focus issues, we are also concerned with the potential implications of having an unincorporated entity retaining the ultimate discretion over whether to re-award the IANA Functions Contract. We believe that further analysis is necessary to determine whether this could expose its representatives to personal liability. Additionally, like Contract Co. we believe that organizational documents, including clear bylaws with a well-defined and limited mission statement, would be necessary for the MRT to ensure that members act within their mandate.

Customer Standing Committee

As previously stated, the RySG believes that the continuation of excellent service to the customers of the IANA Functions is paramount in the IANA Stewardship Transition. We are fully supportive of the creation of the Customer Standing Committee (CSC) to engage in monitoring to ensure that such service continues and to identify and address any performance deficiencies on an ongoing basis.

Within the current framework where the tasks of the CSC are narrowly focused on the technical and operational execution of the IANA Function, we question the need for liaisons or representatives from other ICANN Supporting Organizations or Advisory Committees on the CSC. One possible exception to this rule could be to allow liaisons/experts from relevant technical organizations also charged with undertaking parts of the IANA functions process. Examples could include the RSSAC, IETF, RIRs, IAB, SSAC as well as others; however, these various liaison/expert roles should be more fully fleshed out. We strongly support the continued development of the policies that are applied by the IANA Functions Operator through the existing multi-stakeholder process; however, once those policies move to the implementation phase there is no evident need for external engagement with stakeholders that are not directly impacted by that implementation. We believe that external experts should only be included as needed by the CSC and be appointed directly by the CSC members.

Notwithstanding the establishment of the CSC, we feel that the direct customers of the naming functions are insufficiently empowered in the context of the proposal as a whole. We believe that registry operators currently represented in the CSC should be the parties empowered to make contracting decisions related to the IANA Naming Functions. As the entities both affected by performance of the duties described in such a contract as well as possessing the level of expertise necessary to adjudicate technical performance, registry operators should play a key role in determining whether a rebidding process is necessary or not.

IANA Independent Appeals Process

We strongly support the existence of a binding and independent appeals process extending to decisions and actions of the IANA Functions Operator that affect the content of the Root Zone File or Root Zone WHOIS Database. It is imperative that this appeals process only challenge whether established policies have been properly applied or adhered to by the IANA Functions Operator. It should not evaluate the merits of such policies. Allowing this independent appeals process to challenge the policies governing delegation and re-delegation of gTLDs themselves could create a secondary nexus for

policy development, undermining the role of the multi-stakeholder model for policy development for the naming community. It would be unacceptable to the gTLD Registry Operators.

We believe that further work is needed to define who has standing to appeal to this body. Below is a more in-depth discussion of our views on this matter provided in response to the specific questions raised by the CWG-IANA when the proposal was posted for comment.

Additionally, while it is premature to comment on the outcomes of the accountability process, one of the resounding calls from the community with regard to that process has been the need for a mechanism to provide meaningful review and redress for ICANN decisions and actions. This directive from the community to develop a more meaningful review process aligns closely with the request of the CWG-IANA for an appeals process to cover policy implementation by the IANA Functions Operator. If a broader review mechanism with binding outcomes and appropriate redress was implemented through the Accountability Process, this mechanism could and should also cover the appeals referred to in the draft proposal for as long as ICANN continued to act as the IANA Functions Operator. Separation of these mechanisms would mean unnecessary duplication and increased cost. If a satisfactory mechanism for independent review and meaningful redress is put in place as a result of the work of the Accountability CCWG, we believe that it would be worthwhile to revisit this aspect of the IANA Proposal to determine whether these mechanisms should be integrated.

NTIA Responsibilities Shifting Directly to ICANN

The RySG is not able at this time to indicate specific support for NTIA responsibilities shifting either to ICANN directly or to the entities/groups set forth in Section 3.2 of the Proposal. In both cases further detail is needed. The RySG can, however, in both cases provide the following recommendations to further the development of both plans.

1. Mission: It is critical that whichever entity takes over NTIA responsibilities be tasked with maintaining the core functions and overarching goals exercised by NTIA to date. The IANA Functions Operator should not expand its remit into, use its position to influence, or be able to exercise a veto over policy matters, which are properly created through the ICANN multi-stakeholderled policy development process. It is crucial that the IANA Functions Operator's oversight is not used to circumvent this process.

