

# IANA Stewardship Transition Proposal Assessment Report

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National Telecommunications  
and Information Administration

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# IANA Stewardship Transition Proposal Assessment Report

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### **Attachments:**

- Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart
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- Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart
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# 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 112<sup>th</sup> U.S. Congress affirmed its support for this approach in unanimous resolutions to “preserve and advance the successful multistakeholder model that governs the Internet.”<sup>1</sup> More recently, bipartisan Congressional leaders reiterated this position in stating that “[t]he multistakeholder model for Internet governance must prevail for more countries around the world to realize the transformative benefits of Internet connectivity.”<sup>2</sup>

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.<sup>3</sup> 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.

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<sup>1</sup> See H.R.Con.Res. 127, 112<sup>th</sup> Cong. (2012); S.Con.Res. 50, 112<sup>th</sup> Cong. (2012).

<sup>2</sup> 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/>.

<sup>3</sup> 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](http://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.<sup>4</sup> In 1998, NTIA issued a Statement of Policy on the privatization of the DNS, also known as the DNS White Paper.<sup>5</sup> 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

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<sup>4</sup> 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>.

<sup>5</sup> 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.<sup>6</sup>

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

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<sup>6</sup> 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).<sup>7</sup> Second, ICANN coordinates allocations of Internet Protocol and Autonomous System numbers to the Regional Internet Registries (RIRs).<sup>8</sup> 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.<sup>9</sup>

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

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<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> 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.”<sup>10</sup>

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.

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

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 112<sup>th</sup> 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.”<sup>11</sup> 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.”<sup>12</sup>

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.<sup>13</sup> 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

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<sup>10</sup> DNS White Paper, *supra* n. 2.

<sup>11</sup> See H.R.Con.Res. 127, 112<sup>th</sup> Cong. (2012); S.Con.Res. 50, 112<sup>th</sup> Cong. (2012).

<sup>12</sup> 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-from-government-control/>.

<sup>13</sup> “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.<sup>14</sup> 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.<sup>15</sup> 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. ICG Proposal to Transition the Stewardship of the IANA Functions**

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.

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<sup>14</sup> 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>.

<sup>15</sup> 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.<sup>16</sup>

### *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

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<sup>16</sup> 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.<sup>17</sup>

### *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.<sup>18</sup> 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](http://iana.org).<sup>19</sup>

### *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.

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<sup>17</sup> 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>.

<sup>18</sup> 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>.

<sup>19</sup> 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](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.<sup>20</sup>

## 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.<sup>21</sup> The CCWG-Accountability's proposal builds on this existing community

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<sup>20</sup> 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>.

<sup>21</sup> 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.<sup>22</sup>

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.

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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.

<sup>22</sup> 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.”<sup>23</sup>

### *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

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<sup>23</sup> 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.<sup>24</sup> 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

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<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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

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<sup>25</sup> 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.

<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup>
- 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.

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<sup>27</sup> Ibid, pgs 25-26.

<sup>28</sup> Ibid, pg 3.

<sup>29</sup> 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\\_EE0946\\_27March2014/%24FILE/COSOTransitionQuestionnaire\\_EE0946\\_27March2014.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwj\\_rNDrhrTMAhUGrD4KHZA3DB4QFggUMAA&sig2=ZrG8owI6kVfyx\\_0zvotN9g&usg=AFQjCNF\\_fwpCYRE5F6ASPzaZby4Pin5TYQ](http://www.google.com/url?url=http://www.ey.com/Publication/vwLUAssets/COSOTransitionQuestionnaire_EE0946_27March2014/%24FILE/COSOTransitionQuestionnaire_EE0946_27March2014.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwj_rNDrhrTMAhUGrD4KHZA3DB4QFggUMAA&sig2=ZrG8owI6kVfyx_0zvotN9g&usg=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.<sup>30</sup> 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.<sup>31</sup> 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

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

<sup>31</sup> 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 administering 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.<sup>32</sup> 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

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<sup>32</sup> 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. COSO Assessment

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.<sup>33</sup> 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

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<sup>33</sup> 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


**IANA Stewardship Transition Coordination Group (ICG) Proposal  
NTIA Criteria Assessment Chart**

Names



In the chart below, NTIA analyzes the domain name (names) portion of the ICG proposal against a series of questions developed by NTIA and other U.S. government agencies. The questions are meant to build on NTIA’s March 2014 stated criteria for the transition proposal with the purpose of assisting in determining whether and how the proposal addresses them.

- Key:**
-  **Criteria Component Met**
  -  **Criteria Component Partially Met**
  -  **Criteria Component Not Met**

**Process Used for Proposal Development**

Component	Assessment	Justification	Citations	Notes
Have all stakeholder groups been consulted, including those who may not be deeply involved in the immediate ICANN community?		Yes. The names proposal was developed via an ICANN Cross Community Working Group (CWG) chartered by the GNSO, GAC, ccNSO, ALAC, and SSAC – each of which appointed members. Further, the CWG invited all interested in the work to participate. The CWG conducted multiple public meetings, consultations, webinars, presentations, and other mechanisms by which to engage stakeholders.	ICG Proposal:  Pg 74, paras 1220--1224  Pg 75, paras 1228--1232  Pg 76, paras 1233-1240  Pg 78, paras 1249-1254  Pg 79, paras 1255-1262  CWG-Stewardship Charter: <a href="https://community.icann.org/display/gnsocwgdstwrdsdp/Charter">https://community.icann.org/display/gnsocwgdstwrdsdp/Charter</a>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart


<p>Were clear opportunities and timelines for engagement provided during the development of the proposal?</p>		<p>Yes. Meeting announcements and agendas were made readily available in advance of meetings. A Wiki page was created and publicly available with a meetings page that had relevant details on conference call and meeting schedules. Announcements and Wiki included details for participants and observers to attend remotely via telephone and/or Adobe Connect.</p>	<p>ICG Proposal: Pg 78, paras 1253-1254 Pg 79, paras 1255--1258  CWG-Stewardship Wiki page: <a href="https://community.icann.org/display/gnsocw+gdtstwrdsdp/CWG+to+Develop+an+IANA+Stewardship+Transition+Proposal+on+Naming+Related+Functions">https://community.icann.org/display/gnsocw+gdtstwrdsdp/CWG+to+Develop+an+IANA+Stewardship+Transition+Proposal+on+Naming+Related+Functions</a></p>	
<p>Is the proposal reflective of a broad community-supported, practical, and workable plan for transitioning the USG unique role?</p>		<p>Yes, the proposal is reflective of broad community support and represents a workable and practical plan for transitioning NTIA's stewardship role.</p> <p>The names proposal went through a number of iterations based on public consultation and feedback. The final proposal was a result of the CWG comprised of 19 members, 133 participants, and a team of legal advisors over the course of 100 calls and meetings, two public consultations, and more than 4,000 emails. Each of the chartering organizations (GNSO, GAC, ccNSO, ALAC, and SSAC) signed off on the proposal with no dissenting views tabled. The names proposal was also put out for public comment by the ICG as part of the combined proposal. While there were questions asked and concerns posed, the majority of commenters expressed clear support.</p> <p>While more complex than the proposal for the numbers and protocol parameter functions, the names proposal is practical and workable from</p>	<p>ICG Proposal: Pg 6, para x017 Pg 25, paras 79-82 Pg 79, paras 1261-1262</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart



		<p>NTIA’s perspective. The plan proposes no significant changes to current technical operations and the proposed approaches to ensure accountability, acceptable performance, and separation of policy and operation are consistent with and often exceed those currently in place under the IANA functions contract.</p> <p>The ICG’s assessment also concludes that the names proposal is individually and collectively (with numbers and protocol parameters) workable.</p>		
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**NTIA CRITERIA**


**I. Support and Enhance the Multistakeholder Model**

Component	Assessment	Justification	Citations	Notes
Does the proposal support and enhance the multistakeholder model?		<p>Yes, the proposal supports and enhances the multistakeholder model.</p> <p>The names proposal relies on the multistakeholder model, utilizing the existing policy stakeholder groups and advisory committees within ICANN for continued names policy development. The proposal reinforces and enhances the multistakeholder model by keeping policy development separate from the IANA operations and focusing on the needs of the operational community by establishing transparent and direct control over the Post Transition IANA (PTI). Specifically, ICANN will be responsible for oversight of PTI supported</p>	<p>ICG Proposal: Pg 26, para 84  Pg 70, para 1199</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>by the Customer Standing Committee (CSC) and IANA Function Review (IFR) Team, the latter being a multistakeholder entity. Both the CSC and IFR Team include non-ICANN participants. The CSC and IFR Team escalation mechanisms are based on transparent and open processes and multistakeholder decisions.</p> <p>The ICG in its assessment agrees that the names proposal maintains the existing multistakeholder framework in place today for the names related function and reinforces the multistakeholder model by retaining functional separation between policy development and IANA operations.</p>		
Does the proposal reflect input from stakeholders? Do stakeholders support the proposal?		Yes, the proposal reflects stakeholder input and stakeholder support the proposal. The CWG conducted two rounds of public comment. The first, in December 2014, resulted in a major reconsideration of the CWG’s proposed “Contract Co.” approach. Due to community input, the CWG ultimately agreed to the PTI approach to address accountability and maintain a strict separation of policy and operation. Following a second comment period ending in May 2015, the CWG further refined the proposal, taking into account the public comment analysis. In June 2015, all chartering members of the CWG signed off on the proposal and no dissenting views were tabled.	ICG Proposal:  Pgs 75-77, paras 1229-1251	
Does the proposal replace the USG role with one that is dominated or controlled by		No, the proposal does not replace the USG role with one that is dominated or controlled by governments or intergovernmental institutions.  Specifically, the NTIA Root Zone Authorization	ICG Proposal:  Pg 29, para 100  Pg 72, para 1211	The CSC as proposed would allow a GAC liaison to be appointed if the GAC chose to do so. The IFRT would include


Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
governments or intergovernmental institutions?		<p>role is proposed to be eliminated and not replaced.</p> <p>The role performed by NTIA in “approving” any architectural changes to the root zone is replaced by the creation of a multistakeholder process that will not be led by governments or intergovernmental institutions.</p> <p>IANA contract oversight and administration will now be performed by the CSC and IFR, which will be comprised of representatives from the multistakeholder community.</p>		<p>one GAC representative. Also, the ccTLD community is allocated a total of two members, which hypothetically could be governments if that is how the ccTLDs are operated. Despite this, the structure would not allow dominance of governments in the structure though they would have a role to play.</p>
Does the proposal build in protections against unilateral changes (to the root zone file, protocol parameters, etc.) that are not pursuant to publicly-documented and stakeholder-accepted procedures?		<p>Yes, the proposal builds in protections. No changes are proposed to the root zone management workflow process as currently performed by ICANN. Therefore, ICANN, acting in the capacity as the IANA Functions Operator (IFO), will continue to rely on policies developed by the community, and existing process and procedures for making changes to the root zone file.<sup>1</sup> The CWG also proposes to carry over a number of provisions from the existing IANA functions contract that spell out how and when the IFO is to follow and adhere to existing community-developed policy frameworks.</p> <p>The NTIA authorization role is to be removed and not replaced. However, additional accountability and transparency is to be built in, including oversight of PTI performance by</p>	<p>ICG Proposal:</p> <p>Pg 50, para 1105</p> <p>Pg 55, paras 1129-1130</p> <p>Pg 56, para 1140</p> <p>Pg 59, paras 1149-1150</p> <p>Pg 60, paras 1151-1155</p> <p>Pg 61, paras 1156-1158</p> <p>P1. Annex E: IANA Contract Provisions to be Carried Over Post Transition, pgs 91-92</p> <p>P1. Annex R: Evaluation Method for Implications, pgs 137-141</p>	<p>NTIA’s root zone authorization role was discussed at length by the CWG Design Team-D on Authorization. The group concluded that the role performed by NTIA “adds little to the security or accuracy” of the process.</p> <p>See:  <a href="https://community.icann.org/display/gnsocwgdt+stwrshp/DT-D+Authorization?preview=/52892887/53282383/Design%20Team%20D%20report%20v1.docx">https://community.icann.org/display/gnsocwgdt+stwrshp/DT-D+Authorization?preview=/52892887/53282383/Design%20Team%20D%20report%20v1.docx</a></p>

<sup>1</sup> The IFO reference is used here to clearly articulate the difference between IANA operations and ICANN as the broader organization responsible for naming related policy.




Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>the CSC, periodic IANA function reviews by the community, and dispute resolution mechanisms. Further, by maintaining policy separation between ICANN and the PTI, ICANN has existing accountability mechanisms in place to hold PTI accountable for not following policy and/or taking unilateral action.</p> <p>No changes can be made to the root zone management architecture and operation without a similar review and approval function as currently provided by NTIA. A new multistakeholder body will be created (referred to as the Root Zone Enhancement Review Committee, or RZERC) prior to the transition to serve this purpose. RZERC will be comprised of representatives from SSAC, RSSAC, ASO, IETF, GNSO, and ccNSO. The RZERC will be responsible for seeking out expertise and participation from relevant bodies, to conduct public consultations, and conduct their proceedings transparently. Therefore, ICANN will not be in a position to take unilateral action when it comes to making architectural changes to the root zone management system.</p>		<p>The CWG also conducted an evaluation of how removing NTIA’s authorization role could possibly impact security and stability of the DNS and they rated it a “2,” which is a minor impact.</p>
<p>How is accountability addressed? Does the proposal provide adequate checks and balances to protect against capture?</p>		<p>The CWG proposes the creation of PTI, which will perform the naming function under contract with ICANN, and the existing ICANN/IANA staff will be transferred to PTI. In doing this, the community can rely on the existing and soon to be enhanced accountability mechanisms within ICANN. The CSC, comprised of customers from the naming community and liaisons from each of the ICANN SOs and ACs, will provide regular</p>	<p>ICG Proposal:</p> <p>Pg 52, paras 1108-1110</p> <p>Pg 53, para 1118</p> <p>Pg 54, paras 1119-1125</p> <p>Pg 55, paras 1126-1130</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>reviews of performance. The CSC can note problems and escalate them, but cannot institute a separation from PTI. The IFR Team (IFRT) and Special IFRT (SIFRT) will conduct formal reviews as necessary and be composed of an even broader multistakeholder membership. The IFRT and SIFRT can recommend separation, but a separate multistakeholder process, a Separation Cross Community Working Group (SCWG) would be formed (multistakeholder membership not comprising those who participated in previous groups) to make recommendations associated with the issues identified and whether a separation is required. Ultimately, the ICANN Board would make the final determination. If the ICANN Board chooses to not follow the SCWG recommendation, that decision could be subject of an Independent Review Process (IRP) if so sought by the community.</p> <p>Another example of checks and balances is the IANA Customer Service Complaint Resolution Process for the naming related functions. PTI staff is first allowed to address issues after being notified via a complaint ticketing system. Alternatively, or if the issue isn't resolved satisfactorily, the ICANN Ombudsman or similar service can assist in resolving problems using Alternative Dispute Resolution techniques. The CSC would also be notified to determine if this is a persistent performance issue and, if so, seek remediation from the IANA problem resolution process. Should that problem resolution process work its way out using all</p>	<p>Pg 56, para 1140</p> <p>Pg 57, paras 1141-1143</p> <p>P1. Annex F: IANA Function Reviews- Statement of Work Duration and Review Periodicity, pgs 93-100</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee (CSC), pgs 101-106</p> <p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111</p> <p>P1. Annex J: IANA Problem Resolution Process, pg 112</p> <p>P1. Annex J-1: Escalation Mechanisms Flow Charts, pgs 113-115</p> <p>P1. Annex L: Separation Process, pgs 119-121</p>	


Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>escalation vehicles and the ICANN Board refuses to take recommended action, an IRP could then be utilized.</p> <p>NTIA finds that these proposed checks and balances are more than adequate as they exceed what is currently required under the IANA functions contract with NTIA.</p> <p>Further, the proposal minimizes the potential for capture by relying on a contract between ICANN and PTI that articulates the roles, responsibilities, and expectations for IANA performance; community-based mechanisms for operational oversight, performance review, and changes to the architecture of root zone management; as well as the overarching reliance upon transparent and open operations and proceedings associated with root zone management.</p>		
<p>Does the proposal ensure transparency? Does the proposal include mechanisms that work to ensure optimal levels of transparency in the performance of the IANA functions? Are they outlined? How will they be enforced?</p>		<p>Yes. The names proposal maintains existing transparency requirements (as articulated in the IANA functions contract) as well as increased transparency in the performance of the naming functions. The development of new and additional Service Level Expectations (SLEs) calls for additional details to be provided by IANA staff related to transaction times for each names-related process. This transparency is intended to provide factual information to assist the CSC, review teams, and the community in its determinations as to whether IANA performance is satisfactory. Provision of this information, identified per SLEs, will be monitored by the CSC as part of its</p>	<p>ICG Proposal:</p> <p>Pg 51, para 1106</p> <p>Pg 56, para 1136</p> <p>Pg 61, para 1158</p> <p>Pg 97, para 1298</p> <p>P1. Annex E: IANA Contract Provisions to be Carried over Post-Transition, pgs 91-92</p>	


Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>responsibilities in assessing performance. Persistent failure by the IFO in meeting the SLE could escalate to the point of an IANA Functions Review and also be a consideration in any potential decision to separate.</p> <p>The names proposal also requires the costs associated with the IANA functions operation be transparent, with an itemization of IANA operations costs. Further, the PTI is to have a yearly budget (provided at least nine months in advance) for community review on an annual basis.</p> <p>With respect to making any changes to the root zone management architecture and/or operation (i.e., root zone enhancements) and the relationship with the root zone maintainer, the names proposal specifically identifies transparency as an overarching principle. The names community cites the need to make reports publicly available; that any changes to root zone management be subject to public consultation; and that the IFO generally operate in a transparent manner.</p> <p>The CSC will be required to make minutes of its meetings publicly available within five business days of the meeting and regular reporting of its efforts will be made public. The IFRT will make all mailing lists and meetings open to interested parties, with recordings and transcripts made public, and also seek public comment throughout its reviews.</p>		

**II. Maintain the Security, Stability, and Resiliency of the Internet DNS**

Component	Assessment	Justification	Citations	Notes
<p>Does the proposal work to preserve a model to perform the IANA functions in a manner that avoids single points of failure, manipulation, and/or capture?</p>		<p>Yes. The names proposal preserves the current root zone management process, outside of removing the NTIA authorization function. The proposal makes no change to the root zone maintainer function (currently performed by Verisign) and proposes that any future proposals to modify the current root zone management approach must be subject to wide public consultation.</p> <p>The proposal maintains existing transparency levels (as indicated in current contract) and proposes enhancements, such as the requirement for the IFO to provide additional details related to transaction times for each root zone change request. These details will assist the CSC and review teams in assessing the IFO’s performance. The CSC is charged with monitoring the IFO’s operational performance, resolving issues with the IFO, and escalating any persistent problems.</p> <p>The separation between names policy development and operations will continue and be further enhanced by creating PTI. All root zone management related staff and operations will be transferred to PTI and ICANN will contract with PTI to be the IFO.</p> <p>The names proposal replaces NTIA’s stewardship role with the combination of ICANN, the CSC, and the IFR. By creating PTI as</p>	<p>ICG Proposal: Pg 29, para 100  Pg 52, paras 1108-1110  Pg 59, para 1150  Pg 61, para 1158</p>	<p>NTIA’s root zone authorization role was discussed at length by the CWG via its Design Team-D on Authorization. The group concluded that the role performed by NTIA “adds little to the security or accuracy” of the process.</p> <p>See: <a href="https://community.icann.org/display/gnsocwgdtstwrshp/DT-D+Authorization?preview=/52892887/53282383/Design%20Team%20%20report%20v1.docx">https://community.icann.org/display/gnsocwgdtstwrshp/DT-D+Authorization?preview=/52892887/53282383/Design%20Team%20%20report%20v1.docx</a></p> <p>The CWG also conducted an evaluation of how removing NTIA’s authorization role could possibly impact security and stability of the DNS and they rated it a “2,” which is a minor impact.</p>


Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>an affiliate of ICANN, the community can utilize the accountability mechanisms and safeguards (those already in place and proposed enhancements). The proposal minimizes the potential for capture by relying on a contract between ICANN and PTI that articulates the roles, responsibilities and expectations for IANA performance; community-based mechanisms for operational oversight, performance review, and changes to the architecture of root zone management; as well as the overarching reliance upon transparent and open operations and proceedings associated with root zone management.</p>		
<p>Does the proposal provide mechanisms to preserve the integrity, transparency, and accountability in the performance of the IANA functions?</p>		<p>Yes. The names proposal maintains existing transparency levels (as articulated in current contract) as well as proposes increased transparency in the performance of the naming functions. On the latter point, the development of new SLEs calls for additional details to be provided by IANA staff related to transaction times for each names related process. This transparency is intended to provide factual information to assist the CSC, review teams, and the community in their determinations as to whether IANA performance is satisfactory. Provision of this information, identified per SLEs, will be monitored by the CSC as part of its responsibilities in assessing performance. Persistent failure by the IFO in meeting the SLE could escalate to the point of an IFR and also be a consideration to any potential decision to separate.</p>	<p>ICG Proposal:</p> <p>Pg 51, para 1106</p> <p>Pg 56, para 1136</p> <p>Pg 61, para 1158</p> <p>Pg 97, para 1298</p> <p>P1. Annex E: IANA Contract Provisions to be Carried over Post-Transition, pgs 91-92</p> <p>P1. Annex F: IANA Function Reviews-Statement of Work Duration and Review Periodicity, pgs 93-100</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee (CSC), pgs 101-106</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart



Component	Assessment	Justification	Citations	Notes
		<p>The names proposal also requires the costs associated with the IANA functions operation be transparent, with an itemization of IANA operations costs. Further, the PTI is to have a yearly budget (provided at least nine months in advance) for community review on an annual basis.</p> <p>With respect to making any changes to the root zone management architecture and/or operation and the relationship with the root zone maintainer, the names proposal specifically identifies transparency as an overarching principle. The proposal specifically cites the need to make reports publicly available; for any changes to root zone management be subject to public consultation; and for the IFO generally operate in a transparent manner.</p> <p>The CSC will be required to make minutes of its meetings publicly available within five business days of the meeting and regular reporting of its efforts will be made public. The IFRT will make all mailing lists and meetings open to interested parties, with recordings and transcripts made public, and also seek public comment throughout its reviews.</p> <p>The CWG proposes the creation of PTI to perform the naming function under contract with ICANN. In doing this, the community can rely on the existing and soon to be enhanced accountability mechanisms within ICANN. Further, the CSC will provide regular review of</p>	<p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111</p> <p>P1. Annex J: IANA Problem Resolution Process, pg 112</p> <p>P1. Annex J-1: Escalation Mechanisms Flow Charts, pgs 113-115</p> <p>P1. Annex L: Separation Process, pgs 119-121</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart


Component	Assessment	Justification	Citations	Notes
		<p>performance. The IFRT and SIFR will conduct formal reviews as necessary. The IFRT and SIFRT can recommend separation, but a separate group, the SCWG, would be formed to make recommendations associated with the issues identified and whether a separation is required. Ultimately, the ICANN Board would make the final determination. If the ICANN Board chooses to not follow the SCWG recommendation that could be subject of an IRP if so sought by the community.</p> <p>Further, an IANA Customer Service Complaint Resolution Process for the naming-related functions will allow the PTI staff to address issues after being notified via a complaint ticketing system. Alternatively, or if the issue isn't resolved satisfactorily, the ICANN Ombudsman or similar service can assist in resolving problems using Alternative Dispute Resolution techniques. The CSC would also be notified to determine if this is a persistent performance issue and, if so, seek remediation from the IANA problem resolution process. Should that problem resolution process work its way out using all escalation vehicles and the ICANN Board refuses to take recommended action, an IRP could then be utilized.</p>		
<p>Do the affected parties have the opportunity to identify appropriate service levels for the</p>		<p>Yes. The CWG established "Design Teams" to address discrete issues. One team, composed of representatives from the ccNSO, GNSO, and IANA staff, looked specifically at the development of Service Level Expectations (SLEs). The activities and documents of this</p>	<p>ICG Proposal: Pg 56, paras 1133-1138  P1. Annex H: Service Level Expectations, pgs 107-109</p>	



Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
performance of the IANA functions?		<p>team are all publicly available on the CWG-Stewardship web page. In conducting its work, DT-A developed a framework set of principles, captured the current status quo of root zone management, monitored past performance (historical analysis), and worked towards enhancing and adding on to existing performance measures as currently defined in the IANA functions contract. This includes requiring IANA staff to measure, record, and report additional details of transaction times for each root zone management process. The intent is to add transparency and assist the CSC and Review Teams in their assessments of the IFO's performance. While SLEs are still under development, the above has been made available multiple times for public comment and will be completed prior to the transition.</p>	<p>See also:  <a href="https://community.icann.org/display/gnsocw+gdtstwrdsdp/DT-A+Service+Levels+Expectations">https://community.icann.org/display/gnsocw+gdtstwrdsdp/DT-A+Service+Levels+Expectations</a></p>	
<p>Would the management of the DNSSEC root Key Signing Key (KSK) and root DNSSEC operations in general continue in a manner at least as secure as at present?                      Does the proposal address key rollover?</p>		<p>Yes, DNSSEC KSK management and DNSSEC operations in general will continue to be performed in a secure manner. The names proposal makes no changes to the existing root KSK operations and carries over the existing contract provision C.2.9.2.f-Root Domain Name System Security Extensions (DNSSEC) Key Management and the baseline requirements defined by NIST and NTIA.</p> <p>The proposal does not address key rollover specifically, nor was there any expectation that it would.</p>	<p>ICG Proposal:                      Pg 63, para 1172</p> <p>P1. Annex E: IANA Contract Provisions to be Carried Over Post-Transition, pgs 91-92</p> <p>IANA Functions Contract:  <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p>	
Does the proposal recognize that the IANA services must		<p>Yes, the proposal recognizes that the names-related function needs to be secure and stable. The names proposal proposes to carry over the</p>	<p>ICG Proposal:                      Pgs 13-14, para 23</p>	



Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
<p>be resistant to attacks (e.g., DoS, data corruption), and be able to recover from degradation, and are performed in a secure legal environment? How does the proposal ensure the IANA functions operator takes into consideration technological advancements and maintains up-to-date physical and network security?</p>		<p>relevant provisions from the IANA functions contract including:</p> <ul style="list-style-type: none"> <li>• C.2.9.2.f – Root Domain Name System Security Extensions (DNSSEC) Key Management, notably its reference to Appendix 2 of the contract (DNSSEC Baseline Requirements)</li> <li>• C.3.1 – Secure Systems</li> <li>• C.3.2 – Secure System Notification</li> <li>• C.3.3 – Secure Data</li> <li>• C.3.4 – Security Plan</li> <li>• C.3.5 – Director of Security</li> </ul> <p>The naming function will continue to be performed in a secure legal environment, as PTI will be an affiliate of ICANN and therefore benefit from the stable legal environment available to California-based not-for-profits.</p> <p>The proposal also takes into account the need to address enhancements and/or changes to the root zone management architecture and operations, and outlines a process by which such significant changes are to be reviewed and approved.</p>	<p>Pgs 60-61, paras 1153-1157</p> <p>P1. Annex E: IANA Contract Provisions to be Carried Over Post-Transition, pgs 91-92</p> <p>IANA Functions Contract:  <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p>	
<p>How does the proposal address NTIA’s root zone change authorization and the root zone maintainer role currently</p>		<p>The names proposal removes the NTIA authorization role, citing that NTIA “adds little to the security or accuracy” of the process. The proposal also calls for a post-transition study to determine whether additional checks and verification is needed, and if so, how to accomplish them.</p>	<p>ICG Proposal:</p> <p>Pg 28, para 95</p> <p>Pg 29, para 100</p> <p>Pg 52, paras 1108-1110</p>	<p>NTIA’s root zone authorization role was discussed at length by the CWG via its Design Team-D on Authorization. The group concluded that the role performed by</p>


Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
<p>performed by Verisign? Is the security, stability, and resiliency of the DNS maintained and/or otherwise impacted? Are there any national security implications?</p>		<p>The proposal notes that the root zone maintainer role, currently performed by Verisign, is outside the scope of the CWG and ICG process, but also notes its interdependency in root zone management. The proposal does not dictate any specific changes to the root zone maintainer role, but indicates that if any changes to this role are proposed by the IFO post-transition, a thorough community consultation must first take place. In addition to the community consultation, a standing committee of experts would be tasked to assess any proposed change. Further, the ICG and CWG indicate that an agreement needs to be in place between the IFO and the Root Zone Maintainer before the IANA functions contract expires. The ICG specifically states that the agreement, once drafted, needs to be shared with the community prior to execution.</p> <p>The group did a risk assessment of its proposal, which showed the removal of NTIA’s authorization role as having little to no impact on the system.</p> <p>As the names proposal makes no changes to the root zone management process, outside of removing NTIA’s authorization role; the security, stability, and resiliency of the DNS is maintained.</p> <p>There are no known national security implications.</p>	<p>Pg 59, para 1150</p> <p>Pg 61, para 1158</p> <p>P1. Annex R: Evaluation Method for Implications, pgs 137-141</p>	<p>NTIA “adds little to the security or accuracy” of the process.</p> <p>See:  <a href="https://community.ican.org/display/gnsocwgdtstwrdsdp/DT-D+Authorization?preview=/52892887/53282383/Design%20Team%20%20report%20v1.docx">https://community.ican.org/display/gnsocwgdtstwrdsdp/DT-D+Authorization?preview=/52892887/53282383/Design%20Team%20%20report%20v1.docx</a></p> <p>The CWG also conducted an evaluation of how removing NTIA’s authorization role could possibly impact security and stability of the DNS and they rated it a “2,” which is a minor impact.</p>

**III. Meet the Needs and Expectations of the Global Customers and Partners of the IANA Services**

Component	Assessment	Justification	Citations	Notes
Does the proposal maintain a commitment to the continued separation of policy development and operational activities that is subject to periodic robust auditing?		<p>Yes, the proposal maintains the separation of policy and operations. In order to identify and isolate the IANA naming functions both functionally and legally from the ICANN entity, the CWG proposes the creation of a Post Transition IANA (PTI). PTI will be a subsidiary of ICANN. ICANN will contract with PTI to perform the naming IANA functions. All personnel, processes, data, and related resources from the existing IANA department will be transferred to PTI. ICANN will continue to provide funding to PTI, but PTI will be functionally and legally separated from policy development.</p> <p>The names proposal creates the Customer Standing Committee (CSC) to monitor the performance of the IFO and will hold IFO accountable for performing and reporting on an annual security audit, quarterly RZM audit, KSK management related audits, and annual conflict of interest enforcement audit.</p>	<p>ICG Proposal: Pg 50, para 1105 Pg 52, paras 1107-1110 PI. Annex F: IANA Functions Reviews- Statement of Work Duration and Review Periodicity, pgs 99-100</p>	
Are there structures and mechanisms for the adherence to and development of customer service levels, including timeliness and reliability?		<p>Yes, the CWG established “Design Teams” to address discrete issues. One design team looked specifically at the development of Service Level Expectations (SLEs). This team continues to finalize their SLEs that are to include a requirement for the IANA staff to provide additional details related to transaction times for each names related process. This is intended to provide factual information to assist the CSC, review teams, and the community in its determinations as to whether</p>	<p>ICG Proposal: Pg 56, paras 1133-1138 P1. Annex H: Service Level Expectations, pgs 107-109</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
		<p>IANA performance is satisfactory. The CSC will monitor the SLEs as part of its responsibilities in assessing performance. Persistent failure by the IFO in meeting the SLE could escalate to the point of an IFR and also be a consideration to any potential decision to separate.</p>		
<p>Are there processes for transparency, accountability, and auditability?</p> <ol style="list-style-type: none"> <li>1. Are audit and accountability mechanisms considered and meaningful?</li> <li>2. Are dispute resolution mechanisms considered?</li> <li>3. Are other periodic reviews considered? If so, how would they function?</li> <li>4. Will results of reviews be made publicly available? If not, why not?</li> <li>5. Do proposed reviews, audits, etc. trigger corrections or enhancements</li> </ol>		<p>Yes, there are processes for transparency, accountability, and auditability proposed. As reflected in the CWG “Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Names Functions,” transparency and accountability were cornerstones by which the names proposal was tested and are reflected throughout the names proposal.</p> <p>“Auditability” was not a pre-set criterion for the transition, but it has been captured in the names proposal largely in the form of existing audit requirements in the IANA Functions contract that are proposed to be included in the ICANN contract with PTI. These audits have proven effective in the context of NTIA’s oversight to date.</p> <p>Further, the proposal calls for an annual review of the PTI budget and that an implementation group will be established to develop a process for an IANA-specific budget review. The intent of this review is to get better insight into the IANA functions costs, project any new cost elements associated with the transition, and ensure adequate funding is available moving forward.</p>	<p>ICG Proposal:</p> <p>Pgs 53 -55, paras 1118 -1127</p> <p>Pgs 56-57, paras 1140-1141</p> <p>P1. Annex C: Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Names Functions, pgs 87- 89</p> <p>P1. Annex E: IANA Contract Provisions to be Carried Over Post Transition, pgs 91-92</p> <p>P1. Annex F: IANA Functions Reviews-Statement of Work Duration and Review Periodicity, pgs 99-100</p> <p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111</p> <p>P1. Annex J: IANA Problem Resolution Process, pg 112</p> <p>P1. Annex J-1: Escalation Mechanisms Flow Charts, pgs 113-115</p> <p>P1. Annex Q: IANA Budget, pgs 135-136</p>	



Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
<p>when deemed necessary? If not, why not?</p> <p>6. Are mechanisms proposed to prevent, detect, and manage conflicts of interest between ICANN's multistakeholder policy role and its possible role as administrator of the IANA functions? Will these mechanisms be effective and enforceable?</p> <p>7. Does the proposal allow for separability from ICANN?</p>		<p>Accountability comes in many forms throughout the names proposal, including reliance on ICANN's existing accountability frameworks, the proposed creation of PTI and the PTI Board, the creation of the CSC, and the many opportunities for community review. Specific to reviews, the proposal calls for regular IANA Functions Reviews (IFRs), with the first to take place two years after transition and then no less than every five years. A Special IANA Functions Review (SIFR) can be initiated if persistent issues with the naming functions are identified and not resolved through established escalation paths. Results of reviews would be made public and may include public consultation.</p> <p>The CSC is intended primarily to monitor performance and trigger corrections, utilizing an escalation process if necessary. Dispute resolution mechanisms are proposed, including use of the Ombudsman or other alternative dispute resolution techniques. In the unlikely circumstance of persistent issues going through all possible escalation measures, those issues will be directed to the CCNSO and GNSO who will make a recommendation to the ICANN Board. In the even more unlikely event that the ICANN Board does not accept the CCNSO and GNSO recommendation, an IRP could be used.</p> <p>Managing conflict of interest is present in multiple areas of the proposal, including guidelines and criteria for participating in the</p>		

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart


Component	Assessment	Justification	Citations	Notes
		<p>CSC, review teams, and PTI Board. Further, the names proposal carries over the conflict of interest provisions from the existing IANA functions contract. All of these measures are either self-enforcing, subject to community scrutiny, and/or contractually enforced by the CSC.</p> <p>The names proposal allows for separability. The proposed creation of PTI is intended to create the ability to separate the naming functions should it be deemed necessary by the community.</p> <p>The names proposal replaces NTIA’s various roles with the combination of ICANN, the CSC, and the IFR. By creating PTI as an affiliate of ICANN, the community can utilize the accountability mechanisms and safeguards (those already in place and proposed enhancements) to prevent capture, including by governments. Specifically, the proposal minimizes the potential for capture by relying on a contract between ICANN and PTI that articulates the roles, responsibilities, and expectations for IANA performance; community-based mechanisms for operational oversight, performance review, and changes to the architecture of root zone management; as well as the overarching reliance upon transparent and open operations and proceedings associated with root zone management. In the case of governments, the proposal gives them opportunities to participate in the CSC as a liaison and to</p>		

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart


Component	Assessment	Justification	Citations	Notes
		participate in the review (including any potential separation focused review) as any other stakeholder. No single stakeholder has the authority or ability to dictate the process(es) or outcome(s).		
Are there processes for periodic assessments of performance and procedural evolutions or improvements, as needed?		Yes, there are multiple processes and mechanisms proposed to make assessments of performance. These are largely found in the creation of the CSC, IFRs, and SIFRs.	ICG Proposal:  P1. Annex F: IANA Functions Reviews- Statement of Work Duration and Review Periodicity, pgs 99-100	
Are fees proposed? If so, are the fees based on cost recovery? Are there structures and mechanisms proposed for the agreement and development of a verifiable cost recovery based system? 1. If so, are the fees above cost recovery? In this case, is there a detailed explanation as to why? 2. Will		No fees are proposed. However, if fees are ever contemplated in the future by PTI, contract language is proposed that would ensure that fees would be based on direct costs and resources incurred by PTI and that PTI works with all interested and affected parties to develop a fee structure.	ICG Proposal:  P1. Annex S: Draft Proposed Term Sheet, pg 145	




Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations	Notes
assessment and collection of fee be transparent (published) and subject to stakeholder review, input, and approval?				
Does the proposal maintain the existing limited technical scope of the IANA functions?		<p>Yes, the proposal maintains the existing limited scope of the naming function.</p> <p>Specifically, the names proposal makes no significant changes to the current operation or work flows associated with the naming-related functions.</p>	<p>ICG Proposal:</p> <p>Pg 56, para 1135</p>	




**IV. Maintain the Openness of the Internet**

Component	Assessment	Justification	Citations	Notes
Does the proposal maintain the impartial and apolitical administration of the IANA functions?		<p>Yes, the proposal maintains the impartial and apolitical administration of the naming function.</p> <p>While the names proposal does not address this issue explicitly, the proposal makes no changes to the root zone management process, maintaining the process that exists today that is reliant upon processes and procedures developed and/or supported by the customers of the function. Further, the proposal enhances the current separation of policy and operations by creating PTI and transferring</p>	<p>ICG Proposal:</p> <p>Pg 50, para 1105</p> <p>Pg 56, para 1135</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

		<p>IANA operations outside of ICANN (where names policy development takes place). These existing processes and practices, as well as the continued separation of policy and operations, removes the opportunity for ICANN to insert its own impartial or apolitical administration of the naming function. The required strict adherence to community developed process and procedure, as well as the ability for the community to seek redress, prevents ICANN and/or PTI from asserting undue influence in the root zone management process. This includes preventing any undue influence that is potentially politically motivated.</p>		
<p>Does the proposal maintain the inability to use the technical architecture to interfere with the exercise of human rights or the free flow of information?</p>		<p>Yes, the proposal maintains the inability to use the naming architecture to interfere with the exercise of human rights of the free flow of information.</p> <p>The names proposal makes no changes to the current names-related processes and architectures and it specifically states that it “does not contemplate any changes which would in any way affect the openness of the Internet.”</p> <p>The proposal will enshrine in a contract between ICANN and PTI the requirements and customer expectations regarding performance of the naming function, which binds PTI to objectively implement policies and procedures that in effect removes any opportunity for PTI to use the root zone management process for purposes that could potentially interfere with human rights or the free flow of information.</p>	<p>ICG Proposal: Pg 56, para 1135  Pg 72, para 1210</p>	

Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

<p>Does the proposal address contingency situations?</p>		<p>Yes, the proposal addresses contingency situations.</p> <p>The names proposal will transfer relevant existing contract requirements into the contract between ICANN and PTI. Namely, C.7.2 – Contingency Plan; and C.7.3 – Transition to a Successor Contractor. In doing so, the IFO will be required to maintain a contingency plan and transition plan.</p> <p>Further, the names proposal is largely focused on the CWG-identified principle of being able to separate the naming function from the IFO if necessary. In light of this possibility and ability, the CWG proposes processes by which to determine the need for separation and a framework for transition to be included in the contract between ICANN and PTI to supplement the transition requirement from the existing IANA contract (C.7.3).</p>	<p>ICG Proposal:</p> <p>Pg 58, para 1145</p> <p>P1. Annex E: IANA Contract Provisions to be Carried Over Post-Transition, pg 92</p> <p>P1. Annex M: Framework for Transition to Successor IANA Functions Operator</p>	
<p>Does the proposal acknowledge that, provided a root zone change request satisfies technical and process checks, that there is a presumption of execution? How?</p>		<p>Yes. While the root zone maintainer role was considered out of scope for the transition, the CWG acknowledged the necessity to ensure that root zone change requests are executed. Specifically, the names proposal states that “new arrangements must provide a clear and effective mechanism to ensure that PTI can have its change requests for the Root Zone implemented in a timely manner by the Root Zone Maintainer (possibly via an agreement between the Root Zone Maintainer and the IFO).”</p>	<p>The ICG Proposal:</p> <p>Pg 59, para 1150</p>	
<p>Does the proposal remove subjective decision making?</p>		<p>Yes, the proposal removes subjective decision making. The CWG proposes no changes to the root zone management process and maintains</p>	<p>ICG Proposal:</p> <p>Pg 56, para 1135</p>	




Attachment 1: ICG/Names Proposal NTIA Criteria Assessment Chart

<p>the greatest extent possible (e.g., reliance upon community developed policies and processes; authoritative lists)?</p>		<p>(and enhances) the separation between the IFO and policymaking. Thus, the existing process by which the IFO simply implements policy rather than determining it ensures objective decisionmaking. Further, the CWG commits to transferring a number of relevant provisions from the existing contract to clarify that policies should be developed by the community, respected, and used by the IFO. Namely, C.1.3 – Working relationship with all affected parties; C.2.7 – Responsibility and Respect for Stakeholders; C.2.9.2.c – Delegation and Redelegation of a Country Code Top Level Domain; and C.2.9.2.d – Delegation and Redelegation of a Generic Top Level Domain.</p>	<p>P1. Annex E: IANA Contract Provisions to be Carried Over Post Transition, pg 91-92</p>	
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**IANA Stewardship Transition Coordination Group (ICG) Proposal  
NTIA Criteria Assessment Chart**

**Numbers**



In the chart below, NTIA analyzes the Internet number resources (numbers) portion of the ICG proposal against a series of questions developed by NTIA and other U.S. government agencies. The questions are meant to build on NTIA’s March 2014 stated criteria for the transition proposal with the purpose of assisting in determining whether and how the proposal addresses them.

- Key:**
-  **Criteria Component Met**
  -  **Criteria Component Partially Met**
  -  **Criteria Component Not Met**

**Process Used for Proposal Development**

Component	Assessment	Justification	Citations	Notes
Have all stakeholder groups been consulted, including those who may not be deeply involved in the immediate ICANN community?		<p>Yes, all stakeholder groups have been consulted.</p> <p>The customers of the numbers-related IANA function are generally considered not to be in the immediate ICANN community. In light of this, the numbering community organized themselves to develop the numbers proposal. The numbers community conducted an open, transparent, and bottom-up process modeled on existing processes for numbers policy making at the regional and global levels. Proposal development was conducted as two distinct, yet concurrent, phases – 1) regionally through the Regional Internet Registries (RIRs)</p>	<p>ICG proposal:</p> <p>Pg 177, paras 2126--2131</p> <p>Pg 178, paras 2132-2142</p> <p>Pg 179, paras 2143-2156</p> <p>Pg 180, paras 2157 - 2170</p> <p>Pg 181, paras 2171-2182</p> <p>Pg 182, paras 2183-2186</p> <p>Pg 183, paras 2187-2193</p>	



Attachment 2: ICG/Numbers Proposal NTIA Criteria Assessment

		and 2) globally through the formation of an Internet Number Community Process known as the CRISP (Consolidated RIR IANA Stewardship Proposal) Team. Discussions were open and transparent, with all discussions archived. The RIR discussions were open to all interested parties.	Pg 184, paras 2194 - 2198	
Were clear opportunities and timelines for engagement provided during the development of the proposal?		<p>Yes, clear opportunities and timelines for engagement were provided.</p> <p>Each of the regional RIRs and the CRISP Team created dedicated web portals/pages for posting advance and archived information on the transition, including dates/information regarding meetings, calls, and public comment/input opportunities.</p>	<p>ICG proposal:</p> <p>Pgs 178 - 183, paras 2135 - 2189</p>	
Is the proposal reflective of a broad community-supported, practical, and workable plan for transitioning the USG unique role?		<p>Yes, the numbers proposal is reflective of broad community support and is a practical as well as a workable approach to transitioning stewardship of the numbers-related function.</p> <p>The proposal is a direct result of numerous meetings, teleconferences, and online dialogue. Two drafts were published for public comment and amended based on input received. The numbers proposal demonstrates that there was clear agreement from the global community as reflected in their lists/discussions. In terms of workability, the proposal makes no changes to the technical or operational methods, so status quo is maintained.</p> <p>The ICG supports this finding in its assertion the numbers proposal reflects community support and that the plan is workable both individually and collectively (when inclusive of the names</p>	<p>ICG proposal:</p> <p>Pg 174, para 2108</p> <p>Pg 188, paras 2191-2193</p> <p>Pg 189, paras 2194-2198</p> <p>Pg 25, para 80</p> <p>Pg 23, para 60</p>	


		and protocol parameters proposals).		
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**NTIA CRITERIA**

**I. Support and Enhance the Multistakeholder Model**



<b>Component</b>	<b>Assessment</b>	<b>Justification</b>	<b>Citations</b>	<b>Notes</b>
Does the proposal support and enhance the multistakeholder model?		Yes, 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-related functions. Specifically, the numbering community remains empowered with numbers policy development (not ICANN as the IANA functions operator) and the processes for allocating numbers remain unchanged. Further, the proposal gives oversight to the numbering community through a new Service Level Agreement (SLA) contract between ICANN and the RIRs. The proposal also creates a Review Committee to be comprised of “qualified Internet Number Community representatives from each RIR region” with no other restrictions on composition.	ICG proposal:  Pg 170, para 2086  Pg 171, paras 2087 - 2089  Pg 173, para 2093	
Does the proposal reflect input from stakeholders? Do stakeholders support the proposal?		Yes, the proposal reflects input from stakeholders and the stakeholders clearly support the proposal.  The numbers proposal demonstrates that there was clear agreement from the global community as reflected in their lists/discussions.  The processes and mechanisms by which	ICG Proposal:  Pg 25, para 80  Pgs 177 - 183  Pg 184, paras 2194-2198	

Attachment 2: ICG/Numbers Proposal NTIA Criteria Assessment


Component	Assessment	Justification	Citations	Notes
		<p>community input and support was attained is well documented and included both regional (via each of the RIRs) and global approaches (CRISP Team).</p> <p>Proposal development included numerous meetings, conference calls, email discussions, and public comment periods conducted regionally as well as through the CRISP Team.</p> <p>Prior to submitting its proposal to the ICG, the CRISP team published two drafts seeking community feedback. Issues were identified during these public comment periods and addressed in proposal revisions.</p> <p>The ICG, in its assessment, also concluded that the proposal has broad community support.</p>		
<p>Does the proposal replace the USG role with one that is dominated or controlled by governments or intergovernmental institutions?</p>		<p>No, the proposal does not replace the USG role with one that is dominated or controlled by governments or intergovernmental institutions.</p> <p>Instead, the customers of the numbers function, the RIRs, take direct responsibility for overseeing performance. The proposal replaces the NTIA role with the RIRs in terms of oversight. The RIRs are nonprofit organizations accountable to their community. While government entities rely on number resources and participate in the RIRs, the RIRs develop policies through multistakeholder processes that do not allow for undue government influence.</p> <p>The ICG agrees with this assessment.</p>	<p>ICG proposal: Pg 29, para 102  Pg 176, para 2123</p>	




Attachment 2: ICG/Numbers Proposal NTIA Criteria Assessment

Component	Assessment	Justification	Citations	Notes
<p>Does the proposal build in protections against unilateral changes (to the root zone file, protocol parameters, etc.) that are not pursuant to publicly-documented and stakeholder-accepted procedures?</p>		<p>Yes, the numbers proposal builds in protections against unilateral changes in that it proposes no changes to the existing services provided by the IANA functions operator (IFO), and the policy sources (RIRs) remain unchanged. The proposal identifies principles for the SLA that specifically state that the “IANA numbering services operator will merely execute the global policies adopted according to the global Policy Development Process defined in the ASO MOU” and points to the relevant sections in the existing NTIA contract (C.2.4, C.2.5). Therefore, there are protections in place to prevent unilateral changes.</p> <p>The proposal further specifies that any number registry changes would need to be made in an open and transparent manner to the global community.</p>	<p>ICG proposal:</p> <p>Pg 170, para 2086</p> <p>Pg 171, paras 2088 - 2089</p> <p>IANA Functions Contract:  <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p>	
<p>How is accountability addressed? Does the proposal provide adequate checks and balances to protect against capture?</p>		<p>The numbering community proposes that ICANN continue as the IFO via a contract with the RIRs. Therefore, the RIRs will provide oversight and perform accountability functions. The RIRs have also documented their individual accountability and governance mechanisms as part of their proposal development process.</p> <p>As the proposal states: “by building on the existing Internet registry system (which is open to participation from all interested parties) and its structures, the proposal reduces the risk associated with creating new organizations whose accountability is unproven.”</p> <p>The proposed SLA between the RIRs and</p>	<p>ICG proposal:</p> <p>Pg 168, para 2073</p> <p>Pg 170, para 2086</p> <p>Pg 173, para 2096</p> <p>Pg 174, para 2102</p> <p>RIR Governance Matrix:  <a href="https://www.nro.net/about-the-nro/rir-governance-matrix">https://www.nro.net/about-the-nro/rir-governance-matrix</a></p>	


Attachment 2: ICG/Numbers Proposal NTIA Criteria Assessment

Component	Assessment	Justification	Citations	Notes
		ICANN, as well as all the associated performance reviews, audits, and reporting requirements represent adequate checks and balances as they are consistent with and even exceed what is currently in place under the IANA functions contract with NTIA.		
Does the proposal ensure transparency? Does the proposal include mechanisms that work to ensure optimal levels of transparency in the performance of the IANA functions? Are they outlined? How will they be enforced?		Yes, the numbers proposal ensures transparency in that it relies upon the existing transparent, bottom-up, open processes of the RIRs, as they will be the parties contracting with ICANN for the provision of numbering services. The drafting of the SLA contract was conducted in an open and transparent manner. For the SLA itself, the RIRs require that the IFO be obliged to issue reports on transparency as well as commit to existing transparency requirements in the NTIA contract. These include reporting requirements and periodic/regular review of the IFO. A Review Committee will oversee the performance of the SLA and report to the Number Resource Organization (NRO) Executive Committee (EC) on any concerns regarding performance. Failure of the IFO to perform would result in corrective action and, if the community decided necessary, the option to terminate the contract.	ICG Proposal:  Pg 171, paras 2087-2089  Pg 172, paras 2089 - 2092	



**II. Maintain the Security, Stability, and Resiliency of the Internet DNS**

Component	Assessment	Justification	Citations	Notes
Does the proposal work to preserve a model to perform the IANA functions in a		Yes, the numbers proposal preserves the model to perform the numbers function in a manner that avoids capture, manipulation, and single	ICG proposal:  Pg 168, para 2073	


Attachment 2: ICG/Numbers Proposal NTIA Criteria Assessment

Component	Assessment	Justification	Citations	Notes
<p>manner that avoids single points of failure, manipulation, and/or capture?</p>		<p>points of failure. This is largely because it relies on the existing processes by which the numbering function is performed as well as the policy sources that inform them (i.e., the RIRs).</p> <p>The proposal identifies principles for the SLA that specifically state that the “IANA numbering services operator will merely execute the global policies adopted according to the global Policy Development Process defined in the ASO MOU” and points to the relevant sections in the existing NTIA contract (C.2.4, C.2.5). Further, as numbering policy is developed via the RIRs’ multistakeholder processes, capture and manipulation is not a realistic possibility.</p> <p>A Review Committee will oversee the performance of the SLA and report to the NRO Executive Committee on any concerns regarding performance. Failure of the IFO to perform would result in corrective action and, if decided necessary by the RIRs and the numbering community, the option to terminate the contract.</p> <p>This reliance on existing processes and mechanisms, as well as review enhancements, preserves and strengthens the model under which the numbering services are performed.</p>	<p>Pg 170, para 2086</p> <p>Pg 171, para 2089</p> <p>Pg 172, paras 2089-2092</p> <p>Pg 173, para 2096</p> <p>Pg 174, para 2102</p> <p>IANA Functions Contract:  <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p>	
<p>Does the proposal provide mechanisms to preserve the integrity, transparency, and accountability in the performance of the IANA functions?</p>		<p>Yes, the numbers proposal relies upon the existing transparent, bottom-up, open processes of the RIRs, as they will be the parties contracting with ICANN for the provision of numbering services. The numbering community further proposes that ICANN</p>	<p>ICG Proposal:</p> <p>Pg 171, paras 2087-2089</p> <p>Pg 172, paras 2089 - 2092</p>	




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Component	Assessment	Justification	Citations	Notes
		<p>continue as the IFO via a SLA with the RIRs. Therefore, the RIRs will provide oversight and perform accountability functions. For the SLA itself, the RIRs require that the IFO be obliged to issue reports on transparency as well as commit to existing transparency requirements in the NTIA contract. These include reporting requirements and periodic, regular review of the IFO. A Review Committee will oversee the performance of the SLA and report to the NRO Executive Committee on any concerns regarding performance. Failure of the IFO to perform would result in corrective action and, if the community decided necessary, the option to terminate the contract.</p>		
<p>Do the affected parties have the opportunity to identify appropriate service levels for the performance of the IANA functions?</p>		<p>Yes, the numbers proposal is based on the creation and enforcement of an SLA. The RIRs, working openly and transparently with their communities, drafted the SLA, which includes expectations for the handling of number resource requests and making registry data available. The SLA also articulates requirements such as maintaining good security practices and continuity of operations, as well as processes by which to address disputes associated with performance. The SLA will be signed by the RIRs with ICANN as the IFO.</p>	<p>ICG Proposal:  Pg 171 - 172, paras 2087 - 2089</p>	
<p>Does the proposal recognize that the IANA services must be resistant to attacks (e.g., denial of service, data corruption), and be able to recover from degradation? Are the functions performed in a secure legal</p>		<p>Yes, the proposal recognizes that the numbering-related function must be secure and stable. The numbers proposal is based on the development and enforcement of an SLA with ICANN as the IFO. As part of the SLA, ICANN will commit to security, performance, and audit requirements. ICANN will be obliged to periodically issue reports illustrating its</p>	<p>ICG Proposal:  Pgs 13-14, para 23  Pg 171, para 2089  Pgs 175 - 176, para 2116</p>	

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Component	Assessment	Justification	Citations	Notes
<p>environment? How does the proposal ensure the IANA functions operator takes into consideration technological advancements and maintains up-to-date physical and network security?</p>		<p>compliance. The proposal also points to existing requirements in the IANA functions contract – Sections C.3, C.4, and C.5.</p> <p>Further, the proposal notes that “the existing operational and policy-making structures related to the number registries have served the Internet community well over time, and the Internet Number Community has expressed a strong desire for stability and operational continuity of this critical element of the Internet infrastructure. Accordingly, this proposal suggests minimal changes to existing processes.”</p> <p>The proposal is for ICANN, a not-for-profit organization based in California, to continue to be responsible for the performance of the numbering function. ICANN will subcontract the performance of the numbering function to PTI, an affiliate of ICANN, and therefore subject to the same stable legal environment offered by a California-based not-for-profit.</p>	<p>IANA Functions Contract:  <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p>	
<p>Does the transition proposal propose steps for ensuring a smooth transition that maintains the stability, security, and resiliency of the DNS?</p>		<p>Yes, the numbers proposal takes steps to ensure a smooth transition in that it maintains existing operational and policy sources (RIRs are responsible for numbering policy), thus minimizing any potential for disruption to the security, stability, and resiliency of the DNS during the transition.</p>	<p>ICG Proposal:                      Pgs 175 - 176, para 2116</p>	