In connection with the MRT, it is noted that the Proposal states the "MRT would be a multi-stakeholder body with formally selected representatives from all of the relevant communities." We recommend that the MRT not be subject to external interference, which may lead to the IANA Functions Operator becoming a captured organization. As a result, the RySG recommends that should the proposed Section 3.2 entities be selected, both the IANA Functions Operator's Bylaws and the ICANN Bylaws reflect that Advisory Committee Advice to the ICANN Board of Directors have no heightened influence on any activities. Similarly, if ICANN is selected as the IANA Functions Operator, we recommend that the ICANN Bylaws reflect that Advisory Committees have no heightened influence over decisions made by the IANA Functions Operator.

2. **Accountability:** On December 4, 2014, Larry Strickling of NTIA made a speech to the PLI/FCBA Telecommunications Policy and Regulation Institute where he made it clear that “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.” The RySG agrees with Mr. Strickling – enhanced accountability (regardless of who the IANA Functions Operator is) must be in place prior to the transition.

The necessary changes to ICANN’s organizational accountability framework go beyond IANA delegation and redelegation issues. Enhanced, independent, and binding accountability mechanisms within ICANN relating to policy development must also be in place. As IANA is subject to these policy decisions, and regardless of the number of safeguards placed over the IANA Functions Operator, IANA is at risk of inappropriate influence and capture. It is crucial that agreed upon independent and binding accountability mechanisms are in place at every stage prior to transition.

3. **Jurisdiction:** Similarly, it is crucial that several external opinions (independent of outside counsel representing any particular government or ICANN) be provided to the community regarding any Contract Co., how it is formed, and what jurisdiction it will be formed under. While jurisdiction is a topic that is quite controversial, how and under what laws an IANA Functions Operator is formed will have an ongoing impact on the IANA functions as the IANA Functions Operator will be subject to that jurisdiction’s laws. Analysis on rights of free speech, human rights, business operations, takedowns or other adverse actions with respect to domain names, interference by law enforcement or private legal action, and other matters are key to prevent capture of the organization.

The suggestion that a company be unincorporated or not subject to a particular jurisdiction’s laws must similarly be examined by a neutral, unaffiliated party. For example, can such an entity be insured? If no insurance company is willing to provide coverage, will the entity be able to attract the appropriate commitment from volunteers who may face personal liability and/or potential government action in various jurisdictions?

The RySG believes these are key questions that need to be addressed and, in the case of accountability, implemented prior to any decision being made regarding whether or not ICANN or the new Section 3.2 entities/groups should take over the NTIA responsibilities.

Section III: Answers to Specific Questions Posed by CWG

1. *Possible modifications to the Independent Review of Board actions*

This arrangement is independent of the NTIA functions and can continue without NTIA involvement in IANA Functions. The independent review of Board actions is applicable to all ICANN Board actions which include non-DNS decisions and as such may be beyond the scope of this CWG’s charter. However, in the absence of NTIA oversight and accountability, the CWG is considering whether this review should be binding with regard to delegation/redelegation decisions, and possibly with regard to other decisions directly affecting IANA or the IANA Functions. The

CWG will propose arrangements to ensure that all of the IANA Functions Operator's actions related to TLDs are subject to a similar process.

We feel that that discussion is misplaced. The ICANN Bylaws provide for a limited Independent Review Process (IRP) of Board actions when it comes to the IANA functions. Primarily, this is intended to apply to the delegation and redelegation of ccTLDs, which require Board approval prior to being submitted to NTIA. The IRP also applies to Board actions regarding gTLDs such as policy approval and implementation plan approval. We feel that this level of scrutiny is sufficient when it comes to Board actions as it pertains to the IANA functions provided broader accountability checks are implemented as discussed further below.

As we have noted above, maintaining the level of accountability contained with the IANA functions contract is important; however, we do not feel it is necessary to create another layer of bureaucracy into already complex processes that have definite checks and balances already built into the system.

However, this does not mean that the RySG does not support broader accountability checks on Board actions and decisions, specifically the development of a binding independent review process for all Board actions on policy or the implementation of GNSO policies, including Board decisions as they pertain to the IANA functions.¹ We feel this is a more streamlined and efficient way of addressing the concerns raised by this question. Instead of creating an extra layer of review for IANA-related Board decisions, ICANN would implement a broader scope for independent review of Board decisions, which could encompass both the issues raised here as well as other issues within the broader policy development process within ICANN.