**III. Meet the Needs and Expectations of the Global Customers and Partners of the IANA Services**

Component	Assessment	Justification	Citations	Notes
<p>Does the proposal maintain a commitment to the continued separation of policy development and operational activities that is subject to periodic robust auditing?</p>		<p>Yes, the numbers proposal maintains a commitment to continue the existing separation of policy development and operations as it proposes to rely on the existing services provided by the IANA functions operator and the existing policy sources (RIRs). The proposal identifies principles for the SLA that specifically state that the “IANA numbering services operator will merely execute the global policies adopted according to the global Policy Development Process defined in the ASO MOU” and points to the relevant sections in the existing NTIA contract (C.2.4, C.2.5).</p> <p>As part of the SLA, ICANN will commit to audit requirements and is obliged to periodically issue reports illustrating its compliance. The proposal also points to existing audit requirements in the IANA functions contract – Section C.5.</p>	<p>ICG proposal:  Pg 170, para 2086  Pg 171, para 2089  IANA Functions Contract: <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p>	
<p>Are there structures and mechanisms for the adherence to and development of customer service levels, including timeliness and reliability?</p>		<p>Yes. The numbers proposal is based on the development and enforcement of a SLA with ICANN as the IFO. The SLA includes provisions committing ICANN to specific processes and timelines. A Review Committee will oversee the performance of the SLA and report to the NRO EC on any concerns regarding performance. Failure of the IFO to perform would result in corrective action and, if the community decided necessary, the option to terminate the contract.</p>	<p>ICG Proposal:  Pg 171, paras 2087 - 2089</p>	
<p>Are there processes for transparency, accountability,</p>		<p>Yes, the plan proposes processes for transparency, accountability, and audibility for</p>	<p>ICG proposal:</p>	

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Component	Assessment	Justification	Citations	Notes
<p>and auditability?</p> <ol style="list-style-type: none"> <li>1. Are audit and accountability mechanisms considered and meaningful?</li> <li>2. Are dispute resolution mechanisms considered?</li> <li>3. Are other periodic reviews considered? If so, how would they function?</li> <li>4. Will results of reviews be made publicly available? If not, why not?</li> <li>5. Do proposed reviews, audits, etc. trigger corrections or enhancements when deemed necessary? If not, why not?</li> <li>6. Are mechanisms proposed to prevent, detect, and manage conflicts of interest between ICANN’s multistakeholder policy role and its possible role as administrator of the IANA functions? Will these mechanisms be</li> </ol>		<p>all parties. The numbering community proposes that ICANN continue as the IFO via a contract with the RIRs. Therefore, the RIRs will provide oversight and perform accountability functions. The RIRs have documented their individual accountability and governance mechanisms and asked the community-based NRO to undertake a review and make recommendations for improvements that may be warranted given the nature of the stewardship transition.</p> <p>As the proposal states: “by building on the existing Internet registry system (which is open to participation from all interested parties) and its structures, the proposal reduces the risk associated with creating new organizations whose accountability is unproven.”</p> <p>The proposal calls for the creation and enforcement of an SLA. This SLA articulates commitments for ICANN to adhere to including audits, reporting, a continued separation of policy and operation. These commitments will reflect the existing requirements under the IANA functions contract (sections C.2.6, C.2.7, C.2.8, C.3, C.4, C.5).</p> <p>The SLA provides that dispute resolution will be resolved through arbitration.</p> <p>On the subject of separability, the proposal indicates no need or plans to do so at this point, but builds in the option should the numbers community decide it needs to in the</p>	<p>Pg 168, para 2073</p> <p>Pg 169, para 2080</p> <p>Pg 170, para 2086</p> <p>Pg 173, para 2096</p> <p>Pg 174, para 2102</p> <p>IANA Functions Contract:  <a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p> <p>RIR Governance Matrix:  <a href="https://www.nro.net/about-the-nro/rir-governance-matrix">https://www.nro.net/about-the-nro/rir-governance-matrix</a></p>	

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Component	Assessment	Justification	Citations	Notes
<p>effective and enforceable?</p> <p>7. Does the proposal allow for separability from ICANN?</p>		<p>future. The SLA will specify the term of the agreement as well as details on termination.</p> <p>A Review Committee will oversee the performance of the SLA and report to the NRO EC on any concerns regarding performance. Failure of the IFO to perform would result in corrective action and, if the community decided necessary, the option to terminate the contract. Activities of the Review Committee will be conducted in an open and transparent manner, and all reports will be published.</p>		
<p>Are there processes for periodic assessments of performance and procedural evolutions or improvements, as needed?</p>		<p>Yes, the proposal creates a Review Committee that will conduct periodic reviews of the IFO and its performance. The Review Committee’s charter articulates that it must act transparently and is charged with making recommendations to the NRO Executive Committee for any actions, including changes and/or improvements.</p>	<p>ICG Proposal: Pg 172 - 173, paras 2091-2093</p> <p>Final Review Committee Charter: <a href="https://www.nro.net/review-committee-charter-final">https://www.nro.net/review-committee-charter-final</a></p>	
<p>Are fees proposed? If so, are the fees based on cost recovery? Are there structures and mechanisms proposed for the agreement and development of a verifiable cost recovery based system?</p> <ol style="list-style-type: none"> <li>1. If so, are the fees above cost recovery? In this case, is there a detailed explanation as to why?</li> <li>2. Will assessment and collection of fee be</li> </ol>		<p>The numbers proposal does not propose fees, but the SLA specifies that the RIRs will reimburse the IFO for direct costs with a maximum reimbursement of \$650,000 per calendar year.</p> <p>There is no language in the proposal specific to transparency with respect to fee-related efforts, but the RIRs are publicly committed to open and transparent decision making. Further, there are transparency requirements in the SLA.</p>	<p>ICG Proposal: Pg 172, para 2089 Pg 175, para 2112</p> <p>SLA: <a href="https://www.nro.net/sla">https://www.nro.net/sla</a>, at article 5, article 6</p>	




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Component	Assessment	Justification	Citations	Notes
transparent (published) and subject to stakeholder review, input, and approval?				
Does the proposal maintain the existing limited technical scope of the IANA functions?		Yes, the proposal maintains the existing limited scope as it makes no changes to technical or operational methods in the provision of the numbering functions.	ICG Proposal: Pg 174, para 2108	
Does the proposal maintain the separation of policy development and operations?		Yes, the proposal and the SLA specify explicitly the continued separation of policy and operations.	ICG Proposal: Pgs 170 - 171, paras 2086 - 2089	

**IV. Maintain the Openness of the Internet**

Component	Assessment	Justification	Citations	Notes
Does the proposal maintain the impartial and apolitical administration of the IANA functions?		Yes. The proposal makes no changes to technical or operational methods in the provision of the numbering functions. Therefore, the impartial and apolitical administration of the numbering function is maintained.	ICG Proposal: Pg 174, para 2108	
Does the proposal maintain the inability to use the technical architecture to interfere with the exercise of human rights or the free flow of information?		Yes. The proposal maintains the inability to use the numbering function in a manner that interferes with the exercise of human rights and the free flow of information as it makes no changes to current technical or operational methods.	ICG Proposal: Pg 174, para 2108 Pg 176, para 2120	
Does the proposal address contingency situations?		Yes, the proposal addresses contingency situations. The proposal does this primarily in the context of the numbering community's	ICG Proposal: Pg 169, para 2077	




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		<p>objective to permit “separability” from the IFO should it ever be deemed by the community as necessary. It is proposed that in such a case, the selection of a new contractor is to be done in a fair, open, and transparent process that is consistent with applicable industry best practices and standards. Also, in this context, the SLA requires that the IFO provide for an orderly transition of the functions while maintaining continuity and security of operations.</p>	<p>Pg 172, para 2089</p>	
<p>Does the proposal remove subjective decision making to the greatest extent possible (e.g., reliance upon community developed policies and processes; authoritative lists)?</p>		<p>Yes, the proposal removes subjective decision making to the greatest extent possible as it makes no changes to current technical or operational methods. Further, the proposal reaffirms and commits ICANN (as the IFO) to refer to policies developed by the Internet Numbering Community via the global policy development process as defined in the ASO MoU. This will be codified in the SLA between the RIRs and ICANN.</p>	<p>ICG Proposal: Pg 171, para 2089 Pg 174, para 2108  ASO MoU: <a href="https://aso.icann.org/about-the-aso/aso-memorandum-of-understanding/">https://aso.icann.org/about-the-aso/aso-memorandum-of-understanding/</a></p>	


**IANA Stewardship Transition Coordination Group (ICG) Proposal  
NTIA Criteria Assessment Chart**

**Protocol Parameters**



In the chart below, NTIA analyzes the protocol parameter portion of the ICG proposal against a series of questions developed by NTIA and other U.S. government agencies. The questions are meant to build on NTIA’s March 2014 stated criteria for the transition proposal with the purpose of assisting in determining whether and how the proposal addresses them.

- Key:**
-  **Criteria Component Met**
  -  **Criteria Component Partially Met**
  -  **Criteria Component Not Met**

**Process Used for Proposal Development**

<b>Component</b>	<b>Assessment</b>	<b>Justification</b>	<b>Citations</b>	<b>Notes</b>
Have all stakeholder groups been consulted, including those who may not be deeply involved in the immediate ICANN community?		<p>Yes, all stakeholder groups were consulted during the Protocol Parameters proposal development.</p> <p>By way of background, the protocol parameter registries are the product of the Internet Engineering Task Force (IETF) work and the user community is typically implementers (i.e., not the immediate ICANN community). The IETF does not have members, but includes anyone who wishes to participate. Those participants may also be members of other communities. Staff and participants from ICANN and the RIRs regularly participate in IETF meetings. As</p>	<p>ICG Proposal:</p> <p>Pg 192, paras 3017, 3021</p> <p>Pg 193, paras 3023, 3027</p> <p>Pg 201, para 3072</p>	

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Component	Assessment	Justification	Citations	Notes
		<p>noted in the Protocol Parameters Proposal, the IETF is open to all stakeholders.</p> <p>The proposal development process followed standard IETF practices and was open to any interested party.</p>		
<p>Were clear opportunities and timelines for engagement provided during the development of the proposal?</p>		<p>Yes, opportunities and timelines for engagement were regularly provided through the Protocol Parameter Proposal development process via public announcements, agendas, mailing lists, consultations, and meetings.</p>	<p>ICG Proposal: Pg 203, paras 3085-3095</p>	
<p>Is the proposal reflective of a broad community-supported, practical and workable plan for transitioning the USG unique role?</p>		<p>Yes, the Protocol Parameters Proposal is reflective of broad community support and the proposal itself is practical and workable.</p> <p>The Protocol Parameter Proposal continues existing practice with respect to operation and accountability mechanisms, utilizing the existing Memorandum of Understanding (MoU) between the IETF and ICANN as well as supplemental documents to detail practices, service levels, and service expectations.</p> <p>NTIA has no questions or concerns regarding the practicality or workability of the proposal, given that no changes are proposed and status quo is maintained. The ICG in its assessment also makes the same conclusion that the proposal is practical and workable.</p> <p>NTIA also finds that broad community support was achieved in that the protocol</p>	<p>ICG Proposal: Pg 16, para 31 Pg 198, paras 3060-3061 Pg 204, para 3097</p> <p>IETF MoU with ICANN: <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement: <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	

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Component	Assessment	Justification	Citations	Notes
		parameter community, utilizing the longstanding IETF processes, reached “rough consensus” on their proposal. Throughout proposal development, comments were sought from the community and taken into account.		

**NTIA CRITERIA**


**I. Support and Enhance the Multistakeholder Model**

Component	Assessment	Justification	Citations	Notes
Does the proposal support and enhance the multistakeholder model?		Yes. The Protocol Parameters Proposal was developed through multistakeholder approaches and relies upon multistakeholder developed policies and practices in the performance of the protocol parameters function moving forward. Further, NTIA’s stewardship role will be filled by the IETF (a multistakeholder organization) through an MoU with ICANN. The ICG assessment echoes this conclusion.	ICG Proposal:  Pg 26, para 86  Pg 201, para 3072	
Does the proposal reflect input from stakeholders? Do stakeholders support the proposal?		Yes, the proposal reflects stakeholder input and support as reflected throughout its development process. The Working Group reached rough consensus and the rationale was documented and made publicly available. Following Working Group consensus, the document was put through an IETF “last call” where additional stakeholders voiced support for the proposal and some offered substantial edits, which were taken into account for the final	ICG Proposal:  Pg 204, paras 3097-3107  IETF IANAPLAN WG Document, Shepherd’s summary of WG consensus: <a href="https://datatracker.ietf.org/doc/draft-ietf-ianaplan-icg-response/shepherdwriteup/">https://datatracker.ietf.org/doc/draft-ietf-ianaplan-icg-response/shepherdwriteup/</a>	

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Component	Assessment	Justification	Citations	Notes
		version. This “last call” comment process was summarized and publicly posted.	IETF Last Call summary: <a href="http://www.ietf.org/mail-archive/web/ianaplan/current/msg01500.html">http://www.ietf.org/mail-archive/web/ianaplan/current/msg01500.html</a>	
Does the proposal replace the USG role with one that is dominated or controlled by governments or intergovernmental institutions?		No, the proposal does not replace the USG role with one dominated/controlled by governments or intergovernmental institutions. It instead relies on existing mechanisms with the IETF and Internet Architecture Board (MoU/Supplemental Agreement) replacing the NTIA stewardship role, which is not government-led or intergovernmental.	ICG Proposal:  Pg 202, para 3080	
Does the proposal build in protections against unilateral changes (to the root zone file, protocol parameters, etc.) that are not pursuant to publicly-documented and stakeholder-accepted procedures?		Yes, the plan maintains current practices; therefore, protections against unilateral changes are already in place. These practices are highlighted in the IETF MoU with ICANN and the annually amended Supplemental Agreement. Specifically, ICANN cannot take action without IETF direction.	ICG Proposal:  Pg 198, paras 3060-3061  IETF MoU with ICANN: <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a>  2014 ICANN-IETF MoU Supplemental Agreement: <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a>	
How is accountability addressed? Does the proposal provide adequate checks and balances to protect against capture?		Yes. NTIA finds that accountability is adequately addressed and that adequate checks and balances are in place.  Under the plan, the existing oversight and accountability structure continues post-transition. The proposal specifically points out that “the IETF community is very satisfied with the current arrangement.”	ICG Proposal:  Pg 197, paras 3049-3054  Pg 198, paras 3060-3061  IETF MOU w/ICANN: <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a>	

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Component	Assessment	Justification	Citations	Notes
		<p>The Internet Architecture Board (IAB) will provide broad oversight of the IETF and must approve the appointment of an organization to act as the IANA Functions Operator (IFO), which in this case is currently ICANN, on behalf of the IETF.<sup>1</sup> The IETF will continue to be responsible for day-to-day administration and contract management. The MoU between ICANN and the IETF community that has been in place since 2000 (RFC 2860), will continue to define the work to be carried out by the IFO, and each year a service level agreement is (and will be) negotiated with the IFO as a supplement to the MoU. An annual audit will be performed to ensure protocol parameter requests are being processed according to the established policies and results are made publicly available.</p> <p>NTIA finds that these measures offer adequate checks and balances and are consistent with what is currently required under the IANA functions contract with NTIA.</p>	<p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	
<p>Does the proposal ensure transparency? Does the proposal include mechanisms that work to ensure optimal levels of</p>		<p>Yes, the proposal ensures transparency.</p> <p>The IETF operates in an open and transparent manner as articulated in RFC 6852. With respect to the transparency of</p>	<p>ICG Proposal:  Pg 192, para 3021  Pg 197, para 3053</p>	


<sup>1</sup> The IANA functions operator (IFO) is the entity that is ultimately responsible for the performance of the IANA functions, and in this case, the protocol parameters function. The IETF proposes to use its existing MoU and Supplemental Agreement with the IFO, which is ICANN. ICANN will subcontract the performance of the protocol parameters function to the Post Transition IANA (PTI), which the IETF MoU with ICANN permits (see pgs 13-14 of the ICG proposal). However, for all intents and purposes, all references to the IFO in the protocol parameters proposal refers to ICANN as the entity responsible for protocol parameters performance.

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Component	Assessment	Justification	Citations	Notes
<p>transparency in the performance of the IANA functions? Are they outlined? How will they be enforced?</p>		<p>protocol parameters function performance, there are transparency requirements in the MoU and supplemental SLA including the IFO making available to the public (and free of charge) information about each current assignment, including contact details for the assignee. (MoU Sec 4.4). The SLA stipulates that the IFO maintain a publicly accessible Resource Registry Matrix, provision of monthly resource allocation statistics, and provision of monthly statistics showing work that has been done and work items currently queued. Conclusions of the annual audits are to also be made publicly available.</p> <p>In addition to the above, the IETF has identified that its next supplemental document (to be in place at transition) will include further articulation and clarity on transparency requirements, noting that transparency is critical to the protocol parameters function.</p> <p>Transparency requirements embedded in the MoU and SLA allow for enforcement and are subject to escalation.</p>	<p>Pg 199, para 3063</p> <p>IETF MoU w/ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	





**II. Maintain the Security, Stability, and Resiliency of the Internet DNS**

Component	Assessment	Justification	Citations	Notes
<p>Does the proposal work to preserve a model to perform the IANA functions in a manner that avoids single points of failure, manipulation, and/or capture?</p>		<p>Yes, the proposal preserves the model in that it makes no changes to the protocol parameters function, its operations, or policy development. Current practices will be maintained; therefore, protections against single points of failure, manipulation, and/or capture are already in place.</p> <p>Namely, the IAB will continue to provide broad oversight of the IETF and must approve the appointment of an organization to act as the IFO on behalf of the IETF. The IETF is responsible for day-to-day administration and contract management. An MoU between ICANN and the IETF community has been in place since 2000 (RFC 2860), which defines the work to be carried out by the IFO. Each year a service level agreement is (and will be) negotiated with the IFO as a supplement to the MoU. Per the 2014 supplement, an annual audit is performed to ensure protocol parameter requests are being processed according to the established policies and results are made publicly available.</p> <p>Specific to the issue of single points of failure, the supplemental agreements specifically require the IFO to document any discovered single points of failure and detail efforts to address and/or ameliorate them.</p>	<p>ICG Proposal: Pg 198, paras 3060-3061</p> <p>IETF MoU with ICANN: <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement: <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	


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Component	Assessment	Justification	Citations	Notes
<p>Does the proposal provide mechanisms to preserve the integrity, transparency, and accountability in the performance of the IANA functions?</p>		<p>Yes, the proposal provides mechanisms to preserve the integrity, transparency, and accountability in the performance of the protocol parameters function. It is proposed that the existing oversight and accountability structures continue post-transition.</p> <p>The IETF operates in an open and transparent manner as is articulated in RFC 6852. With respect to the transparency of protocol parameters function performance, there are transparency requirements in the MoU and supplemental SLA. In addition, the IETF stated in the proposal that its next supplemental document (to be in place at transition) will include further articulation and clarity on transparency requirements, noting that transparency is critical to the protocol parameters function.</p> <p>The proposal points to existing structures to preserve accountability. Specifically, the IAB will provide broad oversight of the IETF and must approve the appointment of an organization to act as the IFO on behalf of the IETF. The IETF is responsible for day-to-day administration and contract management. An MoU between ICANN and the IETF community has been in place since 2000 (RFC 2860), which defines the work to be carried out by the IFO. Each year a service level agreement is (and will be) negotiated with the IFO as a supplement to the MoU. Per the 2014 supplement, an</p>	<p>ICG Proposal:</p> <p>Pg 192, para 3021</p> <p>Pg 199, para 3063</p> <p>IETF MoU with ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	


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Component	Assessment	Justification	Citations	Notes
		annual audit is performed to ensure protocol parameter requests are being processed according to the established policies and results will be made publicly available.		
Do the affected parties have the opportunity to identify appropriate service levels for the performance of the IANA functions?		Yes. The IETF/IAB will continue its annual practice of developing it's a service level agreement with ICANN, which becomes a supplement to the existing MoU between the IETF and ICANN.	ICG Proposal:  Pg 197, paras 3052-3053  2014 ICANN-IETF MoU Supplemental Agreement: <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a>	
Does the proposal recognize that the IANA services must be resistant to attacks (e.g., denial of service, data corruption), and be able to recover from degradation, and are performed in a secure legal environment? How does the proposal ensure the IANA functions operator takes into consideration technological advancements and maintains up-to-date physical and network security?		Yes. While the protocol parameter function is not particularly susceptible to attacks, the proposal does recognize the importance of avoiding single points of failure. The current SLA requires the IFO to document monthly any discovered single points of failure and detail efforts to address and/or ameliorate them.  ICANN, a California-based not-for-profit, will continue to be responsible for the performance of the protocol parameters function. ICANN will subcontract operations to PTI, an affiliate of ICANN, while will maintain the secure legal environment offered by a California-based not-for-profit.  With respect to taking into consideration technological advances, the proposal notes that any contemplated changes to the protocol parameter registries function	ICG Proposal:  Pgs 13-14, para 23  Pg 199, para 3063	



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Component	Assessment	Justification	Citations	Notes
		should be made using the IETF process to update RFC 6220.		
Does the transition proposal propose steps for ensuring a smooth transition that maintains the stability, security, and resiliency of the DNS?		Yes. The proposal does not recommend any structural changes. No services are expected or proposed to be changed, no continuity issues are anticipated, and there are no new technical or operational methods proposed that need testing. The IETF leadership, ICANN, and RIRs maintain an ongoing informal dialogue to spot any unforeseen issues that might arise. What is necessary as part of the transition is completion of any supplemental agreements, which can only be entered into during the implementation phase.	ICG Proposal:  Pgs 200-201, paras 3065-3067	


**III. Meet the Needs and Expectations of the Global Customers and Partners of the IANA Services**

Component	Assessment	Justification	Citations	Notes
Does the proposal maintain a commitment to the continued separation of policy development and operational activities that is subject to periodic robust auditing?		Yes. The proposal essentially maintains the status quo of protocol parameter operations, relying on the IETF-ICANN MoU and annual SLA supplements. These agreements specify that the IFO will assign and register protocol parameters “only as directed by the criteria and procedures specified in RFCs” and that in cases where there is doubt or in case of a technical dispute, the IFO will seek and follow technical guidance exclusively from the IETF. Further, it is noted that IETF policy and registry operation are completely separate. The SLA calls for annual audits, the	IETF MoU with ICANN: <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a>  2014 ICANN-IETF MoU Supplemental Agreement: <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a>	




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Component	Assessment	Justification	Citations	Notes
<p>Are there structures and mechanisms for the adherence to and development of customer service levels, including timeliness and reliability?</p>		<p>conclusions of which are made publicly available.</p> <p>Yes. The proposal relies in large part on an existing MoU between the IETF and ICANN that includes an annual revision of the Supplemental Agreement. The Supplemental Agreement specifies expected levels of performance as well as timely delivery of service. The IFO will be required to conduct an annual audit to ensure optimal levels of performance.</p>	<p>IETF MOU w/ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	
<p>Are there processes for transparency, accountability, and auditability?</p> <ol style="list-style-type: none"> <li>1. Are audit and accountability mechanisms considered and meaningful?</li> <li>2. Are dispute resolution mechanisms considered?</li> <li>3. Are other periodic reviews considered? If so, how would they function?</li> <li>4. Will results of reviews be made publicly available? If not, why not?</li> <li>5. Do proposed reviews, audits,</li> </ol>		<p>Yes, the plan proposes processes for transparency, accountability, and auditability. The proposal calls for the existing accountability structures to continue post-transition. Under the existing structures, the IAB provides broad oversight of the IETF and must approve the appointment of an organization to act as the IFO on behalf of the IETF. The IETF is responsible for day-to-day administration and contract management. An MoU between ICANN and the IETF community has been in place since 2000 (RFC 2860), which defines the work to be carried out by the IFO. Each year a service level agreement is (and will be) negotiated with the IFO as a supplement to the MoU. Per the 2014 supplement, an annual audit is performed to ensure protocol parameter requests are being processed according to the established policies and results are made publicly available.</p> <p>In addition to audits, the SLA requires the</p>	<p>ICG Proposal:</p> <p>Pg 195, para 3036</p> <p>Pg 197, paras 3049-3054</p> <p>Pg 198, paras 3060-3061</p> <p>IETF MoU with ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	

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Component	Assessment	Justification	Citations	Notes
<p>etc. trigger corrections or enhancements when deemed necessary? If not, why not?</p> <p>6. Are mechanisms proposed to prevent, detect, and manage conflicts of interest between ICANN’s multistakeholder policy role and its possible role as administrator of the IANA functions? Will these mechanisms be effective and enforceable?</p> <p>7. Does the proposal allow for separability from ICANN?</p>		<p>IFO to undertake a number of reporting efforts, including annual documentation of any discovered single points of failure and detailing efforts to address/ameliorate them.</p> <p>The proposal relies on existing dispute resolution mechanisms. Most disputes are handled at the lowest level through the IETF working group and rough consensus process. Should there be disagreement with any action, Section 6.5 of RFC 2026 specifies a multi-level conflict resolution and appeals process to be followed. In the cases claiming that the procedures themselves are insufficient or inadequate, one may appeal an IAB decision to the Internet Society Board of Trustees.</p> <p>The proposal allows for separability from ICANN. The existing MoU provides an option for either party to terminate the arrangement with six months’ notice. It is noted that “obviously such an action would only be undertaken after serious consideration.”</p>		
<p>Are there processes for periodic assessments of performance and procedural evolutions or improvements, as needed?</p>		<p>Yes. The proposal relies on an existing MoU between the IETF and ICANN. As a supplement to this MoU, the IETF and ICANN will update an SLA annually to address service level expectations and identify IFO requirements. This gives the protocol parameters customer community the opportunity to make annual improvements to the performance of the</p>	<p>IETF MoU with ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	



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Component	Assessment	Justification	Citations	Notes
		function. The SLA also requires an annual audit on performance.		
<p>Are fees proposed? If so, are the fees based on cost recovery? Are there structures and mechanisms proposed for the agreement and development of a verifiable cost recovery based system?</p> <ol style="list-style-type: none"> <li>1. If so, are the fees above cost recovery? In this case, is there a detailed explanation as to why?</li> <li>2. Will assessment and collection of fee be transparent (published) and subject to stakeholder review, input, and approval?</li> </ol>		<p>No fees are proposed. In fact, the existing IETF-ICANN MoU states that the protocol parameter service is to be provided free of charge.</p>	<p>IETF MoU with ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p>	
<p>Does the proposal maintain the existing limited technical scope of the IANA functions?</p>		<p>Yes, the proposal maintains the existing limited scope of the protocol parameters function, as no changes are proposed to the service.</p>	<p>ICG Proposal: Pg 200, para 3066</p>	
<p>Does the proposal maintain the separation of policy development and operations?</p>		<p>Yes, the proposal maintains the separation of policy and operations as evident in the existing IETF-ICANN MoU and SLA, which is proposed to be maintained post-transition.</p>	<p>ICG Proposal: Pg 198, para 3061</p>	

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Component	Assessment	Justification	Citations	Notes
			<p>IETF MoU with ICANN:  <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a></p> <p>2014 ICANN-IETF MoU Supplemental Agreement:  <a href="http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf">http://iaoc.ietf.org/documents/2014-ICANN-IETF-MoU-Supplemental-Agreement-Executed.pdf</a></p>	

**IV. Maintain the Openness of the Internet**

Component	Assessment	Justification	Citations	Notes
Does the proposal maintain the impartial and apolitical administration of the IANA functions?		Yes, the impartial and apolitical administration of the protocol parameters function is maintained. The proposal makes no changes to the organization, structure, or operations of the protocol parameters service. The operations will be carried out per requirements articulated in the MoU and Supplemental Agreement. Policies will continue to be developed by the IETF and implemented by ICANN. Therefore, the impartial and apolitical administration of the function is maintained.	<p>ICG Proposal:</p> <p>Pg 198, paras 3060-3061</p>	
Does the proposal maintain the inability to use the technical architecture to interfere with the exercise of human rights or the free flow of information?		Yes, the proposal maintains the inability to use the protocol parameters function to interfere with the exercise of human rights or the free flow of information. This is largely due to the fact that the protocol parameter function is simply the maintenance of protocol parameters databases. Further, the proposal maintains the existing open framework that allows	<p>ICG Proposal:</p> <p>Pg 202, para 3078</p>	






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		anyone to participate in the development of IETF standards, including the IANA protocol parameters registries policies. Those who require assignments in the IANA protocol registries will continue to have their requests satisfied, as specified by the existing policies for those registries.		
Does the proposal address contingency situations?		Yes, the proposal addresses contingency situations. Like the other functions, the protocol parameter community based its proposal largely on the ability to “separate” from the IFO if deemed necessary. The proposal requests that ICANN (as the IFO) commit to transition the service as requested to a successor and provide continuity of service. The proposal also would require ICANN to commit to work with the IETF and subsequent operator to minimize disruption in use of the protocol parameter registries.	ICG Proposal: Pg 198, para 3062	
Does the proposal remove subjective decision making to the greatest extent possible (e.g., reliance upon community developed policies and processes; authoritative lists)?		Yes, the proposal removes subjective decision making to the greatest extent possible by specifying in the MoU between the IETF and ICANN that the IFO will assign and register protocol parameters “only as directed by the criteria and procedures specified in RFCs” and that in cases where there is “doubt or in case of a technical dispute, IANA will seek and follow technical guidance exclusively from the IESG.”	IETF MoU with ICANN: <a href="http://tools.ietf.org/pdf/rfc2860.pdf">http://tools.ietf.org/pdf/rfc2860.pdf</a>	

**Cross-Community Working Group on Enhanced Accountability (CCWG-Accountability) Proposal  
NTIA Criteria Assessment Chart**


In the chart below, NTIA analyzes the CCWG-Accountability portion of the IANA Stewardship Transition Proposal against a series of questions developed by NTIA and other U.S. government agencies. The questions build on NTIA’s March 2014 criteria for the transition proposal with the purpose of assisting in determining whether and how the proposal meets the criteria.

- KEY:**
-  **Criteria Component Met**
  -  **Criteria Component Partially Met**
  -  **Criteria Component Not Met**

**Process Used to Develop Proposal**

<b>Component</b>	<b>Assessment</b>	<b>Justification</b>	<b>Citations</b>
Have all stakeholder groups been consulted, including those who may not be deeply involved in the immediate ICANN community?		Yes, the CCWG-Accountability was open to the public. It consisted of 28 members from the Chartering Organizations (GNSO, ccNSO, ASO, GAC, ALAC), as well as 172 individual participants. Each of the Chartering Organizations appointed between two and five members to the CCWG-Accountability. Anyone interested could join as a participant or observer. This created an opportunity for meaningful participation from both ICANN community members and groups and individuals not traditionally part of ICANN.	CCWG-Accountability Proposal:  Appendix A, pg 1, para 5
Were clear opportunities and timelines for engagement provided during the development of the proposal?		Yes, the CCWG-Accountability proposal development process provided many opportunities for engagement with clear timelines for input. To enable transparent engagement, the group used a public website to host working documents. In addition, the group maintained a public email list that was open to any interested parties to join or monitor. The public website archived all email exchanges in real time.  The proposal development process also included three public comment periods, which drew over 200 comments. These comment periods were each	CCWG-Accountability Proposal:  Appendix A, pgs 1-13  Appendix C, pgs 1-9  Appendix D, pgs 1-10

Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart


Component	Assessment	Justification	Citations
		<p>open for comment for around 30 days. The group gave each recommendation multiple readings, allowing many opportunities to offer edits and discuss before issuing the report. CCWG-Accountability meetings also offered language translation. Co-chairs set meeting schedules well ahead of time, and sent agendas ahead of each meeting. All of this information was available to all public observers. This entire proposal development process included 221 calls or meetings and more than 13,900 email messages over two years.</p>	<p>CCWG Mailing List Archive:  <a href="https://community.icann.org/display/acctcrosscomm/Mailing+List+Archi+ves">https://community.icann.org/display/acctcrosscomm/Mailing+List+Archi+ves</a></p> <p>Public Comment Report on CCWG Third Draft Proposal:  <a href="https://www.icann.org/en/system/files/files/report-comments-draft-ccwg-accountability-proposal-08jan16-en.pdf">https://www.icann.org/en/system/files/files/report-comments-draft-ccwg-accountability-proposal-08jan16-en.pdf</a></p> <p>CCWG Meeting Schedule:  <a href="https://community.icann.org/display/acctcrosscomm/Meetings">https://community.icann.org/display/acctcrosscomm/Meetings</a></p>
<p>Is the proposal reflective of a broad community-supported, practical and workable plan for enhancing ICANN’s accountability?</p>		<p>Yes, the final proposal of the CCWG-Accountability enjoys broad community support. Of the over 200 regular participants in the proposal development process, only five minority statements were included for the record. None of these statements questioned the premise of the transition, but instead took issue with specific items in the CCWG-Accountability proposal. The ICANN Board unanimously approved the proposal on March 10, 2016.</p> <p>The proposal reflects significant compromises reached by the diverse group of participants. Given the need for the transition proposal to meet the needs of the entire community, each Chartering Organization’s representative fought for the proposal to match what was best for his or her constituency. This created disagreements throughout the development process, but the effort to</p>	<p>CCWG-Accountability Proposal:</p> <p>Appendix A, pgs 1-13</p> <p>Appendix B (no page numbers)</p> <p>Appendix D, pgs 1-10</p> <p>Board Resolution:  <a href="https://www.icann.org/r">https://www.icann.org/r</a></p>

Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations
		resolve these differences resulted in a stronger proposal.	<a href="#">resources/board-material/resolutions-2016-03-10-en#2.c</a>

**NTIA CRITERIA**



**I. Support and Enhance the Multistakeholder Model**

Component	Assessment	Justification	Citations
Does the proposal support and enhance the multistakeholder model?		<p>Yes, the proposal supports and enhances the multistakeholder model of Internet governance. The proposal enshrines in ICANN’s Bylaws the main elements of NTIA and ICANN’s Affirmation of Commitments, which commit ICANN to seeking and supporting “broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.”</p> <p>The proposal builds on the existing community structure by empowering the community with the ability to reject strategic plans and budgets, including the IANA functions budget; reject changes to bylaws; remove individual Board Directors; recall the entire ICANN Board; initiate binding independent review processes; and reject Board decisions related to reviews of the IANA naming functions.</p> <p>In addition, to use any of these powers, the community must engage in a process to escalate a petition from one of the community’s SOs or ACs. This process includes a community-wide forum on a petition, which can only happen after an additional SO or AC joins the petition. The community forum is an ICANN-funded opportunity for the entire community, including the ICANN Board, to discuss whether to use a community power. If the issue is not resolved through multistakeholder dialogue, then SOs and ACs will vote on</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 1, pgs 1-10</p> <p>Annex 2, pgs 1-15</p> <p>Annex 3, pg 2, para 4</p> <p>Annex 3, pgs 3-4, paras 10-14</p> <p>Annex 3, pg 7, para 35</p> <p>Annex 4, pgs 1-26</p> <p>Annex 5, pg 19, para 139</p> <p>Annex 7, pgs 2-3</p> <p>Annex 8, pg 1, paras 1-3</p> <p>Annex 9, pg 5, paras 33-</p>


Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations
		<p>whether to use a community power. Different powers require different thresholds of stakeholder support. Four Decisional Participants (among the GNSO, ccNSO, ASO, ALAC, and GAC) must support a petition to reject a budget, reject Board decisions associated with the IANA naming functions, and recall the entire Board. To initiate a binding independent review process, remove an individual Board Director, or reject or approve a Bylaw, three Decisional Participants must support the petition. In no case can more than one Decisional Participant object to using a community power.</p> <p>If the Board does not comply with the outcome of the community’s use of a power, the community will be able to use its standing as the Sole Designator of the ICANN Board of Directors—a legal designation that gives the community standing in courts—to seek legal remedy to enforce a decision.</p> <p>In addition, the creation of Fundamental Bylaws, for which amendments, additions, and removals will require a 3/4 vote of the Board and positive assent from the community, ensure that ICANN’s commitment to consensus-based multistakeholder processes cannot be changed without supermajority approval by the community.</p> <p>The proposal ensures, by codifying the GAC’s existing operating principle to work by consensus, which is “understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection,” that a group of governments will not be able to unduly influence the ICANN Board. This, in turn, provides a safeguard for the protection of the multistakeholder model.</p> <p>The proposal will also enshrine in ICANN’s Bylaws regular independent reviews of SOs and ACs. This addition will ensure that SOs and ACs remain accountable and inclusive, and do not restrict opportunities to participate in ICANN decision-making by a diversity of participants.</p> <p>Finally, enhancements made to the independent review process will allow the</p>	<p>34</p> <p>Annex 9, pg 11, paras 85-89</p> <p>Annex 10, pg 1, para 3</p> <p>Annex 11, pg 3, para 13</p> <p>Annex 12, pgs 3-4, paras 7-11</p> <p>GAC Operating Principle 47:  <a href="https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles">https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles</a></p>



Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations
		community to hold the Board accountable and ensure that ICANN adheres to its commitment to “employ open, transparent, bottom-up, multistakeholder processes.”	
Does the proposal reflect input from stakeholders? Do stakeholders support the proposal?		Yes, the proposal reflects input from stakeholders and demonstrates stakeholder support for the proposal. This entire proposal development process included 221 calls or meetings and more than 13,900 email messages over two years. The CCWG-Accountability held three public comment periods during the proposal development process. The group considered each round of comments and used them to guide revisions and discussions leading up to the next draft. The group offered the proposal to the ICANN Board with consensus approval and five minority statements. Each Chartering Organization supported the proposal going forward. The ICANN Board vote on the proposal was unanimous.	CCWG-Accountability Proposal:  Appendix D, pgs 1-10  Board Resolution: <a href="https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.c">https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.c</a>
Does the proposal replace the USG role with one that is dominated or controlled by governments or intergovernmental institutions?		<p>No. The proposal protects against replacing the U.S. role with one dominated or controlled by governments or intergovernmental institutions. Post-transition, governments will retain their advisory role via the GAC. The proposal includes a bylaw amendment that codifies the GAC’s existing operating principle to work by consensus, which is “understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.”</p> <p>ICANN’s current bylaws require the Board to notify the GAC if it is not going to follow GAC advice and try, in good faith, to reach a mutually acceptable solution. The proposed bylaw change institutionalizes the current practice that the Board-GAC consultation is predicated on consensus advice, as defined by the lack of formal objection. This will effectively prevent different governments from forcing the Board to choose between conflicting advice. The Board, however, will retain the ability to reject any GAC advice if a mutually acceptable solution cannot be found.</p> <p>In addition, there is no situation in which the GAC could unilaterally use or control the new community powers. The escalation and engagement requirements for advancing a petition require a high level of agreement from</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 1, pg 7, paras 40-45</p> <p>Annex 2, pg 13, para 74</p> <p>Annex 4, pg 25, para 113</p> <p>Annex 4, pgs 22-23, paras 99-103</p> <p>Annex 9, pg 11, paras 85-89</p> <p>Annex 11, pgs 1-2, paras 5-11</p> <p>GAC Operating Principle</p>

Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations
		<p>the various stakeholder groups across the community. The GAC is also barred from participating in the community powers when the subject of a petition is the Board’s implementation of GAC advice.</p> <p>Finally, the proposal recommends that the effectiveness of the relationship between the GAC, the ICANN Board, and the ICANN community is regularly reviewed as part of the accountability and transparency reviews enshrined in ICANN’s Bylaws.</p>	<p>47:  <a href="https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles">https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles</a></p>
<p>Does the proposal build in protections against unilateral decisions that are not pursuant to publicly-documented and stakeholder-accepted procedures?</p>		<p>Yes, the proposal protects against unilateral decision-making.</p> <p>The proposal empowers the community with the ability to reject strategic plans and budgets; reject changes to bylaws; remove individual Board Directors; recall the entire ICANN Board; initiate binding independent review processes; and reject Board decisions related to reviews of the IANA naming functions. These powers exist for the community to use in the event that it decides, collectively, that existing ICANN mechanisms have failed to result in action despite a community-wide recommendation.</p> <p>Since these powers are meant to be used only when the community is in agreement regarding what needs to be done, none of these powers will be able to be exercised by a single SO or AC. Instead, each decision to use a power must meet a threshold of community support. The thresholds are different for each power, but in no case will a single SO or AC be able to exercise a power without at least two others supporting the decision and no more than one opposing. However, before even being able to have a vote among SOs and ACs to use a community power, the petitioning SO or AC must engage in an escalation process that includes a community-wide forum on a petition. This forum will give the ICANN Board and the community the opportunity to discuss the petition, taking in the views of all stakeholders, with aim of resolving an issue through dialogue rather than calling a vote to use a community power.</p> <p>In addition, regular independent reviews of SOs and ACs are enshrined in ICANN’s Bylaws and ensure that SOs and ACs continue to represent their</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 1, pgs 1-10</p> <p>Annex 2, pg 11, paras 46-70</p> <p>Annex 7, pgs 2-3</p> <p>Annex 8, pg 1, paras 1-3</p> <p>Annex 9, pg 5, paras 33-34</p> <p>Annex 10, pg 1, para 3</p>

Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart


Component	Assessment	Justification	Citations
		<p>respective constituencies and stakeholder-accepted procedures. Also, the enhanced independent review process recommended in the proposal will allow any individual with standing—any person/group/entity “materially affected” by ICANN action or inaction—to challenge a decision by the Board that the community believes to be in contravention of ICANN’s Bylaws, which will enshrine bottom-up, transparent processes.</p>	
<p>Does the proposal provide adequate checks and balances to protect against capture?</p>		<p>Yes, the proposal provides adequate checks and balances to protect against capture. The proposal will increase power sharing by empowering the community to hold the ICANN Board accountable. A single SO or AC cannot exercise any of the newly created community powers without the support of other stakeholders.</p> <p>The proposal makes no change to the process of Board selection. The Board is selected via a diverse constituency framework to ensure all stakeholder groups are represented, except for governments, which are not permitted to serve on the Board. Terms will continue to be staggered and adhere to geographical/regional diversity requirements. Board members will also still be subject to removal by a vote of 3/4 of all other members. While the empowered community will be able to remove individual directors and the entire Board, it must do so through the escalation and engagement process (except for removing non-NomCom Directors, which can be removed by a 3/4 vote within the appointing SO or the ALAC).</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 2, pgs 10-19, paras 55-76</p> <p>Annex 4, pgs 22-23, paras 99-103</p> <p>Annex 11, pgs 1-2, paras 5-11</p>
<p>Does the proposal ensure transparency?</p>		<p>Yes, the proposal ensures transparency. The proposal will enshrine in ICANN’s Bylaws the accountability and transparency reviews required today by the Affirmation of Commitments. Specifically, the Board will be obligated to review periodically ICANN’s “execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and be accountable to all stakeholders.”</p> <p>The accountability and transparency review teams will have access to ICANN documents, and if ICANN refuses to disclose documents, it must provide a justification. If the review team is not satisfied with ICANN’s justification, it can</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 3, pg 5, para 8</p> <p>Annex 7, pgs 2-3</p> <p>Annex 8, pg 5</p> <p>Annex 9, pg 6, para 39</p>




Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations
		<p>appeal to the Ombudsman and the ICANN Board. The community can challenge the Board’s inaction related to an accountability review’s recommendations.</p> <p>In addition, any SO or AC can request to inspect accounting books and records of ICANN, as well as the minutes of proceedings of the Board of Directors and committees of the Board of Directors. If the Board refuses or ignores the request, the petitioning Decisional Participant could enforce its inspection right directly through the independent review process or by petitioning the community to initiate the escalation processes for a community independent review. The California Corporations Code outlines the right to such an inspection, which the Bylaws will protect as a Fundamental Bylaw.</p>	<p>Annex 9, pg 9, para 65</p> <p>Annex 9, pg 11, paras 78-97</p> <p>Annex 12, pg 5, para 16</p>


**II. Maintain the Security, Stability, and Resiliency of the Internet DNS**

Component	Assessment	Justification	Citations
<p>Does the transition proposal propose steps for ensuring a smooth transition that maintains the stability, security, and resiliency of the DNS?</p>		<p>Yes, the proposal will ensure a smooth transition that maintains the stability, security, and resiliency of the DNS. No significant change to the organization will happen without the clear, unambiguous intent of the vast majority of the Internet community. The rigorous escalation process to use the community powers will ensure this stability. Fundamental Bylaws, which only the community can change with supermajority approval, protect the pillars of ICANN’s structure, as well as its values. In addition, any petition from the community to reject the ICANN budget would have no impact on the IANA functions budget. Creating a separate budget for the IANA functions allows the community to hold ICANN accountable via budget rejection without jeopardizing the stability of the DNS.</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 2, pgs 1-15</p> <p>Annex 3, pgs 2-3, paras 6-9</p> <p>Annex 4, pgs 6-7, paras 19-29</p> <p>Annex 5, pgs 1-26</p> <p>Annex 9, pgs 1-19</p>



**III. Meet the Needs and Expectations of the Global Customers and Partners of the IANA Services**

Component	Assessment	Justification	Citations
<p>Are there processes for transparency, accountability, and auditability of all parties?</p> <p>1. Are audit and accountability mechanisms considered and meaningful?</p> <p>2. Are other periodic reviews considered? If so, how would they function?</p> <p>3. Are dispute resolution mechanisms considered?</p> <p>4. Will results of reviews be made publicly available? If not, why not?</p> <p>5. Do proposed reviews, audits, etc. trigger corrections or enhancements</p>		<p>Yes, the proposal builds in processes for transparency, accountability, and the auditability of all parties.</p> <p>The proposal will enshrine in ICANN’s Bylaws the accountability and transparency reviews currently required by the Affirmation of Commitments. The reviews serve as effective and meaningful accountability tools because they allow community stakeholders to review ICANN’s execution of tasks. The review teams operate in a fully open and transparent manner, engaging stakeholders at all stages of issue identification and recommendation development.</p> <p>In addition to enshrining in ICANN’s Bylaws the accountability and transparency reviews currently required by the Affirmation of Commitments, the proposal will also establish in ICANN’s Bylaws the need for independent organizational reviews to include an assessment of whether and how SOs and ACs are accountable to their constituencies.</p> <p>The proposal strengthens existing dispute resolution mechanisms by enhancing the independent review process with a standing panel of experts, and making the process available for the community to seek a binding review of Board decisions. It also strengthens the reconsideration process by narrowing the grounds for dismissal of a reconsideration request and extending the time limitation for filing a request. The proposal further considers dispute resolute in its construction of the process necessary for using any of the new community powers. SOs and ACs would need to participate in a community forum with the Board to discuss a petition to use a community power, with the aim of resolving a dispute between the Board and the community through dialogue.</p> <p>All community reviews, independent reviews, organizational reviews, and reconsideration requests results are public.</p>	<p>ATRT2 Implementation Tracker:  <a href="https://community.icann.org/display/atrt/ATRT2+Implementation+Program">https://community.icann.org/display/atrt/ATRT2+Implementation+Program</a></p> <p>CCWG-Accountability Proposal:</p> <p>Annex 2, pgs 7-9, para 32</p> <p>Annex 7, pg 2-3</p> <p>Annex 8, pgs 5-6</p> <p>Annex 9, pg 6, para 39</p> <p>Annex 9, pg 9, para 65</p> <p>Annex 9, pg 10, para 76</p> <p>Annex 9, pg 11, paras 78-97</p> <p>Annex 10, pg 1, para 3</p> <p>Annex 12, pg 5, para 16</p>

Attachment 4: CCWG-Accountability Proposal NTIA Criteria Assessment Chart

Component	Assessment	Justification	Citations
when deemed necessary? If not, why not?		Community reviews and organizational reviews produce formal recommendations and require the ICANN Board or the SO or AC being reviewed to take appropriate action, develop an implementation plan, and regularly update the community on its implementation progress.	
Are there processes for periodic assessments of performance and procedural evolutions or improvements, as needed?		Yes, the proposal includes meaningful processes for periodic assessments of performance that allows for procedural improvement as needed. The proposal will enshrine in ICANN’s Bylaws an IANA Function Review, as well as the reviews currently contained in the Affirmation of Commitments. The four subjects of the ongoing Affirmation reviews are: ensuring accountability, transparency, and the interests of global Internet users; preserving the security, stability, and resiliency of the Internet DNS; promoting competition, consumer trust, and consumer choice in connection with any implementation of generic top-level domains (gTLDs); and meeting the needs of law enforcement and consumer protection in connection with WHOIS implementation and recognizing national laws.	CCWG-Accountability Proposal:  Annex 7, pgs 2-3  Annex 8, pg 1, paras 1-3  Annex 9, pg 2, para 5  Annex 9, pg 4-5, paras 22-23  Annex 9, pg 6, para 39  Annex 9, pg 11, para 79  Annex 9, pg 15, para 140  Annex 10, pg 1, para 3




**IV. Maintain the openness of the Internet**

Component	Assessment	Justification	Citations
Does the proposal maintain the impartial and apolitical administration of ICANN?		<p>Yes. NTIA believes the proposal maintains the impartial and apolitical administration of ICANN. The proposal maintains this posture by empowering the community to hold the Board accountable through a series of powers only used when the community, as a whole, can reach agreement on the need to use these powers. This feature limits the influence any stakeholder or stakeholder group can have to impose political or other pressures on ICANN. The proposal also maintains this apolitical posture by enshrining the bottom-up, multistakeholder process in a Fundamental Bylaw that cannot be changed without supermajority community agreement, and enabling the members of the community, and the community acting as a whole, to challenge decisions that are not bottom-up. Individuals, as well as the community acting as a whole, can use the reconsideration and independent review processes to challenge such decisions.</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 3, pg 1, para 1</p> <p>Annex 3, pg 2, para 4</p> <p>Annex 3, pgs 3-4, paras 10-14</p> <p>Annex 8, pgs 1-8</p> <p>Annex 9, pg 5, paras 33-34</p>
Does the proposal address human rights or the free flow of information?		<p>Yes, the proposal addresses human rights and the free flow of information by enshrining ICANN’s commitment to “neutral and judgment free” administration of the DNS, as well as its commitment to the “openness of the DNS and the Internet,” as Fundamental Bylaws. These provisions will effectively prevent any party from using ICANN to limit access to the DNS, or implement any other policy that would attempt to use the administration of the DNS to restrict the free flow of information online.</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 1, pgs 1-10</p> <p>Annex 3, pg 1, para 3</p> <p>Annex 3, pg 2, para 5</p> <p>Annex 5, pg 16, para 112</p>

## Committee of Sponsoring Organizations (COSO) of the Treadway Commission Internal Control Framework Assessment

In August 2015, the U.S. Government Accountability Office (GAO) published its review of the Internet Assigned Names and Numbers Authority (IANA) stewardship transition. GAO examined 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.<sup>1</sup> GAO recommended that NTIA review relevant internal control frameworks, such as the Committee of Sponsoring Organizations (COSO) framework, and use relevant portions to help evaluate and document whether and how the transition proposal meets NTIA's core goals.<sup>2</sup> NTIA agreed to GAO's recommendation and used the COSO framework as a tool to supplement NTIA's criteria-assessment approach. NTIA's review focused on the specific areas referenced in the GAO report: the COSO principles associated with organizational environment, risk assessment, and monitoring.

In conducting this assessment, NTIA utilized the COSO framework questionnaire developed by Ernst & Young.<sup>3</sup> This questionnaire provides a guide by which to develop relevant probing questions and key concepts to assess the IANA Stewardship Transition Proposal. The framework questionnaire NTIA used as a reference states (as does GAO) that the COSO-based questions are not all inclusive, and not all of the questions apply to every organization. In response to this latter point, as well as the GAO guidance to apply "relevant" parts of the framework, NTIA did not apply every question in the questionnaire and tailored others as appropriate to the transition proposal review. The framework questionnaire also recognizes that a non-compliant response does not necessarily mean a failure, and could indicate areas where future attention is possibly needed.<sup>4</sup> In cases where the proposal is not explicit in responding to and/or addressing the COSO-based questions and principles, NTIA makes recommendations for the Internet Corporation for Assigned Names and Numbers (ICANN) and the multistakeholder community to consider during the proposal implementation phase. However, NTIA does not require that any of these recommendations be resolved as a pre-condition for the completion of the transition.

- Key:**
-  Denotes already in place or completed
  -  Denotes partial compliance and/or an expectation to be compliant when and if the IANA functions contract ends
  -  Denotes no indication of compliance and/or expectation to be compliant when and if the IANA functions contract ends

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<sup>1</sup> U.S. Government Accountability Office, "Internet Management: Structured Evaluation Could Help Assess Proposed Transition of Key Domain Name and Other Technical Functions," (Sep. 18, 2015), available at: <http://www.gao.gov/products/GAO-15-642>.

<sup>2</sup> Ibid



<sup>3</sup> "Transitioning to the 2013 COSO Framework for External Financial Reporting Purposes," Appendix A – 2013 Framework Questionnaire: Probing Questions and Key Concepts, Ernst & Young, March 2014, available at: <http://bit.ly/1rF1fH5>.

<sup>4</sup> Ibid

Attachment 5: COSO Assessment Chart


**Organizational Environment**

According to the GAO, examining the overall environment created by the proposed changes would/could satisfy our core goals for the transition. NTIA used the COSO principles for the “control environment,” and poses a series of relevant questions to assess how the proposed and existing processes and structures set the tone for accountability and meeting the organization’s goals. The assessment below for “organizational environment” looks specifically at those entities proposed to be responsible for the operations of the IANA functions - the Post-Transition IANA (PTI) and ICANN - as well as any new structures or existing institutions and practices that impact the overall organizational environment of the responsible entities.<sup>5</sup> It is important to note that NTIA did not always need to reference the CCWG-Accountability proposal in this portion of the assessment, as the ICANN institution and “organizational environment” is already established. However, the CCWG-Accountability proposal does enhance the “organizational environment” to a certain degree and NTIA references it as appropriate below.


COSO Principle	Relevant Entity	Assessment	Justification	Citations
<b><i>Oversight body commitment to integrity and ethical values</i></b>				
Will the Board of Directors/management be expected to lead by example and demonstrate importance of integrity and ethical values?	ICANN		Yes, ICANN, as the body that will sign the contract with PTI, the Service Level Agreement (SLA) with the RIRs, and the Supplemental Agreement(s) with the IETF, has an explicit expectation that its Board act with integrity and adhere to ethical values. These expectations are articulated in the ICANN Board of Directors’ Code of Conduct. Further, the “ICANN Expected Standards of Behavior” applies to those participating in ICANN multistakeholder processes, including the ICANN Board and staff. These standards of behavior include the expectation for ethical behavior and integrity.	ICANN Board of Directors’ Code of Conduct: <a href="https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en">https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en</a>  ICANN Expected Standards of Behavior: <a href="https://www.icann.org/resources/pages/expected-standards-2012-05-15-en">https://www.icann.org/resources/pages/expected-standards-2012-05-15-en</a>
	PTI		NTIA anticipates that explicit expectations for the PTI Board and management to be articulated during the implementation phase.  Given that PTI is to be an affiliate of ICANN, NTIA expects that PTI will adhere to a form of the existing practices and expectations established for ICANN’s Board members and senior management such as (1) the	ICG Proposal:  Pg 53, para 1112  Pg 154  IANA functions contract, C.6 & H.9:

<sup>5</sup> Both the RIRs and IETF propose to contract directly with ICANN for the performance of the numbers and protocol parameters function, but it is expected that ICANN will subcontract the performance of those functions to PTI. ICANN will ultimately still be responsible for the performance of those functions, which is why ICANN is included in this part of the assessment.