2. Possible modifications to the NTIA's responsibilities as the Root Zone Management Process Administrator

a. Public posting of all IANA change requests

IANA will be required to publicly post all requests for changes to the Root Zone File or the Root Zone WHOIS database as a notification that a change is being made. IANA will also continue to be required to produce and publish Delegation and Redelegation Reports.

The accountability measures enumerated in the IANA functions contract itself largely address the challenge of ensuring that ICANN performs the IANA functions effectively and transparently. This includes, “carry[ing] out the IANA functions in a transparent manner, including inter alia, publishing of user instructions, technical requirements, and an explanation of the processes and procedures that are used to develop policies related to the IANA functions.” We feel that adding an extra layer of transparency by requiring the public posting of all IANA change requests will only increase visibility into the IANA functions.

¹ See RySG Public Comments on “Enhancing ICANN Accountability”:
http://media.wix.com/ugd/ec8e4c_8831eed569674c03afa4fd122cccb80d.pdf

However, it should be made clear that the public posting of IANA change requests is for informational purposes only and these change requests should not be open to further discussion or public comment by the community. Further, the public posting of each IANA change request needs to be done in an efficient manner to ensure that this new process does not slow down these requests.

b. Independent certification for delegation and re-delegation requests

The CWG is considering replacing the authorization role, at least with regard to ccTLDs, with a written opinion from counsel (independent of ICANN) that each delegation and re-delegation request meets the policy requirements cited in the publicly posted reports. The CWG is still in the process of discussing whether and how to replace the authorization role currently played by the NTIA with respect to delegation and redelegation requests, especially those for gTLDs.

The RySG calls attention to Section 1 of the Proposal where a discussion on the differences between ccTLDs and gTLDs is provided. Understanding the difference between each of these types of registries is important in understanding the potential need for different procedures depending on the party involved.

ccTLDs “are representative of individual countries and territories” and are more autonomous. gTLDs, however, represent a broader global interest – whether that represents an open space with no restrictions, a community, a brand, or a particular business model. While it is clearly appropriate for delegation and re-delegation requests for ccTLDs to be analyzed in connection with local and national laws and public policy of the jurisdiction the ccTLD represents, it is not appropriate for gTLDs to be subject to the same requirement.

Because of the global nature of gTLDs, an operator would need to seek an opinion in every jurisdiction where its end-users reside, which is theoretically every jurisdiction in the world. Determining whether or not a particular gTLD’s policies violate local and/or national laws and policies would be impossible. ICANN would be forcing registries to move to permission-based operations in all instances, and governments would be able to override the policy development process by simply banning certain types of registry policies and provisions. Permissionless innovation is what has made the Internet a thriving place globally – for business, speech, communications, and a variety of other things. This concept must be allowed to survive.

Should the delegation/redelegation role that NTIA currently performs be replaced (or removed) for gTLDs?

The NTIA transition has two parts: the elements related to the management of the IANA Functions Contract; and the ‘authorisation’ role performed by NTIA.

The ‘authorisation’ role currently performed by NTIA has been described by Larry Strickling as largely ‘clerical’ or ‘administrative’. The NTIA ‘authorises’ both changes to the Root Zone, and changes to the WHOIS database: i.e., delegations and changes to technical and administrative details respectively. This role is currently performed by a single person at NTIA as required. To accommodate for increased delegation requests associated with the new gTLD process is largely automated and managed via a web interface.

A new gTLD registry operator signs a Registry Agreement with ICANN prior to delegation, which asserts, among other things, that the registry operator has met all the requirements of the application process and the terms and conditions under which the TLD will be operated. The delegation process commences after the Registry Agreement is signed and pre-delegation testing is completed.

The 'authorisation' role performed by NTIA is essentially a completeness check: confirming that the details of the request are accurate and meet the necessary requirements. Given that accuracy of information is critical for TLD delegations, it can be argued that it will be important that the 'authorisation' role performed by NTIA be replicated post-transition. How and by whom is the question that needs to be answered?

Possible options include:

- an alternative, independent, third party that confirms the accuracy and completeness of the delegation request

a secondary check that is built into the IANA delegation processes. In the case of gTLDs, an alternative, independent, third party could confirm the accuracy and completeness of the delegation request and also that the rules for delegation or re-delegation as created through the policy development process have been followed.

c. Who should have standing with the independent Appeals Panel

The CWG recommends that all decisions and actions (including deliberate inaction) of the IANA Functions Operator that affect the Root Zone or Root Zone WHOIS database be subject to an independent and binding appeals panel. The Appeals Mechanism should also cover any policy implementation actions that affect the execution of changes to the Root Zone File or Root Zone WHOIS and how relevant policies are applied. Where disputes arise as to the implementation of "IANA related policies."