Attachment 5: COSO Assessment Chart



COSO Principle	Relevant Entity	Assessment	Justification	Citations
			<p>ICANN Board Code of Conduct, which explicitly states the expectation for adherence to a high ethical conduct and demonstration of integrity; and (2) the “ICANN Expected Standards of Behavior” that also include the expectation for ethical behavior and integrity.</p> <p>The ICG proposal specifically indicates that the PTI Board and management will adhere to conflict of interest requirements. Further, the ICG proposal specifically states its reliance upon ICANN’s existing and soon to be enhanced accountability mechanisms.</p> <p><b>ACTION: NTIA recommends that ICANN and the community explicitly confirm the expectation that the PTI Board and management lead by example and demonstrate ethical behavior and integrity.</b></p>	<p><a href="http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf">http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf</a></p> <p>ICANN Board of Director’s Code of Conduct: <a href="https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en">https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en</a></p> <p>ICANN Expected Standards of Behavior: <a href="https://www.icann.org/resources/pages/expected-standards-2012-05-15-en">https://www.icann.org/resources/pages/expected-standards-2012-05-15-en</a></p>
<p>Will standards be put in place to guide directives, attitudes, and behaviors of the organization in achieving objectives?</p>	<p>ICANN</p>		<p>Yes, standards are in place at ICANN to guide the organization in achieving its governance objectives, including a Code of Conduct. Further, ICANN will be bound by legal agreements with the IETF and RIRs with respect to PTI’s achieving its IANA performance objectives.</p> <p>In addition, ICANN has codified in its bylaws a requirement that the organization must continue to “employ open, transparent, bottom-up, multistakeholder processes” and apply “policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.”</p>	<p>ICG Proposal:</p> <p>Pg 197, paras 3052-3054</p> <p>Pgs 199-200, para 3063</p> <p>PI. Annex S: Draft Proposed Term Sheet, pgs 142-155</p> <p>ICANN Board of Director’s Code of Conduct: <a href="https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en">https://www.icann.org/resources/pages/code-of-conduct-2012-05-15-en</a></p> <p>ICANN’s Governance Documents: <a href="https://www.icann.org/resources/pages/governance/governance-en">https://www.icann.org/resources/pages/governance/governance-en</a></p>

Attachment 5: COSO Assessment Chart


COSO Principle	Relevant Entity	Assessment	Justification	Citations
				<p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>CCWG-Accountability Proposal:                      Pg 27, para 134</p>
	PTI		<p>NTIA anticipates that such standards will be put in place for PTI during the implementation phase.</p> <p>As an affiliate of ICANN, many of the standards in place for ICANN are expected to apply to PTI as well (e.g., a code of conduct, conflict of interest policy, and governance guidelines). Further, as PTI will be a subsidiary/affiliate of a California not-for-profit, PTI will be bound by the California Corporations Code requirement for a base standard of conduct.</p> <p>On the issue of whether PTI will have standards in place to guide its actions in achieving IANA-related objectives, ICANN will enter into a contract with PTI, which will articulate the community’s expectations in PTI’s performance of the naming functions. While the IETF and RIRs are entering into legal agreements with ICANN to perform the protocol parameter and numbering functions, ICANN will subcontract this work to PTI. The “standards” for achieving objectives in the performance of these functions are the IETF MOU and Supplemental Agreement, and the RIR SLA contract.</p> <p><b>ACTION: NTIA recommends that ICANN and the community confirm that standards will be put in place for the purpose of guiding directives, attitudes, and behaviors of PTI in achieving objectives.</b></p>	<p>ICG Proposal:                      Pg 197, paras 3052-3054                      Pgs 199-200, para 3063</p> <p>PI. Annex S: Draft Proposed Term Sheet, pgs 142-155</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>ICANN’s Governance Documents:  <a href="https://www.icann.org/resources/pages/governance/governance-en">https://www.icann.org/resources/pages/governance/governance-en</a></p> <p>California Corporations Code, Section 5230-5239:  <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&amp;group=05001-06000&amp;file=5230-5239">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&amp;group=05001-06000&amp;file=5230-5239</a></p>




Attachment 5: COSO Assessment Chart

COSO Principle	Relevant Entity	Assessment	Justification	Citations
<p>Will processes be put in place to evaluate Board and management adherence to standards of conduct?</p>	<p>ICANN</p>		<p>Yes, there are processes in place to evaluate the adherence of the ICANN Board and management to standards of conduct.</p> <p>There are existing reviews (including an annual review and report on the Board’s Code of Conduct) in place for ICANN leadership and for organizational performance. ICANN’s reconsideration process and independent review process are available to community members to challenge Board or staff decisions that are not in line with ICANN’s Bylaws or policies.</p> <p>In addition, the community is incorporating the existing Affirmation of Commitments into ICANN’s Bylaws, which will ensure that regular accountability and transparency reviews become permanent. These reviews are meant to continually assess and improve ICANN Board governance which includes an ongoing evaluation of Board performance.</p>	<p>Board Governance Committee-Annual Reports on Code of Conduct:  <a href="https://www.icann.org/resources/pages/annual-reports-2012-02-25-en#code-of-conduct">https://www.icann.org/resources/pages/annual-reports-2012-02-25-en#code-of-conduct</a></p> <p>ICANN Accountability Web Page:  <a href="https://www.icann.org/resources/accountability">https://www.icann.org/resources/accountability</a></p> <p>ICANN Accountability and Transparency Review:  <a href="https://www.icann.org/resources/reviews/aoc/atrt">https://www.icann.org/resources/reviews/aoc/atrt</a></p> <p>CCWG-Accountability Proposal:                      Pg 39, para 194</p>
	<p>PTI</p>		<p>Explicit “standards of conduct” have not yet been developed for PTI, but NTIA expects that they will be established during the implementation period.</p> <p>In so far as standards of conduct are intended to guide the directives, attitudes, and behaviors of the organization in achieving objectives, the transition proposal clearly articulates expectations associated with performing the functions. Therefore, the proposed contracts/agreements and the performance expectations stipulated therein are a form of standards of conduct providing processes to evaluate PTI Board and management adherence to those standards.</p> <p>Reviews of PTI’s performance specific to the names-related function, including the oversight performed by</p>	<p>ICG Proposal:                      Pg 93, paras 1267-1272</p> <p>Pg 94, para 1276</p> <p>Pg 95, para 1279</p> <p>Pg 197, paras 3052-3054</p> <p>P1. Annex F: IANA Function Reviews-Statement of Work, pgs 93-100</p> <p>P1. Annex G: Proposed Charter of the Customer Standing</p>


Attachment 5: COSO Assessment Chart

COSO Principle	Relevant Entity	Assessment	Justification	Citations
			<p>and accountability of PTI leadership, will take place. The Customer Standing Committee (CSC) will conduct regular operational oversight for purposes of monitoring performance. The CSC will be responsible for reviewing PTI’s monthly reports as to be required in the contract with ICANN as well as review any complaint received regarding PTI’s performance. The proposed IANA Functions Review Team (IFRT) will be responsible for conducting reviews in consultation with the CSC. The first IFR will be conducted after two years and subsequent ones no more than every five years.</p> <p>For the numbering function, the RIRs proposed a Review Committee to periodically review ICANN’s performance per their SLA and standards of conduct to be contained therein (performance requirements). For the protocol parameters function, the IETF stipulates in their supplemental agreement annual reviews of ICANN’s performance.</p> <p><b>ACTION: NTIA recommends the respective communities and ICANN consider, if they have not already, additional processes by which to evaluate the Board and management of PTI in meeting any standards of conduct they deem necessary to guide ethical values and integrity in achieving their objectives.</b></p>	<p>Committee, pg 101</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>
<b>Exercise Oversight Responsibility</b>				
<p>Will the makeup of the Board of Directors, including the number of Directors and their background and expertise, be appropriate given the nature of the</p>	<p>ICANN</p>		<p>Yes, the makeup of the ICANN Board is appropriate and is periodically evaluated.</p> <p>The ICANN Board has 16 voting members and five non-voting liaisons. The ICANN SOs each select two voting members and the ALAC selects one. The remaining eight voting members are selected by a Nominating</p>	<p>Beginner’s Guide to Participating in ICANN:  <a href="https://www.icann.org/en/system/files/files/participating-08nov13-en.pdf">https://www.icann.org/en/system/files/files/participating-08nov13-en.pdf</a></p> <p>ICANN Board Member Evaluation</p>



Attachment 5: COSO Assessment Chart

COSO Principle	Relevant Entity	Assessment	Justification	Citations
<p>organization? Will the makeup and skills of the board members be periodically evaluated?</p>			<p>Committee. The non-voting liaisons provide technical advice to the Board, representing the remaining ICANN advisory committees and the Internet Engineering Task Force.</p> <p>ICANN’s Bylaws state that it is an organization dedicated to “seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.” ICANN’s Board, by having Directors appointed by each of its SOs, ensures the functional, geographic, and cultural diversity of the Internet is represented on the Board.</p> <p>Each year a Board Evaluation is conducted on all ICANN Board members entering into the last year of their terms. This review is complemented by periodic structural reviews that review the Board’s makeup and performance. Together, these reviews create a meaningful evaluation of any performance issues stemming from its makeup.</p>	<p>Process:  <a href="https://www.icann.org/en/group/s/board/governance/evaluation-process-16nov13-en.pdf">https://www.icann.org/en/group/s/board/governance/evaluation-process-16nov13-en.pdf</a></p> <p>ICANN Accountability and Transparency Review:  <a href="https://www.icann.org/resources/reviews/aoc/atrt">https://www.icann.org/resources/reviews/aoc/atrt</a></p> <p>ICANN Organizational Reviews:  <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p>
	<p>PTI</p>		<p>The ICG proposal did not provide this level of detail with respect to the makeup of the PTI Board, nor did NTIA require it.</p> <p>However, NTIA finds that the PTI organizational makeup is appropriate, and expects that further details regarding how the PTI Board’s makeup and skills will be evaluated will be provided during the proposal implementation phase.</p> <p>The proposed PTI Board would consist of five people, comprised of three Directors employed by ICANN and two independent Directors appointed using “an appropriately rigorous nomination mechanism.” The</p>	<p>ICG Proposal:                      Page 53, paras 1112-1114</p>



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			<p>skillset of the Board is recommended to be evaluated as a whole and not on a per-member basis, while also ensuring that each individual member is appropriately qualified to serve. The complete skill set of the board, as articulated in the proposal, should be balanced and cover an appropriate and complete composite of executive management, operational, technical, financial, and corporate governance experience.</p> <p>Since the proposed role of the PTI Board will be limited to providing oversight of PTI operations performed by 20 individuals, the proposed makeup and size of the PTI Board is sufficient. This is especially the case since the proposal creates other mechanisms for operational oversight provided by the community (CSC and reviews).</p> <p><b>ACTION: NTIA recommends that ICANN and the community consider, if they have not already, processes by which to periodically evaluate the PTI Board makeup and the skills of the members.</b></p>	
<p>Will the independence of Board members be adequately reviewed?</p>	<p>ICANN</p>		<p>Yes, there are overarching ICANN Board reviews in place as well as the nomination process that occurs following the end of each director’s term which allow poor performers (or those not reflecting adequate independence) to be not re-nominated.</p> <p>Per ICANN Bylaws, each Director is required to submit, not less than once a year, a statement outlining all businesses and other affiliations that relate to the business and other affiliations of ICANN. Further, each Director is responsible for disclosing to ICANN any matter that could reasonably be considered to make him/her an “interested director” or “interested person” within the meaning of Section 5233 /5227 of the California Nonprofit Public Benefit Corporation Law.</p>	<p>ICANN Board Member Evaluation Process:  <a href="https://www.icann.org/en/groups/board/governance/evaluation-process-16nov13-en.pdf">https://www.icann.org/en/groups/board/governance/evaluation-process-16nov13-en.pdf</a></p> <p>ICANN Bylaws (Board Specific):  <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a></p> <p>ICANN Ombudsman:  <a href="https://www.icann.org/ombudsman">https://www.icann.org/ombudsman</a></p>


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			<p>There is also an Ombudsman in place that provides an internal evaluation of complaints by members of the community who believe they have been treated unfairly (including by the ICANN Board). Included in the Ombudsman responsibilities is an annual report analyzing the year’s complaints and resolutions, which could include complaints against the Board’s or Board member’s independence.</p>	
	PTI		<p>The ICG proposal takes into consideration independence of the PTI Board and proposes mechanisms by which to ensure a sufficient level of independence. The PTI Board is proposed to consist of five people, comprised of three Directors employed by ICANN and two independent Directors appointed using “an appropriately rigorous nomination mechanism.” The skill set of the Board is recommended to be evaluated as a whole and not on a per-member basis, while also ensuring that each individual member is suitable and appropriately qualified to serve. The complete skill set of the Board should be balanced and cover an appropriate and complete composite of executive management, operational, technical, financial, and corporate governance experience.</p>	<p>ICG Proposal: Pg 53, paras 1112-1114</p>
<p>Will the Board have a role in the design, implementation, and/or operation of internal controls?</p>	ICANN		<p>Yes. The ICANN Board has in place an Audit Committee, which includes overseeing ICANN’s financial and accounting controls. There is also a Board Governance Committee charged with overseeing compliance with codes of conduct and other corporate governance matters. In addition, there is a Board-level Risk Committee that oversees risk management for ICANN as an organization.</p> <p>With respect to the IANA functions objectives, associated internal controls are specified in the RIR SLA regarding numbering and the IETF MoU/Supplemental</p>	<p>ICG Proposal: Pg 197, paras 3052-3054</p> <p>See ICANN Board Committees: <a href="https://www.icann.org/resources/pages/board-of-directors">https://www.icann.org/resources/pages/board-of-directors</a></p> <p>Draft SLA for IANA Numbering Services: <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>

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			<p>Agreement regarding the protocol parameters and ICANN was involved in the design of those agreements.</p> <p>In addition, ICANN’s Board is responsible for initiating Organizational Reviews, which review the effectiveness and relevance of ICANN’s SOs, ACs (excluding the GAC), and other critical bodies like the Nominating Committee. The Board establishes the criteria and standards under which these reviews shall occur.</p>	<p>Board Audit Committee Charter: <a href="https://www.icann.org/resources/pages/charter-2012-02-25-en">https://www.icann.org/resources/pages/charter-2012-02-25-en</a></p> <p>ICANN Organizational Reviews: <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p>
	PTI		<p>Yes. The role of the PTI Board will be limited and most of PTI’s oversight and internal controls will be dictated through agreements with ICANN. Specifically, controls associated with performance of the names function will be detailed in the PTI contract with ICANN. The role of the PTI Board in designing the controls associated with the numbering and protocol parameters functions is not the same, as those agreements are negotiated between ICANN and the RIRs, and ICANN and the IETF respectively. However, since ICANN will subcontract the performance of these functions to PTI, PTI will be responsible for implementation and operations as articulated in the ICANN SLA with the RIRs and the MoU/supplemental agreement between ICANN and the IETF, but they will be directed through subcontracts between ICANN and PTI.</p> <p>The function of the PTI Board is to provide oversight of PTI operations and therefore it will be expected to ensure implementation and operation of internal controls take place.</p>	<p>ICG Proposal: Pg 197, paras 3052-3054</p> <p>PI. Annex S: Draft Proposed Term Sheet, pgs 142-155</p> <p>Draft SLA for IANA Numbering Services: <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>
Will there be a charter outlining the duties and responsibilities of the audit committee (or other similarly focused	ICANN		<p>Charters are in place for all the existing ICANN Board-level committees that have an audit purpose, including the Audit Committee.</p> <p>Further, ICANN’s Bylaws outline the Board’s role and</p>	<p>ICANN Board Audit Committee: <a href="https://www.icann.org/en/groups/board/audit/charter">https://www.icann.org/en/groups/board/audit/charter</a></p> <p>ICANN Board Governance</p>

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committee)?			<p>responsibilities for the initiation of organization-wide Organizational Reviews. The Bylaws compel the Board to define the criteria and standards of reviews.</p> <p>The CCWG-Accountability proposal will also create a community audit process to investigate fraud or gross mismanagement of funds by the Board. However, the proposal does not specify the creation of an audit committee or the use of any existing committee or mechanism to oversee the audit. Thus, there is not a proposed charter nor are there detailed criteria specified regarding this audit process. As this level of detail was not required, NTIA expects that the community will address this during the proposal implementation phase.</p> <p><b>ACTION: NTIA recommends that the community specify who or what will be responsible for overseeing the proposed community audit process including whether or not a charter will be established or other vehicle by which to articulate the duties and responsibilities associated with audit oversight.</b></p>	<p>Committee:  <a href="https://www.icann.org/en/groups/board/governance/charter">https://www.icann.org/en/groups/board/governance/charter</a></p> <p>ICANN Board Risk Committee:  <a href="https://www.icann.org/en/groups/board/risk/charter">https://www.icann.org/en/groups/board/risk/charter</a></p> <p>CCWG-Accountability Proposal:                       Pg 14, para 52</p>
	PTI		<p>The ICG proposal did not provide this level of detail, nor did NTIA require it. NTIA expects that a charter or other vehicle will be developed during the proposal implementation phase that outlines the duties of the audit or other committee responsible for overseeing PTI financials and/or its budget.</p> <p>The ICG proposal specifies that a process needs to be developed for performing a specific IANA budget review and audit that will include the PTI annual budget as well. This process development is an opportunity by which the community would specify a charter or other similar vehicle for the purpose of defining a PTI audit/oversight</p>	<p>ICG Proposal:                       Pg 172-173, paras 2090-2093</p> <p>P1. Annex F: IANA Functions Reviews-Statement of Work Duration and Review Periodicity, pgs 93-100</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee, pgs 101-106</p>

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			<p>committee’s responsibilities.</p> <p>Much of the IANA operational costs and budget will continue to be the responsibility of ICANN. There is already in place at ICANN a Board-level Audit Committee with a charter that outlines its duties and responsibilities, which include overseeing all audit related activities including ICANN’s internal financial and accounting controls and procedures.</p> <p>In terms of overseeing internal controls specific to performing the IANA functions, there are a number of audit committee-like bodies and processes that are to be chartered. The ICG proposal requires numerous audits as part of the contract between ICANN and PTI, as well as the SLA between ICANN and the RIRs and the MoU/Supplemental agreement between the IETF and ICANN.</p> <p>Specific to the names related function, the ICG proposal creates an oversight committee (CSC) responsible for reviewing the outputs of the contractual audit requirements. Additionally, ICANN will convene an IANA Functions Review Team to regularly assess PTI’s performance. These bodies therefore will perform an audit function for the name-related function. The CSC has a draft charter and statement of work for the reviews.</p> <p>The RIRs will establish a Review Committee for the purpose of monitoring ICANN’s/PTI’s performance of the number-related functions that will take into consideration audit requirements detailed in the numbers SLA. The RIRs have finalized a charter for this Review Committee.</p>	<p>P1. Annex S: Draft Proposed Term Sheet, pg 153</p> <p>P1. Annex Q: IANA Budget, pgs 135-136</p> <p>ICANN Board Audit Committee Charter:  <a href="https://www.icann.org/resources/pages/charter-2012-02-25-en">https://www.icann.org/resources/pages/charter-2012-02-25-en</a></p> <p>Final Version IANA Numbering Services Review Committee Charter:  <a href="https://www.nro.net/review-committee-charter-final">https://www.nro.net/review-committee-charter-final</a></p>




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			<p>Lastly, the IETF plans to review ICANN's/PTI's performance on an annual basis per their supplemental agreement using existing internal structures.</p> <p>The customers of the relevant functions provide audit committee type functions. With these proposed audits and mechanisms by which to review them, it is not clear that an audit committee at the PTI Board level is necessary considering the small size and limited responsibilities of the PTI Board. Further, ICANN (as signatory to the contract with PTI) has a Board level audit and other related committees in place.</p> <p><b>ACTION: NTIA recommends that ICANN and the community consider extending the ICANN Board Audit Committee responsibilities to the PTI and/or that an audit committee be established at the PTI Board level if they deem it necessary.</b></p>	
<p>Will there be communication lines between the Board (or appropriate management) and auditors/oversight body(ies)?</p>	<p>ICANN</p>		<p>Specific lines of communication are called for throughout the ICANN organization, including between the Board/management and those responsible for auditing and providing oversight. These lines of communication are articulated in ICANN's Bylaws and fleshed out in Board resolutions and correspondence.</p> <p>For example, the Board's Audit Committee acts as an interface between independent auditors and ICANN staff responsible for annual financial reporting, as well as overseeing the selection of independent auditors.</p> <p>In the case of Organizational Reviews, the Board's Organizational Effectiveness Committee selects an independent evaluator via a public Request for Proposal to undertake an external review of an ICANN</p>	<p>CCWG-Accountability Proposal: Annex 1, pg 1, para 8 Annex 2, pg 1, para 1</p> <p>ICANN's Board Audit Committee: <a href="https://www.icann.org/resources/pages/charter-2012-02-25-en">https://www.icann.org/resources/pages/charter-2012-02-25-en</a></p> <p>ICANN Board Organizational Effectiveness Committee: <a href="https://www.icann.org/resources/pages/charter-oec-2015-08-14-en">https://www.icann.org/resources/pages/charter-oec-2015-08-14-en</a></p>



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			<p>organization. The independent evaluator delivers a report to the Organizational Effectiveness Committee, who posts the report for public review. The report is also sent to a Working Party comprised of members of the organization being reviewed, who develop a feasibility and implementation review of the independent review. Once this is received, the Organizational Effectiveness Committee considers the results of the independent review and the input of the Working Party to make recommendations to the entire Board. In the case of a review of the ICANN Board, the process remains the same, however the Board itself selects a subset of current and former Board members to join the Working Party responsible for evaluating the feasibility of the independent reviewer’s recommendations. These lines of communication are clearly established, and have been tested through implementation.</p> <p>In addition to existing lines of communication, the CCWG-Accountability proposal provides that the Empowered Community can retain, through ICANN, a third-party firm to undertake an audit to investigate gross mismanagement and fraud. The lines of communication between the community, ICANN, and this independent auditor are not clear. As NTIA did not require this level of detail, NTIA expects that the community will address this during the proposal implementation phase.</p> <p><b>ACTION: NTIA recommends that the community establish to whom any auditor retained to investigate gross mismanagement and fraud directly reports its findings, and how these findings will be considered.</b></p>	<p>ICANN Bylaws:  <a href="http://www.icann.org/resources/pages/governance/bylaws-en#IV">http://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>GNSO Organizational Review Process:  <a href="https://community.icann.org/display/GR2/GNSO+Review+2014+Home">https://community.icann.org/display/GR2/GNSO+Review+2014+Home</a></p> <p>Board Organizational Review:  <a href="https://www.icann.org/en/system/files/files/board-review-final-26jan10-en.pdf">https://www.icann.org/en/system/files/files/board-review-final-26jan10-en.pdf</a></p> <p>Example Request for Proposal:  <a href="https://www.icann.org/news/announcement-6b-2014-04-23-en">https://www.icann.org/news/announcement-6b-2014-04-23-en</a></p>


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	PTI		<p>The community will develop a process by which to review and audit the PTI and IANA budget during the implementation phase.</p> <p>In terms of communication lines being established between PTI management and auditors of IANA functions performance, these have been determined. For the naming function, the draft CSC charter states that a representative from PTI will be a liaison to the CSC and that both the CSC and PTI will designate primary and secondary points of contact to facilitate communication. There will also be an IANA functions Operator staff member (PTI staff) appointed as a point of contact for the future IANA Functions Review Teams.</p> <p>With respect to the protocol parameter function, it is understood-based largely on existing practice, that there will be a communication line between the IETF and the party responsible for the performance of the protocol parameter function. However, this is not explicit in the ICG proposal.</p> <p>Similar to the protocol parameters, it is not explicit, but understood, that the numbering Review Committee will have a communication line with the party responsible for performing the numbering function.</p> <p><b>ACTION: NTIA recommends that ICANN and the community clearly articulate communication lines as they develop a process by which to review and audit the PTI and IANA-specific budgets. Further, the RIRs and IETF could consider making specific references to a line of communication between them (in the auditing capacity) and PTI (as the entity to perform their relevant functions).</b></p>	<p>ICG Proposal:</p> <p>Pg 96, para 1285</p> <p>Pg 102, para 1327</p> <p>Pg 103, para 1331</p>


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<b><i>Establish Structure, Responsibility, and Authority</i></b>				
Is the organizational structure appropriate for the size and operating practices of the organization to enable management to carry out their oversight responsibilities?	ICANN		<p>Yes, the organizational structure is appropriate to carry out oversight responsibilities. Implicit in ICANN’s bottom-up approach is oversight of processes, given the necessity for transparency and collaboration to achieve policy goals. This structure is complemented by the use of independent reviews which ensure that the bodies suggesting policy to the ICANN Board, and the Board itself, remain effective and accountable.</p> <p>The CCWG-Accountability proposal’s recommendations build on the current ICANN structure by empowering the community to hold the ICANN Board accountable. This is appropriate given the bottom-up, multistakeholder processes and approaches that are a cornerstone of ICANN’s operations.</p>	<p>ICANN Bylaws:  <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a></p> <p>ICANN’s Mission and Core Values:  <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a></p> <p>CCWG-Accountability Proposal:                      Pg 13, paras 45-46                      Pg 27, para 134</p>
	PTI		<p>Yes, the organizational structure is appropriate when considering the size of PTI and the proposed operating practices for oversight.</p> <p>Based on information in the ICG proposal, PTI will have a small board with “minimal responsibilities.” The existing IANA department and administrative staff from ICANN will be transferred to PTI.</p> <p>It is not yet clear what the oversight responsibilities of the PTI Board will be, but as the effective sole member, ICANN is obliged to ensure that PTI is sufficiently equipped to meet the minimum code of conduct requirements found in California Law for California-based not-for-profits.</p> <p>Further, much of the oversight pertaining to the performance of the IANA functions is proposed to be exercised through the CSC, IANA Function Reviews</p>	<p>ICG Proposal:                      Pg 11, para 14                      Pg 12, paras 18 and 20                      Pg 52, paras 1108-1109                      Pg 53, para 1112</p>


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			<p>(including those of the IRFT/SIRFT, the IETF, and RIR Review Committee), and the relevant contractual tools (PTI contract, IETF MoU/Supplemental Agreement, and RIR SLA).</p> <p>This structure appears to be sufficient. Further, there are mechanisms proposed (such as reviews) that would allow the structure to be amended to better meet the organization’s objectives if necessary.</p>	
<p>Are reporting lines clearly defined?</p>	<p>ICANN</p>		<p>ICANN’s reporting lines are outlined in the organization’s Bylaws. The fundamental roles of ICANN’s Board or SOs and ACs, and how they factor into ICANN’s decision-making, are detailed in Sections VI through XI. Each SO or AC is responsible for reporting its policy recommendations to the ICANN Board.</p> <p>The CCWG-Accountability proposal enhances this existing structure by enabling the community to challenge a Board decision. The reporting lines are clearly established in the proposal for how this process would work. If a Decisional Participant decides to escalate a petition to use a community enforcement power, there are clear lines of communication and reporting established for communication to the ICANN Board and to other SOs and ACs. An SO or AC must formally contact other SOs or ACs to request them in a petition. At least one SO or AC must support the petition (or two in some cases) for ICANN staff to host a Community Forum for all stakeholders to discuss the issue driving the petition. The SO or AC must designate a liaison or liaisons to answer questions in the forum. The ICANN Board will be required to participate, with the goal of resolving the issue through dialogue. If the issue is not resolved through dialogue, the Decisional Participants must vote on whether to use a community</p>	<p>ICANN Bylaws:  <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a></p> <p>CCWG-Accountability Proposal:            Annex 2, pgs 4-9, paras 17-38</p>



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			<p>power. If the vote meets the threshold for the specific power, the community must advise the Board on its decision and recommend it take the necessary action to comply with its decision. If no action is taken, the community can proceed with its enforcement actions.</p>	
	PTI		<p>Reporting lines are clearly defined in that the naming function will be performed by PTI via a contract with ICANN. It is expected that points of contact will be identified in the contract and/or other documentation, during the proposal implementation phase.</p> <p>According to the Proposed Term Sheet between ICANN and PTI, the primary parties that need to be involved in key changes and in communicating (“reporting”) deliverables are identified. The ICG proposal also details how and to whom the CSC will communicate to resolve customer service complaints.</p> <p>With respect to the RIRs, ICANN will ultimately be responsible for performing the numbering function as signatory to the RIR SLA, but since the operations will be subcontracted to PTI, established reporting lines may be necessary between the RIRs and PTI as well. The RIRs will likely rely on much of the existing structure and process, in which reporting lines are already established. Escalation contacts are also already noted on the IANA web page. Other reporting lines have not been made explicit in the ICG proposal or other available materials.</p> <p>Similar to the RIRs and numbering, ICANN will also be ultimately responsible for the protocol parameters function through an MoU/Supplemental Agreement with the IETF, but PTI will actually perform the function. While the details in the ICG proposal are limited, it is explicit that the IETF will rely on existing reporting</p>	<p>ICG Proposal:</p> <p>P1. Annex S: Draft Proposed Term Sheet, pg 151</p> <p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111, paras 1367, 1377-1381</p> <p>IANA Escalation:  <a href="http://www.iana.org/help/escalation-procedure">http://www.iana.org/help/escalation-procedure</a></p>

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			<p>practice. This includes the escalation points of contact listed on the IANA web page. Most interaction between those performing the protocol parameters function and the IETF is currently through the Protocol Parameters Engagement Manager at ICANN.</p> <p><b>ACTION: NTIA recommends that ICANN, the RIRs, and IETF consider, if they have not already, explicitly indicating key lines of reporting in their contracts and/or other agreements with PTI/ICANN.</b></p>	
<p>Are there appropriate policies in place or envisioned for achieving the organizations objectives? Are there policies for matters such as problem resolution, security practices, transitioning to a successor, etc.?</p>	<p>ICANN</p>		<p>Yes, appropriate policies are in place at ICANN.</p> <p>ICANN’s Bylaws provide for the role of the Board, supporting organizations, advisory committees, mission, fiscal matters, staff policies, and other essential ICANN functions. The Bylaws also detail avenues for problem resolution throughout the organization, ranging from the initiation of a policy development process for creating or changing a specific ICANN policy to reconsideration and independent review processes to challenge decisions. There is also an ombudsman who can attempt to resolve issues using dispute resolution techniques.</p> <p>In addition, the Bylaws provide for Board Director removal, which can be achieved by a three-fourths majority vote of all other Directors. The CCWG-Accountability proposal will build on this existing mechanism by allowing the Empowered Community to remove individual Board Directors, as well as the entire Board. The proposal emphasizes engagement to resolve issues between the community and the Board, with the removal of a Director or the entire Board as an option of last resort.</p>	<p>CCWG-Accountability Proposal: Annex 4, pg 9, para 49 Annex 2, pg 1, para 1</p> <p>Board Organizational Review: <a href="https://www.icann.org/resources/reviews/org/board">https://www.icann.org/resources/reviews/org/board</a></p> <p>ICANN Security Team: <a href="https://www.icann.org/resources/pages/security-2012-02-25-en">https://www.icann.org/resources/pages/security-2012-02-25-en</a></p> <p><u>ICANN Bylaws:</u> <a href="https://www.icann.org/resources/pages/governance/bylaws-en#VI">https://www.icann.org/resources/pages/governance/bylaws-en#VI</a></p>

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	PTI		<p>On the matter of security practices, ICANN has a Security Team that looks at operational and physical security. This is handled at the staff level. The Security Team's policies are open to community input.</p> <p>Yes, appropriate policies are proposed.</p> <p>As the entity to perform the IANA functions, PTI will be subject to policies and procedures for a range of matters, which are largely to be dictated by the relevant contracts/agreements as described in the ICG proposal. For example, there are conflict and dispute resolution processes established, escalation procedures, and a process for separation/transition to a successor operator. Further, there are expectations identified with respect to security practices and service levels proposed for the PTI contract with ICANN, the RIR SLA contract, and the IETF MoU/Supplemental Agreement.</p> <p>The ICG proposal also clearly articulates that the primary responsibility of PTI is operation of the IANA functions, and the responsibility of policy development associated with the IANA functions lies with the respective customer communities and the multistakeholder organizations that represent them (ICANN, RIRs, IETF).</p>	<p>ICG Proposal: Pgs 28-29, para 97 Pg 197, paras 3052-3054 PI. Annex S: Draft Proposed Term Sheet, pgs 142-155 Draft SLA for IANA Numbering Services: <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>
Are processes called for or envisioned to evaluate the organizational structure to ensure it can best meet objectives and adapt to new ones?	ICANN		<p>Yes, ICANN's current Bylaws detail in Section IV an independent structural review to determine whether an ICANN organization has a continuing purpose in the ICANN structure, and, if so, whether any change in structure or operations is desirable to improve its effectiveness. The CCWG-Accountability proposal includes in these reviews how the organization remains accountable to its constituency, which is essential for making sure that an organization is meeting the objectives of its stakeholders and adapting to changes in its constituency. The CCWG will flesh out the details of</p>	<p>ICANN Bylaws: <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a> CCWG-Accountability Proposal: Annex 10, pg 4, para 15 Annex 12, pg 2, para 5</p>





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	PTI		<p>this review process in its Bylaw-mandated post-transition workstream.</p> <p>Yes, processes are proposed to evaluate the organizational structure and to adapt if necessary.</p> <p>The IANA Functions Review (IFR) is proposed to take place two years from the date of the IANA Stewardship Transition and subsequent reviews are recommended to take place in no more than five-year intervals. The reviews are targeted largely at PTI’s performance, but will also look at the effectiveness of the new structures created to perform oversight. The review will identify areas of improvement in the performance of the IANA functions and associated oversight mechanisms.</p>	<p>ICG Proposal:</p> <p>P1. Annex F: IANA Function Reviews-Statement of Work Duration and Review Periodicity, pg 93, paras 1267, 1268, 1270; pg 94, para 1276; pg 95, para 1279</p>
<b>Demonstrate Commitment to Competence</b>				
Are there screening procedures proposed for selecting key staff, committee, and review team members?	ICANN		<p>Yes, screening procedures currently exist. ICANN’s Bylaws detail the criteria for the selection of Board Directors and offer general guidelines on who should be a Member of which SO or AC, as well as what the leadership in each one of those organizations should be. ICANN’s senior management sets ICANN staff selection policies.</p> <p>In the CCWG-Accountability proposal’s recommendation to create a standing independent review panel that can review Board decisions, there are recommendations for the makeup of this panel. The proposal recommends that the panel be comprised of experts with significant legal expertise, particularly international law, corporate governance, judicial systems, and dispute resolution.</p>	<p>ICANN Bylaws: <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a></p> <p>CCWG-Accountability Proposal: Annex 7, pg 2</p>
	PTI		<p>Yes, there are screening procedures proposed.</p> <p>Key PTI Staff: The proposal indicates specific and detailed requirements for a qualified program manager,</p>	<p>ICG Proposal: Pg 173; para 2093</p>

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			<p>which is incorporated in the proposed contract term sheet between ICANN and PTI. Further, any changes to key personnel require PTI Board consent and the replacement personnel must possess equal or exceeding qualifications. PTI management/staff requests for changes in key personnel must be submitted to the PTI Board 15 days prior to making any permanent substitution and the request should contain detailed explanation of circumstances necessitating the change, complete resumes of the substitutes and any other data requested by the PTI Board. There are also conflict of interest requirements in the current contract with NTIA that the community proposes to include in the contract between ICANN and PTI.</p> <p>CSC: the plan proposes that representatives have direct experience and knowledge of the IANA functions. Composition includes the naming customers and a liaison from PTI. Members will be appointed by their respective communities, but all candidates are required to submit an expression of interest articulating what skills they bring, their knowledge of IANA functions, their understanding of CSC purpose, and their commitment to time necessary to effectively participate in the CSC. The customer community (represented by the ccNSO and RySG) is expected to consult with each other prior to finalizing their selections with a view to providing, to the extent possible, diversity in terms of geography and skill set.</p> <p>IFR Team: Membership will be comprised of community members to ensure adequate representation of the IANA customers and the broader community. Individuals interested in participating in the review team must submit an expression of interest that indicates</p>	<p>P1. Annex F: IANA Function Reviews-Statement of Work Duration and Review Periodicity, pg 95, para 1283; pg 96, para 1288; pg 97, para 1289</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee (CSC), pg 103, paras 1334-1336</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 150, 151, 154</p>



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			<p>their skills that will contribute to the review, knowledge of the functions, understanding of the IFR purpose, and understanding of the time commitment required and their ability to commit. It will be left to the relevant SO/AC to appoint individuals based on these statements.</p> <p>RIR Numbering Review Committee: Membership will be composed of suitably qualified Internet number community representatives from each RIR region. The selection of these representatives is to be conducted in an open, transparent, and bottom up manner appropriate for each RIR region. There should be equal representation from each RIR region.</p>	
Does the organization have policies and practices in place to articulate the skills, competencies and behaviors that should be in place at all levels of the organization?	ICANN		Yes, ICANN’s Bylaws articulate the skills and competencies that should be held by its Board of Directors, and also defines the roles and explains who should participate in its various SOs and ACs (e.g., the Country Code Names Support Organization). ICANN has an Expected Standards of Behavior for anyone taking part in ICANN’s multistakeholder process.	<p>ICANN Bylaws: <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a></p> <p>ICANN Expected Standards of Behavior: <a href="https://www.icann.org/resources/pages/expected-standards-2012-05-15-en">https://www.icann.org/resources/pages/expected-standards-2012-05-15-en</a></p>
	PTI		<p>As the proposed PTI will be a subsidiary/affiliate of ICANN, it is expected that many of the policies and practices currently in place at ICANN will apply to PTI and the ICANN-based committees/teams (CSC, IFR Teams). These include the “ICANN Expected Standards of Behavior.” Related policies and practices specific to PTI and its new accountability structures are not expected to be developed until after NTIA approval of the proposal, but skills and competencies are clearly articulated in the proposal.</p> <p>Key PTI Staff: The proposal indicates specific and</p>	<p>ICG Proposal:</p> <p>Pg 173, para 2093</p> <p>P1. Annex F: IANA Function Reviews-Statement of Work Duration and Review Periodicity, pg 96, para 1288; pg 97, para 1292</p> <p>P1. Annex G: Proposed Charter of the Customer Standing</p>



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			<p>detailed requirements for a qualified program manager, which is incorporated in the proposed contract term sheet. There are also conflict of interest requirements in the current contract with NTIA that the community proposes to include in the PTI contract with ICANN.</p> <p>CSC: It is proposed that representatives have direct experience and knowledge of the IANA functions. All candidates are required to submit an Expression of Interest articulating what skills they bring, knowledge of IANA functions, understanding of CSC purpose, and a commitment to time necessary to effectively participate in the CSC.</p> <p>IFR Team: It is proposed that membership be comprised by community members in a manner that ensures adequate representation of the IANA customers and the broader community. Individuals interested in participating in the review team must submit an expression of interest that indicates their skills that will contribute to the review, knowledge of the functions, understanding of the IFR purpose, and understanding of the time commitment required and their ability to commit. It is clearly stated in the draft charter that all members selected are expected to participate actively and that reviews will be “high-intensity projects.”</p> <p>RIR Numbering Review Committee: This committee will be composed of suitably qualified Internet Number Community representatives from each RIR region. The selection of these representatives will be conducted in an open, transparent, and bottom up manner appropriate for each RIR region.</p> <p><b>ACTION: NTIA recommends that ICANN and the</b></p>	<p>Committee (CSC), pg 103, para 1334</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 150, 151, 154</p> <p>ICANN Expected Standards of Behavior:  <a href="https://www.icann.org/resources/pages/expected-standards-2012-05-15-en">https://www.icann.org/resources/pages/expected-standards-2012-05-15-en</a></p>

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			<p><b>community consider, if they have not already, confirming that existing ICANN practices and policies will apply to PTI and/or that PTI-specific policies and practices will be developed.</b></p>	
<p>Does the organization have policies and practices in place that include evaluating performance, including taking remedial actions for any issues identified?</p>	<p>ICANN</p>		<p>Yes, ICANN’s Bylaws include independent Organizational Reviews that review the effectiveness of each of ICANN’s Board, SOs, ACs (excluding the GAC), and other key organizations. In addition, ICANN’s Ombudsman offers dispute resolution mechanisms that can allow individuals to address issues with other parts of the ICANN community.</p> <p>The Affirmation of Commitments outlines several reviews that address performance and process effectiveness, including accountability and transparency, security and stability, and consumer trust and competition. Each of these reviews assesses the performance of different actors in the ICANN community and provides recommendations to the Board to address issues.</p> <p>The CCWG-Accountability proposal enshrines these reviews in ICANN’s Bylaws, and supplements the accountability and transparency review by including a review of the role and effectiveness of GAC interaction with the broader ICANN community, in addition to the existing requirement to review the GAC’s interaction with the Board.</p>	<p>ICANN Organizational Reviews:  <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p> <p>CCWG-Accountability Proposal:  Pg 43, para 209</p> <p>ICANN Ombudsman:  <a href="https://www.icann.org/ombudsman">https://www.icann.org/ombudsman</a></p> <p>Affirmation of Commitments Reviews:  <a href="https://www.icann.org/resources/reviews/aoc">https://www.icann.org/resources/reviews/aoc</a></p>
	<p>PTI</p>		<p>Yes, policies and practices are proposed that evaluate performance of the IANA functions and require remedial actions if issues are identified.</p> <p>Specific to operations of the IANA functions, the ICG proposal articulates performance expectations, performance oversight, performance reviews, and</p>	<p>ICG Proposal:  P1. Annex F: IANA Function Reviews-Statement of Work Duration and Review Periodicity, pgs 93-100</p>



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			complaint/problem resolution processes. All of these include the ability to take remedial actions if necessary.	P1. Annex G: Proposed Charter of the Customer Standing Committee (CSC), pgs 101-106  P1. Annex H: Service Level Expectations, pgs 107-109  P1. Annex I: IANA Customer Service Complain Resolution Process for Naming Related Functions, pgs 110-111  P1. Annex J: IANA Problem Resolution Process (for IANA naming service only), pg 112  Draft SLA for IANA Numbering Services: <a href="https://www.nro.net/sla">https://www.nro.net/sla</a>
Do the entity's policies include succession plans for senior executives and contingency plans for assignments of responsibilities important for internal control?	ICANN		Yes, ICANN's Bylaws provide instruction for Board member replacement at the end of their terms. Each ICANN organization and ICANN's staff set their own policies for how their leadership is replaced, and these processes have functioned well. The CCWG-Accountability proposal includes the ability to remove a Board member or members. In this case, the Nominating Committee will have several "reserve" candidates ready to serve through the original candidate's term. For SO or AC appointed Directors, each SO and AC will use its normal nominating process to appoint a director to serve through the original candidate's term.	ICANN's Bylaws: <a href="https://www.icann.org/resources/pages/governance/bylaws-en">https://www.icann.org/resources/pages/governance/bylaws-en</a>  CCWG-Accountability Proposal:  Annex 4, pg 15, para 65  Annex 4, pg 19, para 76
	PTI		With respect to operations of the IANA functions, plans and/or planning associated with succession and	ICG Proposal:

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			<p>continuity are addressed in the ICG proposal. Namely, all three functional communities (names, numbers, and protocol parameters) build in the ability to “separate” from the operator if deemed necessary.</p> <p>The names proposal includes a “Framework for Transition to Successor IANA Functions Operator” that specifies considerations for a smooth, stable, and functional transition in the unlikely event it is necessary. It also proposes that the contract between ICANN and PTI require continuity of operations that includes a commitment on behalf of the operator (PTI) to fully engage in a transition should one ever be necessary.</p> <p>The CRISP Team (numbers) proposal indicates that the RIRs will include in their contract with ICANN the requirement for the IANA functions operator to ensure an orderly transition of the numbering function while maintaining continuity and security of operations, in the unlikely event of separation.</p> <p>The IANAPLAN WG (protocol parameters) stated in their proposal the need for ICANN (as the contracted party responsible for the IANA functions) to “acknowledge that it will carry out the obligations established under the current IANA functions contract between ICANN and the NTIA to achieve a smooth transition to subsequent operator(s), should the need arise. Furthermore, in the event of a transition, the IETF community expects that ICANN, the IETF, and subsequent operator(s) will work together to minimize disruption in the use [of] the protocol parameters registries or other resources currently located at iana.org.” It is the intention of the IETF to build such arrangements into future agreements (Supplemental Agreement) following NTIA’s stewardship</p>	<p>Pgs 171-172, para 2089</p> <p>Pgs 198-199, para 3062</p> <p>P1. Annex M: Framework for Transition to Successor IANA Functions Operator, pgs 122-124</p> <p>P1. Annex S: Draft Proposed Term Sheet, pg 145</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>

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			<p>transition.</p> <p>Specific to PTI as an organization and its senior executives, NTIA expects that succession and contingency planning will be developed in the proposal implementation phase.</p> <p><b>ACTION: NTIA recommends that ICANN and the community consider, if they have not already, specifically documenting succession plans for PTI senior executives.</b></p>	
<b>Enforce Accountability</b>				
Does the organization's structure and tone at the top help establish and enforce individual accountability for performance of internal control responsibilities?	ICANN		Yes, ICANN's structure, with the CCWG-Accountability proposal's recommended enhancements, reinforces responsibility and accountability for the continued management of ICANN's bottom-up, multistakeholder process. Specifically, the power for an ICANN SO or AC to remove its appointed Director to the Board reinforces the individual responsibilities for ICANN Board Directors to be accountable to their appointing organizations. Within organizations, the explicit emphasis on multistakeholder governance in the Bylaws impresses upon all ICANN bodies that their active participation in the model is necessary for the continued development of Internet policy.	CCWG-Accountability Proposal:  Annex 4, pgs 1-26
	PTI		<p>Yes, overall, the tone at the top is sufficient to establish accountability.</p> <p>The approaches proposed (contracts, reviews, problem resolution, the ability to apply remedial actions, etc.) by the three operational communities (names, numbers, and protocol parameters) were developed expressly for the purpose of establishing and enforcing accountability.</p>	ICG Proposal:  Pg 6, paras x017-x018



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**Risk Assessment**



According to the GAO, NTIA could use the COSO “Risk Assessment” framework to evaluate the IANA transition proposal with regard to risk and specifically help NTIA consider 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.

COSO Principle	Relevant Proposal	Assessment	Justification	Citations
<b>Define Objectives and Risk Tolerances</b>				
Do the proposals define objectives for proposal development and for meeting NTIA’s criteria?	ICG		<p>Yes.</p> <p>In its proposal, the ICG articulates the basis (objectives) by which it assessed the three component proposals (names, number, and protocol parameters). Namely, the ICG established objectives of “whether the community processes used to develop the proposals were open and inclusive, and whether they achieved consensus; the proposals are complete and clear; the three proposals together are compatible and interoperable, provide appropriate and properly supported accountability mechanisms, and are workable; and the proposals together meet the NTIA criteria.” The ICG issued a Request for Proposals (RFP) that clearly articulated how the three communities were to respond and what information should be included to substantiate the objectives. The three communities conditioned their proposals on these “objectives” as articulated in the RFP that ultimately provided the basis for the ICG’s assessment.</p> <p>In addition, each of the communities identified their own objectives.</p> <p>The CWG-Names developed “Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Naming Related Functions,” which were meant to be the basis upon which to test the names proposal. In terms of post-transition “objectives,” the</p>	<p>ICG Proposal:</p> <p>Pg 5, para x010</p> <p>Pg 11, para 10</p> <p>Pg 48, para 1098</p> <p>Pg 56, paras 1134-1137</p> <p>Pgs 171-172, para 2089</p> <p>Pg 197, para 3052</p> <p>Pg 198, para 3060</p> <p>Pgs 199-200, para 3063</p> <p>P1. Annex C: Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Names Functions, pg 87, para 1264</p> <p>P1. Annex H: Service Level Expectations, pgs 107-109</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 142-155</p>


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			<p>names proposal calls for a contract between ICANN and the newly formed PTI. While not yet drafted, the proposal articulates what should be included in a draft term sheet that includes all service provision-related expectations. Associated with this will be Service Level Expectations (SLEs). A set of principles were also developed for the sole purpose of developing these SLEs.</p> <p>The CRISP Team, representing the customers of the numbering function (RIRs), developed “IANA Service Level Agreement Principles” to guide the drafting of an SLA with ICANN. The SLA between the RIRs and ICANN is the intended primary source of accountability in the performance of the numbering function and basis of their proposal. A Numbering SLA was drafted and outlines the post-transition “objectives” with respect to how the numbering function is to be performed moving forward.</p> <p>The IANAPLAN Working Group, charged with developing the protocol parameters portion of the proposal on behalf of the IETF community, drafted principles to help establish future IANA performance metrics and operational procedures. The protocol parameters community proposed no changes to their existing relationship with ICANN and the operation of the protocol parameters. They will continue to rely on their existing MoU with ICANN and Supplemental Agreement, which articulates service level expectations. In terms of post-transition “objectives,” the MoU between the IETF and ICANN is already in effect and will not be modified. The Supplemental Agreement will continue to be updated on an annual basis. The amended Supplemental Agreement is not yet available, but will</p>	<p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>IANA Stewardship Transition Coordination Group Request for Proposals:  <a href="https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf">https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf</a></p> <p>Supplements to RFC 2860 (IETF-ICANN MoU):  <a href="http://iaoc.ietf.org/contracts.html">http://iaoc.ietf.org/contracts.html</a></p>


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	CCWG-Accountability		<p>cover objectives associated with operations of the protocol parameters function moving forward.</p> <p>Yes, the CCWG-Accountability developed a defined set of objectives regarding the transition and meeting NTIA’s criteria. The CCWG-Accountability worked on the basis of a Charter that established the group’s goals, working methods, and responsibilities. The completion of these objectives, as well as documentation that the process was bottom-up and consensus-based, is fully reflected in the group’s final report.</p> <p>The proposal notes its objective of assessing ICANN’s overall accountability to its community in the absence of a contract with the U.S. government, and what recommendations would be needed to ensure that ICANN remains accountable. The proposal also details how its recommendations match the needs of both NTIA and CWG-Stewardship, which coordinated the work of the naming community.</p>	<p>CCWG-Accountability Proposal: Pg 8, paras 11-12 Pg 50, paras 243-246 Annex 13, pgs 1-4 Annex 14, pgs 1 -3</p> <p>CCWG-Accountability Charter: <a href="https://community.icann.org/display/acctcrosscomm/Charter">https://community.icann.org/display/acctcrosscomm/Charter</a></p>
Do the proposals identify how these objectives were to be achieved and who would be responsible for achieving them? Are/were time frames established?	ICG		<p>Yes.</p> <p>The ICG developed objectives for both the ICG itself as well as for the three communities (names, numbers, and protocol parameters) as they drafted their component proposals. The time frame for meeting these objectives was bound to the proposal development and ICG assessment processes.</p> <p>The CWG-Names principles are applicable to the names community and time bound to the development of the names proposal. With respect to the proposed contract between ICANN and PTI for performing the naming function, time frames will be established and are enumerated in the draft term sheet as related to the contract term, reviews, complaint escalation processes,</p>	<p>ICG Proposal: Pg 5, para x010 Pg 11, para 10 Pg 48, para 1098 Pgs 171-172, para 2089 Pgs 199-200, para 3063 P1. Annex C: Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Names</p>



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			<p>and deliverables.</p> <p>The CRISP Team (numbering community) principles were/are applicable and time bound to the RIRs as they consult(ed) with their communities and draft(ed) an SLA with ICANN. The SLA, as reflected in the draft, will include time frames associated with the terms of performance, mediation, performance, and deliverables.</p> <p>The IANAPLAN (protocol parameters community) principles are applicable to the IAB, IAOC, and the rest of the IETF community as they work to establish future IANA performance metrics and operational procedures that will be articulated in their Supplemental Agreement. The guiding principles are time bound to the revision of the Supplemental Agreement and to future amendments.</p>	<p>Functions, pg 87, para 1264</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 142-155</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>IANA Stewardship Transition Coordination Group Request for Proposals:  <a href="https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf">https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf</a></p>
	CCWG-Accountability		<p>Yes, the ICANN community, through a public comment process, recommended the creation of the CCWG-Accountability, which was responsible for coordinating recommendations for enhancing ICANN accountability. The CCWG-Accountability's Charter established that working group as the sole party responsible for developing these recommendations, and that its Chartering Organizations would be responsible for reviewing the recommendations before delivery to the ICANN Board. The charter also established consensus as the primary work method for developing recommendations.</p> <p>The timeline for the group's work was established to ensure time for the recommendations to be adopted ahead of the expiration of the U.S. Government's contract with ICANN.</p>	<p>CCWG-Accountability Charter:  <a href="https://community.icann.org/display/acctcrosscomm/Charter">https://community.icann.org/display/acctcrosscomm/Charter</a></p> <p>ICANN Call for Participants:  <a href="https://www.icann.org/resources/pages/process-next-steps-2014-10-10-en">https://www.icann.org/resources/pages/process-next-steps-2014-10-10-en</a></p>


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<p>Do the proposals define objectives in measurable terms so that performance in meeting objectives can be assessed?</p>	<p>ICG</p>		<p>Yes, the ICG articulated its objectives in a way to be measurable for the purpose of assessing the proposals.</p> <p>The CWG-Names specifically defined its objectives for the purpose of testing its proposal against them. Their objectives associated with the proposed ICANN-PTI contract, as defined in the draft term sheet and SLEs, is also measurable for the purpose of assessing contractor performance.</p> <p>The CRISP Team’s SLA principles are also measurable as they articulate component parts to be specifically addressed in their proposed SLA with ICANN. The SLA will include objective measurements for the purpose of assessing the contractor’s performance in provision of the numbering service.</p> <p>The IANAPLAN Working Group’s principles are also measurable for purposes of identifying requirements for its proposal development effort and needs in protocol parameters service provision moving forward.</p>	<p>ICG Proposal:</p> <p>Pg 5, para x010</p> <p>Pg 11, para 10</p> <p>Pg 48, para 1098</p> <p>Pgs 171-172, para 2089</p> <p>Pgs 199-200, para 3063</p> <p>P1. Annex C: Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship for Names Functions, pg 87, para 1264</p> <p>P1. Annex H: Service Level Expectations, pgs 107-109</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 142-155</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>IANA Stewardship Transition Coordination Group Request for Proposals:  <a href="https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf">https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf</a></p>