The RySG recommends that standing to appeal decisions and actions resulting from the gTLD process steps associated with delegations or redelegations of gTLDs be as shown in the table below. The step numbers and process step descriptions come from the CWG-IANA draft proposal section 2.1.8.2, Description of gTLD Policy Dispute Resolution Processes, Table 11 (T11) - Description of gTLD Policy Dispute Resolution Processes.

Steps A-5 through A-9 involve IANA functions so any appeals would involve the Independent Appeals Panel (IAP) proposed in the CWG proposal. Steps A1 through A-4 involve development and implementation of GNSO policies. Therefore, appeals relating to any of those steps would possibly involve a different appeals process depending on the results of the Enhancing ICANN Accountability cross community working group. In either case, the RySG believes that the appeals process should be binding on the parties.

Step #	gTLD Process Step Description	Standing to Appeal
T11-A-1	Development of Consensus Policies	N/A
T11-A-2	Approval of Consensus Policies	GNSO

Step #	gTLD Process Step Description	Standing to Appeal
T11-A-3	Implementation of Consensus Policies including:	N/A
T11-A-3a	Finalization of Registry Agreement	RySG and/or GNSO
T11-A-3b	Approval of gTLD for delegation	Impacted Registry Operator
T11-A-3c	Execution of Registry Agreements	N/A
T11-A-4	Pre-delegation testing	Impacted Registry Operator
T11-A-5	Request for delegation by registry operators or by ICANN in the case of EBERO action	N/A
T11-A-6	Verification of process, policy and technical checks were successfully confirmed	N/A
T11-A-7	Approval of delegation of gTLD	Impacted Registry Operator
T11-A-8	Change into the root	N/A
T11-A-9	Updating root zone Whois	N/A

d. Key contracting provisions

Key contracting provisions – the end of Section 3 refers the reader to Annex 5, which presents key provisions which would be required to be in the first contract between ICANN and the new contracting entity "Contract Co.". A number of these provisions come from the current NTIA IANA Functions Contract and are proposed to be retained in the new contract, either in original or modified form. Several of these provisions include options or questions on which the CWG would also appreciate receiving input.

The RySG has no comments on the key provisions at this time but will continue to monitor them as they are discussed in the CWG and as decisions are made that may impact the provisions from other sections of the proposal.

Section IV: RySG Proposed Modifications to CWG Proposal

In light of the concerns above, we believe that the following modifications to the CGW proposal could account for the unique role of Registry Operators as the direct customers of the IANA Naming Functions and would be more effective in ensuring the continued performance of the IANA Functions Operator than that put forward in the Draft Proposal. Below, we provide an overview of our recommended modifications to the proposal, including a description of the improvements in comparison to the existing draft proposal.

RySG Proposed Modifications

The IANA Functions Contract provides the NTIA a critical technical oversight role, which we propose should be retained in the form of an Operational Oversight Council (OOC). In order to protect individuals and attract the most qualified experts, the OOC will be a lightweight, incorporated entity. Decisions and actions of the OOC would be carried out by two subsidiary entities: the Operational Oversight Board (OOB) and the Multi-stakeholder Advisory Committee (MAC). The OOB and the MAC would have well-defined compositions and responsibilities, which are described in more detail below.

The primary accountability mechanism to ensure that the performance of the IANA Naming Functions remains satisfactory to its customers (gTLD and ccTLD Registry Operators) would continue to be a contract with the IANA Functions Operator. This contract would provide for the possibility of transitioning the performance of the IANA Naming Functions to a successor operator as a result of performance deficiencies or other failures of the IANA Functions Operator to adhere to contract terms. The contract would include a requirement for the incumbent operator to accept a determination to transition the IANA Functions to a successor entity and to facilitate such a transition, provided that the rebidding process was conducted in accordance with established requirements (e.g., confirmation of a performance deficiency in an independent audit and approval by both the MAC and the OOB).