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	CCWG-Accountability		Yes, the proposal outlines 12 specific recommendations, and includes a detailed annex for each with an explanation of the recommendation and how it meets either NTIA’s criteria or the CWG-Stewardship dependencies. The report also includes a Stress Test annex with a series of hypothetical situations where ICANN’s accountability to its community and its Bylaws is tested, and demonstrates how the recommended changes would prevent such situations from occurring.	CCWG-Accountability Proposal:  Pgs 51-52  Annex 15, pgs 1-49  Annex 4, pg 1, para 2
<b>Identify, Analyze, and Respond to Risks</b>				
Do the proposals identify risks related to achieving the defined objectives?	ICG		<p>Yes. The proposal identifies risks, but also expressly indicates where there are no risks.</p> <p>The ICG asked in its RFP for the names, numbers, and protocol parameters communities to describe the implications of the changes being proposed and if there were any risks to operational continuity and how they would be addressed.</p> <p>The naming community indicated that its proposal minimizes risk by essentially maintaining ICANN as the IFO, even though operational separation is proposed by establishing PTI as an affiliate of ICANN. It is expected that this change will have little to no impact on operations as the IFO systems, processes, procedures, and personnel will remain exactly the same as they are at present. Further, the naming community evaluated the elements of its proposal and determined that they are all workable with no negative impact on operations. Lastly, as part of the CCWG-Accountability proposal development process, certain “Stress Tests” were applied to test the proposed structure against various scenarios in an effort to identify and mitigate risks.</p> <p>The numbering community explained that the intent of</p>	<p>ICG Proposal:</p> <p>Pg 63, paras 1171-1172</p> <p>Pgs 66-67, paras 1189-1191</p> <p>Pgs 174-175, paras 2099-2108</p> <p>Pgs 200-201, paras 3065-3066</p> <p>IANA Stewardship Transition Coordination Group Request for Proposals: <a href="https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf">https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf</a></p>

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			<p>its proposal was to minimize risk to operational continuity and retain the existing framework for making policies associated with the IANA number registries. The proposal asserts that “by building upon the existing Internet registry system (which is open to participation from all interested parties) and its structures, the proposal reduces the risk associated with creating new organizations whose accountability is unproven.”</p> <p>The protocol parameters community identified no risks, pointing to the fact that its plan proposed no structural changes. They further attest that “as no services are expected to change, no continuity issues are anticipated, and there are no new technical or operational methods proposed by the IETF to test.” Lastly, “the IETF leadership, ICANN, and the RIRs maintain an ongoing informal dialog to spot any unforeseen issues that might arise as a result of other changes.”</p>	
	CCWG-Accountability		<p>Yes, the CCWG-Accountability proposal used a series of 37 Stress Tests to define the risks related to achieving the proposal’s objectives. These Stress Tests were mandated by the group’s charter.</p> <p>The Stress Tests were used to identify potential weaknesses and risks, and identify accountability mechanisms to mitigate these issues. The proposal breaks down each of the Stress Tests into categories, including: Financial Crisis or Insolvency; Failure to Meet Operational Expectations; Legal/Legislative Action; Failure of Accountability; and Failure of Accountability to External Stakeholders. As a result of the tests, appropriate accountability mechanisms were identified to mitigate potential risk and weaknesses.</p>	CCWG-Accountability Proposal: Annex 15, pgs 1-48

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<p>Do the proposals analyze the identified risks to estimate their significance? (e.g., did they consider the magnitude of impact, likelihood of occurrence, and the nature of the risk?)</p>	ICG		<p>Yes, risk significance was analyzed to the extent necessary.</p> <p>The numbers and protocol parameters communities did not conduct such an analysis because neither group proposed changes that introduced any identified risk.</p> <p>The naming community analyzed the elements of its proposal in terms of workability and whether or not they could have negative impacts on security, stability, and resiliency of the DNS. This included rating the level of negative impact (“significance”). The CCWG-Accountability Work Stream 1 proposal further developed and addressed Stress Tests specific to the naming function, including failure to meet operational expectations; legal/legislative action; and failure of accountability to external stakeholders.</p>	<p>ICG proposal:</p> <p>Pgs 66-67, paras 1189-1191</p> <p>Pgs 174-175, paras 2099-2108</p> <p>Pgs 200-201, paras 3065-3066</p> <p>P1. Annex R: Evaluation Method for Implications, pgs 137-141</p>
	CCWG-Accountability		<p>Yes, the CCWG-Accountability developed and responded to Stress Tests to analyze identified risks and estimate their significance.</p> <p>The purpose of the Stress Tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of proposed accountability mechanisms to mitigate these risks.</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 15, pgs 1-48</p>
<p>Do the proposals articulate and/or consider responses and actions to risks so that a risk tolerance could be defined?</p>	ICG		<p>Yes, mitigations were considered in the cases where the communities identified risks.</p> <p>All three of the operational communities assert that there is little to no risk associated with the IANA functions operations. This is attributable to the fact that the communities propose no changes to the operations as they occur today.</p> <p>For the numbers and protocol parameters communities,</p>	<p>ICG Proposal:</p> <p>Pgs 66-67, paras 1189-1191</p> <p>Pgs 174-175, paras 2099-2108</p> <p>Pgs 200-201, paras 3065-3066</p> <p>P1. Annex R: Evaluation Method for Implications, pgs 137-141</p>




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			<p>the accountability structures also largely stay the same, but the names community proposes to create a new entity (PTI) and supportive structures for tasks such as operational oversight (CSC) and review mechanisms (IRT, SIRT, Root Zone Enhancement Review Committee). As noted previously, the names community analyzed these elements of their proposal in terms of workability and the CCWG-Accountability developed and addressed Stress Tests. The purpose of these Stress Tests was to assess the adequacy of proposed accountability mechanisms available to the ICANN community to mitigate the risks.</p>	<p>CCWG-Accountability Proposal: Annex 15-Stress Testing, pgs 1-2, paras 1-11</p>
	CCWG-Accountability		<p>Yes, each stress test used in the CCWG-Accountability proposal defines how the recommendation mitigates risk. Overall, the risk tolerance is strong and demonstrates that the post-transition ICANN will be more accountable than it is today.</p>	<p>CCWG-Accountability Proposal: Annex 15, pgs 1-48 Annex 15, pg 22, para 196</p>
<b>Assess Fraud Risk</b>				
<p>Do the proposals consider the various types of fraud (fraudulent financial reporting, misappropriation of assets, corruption) that could take place post-transition via their proposed approaches?</p> <p>Do the proposals consider ways in which to mitigate such fraud?</p>	ICG		<p>Yes. The ICG proposal’s cornerstone is transparency and accountability; and the various measures proposed to ensure high levels of transparency and accountability will help identify matters associated with fraud should it occur.</p> <p>The ICG proposal calls for a number of actions regarding the IANA budget to mitigate potential fraud associated with the financials and costs in performing the functions. The proposal recommends that the IANA functions operator’s costs be itemized to the project level. The ICG further proposes that costs be itemized into more specific costs related to each specific function (names, numbers, protocol parameters) to the project level. The proposal also foresees an IANA-specific budget review (separate from the overall ICANN budget). These</p>	<p>ICG Proposal: Pg 51, para 1106 Pg 198, para 3062</p> <p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111</p> <p>Appendix G: Proposed Charter of the Customer Standing Committee (CSC), pgs 101-106</p>


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			<p>budget-related proposals will help prevent and detect fraud.</p> <p>There are also a number of operational safeguards proposed to address fraud in the context of PTI and performance of the IANA functions. For example, the names community would be able to take action against PTI staff should fraudulent activity be identified during the course of CSC operational oversight or through an IFR. The customer problem resolution mechanism is also a vehicle by which to address suspected fraudulent activities in the provision of the IANA functions.</p>	
	CCWG-Accountability		<p>Yes, the CCWG-Accountability considered the potential for fraud.</p> <p>The CCWG-Accountability proposal empowers the ICANN Community to reject ICANN’s budget or strategic operating plans, including the IANA functions budget. The proposal couples this new power with new rights to inspection and investigation, which will help the community to detect fraud and abuse.</p> <p>In addition, the CCWG-Accountability proposal includes an audit process, triggered by three Decisional Participants in the Empowered Community, which will identify suspected fraud or gross mismanagement of ICANN resources. In this case, ICANN will retain a third-party, independent firm to undertake an audit to investigate. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.</p> <p>These recommendations build on ICANN’s existing fraud protection mechanisms. ICANN’s finances undergo an annual independent audit, the results of which are</p>	<p>CCWG-Accountability Proposal: Pg 14, para 52</p> <p>Annex 1, pgs 6-7, paras 28-39</p> <p>Annex 4, pgs 4-7, paras 9-29</p> <p>Board Audit Committee: <a href="https://www.icann.org/resources/pages/charter-2012-02-25-en">https://www.icann.org/resources/pages/charter-2012-02-25-en</a></p> <p>DIDP Program: <a href="https://www.icann.org/resources/pages/didp-2012-02-25-en">https://www.icann.org/resources/pages/didp-2012-02-25-en</a></p> <p>ICANN Whistleblower Program: <a href="http://mm.icann.org/pipermail/atr2/attachments/20130705/dfd2fded/Anonymous-Hotline-Committee-Procedure-Redacted.pdf">http://mm.icann.org/pipermail/atr2/attachments/20130705/dfd2fded/Anonymous-Hotline-Committee-Procedure-Redacted.pdf</a></p>


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			<p>posted online. ICANN’s Board Audit Committee reviews ICANN’s budgets, expenditures, and audit-related activities, as well as “oversees investigations resulting from reports of questionable accounting or financial matters or financially-related fraud concerns, including receiving management reports about calls made to the anonymous reporting hotline pursuant to the ICANN whistleblower policy, as those calls relate to the reporting of concerns.” In addition, through ICANN’s Documentary Information Disclosure Program, individuals can request financial documents, and appeal any decisions to not release documents through the reconsideration process or the Independent Review Process.</p>	<p>ICANN independent audit information:  <a href="https://www.icann.org/news/announcement-2-2015-10-29-en">https://www.icann.org/news/announcement-2-2015-10-29-en</a></p>
<b>Identify, Analyze, and Respond to Change</b>				
<p>Do the proposals establish groups or positions responsible for anticipating or identifying internal and external changes with possible significant effects on the entity and/or performance of the functions?</p>	<p>ICG</p>		<p>Yes, the proposal creates groups with responsibilities relevant to anticipating and identifying changes.</p> <p>The ICG proposal creates a standing committee responsible for considering “significant” architectural changes to the root zone management process (known as the RZERC). As proposed, any issues (changes) that may impact the architecture and/or operations of root zone management would be brought to the RZERC’s attention. The CSC, which would oversee the day to day operations of root zone management, and PTI are recognized as the parties responsible for bringing such matters to the RZERC. Ultimately, the ICANN Board will be responsible for granting approval to any recommendation coming out of the RZERC.</p> <p>In addition to the RZERC, the ICG proposal tasks the CSC to consult with registry operators and discuss with PTI ways to enhance provision of service to meet changing technological environments. Further, the ICG proposal</p>	<p>ICG Proposal:  Pg 60, para 1155  Pg 61, para 1157  P1. Annex S: Draft Proposed Term Sheet, pgs 150-152  Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>

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			<p>states that the IANA functions budget must support PTI’s ability to investigate, develop, and deploy Root Zone enhancements required to keep the Root Zone and its management evolving. Any possible proposed enhancements coming either from the CSC or PTI itself would then be put forward to the RZERC.</p> <p>Besides the RZERC, the proposed legal agreements that stipulate performance of the IANA functions also identify or infer requirements associated with the anticipation and identification of changes with possible significant impacts. Namely, all three of the operational communities (names, numbers, and protocol parameters) propose that, in the performance of the IANA functions, ICANN/PTI regularly report on operational events and projected changes that may impact future operations. Further, they all propose reviews and audits that could anticipate and at least identify changes, such as failure to perform.</p> <p>Further, the ICG proposal creates new positions that would have responsibility to anticipate and identify changes that have the potential to significantly impact PTI. Namely, the proposal requires that PTI provide a “Qualified Program Manager,” an “IANA Functions Program Manager,” and an “IANA Function Liaison for Root Zone Management.” Any of these positions could specifically require such a responsibility.</p>	
	CCWG-Accountability		<p>Yes, the CCWG-Accountability proposal enshrines in ICANN’s Bylaws periodic accountability and transparency reviews by the community.</p> <p>In addition to the Affirmation reviews, the CCWG-Accountability proposal recommends that outside consultants conduct organizational reviews of SOs and</p>	<p>CCWG-Accountability Proposal: Annex 9, pg 1, para 2</p> <p>Annex 10, pg 4, para 15</p> <p>ATRT Call for Volunteers:</p>


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			<p>ACs to evaluate the accountability of the SOs and ACs to their stakeholders. The GAC is not included in such organizational reviews, but is subject to the accountability reviews that will be mandated by ICANN’s Bylaws and are currently mandated by the Affirmation of Commitments.</p> <p>These reviews would identify and address any changes that significantly impact ICANN as well as the SOs and ACs.</p>	<p><a href="https://www.icann.org/resources/pages/call-for-volunteers-2012-10-05-en">https://www.icann.org/resources/pages/call-for-volunteers-2012-10-05-en</a></p>
<p>Do the proposals establish processes or policies to respond to significant changes?</p>	<p>ICG</p>		<p>Yes.</p> <p>The ICG proposal creates a standing committee responsible for considering “significant” architectural changes to the root zone management process (RZERC). Any issues (changes) that may impact the architecture and/or operations of root zone management would be brought to the RZERC’s attention. The RZERC (to be comprised of representatives from IFO, SSAC, RSSAC, ASO, IETF, GNSO, and ccNSO) is responsible for ensuring that those involved in making a decision on the matter(s) include all the relevant bodies and have access to the necessary expertise. For architectural changes that impose potential risk to the security, stability, or resiliency of the root zone management system, there will be a public comment process. The ICANN Board will ultimately be responsible for formally approving any recommended changes with full transparency, except in limited cases where security and/or contracts require confidentiality.</p> <p>Also, the ICG proposal states that the IANA functions budget must support PTI’s ability to investigate, develop, and deploy Root Zone enhancements required to keep the Root Zone and its management evolving.</p>	<p>ICG Proposal:</p> <p>Pg 60-61, para 1155</p> <p>Pgs 171-172, para 2089</p> <p>Pgs 198-199, para 3062</p> <p>P1. Annex L: Separation Process, pgs 119-121</p> <p>P1. Annex M: Framework for Transition to Successor IANA Functions Operator, pgs 122-124</p> <p>P1. Annex S: Draft Proposed Term Sheet, pg 145</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>

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			<p>In the unlikely case that the IFO so severely underperforms or does not perform, all three communities propose the ability to “separate” from the operator. Each community has proposed oversight, reviews, and audits to identify such deficiencies and proposed escalation mechanisms by which to address them. However, if “separation” is the only solution, the three communities identify processes and policies that would guide such a decision and the act of transitioning to a successor operator.</p> <p>For the names function, a continuity of operations requirement will be included in the PTI contract that obliges PTI to facilitate a stable transition if determined necessary. The names proposal also articulates a “Framework for Transition to a Successor IANA Functions Operator” intended to guide the development of a transition plan. The proposal also establishes a process by which to make a determination for separation.</p> <p>For the numbers function, the SLA with ICANN obligates the IFO to ensure an orderly transition while maintaining continuity and security of operations, in the unlikely event of separation.</p> <p>For the protocol parameters function, the Supplemental Agreement between the IETF and ICANN acknowledges that the operator must “carry out the obligations established under C.7.3 and I.61 of the current IANA functions contract between ICANN and the NTIA to achieve a smooth transition to subsequent operator(s), should the need arise. Furthermore, in the event of a transition it is the expectation of the IETF community</p>	



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	CCWG-Accountability		<p>that ICANN, the IETF, and subsequent operator(s) will work together to minimize disruption in the use [of] the protocol parameters registries or other resources currently located at iana.org.”</p> <p>ICANN’s policy development processes offer the principal means for making changes to ICANN’s policies, and are the key drivers for making sure that ICANN practices match the needs and expectations of ICANN’s stakeholders. These processes drive change within the organization. In the event that a stakeholder believes a policy proposal does not meet its needs, or does not match ICANN’s stated policies and practices, it can be appealed through a reconsideration process or an independent review process.</p> <p>A central purpose of all organizational and accountability reviews is to ensure that these key policy development functions continue to meet the needs of ICANN’s stakeholders. The Board’s responsibility to facilitate these reviews is enforceable by the Empowered Community.</p>	<p>CCWG-Accountability Proposal: Annex 1, pg 5, para 27</p> <p>Article 4, Section 2 of ICANN’s Bylaws on Reconsideration Process: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Multistakeholder Policy Development Processes: <a href="https://www.icann.org/sites/default/files/assets/multistakeholder-policy-development-29feb16-en.pdf">https://www.icann.org/sites/default/files/assets/multistakeholder-policy-development-29feb16-en.pdf</a></p> <p>Affirmations of Commitments Reviews: <a href="https://www.icann.org/resources/reviews/aoc">https://www.icann.org/resources/reviews/aoc</a></p> <p>Organizational Reviews: <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p>

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**Monitoring**

The GAO recommended that NTIA use the “monitoring” component of the COSO framework to consider the various monitoring requirements proposed and determine the extent to which the ICG and CCWG-Accountability proposals incorporate sufficient monitoring requirements.



COSO Principle	Relevant Proposal	Assessment	Justification	Citations
<b>Perform Monitoring Activities</b>				
Are monitoring activities in place/proposed to assess whether the transition objectives are being met/achieved over time?	ICG		<p>Yes, the ICG proposal puts in place multiple groups and processes to assess whether the operational transition objectives are being met over time.</p> <p>For the naming function, the community proposes that the CSC perform operational oversight according to contractual requirements and service level expectations. The names community also proposes periodic and special reviews (IFR) of the entity performing the naming function (PTI).</p> <p>For the numbering function, the community proposes a Review Team to oversee performance according to requirements detailed in an SLA.</p> <p>For the protocol parameters function, the IETF is responsible for overseeing performance per the MoU with ICANN and the annually updated Supplemental Agreement.</p>	<p>ICG Proposal: Pg 50, para 1105</p> <p>Pg 172, paras 2091-2092</p> <p>Pg 196, para 3053</p>
	CCWG-Accountability		<p>Yes, the CCWG-Accountability proposal enshrines in ICANN’s Bylaws periodic accountability and transparency reviews. These reviews result in formal recommendations to the ICANN Board for consideration and implementation. ICANN is also responsible for producing an implementation status report following adoption of the CCWG-Accountability recommendations. ICANN’s existing organizational reviews will also help ensure that ICANN organizations continue to deploy policies that meet the needs of the community and ICANN’s stated goals.</p>	<p>CCWG-Accountability Proposal: Annex 7, pg 1, para 4</p> <p>Annex 9, pg 1, para 2</p> <p>Affirmations of Commitments Reviews: <a href="https://www.icann.org/resources/reviews/aoc">https://www.icann.org/resources/reviews/aoc</a></p>



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			<p>In addition to these reviews, ICANN has many existing mechanisms to monitor compliance with its Bylaws and policies. ICANN’s reconsideration process and independent reviews are tools the community can utilize to ensure that any policy decision made by the Board adheres to ICANN’s policies and Bylaws. The CCWG-Accountability proposal enhances the effectiveness of the independent review by establishing a standing panel of experts to hear complaints. ICANN’s Ombudsman also can help document any issues stakeholders encounter with the ICANN Board or leadership.</p>	<p>ICANN Organizational Reviews:  <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p> <p>ICANN Accountability:  <a href="https://www.icann.org/resources/accountability">https://www.icann.org/resources/accountability</a></p>
<p>Are the monitoring activities ongoing as well as separate evaluations performed periodically?</p>	<p>ICG</p>		<p>Yes, the ICG proposal calls for monitoring activities that are ongoing as well as separate evaluations performed periodically.</p> <p>For the names function, the community proposes ongoing monitoring to be conducted by the CSC. Periodic and special evaluations will also be performed. An IANA Functions Review (IFR) is to be performed, the first of which is recommended to take place no more than two years after the transition. After this initial review, the periodic IFR should occur at intervals of no more than five years. A “Special” IFR may be initiated outside of the normal periodic schedule.</p> <p>For the numbers function, the community-proposed Review Committee will largely conduct its monitoring on a periodic basis. The RIRs will provide ongoing monitoring to ensure the IFO is meeting requirements and service level expectations as specified in the SLA.</p> <p>For the protocol parameters function, the IETF will conduct an annual audit on performance as well as</p>	<p>ICG Proposal:</p> <p>Pg 54, paras 1119-1123</p> <p>Pg 172, paras 2091-2092</p> <p>Pg 197, para 3053</p>


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	CCWG-Accountability		<p>annually update its performance metrics and operational procedures. The IETF will also provide ongoing monitoring to ensure requirements and performance expectations are met as articulated in the Supplemental Agreement.</p> <p>ICANN’s open policymaking process allows the community to monitor and raise concerns about any policy proposal that appears to contravene ICANN’s Bylaws or policies.</p> <p>Stakeholders may also file reconsideration requests or appeal decisions using the independent review process. Decisions made via each of these processes are public and allow for effective monitoring.</p> <p>Existing reviews, including the accountability and transparency review that are now enshrined in ICANN’s Bylaws via the CCWG-Accountability proposal, complement these tools and help document that ICANN’s policies are followed and continually implemented. The recommendations of these reviews are public, and require the publishing of an implementation report which allows the community to monitor progress.</p>	<p>CCWG-Accountability Proposal: Annex 9, pg 1, para 2</p> <p>ART Review: <a href="https://www.icann.org/resources/reviews/aoc/atrt">https://www.icann.org/resources/reviews/aoc/atrt</a></p> <p>Article 4, Section 2 of ICANN’s Bylaws on Reconsideration Process: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Open Participation at ICANN: <a href="https://www.icann.org/resources/pages/groups-2012-02-06-en">https://www.icann.org/resources/pages/groups-2012-02-06-en</a></p>
Is the level of staffing and specialized skills of the people performing the monitoring adequate?	ICG		<p>Yes, the level of staffing and specialized skills of the people proposed to perform the monitoring are adequate.</p> <p>For the naming function, the CSC will be comprised primarily of direct customers (two gTLD registry operators, two ccTLD registry operators, and one additional TLD representative not considered a ccTLD or</p>	<p>ICG Proposal: Pg 173, para 2093</p> <p>Pg 197, para 3053</p> <p>Appendix G: Proposed Charter of the Customer Standing</p>


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			<p>gTLD, such as IAB for .ARPA) and one liaison from the IANA Functions Operator (PTI). There can also be one optional liaison from each of the non-represented ICANN SOs and ACs. All members and liaisons will be appointed by their respective communities, but all candidates will be required to submit an Expression of Interest that includes the skills they would bring, why they are interested in participating, their knowledge of the IANA functions, their understanding of the CSC’s purpose, and their recognition of the time required and their ability to commit. The ccNSO and GNSO’s RySG are to also consult prior to finalizing their ccTLD and gTLD member selections to ensure diversity in skill sets.</p> <p>The names community proposes a similar approach to staffing the IFR teams. All stakeholder groups represented at ICANN will be allotted at least one seat on the team. The number and protocol parameters operational communities will also be offered the opportunity to name a liaison. IFR team members will be selected from submitted Expressions of Interest indicating individuals’ particular skill sets, knowledge of the IANA functions, understanding of the IFR team’s purpose, and their commitment to the role and time required. As the membership of these teams come directly from the customers of the naming functions as well as the relevant overall community, these are the most appropriate in terms of having the adequate skill and knowledge set.</p> <p>For the numbering function, the community-proposed Review Committee will be comprised of “suitably qualified” representatives from each RIR community. As the RIR community represents the customers of the numbering function and developed the SLA with the</p>	<p>Committee (CSC), pgs 102-103, paras 1327-1336; pgs 95-97, paras 1283-1293</p>



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			<p>operator, they possess the skills and knowledge necessary to adequately perform monitoring of this function.</p> <p>For the protocol parameters function, monitoring activities are the responsibility of the IETF. The IETF is the direct customer of the protocol parameters function as well as the party responsible for annually updating the operator’s performance metrics and operational procedures, and thus adequate to monitor.</p>	
	CCWG- Accountability		<p>Yes. The ICANN community is adequately positioned to monitor ICANN’s performance, as the organization is grounded in multistakeholder, bottom-up practices.</p> <p>All accountability and transparency reviews will be conducted by members of the ICANN community selected through a call for volunteers. Each review team is required to reflect “geographic diversity; gender balance; understanding of ICANN's role and the basic Internet ecosystem in which ICANN operates; and expertise in a discipline related to the review topic (relevant technical expertise, if required by the scope of the review).”</p> <p>In addition, qualified independent experts will be called upon to serve on independent review panels, which are required to have “jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work.” The CCWG-Accountability recommendations will strengthen these qualifications to include “knowledge, developed over time, regarding the DNS and ICANN's Mission, work, policies, practices, and procedures.”</p> <p>The Board Governance Committee is responsible for</p>	<p>ARTT Review: <a href="https://www.icann.org/resources/reviews/aoc/artt">https://www.icann.org/resources/reviews/aoc/artt</a></p> <p>ARTT Call for Volunteers: <a href="https://www.icann.org/resources/pages/call-for-volunteers-2012-10-05-en">https://www.icann.org/resources/pages/call-for-volunteers-2012-10-05-en</a></p> <p>ICANN Organization: <a href="https://www.google.com/#q=ICANN+organization">https://www.google.com/#q=ICANN+organization</a></p> <p>Article 4, Section 2 of ICANN’s Bylaws on Reconsideration Process: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>ICANN Board Governance</p>


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			<p>reviewing reconsideration requests. The Board Governance Committee is comprised of “at least three, but not more than six voting Board Directors and not more than two Liaison Directors, as determined and appointed annually by the Board, each of whom shall comply with the Conflicts of Interest Policy.”</p>	<p>Committee:  <a href="https://www.icann.org/resources/pages/charter-06-2012-02-25-en">https://www.icann.org/resources/pages/charter-06-2012-02-25-en</a></p> <p>CCWG-Accountability Proposal:            Annex 7, pg 1, para 4</p>
<p>Are procedures in place to monitor when controls are overridden and to determine whether the override was appropriate?</p>	<p>ICG</p>		<p>Yes, procedures are proposed that will monitor when controls (contractual obligations/service levels) are overridden.</p> <p>The three operational communities (names, numbers, protocol parameters) proposed legal arrangements with the IANA functions operator that articulate service level expectations, responsibilities, and requirements. Monitoring will focus in large part on how/whether the operator of the IANA functions adheres to these (including whether the IFO chose to “override” controls). If failure to comply is detected, all three of the operational communities have proposed procedures by which to resolve the situation.</p> <p>The names community proposes a series of escalation measures that include customer service complaint resolution (which will be applicable to all the IANA functions) and IANA problem resolution (for naming services only). This would include situations by which the IFO chose to “override” community established controls as specified in the agreements.</p> <p>For the numbering function, the proposed RIR SLA with ICANN specifies a “discussion period” by which resolution of disputes between the operator and the RIRs that may arise relating to the SLA will undertake a number of steps prior to asserting a “failure to perform.”</p>	<p>ICG Proposal:            Pg 197, para 3054</p> <p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>


Attachment 5: COSO Assessment Chart

COSO Principle	Relevant Proposal	Assessment	Justification	Citations
	CCWG- Accountability		<p>The protocol parameters proposal recognizes that, to date, there have been no unresolvable disputes or issues between the IETF and current IANA functions operator, but should a dispute arise there are a number of escalation steps in place to address the matter.</p> <p>Yes, ICANN SOs and ACs are constantly monitoring accountability in the ICANN system. In the context of policy proposals, the public comment process, as well as the publicly documented Board adoption or rejection of such policies allows for the public to monitor and comment on proposals and advice seen to be in contravention of, or as overriding, existing ICANN policies and Bylaws.</p> <p>In the event that a policy is seen as overriding established ICANN practices or values, individuals in the community can pursue reconsideration or independent review, which will both render a decision on whether the override was appropriate.</p> <p>If there is a perceived abnormality in ICANN processes that cannot be resolved through existing tools, the Empowered Community will be able to challenge the action. As previously described, the entire community will have the opportunity via a community forum to determine whether any action was appropriate and whether the community should use its enforcement power to correct the action.</p>	<p>Article 4, Section 2 of ICANN’s Bylaws on Reconsideration Process: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Open Participation at ICANN: <a href="https://www.icann.org/resources/pages/groups-2012-02-06-en">https://www.icann.org/resources/pages/groups-2012-02-06-en</a></p> <p>CCWG-Accountability Proposal: Annex 4, pg 1, paras 1-4 Annex 2, pgs 4-9, paras 17-38</p>
<b>Evaluate Issues and Remediate Deficiencies</b>				
Do the monitoring activities provide for reporting and evaluation of issues identified?	ICG		<p>Yes.</p> <p>All three of the operational communities propose reporting requirements to be included in their legal</p>	<p>ICG Proposal: Pg 197, para 3053</p>