The RySG also recommends that a mechanism is put in place through which the decisions and actions of the IANA Functions Operator can be appealed by directly affected parties (as defined in Section III 2.c of the RySG comments). This requirement could be filled by a satisfactory mechanism identified as part of the CCWG-Accountability or by another distinct mechanism, if necessary. Finalization of this mechanism would be paused pending the publication of recommendations by the CCWG-Accountability, following the process described later in these modifications to the proposal.

The Operational Oversight Council (OOC)

An OOC would be established to serve as the counterpart to a contract with the IANA Functions Operator for the performance of the IANA Naming Functions. The OOC would have minimal staff, with most of its activities carried out by OOB and the MAC, as described below. Meetings of the OOC would provide for remote participation and, to the extent possible, in-person meetings would be held around ICANN meetings to reduce the cost of attendance to participants.

Multi-Stakeholder Advisory Committee (MAC)

The OOC Bylaws would establish a MAC comprising one representative from each of ICANN's Stakeholder Groups and Advisory Committees. Representatives would serve three-year staggered terms to provide for rotation and diversity in the community members serving on the MAC. Representatives would not be paid and would be expected to cover expenses associated with participation. Further, to ensure a holistic approach is taken when examining the overall performance of the IANA Functions, the MAC would also include liaisons from other direct customers of the IANA Functions related to Internet numbering allocation and protocol parameters, namely the Internet Engineering Task Force (IETF), the Numbering Resource Organization (NRO), and the Regional Internet Registries (RIR).

The overarching goal of the MAC would be to provide feedback from the multi-stakeholder community as it relates to the ongoing performance of the IANA Naming Functions.

The MAC would be tasked with the following specific responsibilities:

- Approving changes to the OOC Bylaws requested by the OOB;
- Appointing a liaison to the OOB to facilitate information exchange between the OOB and the MAC and participate fully in OOC decisions and activities;
- Engaging with their respective communities as a part of a regular performance review;
- Approving any decision of the OOB to initiate a bidding process (which could include an RFP) outside of any regularly scheduled rebidding processes; and
- Approving the outcome of a rebidding process that resulted in a decision to transition the IANA Naming Functions to an entity other than the incumbent operator.

The MAC would provide an internal check to the OOC by ensuring that significant changes to the performance of the IANA Naming Functions would be acceptable both to the direct customers of those functions as well as to the broader multi-stakeholder community.

Operational Oversight Board (OOB)

The primary responsibility for operational oversight of the IANA Functions would be provided to an OOB. The OOB would be comprised of ccTLD and gTLD Registry Operators, the direct customers of the IANA Naming Functions. The ccTLD and gTLD community would each be designated five seats, which would be filled through procedures developed by the ccNSO and RySG. The MAC would also appoint a liaison to the OOB, who would have full voting rights on any OOB decision. Members of the OOB would serve three-year staggered terms to provide rotation and diversity in the registry operators serving on the OOB; representatives would not be paid and would be expected to cover expenses associated with participation on the OOB.

The OOC and OOB would operate according to Articles of Association and Bylaws. The Bylaws would, at a minimum, include the following provisions related to the conduct of the OOB:

- A requirement that the OOB act transparently by publishing minutes of all OOB Meetings;
- A requirement that any changes to the OOC Bylaws be approved by a majority vote of the (MAC, as described in greater depth above);
- A requirement that any decision to initiate a rebidding process (outside of the regular cycle) be on the basis of an identified performance deficiency confirmed in an independent audit;
- A requirement that any decision to transition the IANA Naming Functions to an entity other than the incumbent operator be supported by one or more identified performance deficiencies or instances of non-adherence to established contract terms substantiated by an independent audit;
- A requirement that any decision to transition the IANA Naming Functions to an entity other than the incumbent operator be approved by a supermajority vote of both the MAC and the OOB; and

- A requirement that any changes to the OOC Bylaws be approved by a supermajority vote of both the MAC and OOB.

The principal responsibilities of the OOB would include:

- Identifying terms for the contract with the IANA Functions Operator, including the establishment of service levels;
- Entering into a contract with the IANA Functions Operator for the performance of the IANA Naming Functions;
- Reviewing the regular deliverables of the IANA Functions Operator (e.g., delegation/redelegation reports and monthly reports) and ensuring that such reports are complete, accurate, and published in accordance with transparency requirements;
- Coordinating regular performance reviews of the IANA Naming Functions to identify areas for improved performance or new services;
- Overseeing the IANA Functions Operator's compliance with contract terms and established service levels;
- Initiating a rebidding process for the IANA Naming Functions in the case of non-adherence to contract terms, or non-performance against established service levels;
- Approving the outcome of a rebidding process.

Independent Appeals Panel (IAP)

As established in the existing Draft Proposal:

All decisions and actions (including deliberate inaction) of the IANA Functions Operator that affect the Root Zone or Root Zone WHOIS database would be subject to an independent and binding appeals panel. The appeals mechanism should also cover any policy implementation actions that affect the execution of changes to the Root Zone File or Root Zone WHOIS and how relevant policies are applied. Where disputes arise as to the implementation of 'IANA related policies.'

The appeals mechanism should be limited to reviewing whether the relevant policies were properly applied and adhered to by the IANA Functions Operator and could not be used to challenge the substance of policies developed through the appropriate channels in the ICANN multi-stakeholder model.

The Independent Appeals Panel (IAP) would apply the standards set forth in Section III 2.c. of the RySG comments in determining which parties had standing to appeal each category of action by the IANA Functions Operator.

Finalization of this aspect of the IANA Naming Proposal would be deferred, pending the outcome of the ICANN Accountability Process. Following the publication of the CCWG-Accountability's draft recommendations, an assessment would be conducted to determine whether the outcome of the Accountability Process provided for a satisfactory appeals mechanism that could also meet the requirements described above.

If the IANA CWG determined that a suitable appeals mechanism did exist, then its membership would work collaboratively with members of the CCWG-Accountability to

ensure that a single, integrated appeals mechanism emerged from the CCWG-Accountability that was consistently reflected in both proposals.

If, upon publication of the CCWG-Accountability draft recommendations, no suitable appeals mechanism was deemed to exist by the IANA CWG, then the IANA CWG would resume its work of developing a mechanism to apply solely to the decisions and actions of the IANA Functions Operator. Standing to use this mechanism would be as provided in Section III 2.c of the RySG comments.

Advantages of New Model

Retains Accountability Mechanisms Provided in the Draft Proposal

In our proposed modifications to the proposal, the two principal accountability mechanisms, namely the ability to move the IANA Naming Functions as a result of non-performance of the IANA Functions Operator and the ability for affected parties to appeal decisions and actions of the IANA Functions Operator, are retained.

Avoids Unnecessary Duplication and Bureaucracy and Potential Inconsistencies

The proposed modifications to the proposal provides for the deferral of the potentially duplicate accountability mechanisms until the finalization and implementation recommendations from the completion of the work in the CCWG-Accountability. This permits the development of a more robust set of accountability mechanisms. The existence of multiple appeals mechanisms, potentially with overlapping mandates, could introduce the possibility of forum shopping and conflicting outcomes - a problem that is minimized in our proposed modifications.

Improved System of Checks/Balances

The two-step system we have built into our proposed modifications to the proposal for approving the decision to move the IANA Functions to a new operator provides a valuable check. Requiring approval of a decision to change the IANA Functions Operator by both the OOB and the MAC will ensure that the continued performance of the IANA Naming Functions continues to account for the needs and expectations of its direct users, while also accounting for any implications that such a change would have for the multi-stakeholder model holistically.

Additionally, requiring that a decision to initiate a rebidding process be on the basis of a performance deficiency or upon violation of the contract between the OOC and the IANA Functions Operator provides an additional check that helps to ensure that decisions related to the continued performance of the IANA Naming Functions are operationally grounded.

Improved Stability and Predictability

We believe that putting in place limitations on the circumstances in which the IANA Naming Functions could be transitioned to a new operator provides stability and predictability in the performance of the IANA Naming Functions. Registry Operators are directly dependent on the continued execution of the IANA Naming Functions in accordance with established policies and service levels. Given the complexities and

contingencies associated with transitioning the IANA Naming Functions to a new operator, as well as the uncertainty over how a new operator would perform in this role, gTLD Registry Operators have a strong preference for the incumbent operator continuing to perform the IANA Naming Functions unless a change was warranted due to performance issues, as described above. The limitations on the grounds in which a rebidding process could be initiated supports this general goal.

The assurances that decisions regarding the IANA Naming Functions would be performance based and that the oversight bodies would not act arbitrarily, would also improve predictability for the IANA Functions Operator, while incentivizing continued satisfactory and improving performance.

Better Integration of New Structures

Integrating the contracting entity and its composite committees involved in operational oversight and introducing a liaison between the OOB and the MAC facilitate the establishment of Bylaws for each entity. They also improve coordination and execution by all parties involved in the oversight of the IANA Naming Functions.

Limits the Scope on Mission Creep

The existence of clear Bylaws in our proposed modifications to the proposal defining the responsibilities and composition of the OOB and the MAC also offers important limitations to ensure that oversight over the IANA Naming Functions remains operationally and technically focused. Further, the internal limits on the ability of each committee to modify its own Bylaws without the approval of the other limit the possibility of mission-creep by either of the two bodies.

Improved Separation of Policy and Operational Responsibilities

The aforementioned restrictions on mission-creep provided for in our proposed modifications also enhance separation of policy and operational responsibilities vis-a-vis the existing draft proposal by restricting the ability for either party to create a secondary nexus whereby policies can be reopened and reevaluated. As a result, our proposed modifications to the proposal better preserves the existing ICANN multi-stakeholder model for policy development while maintaining the technical and operational nature of the IANA Functions.

Regarding the comments above, the positions represent the views of the ICANN GNSO gTLD Registries (RySG) as indicated. Unless stated otherwise, the RySG positions were arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

RySG Level of Support

1. Level of Support of Active Members: Majority

1.1 # of Members in Favor: 24

- 1.2 # of Members Opposed: 1
- 1.3 # of Members that Abstained: 2
- 1.4 # of Members that did not vote: 19
- 1.5 Total # of eligible Voting RySG Members²: 46
- 1.6 Total # of Voting and Non-voting RySG Members: 54
- 1.7 Total # of Active Voting RySG Members³: 39⁴
- 1.8 Minimum requirement for supermajority of Active Voting Members: 26
- 1.9 Minimum requirement for majority of Active Voting Members: 20
- 1.10 # of nonvoting members that support the comments: 4

2. Minority Position(s):

3. List of voting and non-voting members:

1. Afilias, Ltd.
2. Charleston Road Registry (non-voting member)
3. .CLUB Domains LLC
4. China Organization Name Administration Center (CONAC)
5. CORE (non-voting member)
6. DNS Belgium vzw
7. Donuts Inc.
8. DotAsia Organisation
9. dotBERLIN GmbH & Co. KG
10. dotCooperation (inactive)
11. Dot Kiwi Ltd.

² All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (Article III, Membership, ¶ 1). The RySG Articles of Operations can be found at http://gtldregistries.org/sites/gtldregistries.org/files/Charter_of_the_gTLD_Registries_Stakeholder_Group.pdf

³ Per the RySG Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

⁴ This number excludes three (3) inactive members and one (1) active member who asked to be removed from the voting on this issue because of a conflict of interest.

12. Dot Latin, LLC
13. DotShabaka Registry
14. dotStrategy Co.
15. Employ Media LLC
16. European Broadcasting Union (EBU)
17. Famous Four Media
18. Foundation for Assistance for Internet Technologies and Infrastructure Development (FAITID) (non-voting member)
19. fTLD Registries LLC
20. Fundació puntCAT (inactive)
21. GMO Registry, Inc. (non-voting member)
22. ICM Registry LLC
23. InterNetX Corp. (non-voting member)
24. IRI Domain Management, LLC
25. KNET (non-voting member)
26. Minds + Machines
27. Museum Domain Management Association – MuseDoma (inactive)
28. National Association of Boards of Pharmacy (NABP)
29. National Association of Real Estate Investment Trusts Inc.
30. Neustar, Inc
31. Nomiinet
32. Nucleo de Informacao e Coordenacao do Ponto BR (NIC.br)
33. OP3FT
34. Plan Bee LLC
35. Public Interest Registry - PIR
36. Punkt.wien GmbH
37. Punkt Tirol GmbH
38. Punto 2012 S.A. de C.V.
39. Radix FZC
40. Region D Alsace
41. Richemont DNS
42. Rightside Registry (non-voting member)
43. Societe Internationale de Telecommunication Aeronautiques – SITA
44. Sky IP International Ltd.
45. Starting Dot Limited
46. Telnic Limited
47. The Foundation for Network Initiatives “The Smart Internet”
48. Top Level Design LLC
49. Tralliance Registry Management Company (TRMC)
50. Uniregistry Corp. (non-voting member)
51. Universal Postal Union (UPU)
52. VeriSign
53. XYZ.COM LLC
54. Zodiac

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