Attachment 5: COSO Assessment Chart




COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>agreements with the operator (PTI contract, SLA, MoU/Supplemental Agreement(s)), which contribute to the monitoring activities.</p> <p>The names community proposes that the CSC, which is to be responsible for performance oversight, analyze reports provided by the operator and publish any findings.</p> <p>Similarly, the numbers community proposes that its Review Committee report out at least once a year on any findings they encounter while overseeing performance.</p> <p>The protocol parameters community proposes that the conclusions of the required annual audit be made available for anyone to review.</p>	<p>P1. Annex G: Proposed Charter of the Customer Standing Committee, pg 101, para 1315</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 152-153</p> <p>Final Version IANA Numbering Services Review Committee Charter:  <a href="https://www.nro.net/review-committee-charter-final">https://www.nro.net/review-committee-charter-final</a></p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>
	CCWG-Accountability		<p>Yes.</p> <p>Independent reviews and reconsideration processes exist for the express purpose of determining whether a community complaint is valid and requires reversal of a Board action. Both processes are able to effectively evaluate whether a decision or policy is in contravention of ICANN’s Bylaws or policies.</p> <p>Stakeholders can also communicate any concerns with policies in open comment periods before, or at panels and forums at ICANN meetings, before proposals are transmitted to the Board. In addition, Working Groups developing policy proposals within ICANN’s SOs and ACs, as well as that entire SO or AC, serve as an initial check for whether decisions will pass muster with the community or the Board. The open nature of these early deliberations allows for evaluation of proposals at</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 2, pgs 7-8 , paras 31-33</p> <p>Annex 2, pgs 1-15</p> <p>Article 4, Section 2 of ICANN’s Bylaws on Reconsideration Process:  <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP:  <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Open Participation at ICANN:</p>

Attachment 5: COSO Assessment Chart


COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>a very early stage.</p> <p>The community can seek to exercise a Community Power if appropriate. If these processes fail, any decision to exercise the community’s enforcement power would require a Community Forum to evaluate the issue being petitioned. Engagement within each SO and AC on the matter is also required before moving a petition to exercise community enforcement. Reporting of an issue can be done by any individual to the leadership of that person’s SO or AC.</p>	<p><a href="https://www.icann.org/resources/pages/groups-2012-02-06-en">https://www.icann.org/resources/pages/groups-2012-02-06-en</a></p>
<p>Are findings and recommendations from external parties (such as customers and external auditors) considered? Is there a process in place to evaluate these findings?</p>	<p>ICG</p>		<p>All three of the operational communities propose reporting requirements to be included in their legal agreements with the operator (contract, SLA, MoU/Supplemental Agreement(s)), which are inputs into the monitoring activities.</p> <p>The CSC is specifically charged with reviewing the reports provided by the operator as well as third party audit reports/findings as to be required in the PTI contract. There will also be requirements for the operator to conduct customer service surveys.</p> <p>The numbering community’s proposed Review Committee will review the operator’s required audit reports/results. In addition, the operator is required to conduct customer service surveys, after which the RIRs and operator are to determine what if any actions should be taken as a result.</p> <p>The protocol parameters community proposes that the conclusions of the required annual audit be made available for anyone to review and the results of that audit will inform the annual update of the Supplemental Agreement between the IETF and ICANN.</p>	<p>ICG Proposal:</p> <p>Pg 197, para 3053</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee, pg 101, para 1315</p> <p>P1. Annex S: Draft Proposed Term Sheet, pgs 152-153</p> <p>Final Version IANA Numbering Services Review Committee Charter:  <a href="https://www.nro.net/review-committee-charter-final">https://www.nro.net/review-committee-charter-final</a></p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>




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COSO Principle	Relevant Proposal	Assessment	Justification	Citations
	CCWG-Accountability		<p>Yes, ICANN’s policy development processes and comment periods are open to the public and allow for meaningful input from individuals not formally part of any ICANN organization. The recommendations of accountability and transparency reviews are put out for public comment before being adopted by the Board.</p> <p>In addition, ICANN’s finances are independently audited annually, and all organizational review teams are comprised of members of the community not affiliated with the specific organization under review.</p> <p>In the context of the Empowered Community, the engagement and escalation process that occurs before any decision to use the community enforcement power requires a discussion and evaluation of the issue by the entire community, not just the petitioning organization.</p>	<p>CCWG-Accountability Proposal: Annex 2, pg 7-8, para 31-33</p> <p>Accountability and Transparency Review: <a href="https://www.icann.org/resources/reviews/aoc/atrt">https://www.icann.org/resources/reviews/aoc/atrt</a></p> <p>Open Participation at ICANN: <a href="https://www.icann.org/resources/pages/groups-2012-02-06-en">https://www.icann.org/resources/pages/groups-2012-02-06-en</a></p> <p>ICANN Organizational Reviews: <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p>
Are deficiencies to be communicated to those parties responsible for taking corrective action?	ICG		<p>Yes, all three communities include in their proposals language that articulates that deficiencies will be communicated back to the IANA functions operator, who is responsible for taking any corrective action.</p>	<p>ICG Proposal: P1. Annex G: Proposed Charter of the Customer Standing Committee, pg 101, para 1311</p> <p>Defining the Role and Function of the IETF Protocol Parameter Registry Operators: <a href="http://www.rfc-editor.org/rfc/rfc6220.txt">http://www.rfc-editor.org/rfc/rfc6220.txt</a></p> <p>Draft SLA for IANA Numbering Services: <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p>
	CCWG-Accountability		<p>Yes. All accountability and organizational reviews result in formal recommendations to the ICANN Board, which sets implementation plans to address each review’s</p>	<p>CCWG-Accountability Proposal: Annex 4, pg 1, paras 1-4</p>


Attachment 5: COSO Assessment Chart

COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>issues. In addition, reconsideration processes are addressed directly with the Board, while IRPs compel Board action.</p> <p>In the context of an accountability and transparency review, the review team delivers formal recommendations to the Board. The Board is responsible for responding with an implementation program, and updating the community on its implementation of the review plan.</p> <p>In some cases, deficiencies in ICANN decision-making can also be addressed directly by the ICANN community via its enforcement power as a last resort. The Board is made aware of any petition to use a community power at the outset by a Decisional Participant, and is formally included in dialogue in the Community Forum where Decisional Participants discuss the issue at the heart of a petition. At any point, the Board can end the process by addressing the petition’s issues.</p>	<p>ICANN Organizational Reviews: <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p> <p>Accountability and Transparency Review: <a href="https://www.icann.org/resources/reviews/aoc/atrt">https://www.icann.org/resources/reviews/aoc/atrt</a></p> <p>Article 4, Section 2 of ICANN’s Bylaws on Reconsideration Process: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP: <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p>
<p>Is the IFO and/or ICANN Board expected to respond timely and appropriately to the findings and recommendations of auditors/reviews?</p>	<p>ICG</p>		<p>Yes, in the case of the ICG proposal and operations of the IANA functions, the IFO (PTI) is expected to respond appropriately and in a timely fashion when it comes to problem resolution or other matters identified by audit or review.</p> <p>For the naming function, the IFO is expected to resolve complaints as soon as possible and a structured escalation process is available if this does not happen. With respect to issues identified through standard performance monitoring, PTI will be bound to remedial action procedures in cases where it fails to execute in a timely fashion. Per the draft contract between ICANN and PTI, PTI is bound to make any necessary changes that may result from an IFR. The IFR looks at the</p>	<p>ICG Proposal:</p> <p>Pg 171, para 2089</p> <p>Pg 197, para 3053</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee, pg 105, para 1362</p> <p>P1. Annex I: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pg 110, para 1368</p>


Attachment 5: COSO Assessment Chart

COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>reporting and audits required of PTI under the contract.</p> <p>For the numbering function, the IFO is required to conduct audits as well as to facilitate and cooperate with periodic reviews as defined in an SLA. The numbers community states in its draft SLA that “time is of the essence” with regard to all dates, periods of time, and times specified in their agreement.</p> <p>For the protocol parameters function, the proposal stipulates an annual audit. Per the existing Supplemental Agreement (and future updates) between the IETF and ICANN, ICANN (as the IFO) is expected to provide an explanation regarding findings of the audit report and remediation plan within 150 days. Future updates to the Agreement, which includes performance requirements, will take into account audit findings.</p>	<p>P1. Annex S: Draft Proposed Term Sheet, pg 143</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>Supplements to RFC 2860 (IETF-ICANN MoU):  <a href="http://iaoc.ietf.org/contracts.html">http://iaoc.ietf.org/contracts.html</a></p>
	CCWG-Accountability		<p>Yes, the ICANN Board is required to respond to a declaration from an IRP Panel at the Board’s next meeting, when possible. In the case of reconsideration requests, the Board Governance Committee will be required, following the adoption of the CCWG-Accountability recommendations, to respond within 75 days when possible, and no later than 135 days.</p> <p>In the case of the accountability and transparency reviews, the Board is required to take action within six months of receipt of the recommendations. The Board must consider the results of an organizational review no later than the second scheduled Board meeting after such results have been posted for 30 days.</p> <p>In the case of the Community Powers, at the end of the escalation process the ICANN Board will be deemed to have refused or failed to comply with a request by the</p>	<p>CCWG-Accountability Proposal:</p> <p>Annex 1, pg 7, paras 38-39</p> <p>Annex 2, pg 9, para 41</p> <p>Annex 8, pg 1, para 3</p> <p>Article 4, Section 3 of ICANN’s Bylaws on IRP:  <a href="https://www.icann.org/resources/pages/governance/bylaws-en#IV">https://www.icann.org/resources/pages/governance/bylaws-en#IV</a></p> <p>Affirmation of Commitments:  <a href="https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en">https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en</a></p>

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COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>Empowered Community to use one of its Community Powers if it has not complied with the request within 30 days of being advised of the request. There is no specific timeline for responding to an initial finding of an independent audit for financial mismanagement; however the ICANN community can enforce such findings through the rejection of budgets and strategic operating plans through the Empowered Community. In that case, the 30 days to comply with a community decision would apply.</p>	<p>ICANN Organizational Reviews:  <a href="https://www.icann.org/resources/reviews/org">https://www.icann.org/resources/reviews/org</a></p>
<p>Are processes proposed to track unremediated control deficiencies and a protocol to escalate them to higher levels if necessary?</p>	<p>ICG</p>		<p>Yes. All three of the operational communities propose mechanisms by which to track unremediated deficiencies and have protocols in place to escalate if necessary.</p> <p>For the names proposal, the CSC is responsible for overseeing IFO performance. A number of reporting requirements are proposed for the IFO, and the CSC will analyze and publish any findings associated with them. The CSC is authorized to escalate any performance issues if necessary. A continuing problem in performance is also subject to an IFR and could trigger a special IFR. Specific to complaint resolution, a process is proposed by which a complainant sends a communication to the IFO. If the problem is not resolved, a set escalation path is available. This process was proposed by the naming community as available to anyone and for all three of the primary functions (names, numbers, protocol parameters). Further escalation as part of this process is reserved only for the naming services.</p> <p>Specific to the numbering function, that proposal calls for a Review Committee that will conduct its activities in an open and transparent manner and will publish</p>	<p>ICG Proposal:  Pg 173, para 2092  Pg 197, paras 3053-3054</p> <p>P1. Annex G: Proposed Charter of the Customer Standing Committee, pg 101, paras 1314-1317</p> <p>P1. Annex G: IANA Customer Service Complaint Resolution Process for Naming Related Functions, pgs 110-111</p> <p>Draft SLA for IANA Numbering Services:  <a href="https://www.nro.net/sla">https://www.nro.net/sla</a></p> <p>Supplements to RFC 2860 (IETF-ICANN MoU):  <a href="http://iaoc.ietf.org/contracts.html">http://iaoc.ietf.org/contracts.html</a></p>

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COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>reports of its findings. This report offers a mechanism for issue tracking purposes. The SLA establishes a number of reporting requirements, including a monthly report on the IFO’s adherence to performance standards. Further, the SLA requires the IFO to document any instance where it is unable or unwilling to fulfill a numbering service request. This process initiates a number of actions and time frames by which the IFO and RIRs communicate on the matter until the issue is resolved. Should any issues or disputes not be sufficiently addressed, a dispute resolution mechanism is provided for in the SLA.</p> <p>For the protocol parameters function, the Supplemental Agreement between the IETF and ICANN requires a number of reporting mechanisms. Namely, the IFO is required to report monthly on any single points of failure as well as to provide publicly accessible monthly statistics showing work completed, work “queued,” and the length of time taken to complete work. The Supplemental Agreement articulates that “escalation processes have been established to handle the cases where timely responses are not forthcoming.”</p>	
	CCWG-Accountability		<p>Yes, all reviews, IRPs, and reconsideration requests result in formal public documents at their conclusion. ICANN Board action or inaction on any of these items is public, and in many cases the subject of mandated implementation reports. Any intentional Board action or inaction perceived to be in violation of its Bylaw-mandated role in these exercises can be appealed by the Empowered Community. There is no formal documentation process for issues raised that do not achieve sufficient community support to reach the enforcement phase of the community escalation process. However, given the very public nature of such</p>	<p>CCWG-Accountability Proposal: Annex 2, pgs 9 -11, paras 44-45</p>

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COSO Principle	Relevant Proposal	Assessment	Justification	Citations
			<p>a process, there will be transcripts and other documents generated from AC, SO, and community-wide deliberations on an issue that can form a record. ICANN could build a formal repository for Empowered Community actions.</p>	

## CCWG-Accountability Expert Assessment

### *Executive Summary*

**May 19, 2016**

On March 14, 2014, the National Telecommunications & Information Administration of the United States Department of Commerce (NTIA) announced its intent to transition its stewardship of key Internet domain name functions to the global multistakeholder community. To meet the NTIA's requirements for the transition, the Internet Corporation for Assigned Names and Numbers (ICANN) facilitated the formation of multiple working groups, each focused on a different element of the transition proposal. One of those groups was the Cross-Community Working Group on Accountability (CCWG), which developed a set of 12 recommendations for strengthening and enhancing ICANN's accountability. As contribution to its own review of the transition proposal, the NTIA has convened this independent expert panel with a single objective: to conduct a thorough review and assessment of the CCWG Recommendations in order to determine the extent to which they comply with good governance principles.

Because ICANN is such a unique entity, sharing similarities with for-profit and nonprofit corporations, as well as multistakeholder entities, the expert panel drew on a diverse array of expertise. Utilizing recognized governance frameworks and leading scholarship from across the fields of corporate, nonprofit, and multistakeholder governance, the expert panel identified a set of good governance principles common to these varied fields and applicable to ICANN and the Internet governance ecosystem. These principles cluster around five broad categories:

1. Mission and duties
2. Auditing and transparency
3. Deliberative frameworks
4. Checks and balances
5. Enforcement capacity

For each of these categories, the expert panel determined if and how specific CCWG Recommendations collectively and individually supported the underlying principles. The expert panel then assessed the CCWG Recommendations as a whole, using as a lens an analysis of how the CCWG Recommendations, when operating in concert, could mitigate the risk of government or third-party subversion of ICANN.

Based on this detailed and careful assessment, the expert panel concludes that the CCWG Recommendations are consistent with sound principles of good governance. ICANN has a unique and important mission within the Internet ecosystem, and the recommendations of the CCWG reflect that. The recommendations are designed to enhance the accountability of the organization, while preserving the decentralized and multistakeholder nature of Internet governance. While these recommendations might not be well-suited for companies that prioritize efficiency and profits, or pursue a singular mission on behalf of a single, well-defined constituency, they are well-matched to the special needs and role of ICANN.

## CCWG-Accountability Expert Assessment

*Assessment*  
May 19, 2016

### I. Background and History of the CCWG-Accountability Recommendations

On March 14, 2014, the National Telecommunications & Information Administration of the United States Department of Commerce (NTIA) announced its intent to transition its stewardship of key Internet domain name functions to the global multistakeholder community.<sup>1</sup> To enable this transition, the NTIA asked the Internet Corporation of Assigned Names and Numbers (ICANN) to convene a multistakeholder process that would develop a transition plan meeting four criteria:

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

Additionally, the NTIA stated it would not accept a proposal that would replace the NTIA with a government-led alternative.

In order to ensure that these criteria were met, ICANN facilitated the formation of several working groups, each focused on a different element of the transition proposal. For example, ICANN and the stakeholder community convened the IANA Stewardship Transition Coordination Working Group (ICG) to consider technical components of the transition. The focus of this assessment is the Cross-Community Working Group on Accountability (CCWG). After months of meetings, legal guidance, public deliberations, and debate, the CCWG developed a set of 12 recommendations for strengthening and enhancing ICANN's accountability (CCWG Recommendations). The centerpiece of these recommendations is the creation of an "Empowered Community" that will have seven significant powers that can be exercised under extraordinary circumstances, such as if ICANN strays from its mission or is subverted by outside interests. These powers include rejecting ICANN budgets, removing individual ICANN board members, removing the entire ICANN board, and initiating binding arbitration to compel action consistent with the mission. On March 10, 2016, ICANN's board formally presented the CCWG Recommendations to the NTIA. Additionally, on April 21, 2016, ICANN posted for public comment the bylaw amendments that would effectuate the CCWG Recommendations.<sup>2</sup>

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<sup>1</sup> The IANA functions are a set of interdependent technical functions that enable the continued efficient operation of the Internet. They include: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with DNS root zone management; (3) the allocation of Internet numbering resources; and, (4) other services related to the management of the .ARPA and .INT top-level domains. ICANN currently performs these functions through a contract with NTIA.

<sup>2</sup> The expert panel was not asked to, and did not perform an overall review of the proposed bylaw amendments because the public comment and review period is still ongoing as of transmission of this assessment. We do observe that the lawyers for the CCWG have stated that they believe that the proposed draft bylaws are consistent with the



The question currently before the NTIA is whether these recommendations, when fully implemented, will preserve the flexible, multistakeholder system that has enabled the Internet to become a powerful force for economic and social change, while assuring the long-term stability of this critical infrastructure. As part of its own review, the NTIA is evaluating the IANA Stewardship Transition proposal and make a determination as to whether those recommendations meet the four criteria and prevent the installation of a government-led alternative system.

The assessment of this expert panel has a far narrower and more specific scope. The NTIA has convened this independent expert panel with a single objective: to conduct a thorough review and assessment of the CCWG Recommendations in order to determine the extent to which they comply with good governance principles. This expert assessment will supplement the NTIA's expertise, and serve as an expert input to its larger review. By the same token, it is important to understand what this assessment is not. The expert panel did not undertake an exhaustive accountability review of ICANN, under either its current or post-transition structure.<sup>3</sup> The expert panel did not assess the accountability of the broader Internet governance ecosystem.<sup>4</sup> The expert panel did not consider every possible scenario in which ICANN's accountability mechanisms could fail or be subverted.<sup>5</sup> And the expert panel did not review the ICG's transition proposals, nor does it opine on the ultimate question of the providence of the proposed IANA transition. Such questions are entrusted to those entities, such as the NTIA, in the best position to provide answers.

Assessing whether the CCWG Recommendations conform to good governance practices presents a challenge because ICANN is such a unique entity, without an appropriate analogue. It is organized as a nonprofit and serves many public-oriented goals, yet its operations have an incredible impact on the global for-profit economy. It is also a multistakeholder organization, with diverse constituencies that shape its course and operations in ways that would be unfamiliar for most corporations, for-profit and not. As such, while ICANN shares many similarities with other for-profit and nonprofit corporations, it simultaneously fails to fit neatly into the governance frameworks designed for those entities. And multistakeholder governance as a field does not yet have the established set of consensus best practice governance frameworks that exist

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CCWG Recommendations. See E-mail from Holly Gregory to the CCWG-Accountability Mailing List, *Draft ICANN Bylaws Draft of April 20, 2016: CCWG=Accountability and CWG-Stewardship Certifications* (Apr. 20, 2016), available at <http://mm.icann.org/pipermail/accountability-cross-community/2016-April/012063.html>.

<sup>3</sup> One member of the expert panel, the Berkman Center for Internet & Society, led such an exercise as part of ICANN's 2010 Accountability and Transparency Review. Such an effort takes several months, teams of people, and hundreds of thousands of dollars – none of which were available for this assessment.

<sup>4</sup> At issue before the NTIA is solely the question of the IANA transition. The Internet is far more than just ICANN and the IANA functions, comprised of a complex network of independent servers, autonomous systems, registries, registrars, and a multitude of multistakeholder organizations, whose collective voluntary commitment to using a shared and open set of protocols enables the Internet to function and evolve. The transition of the IANA functions, while significant, is but one small part of that larger ecosystem. Neither the NTIA, nor this expert panel, will assess these larger issues.

<sup>5</sup> The CCWG, in a series of stress tests, considered 37 possible failure scenarios, including attempts by governments to subvert ICANN. See CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations, Feb. 23, 2016, at Annex 15 [hereinafter individual annexes are referenced as "Annex" followed by the specific Annex number]. The expert panel considered the risk of government subversion due to its salience in the public debate. See *infra* Part III.

## Attachment 6: Corporate Governance Report

in the fields of corporate and nonprofit governance. For that reason, this assessment necessarily draws from a diversity of perspectives across corporate, nonprofit, and multistakeholder governance. This panel represents this array of expertise:

- John C. Coffee, Jr.: The Adolf A. Berle Professor of Law at Columbia Law School—a recognized expert in corporate governance and a Reporter for the American Law Institute’s *Principles of Corporate Governance*.
- Dana Brakman Reiser: Professor of Law at Brooklyn Law School—A recognized expert in the law of nonprofit organizations who has written extensively on nonprofit governance and the role of non-fiduciary constituencies in nonprofit organizations.
- The Berkman Center for Internet & Society at Harvard University: Professor Urs Gasser, the Center’s Executive Director and Professor of Practice at Harvard Law School, and Senior Researcher Ryan Budish have led extensive research into several important aspects of the multi-layered system that defines the function, structure, and operation of the Internet, including developing a better understanding of the mechanisms of effective governance.

In the absence of established, consensus best governance practices for entities like ICANN, the expert panel has determined that this assessment necessitates synthesizing a framework of good governance practices tailored to the unique needs of the multistakeholder Internet community. To create such a framework, the expert panel adopted a triangulation approach that draws from recognized governance frameworks and leading scholarship from across the fields of corporate, nonprofit, and multistakeholder governance. As an initial step in the triangulation, the panel, utilizing their diverse expertise, identified and reviewed a representative collection of foundational scholarship and frameworks from each of their fields.<sup>6</sup> From that foundational material, the expert panel identified a set of 22 higher-order good governance principles common to these varied fields and applicable to ICANN and the Internet governance ecosystem. These principles, described in greater detail below, are clustered into five broad categories:

1. Mission and duties
2. Auditing and transparency
3. Deliberative frameworks
4. Checks and balances
5. Enforcement capacity

The remainder of this assessment begins by describing the good governance framework that the expert panel synthesized. The expert panel first considers each of these categories of good governance principles, describing the key elements of the framework and then identifying how specific CCWG Recommendations collectively and individually support those principles. The expert panel next considers the CCWG Recommendations as a whole, to determine whether the proposed accountability reforms are generally consistent with the good governance framework. From this broad perspective, the expert panel offers several general observations about the CCWG Recommendations, including an assessment of the risk of government subversion of ICANN.

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<sup>6</sup> See Appendix 1.

As described more fully below, the expert panel ultimately concludes that the CCWG Recommendations are consistent with sound principles of good governance. ICANN has a unique and important mission within the Internet ecosystem, and the recommendations of the CCWG reflect that. The recommendations are designed to enhance the accountability of the organization, while preserving the decentralized and multistakeholder nature of Internet governance. While these recommendations might not be well-suited for companies that prioritize efficiency and profits or pursue a singular mission on behalf of a single, well-defined constituency, they are well-matched to the special needs and role of ICANN.

## **II. Governance Principles and the CCWG Recommendations**

The expert panel's best governance framework includes five broad categories encompassing numerous specific good governance principles. No single principle in this framework would be sufficient to assure an organization's accountability, nor is total adherence to every principle a necessary requirement. Instead, the expert panel's framework operates from the assumption that these principles represent a constellation of responsibilities, duties, and tools that, when activated, operate in concert to create a system of good governance. Accordingly, this assessment first describes in greater detail the five broad categories of good governance principles, and then for each category describes how the CCWG Recommendations, individually and collectively, reflect these good governance principles. Part III of this assessment will look more broadly at the entirety of the CCWG Recommendations to provide an overall assessment.

### **A. Mission & Duties**

#### **a. Framework Overview**

The responsibility and competence of an organization's key actors will, in large part, determine the quality of its governance. But even the most dedicated and capable actors need clear guidance to steward their organizations. To assist the individuals and bodies entrusted to manage an organization, good governance systems provide clear guidance on what they should and should not do.

This guidance begins with defining the organizational mission and enumerating the powers and responsibilities of each set of actors with a governance role. A clear organizational mission sets the ultimate criteria against which all organizational actions must be measured. Establishing organizational mission can be especially challenging in nonprofit organizations, for whom profitability cannot serve as an easy proxy for success, and in multistakeholder organizations, whose multiple constituencies can disagree over the organization's proper purposes and the priority among them. Despite this difficulty, organizations must identify their mission in order to establish a high-quality governance system. Identifying the roles and processes by which organizational actions will be taken is likewise crucial. Doing so allows for orderly decision-making, and supports the related good governance principles of transparency and deliberation.

Good governance systems also establish expectations and constraints that limit key actors' ability to undermine or oppose the best interests of an organization and its stakeholders. Under both for-profit and nonprofit corporate law, fiduciary duties of care and loyalty serve these functions. They create expectations that directors and officers will act with the level of care a reasonably prudent person would apply in similar circumstances, will not elevate their personal interests over those of their organizations, and will act always in good faith. While best governance practices for multistakeholder organizations are not yet as conclusively established as those enshrined in for-profit and nonprofit corporate law, key actors in these organizations are certainly expected to represent their stakeholder groups faithfully. Good governance systems will identify these obligations, along with the overarching requirement of supporting the organizational mission. In some cases—particularly but not exclusively in nonprofit corporations—these obligations may also include commitments external to the organization, such as those relating to preservation of the environment or human rights. To some degree, the ability of these expectations to constrain behavior will depend on the related good governance principles relating to enforcement capacity. Even when legal or other external enforcement is limited, however, establishing clear expectations like care, loyalty and representation enables individuals with governance roles to self-regulate, and can generate social norms of compliance within and among governing bodies.

### b. Mission & Duties in the CCWG Recommendations

The CCWG Recommendations comply with good governance principles by providing adequate guidance to its key actors. The proposals in Recommendations 5 and 6 speak to mission directly. If adopted, they would stake out a limited mission for ICANN: “to coordinat[e] the development and implementation of policies that are designed to ensure the stable and secure operation” of the Internet “and to facilitate its openness, interoperability, resilience and/or security.”<sup>7</sup> They would clarify its commitments to benefit the Internet community, comply with applicable law, operate fairly and transparently, avoid capture, and respect human rights.<sup>8</sup> Enshrining its mission, commitments, and core values as Fundamental Bylaws<sup>9</sup> gives all actors clear and stable guidance on the expectations for their actions on behalf of ICANN.

Much of the CCWG Recommendations addresses the roles and processes by which organizational actions will be taken. It develops an innovative and complex framework, and the construct of the Empowered Community sits at its core. Although ICANN will continue to be run by a board of directors selected through a combination of nominations from its Nominating

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<sup>7</sup> CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations, Feb. 23, 2016, Recommendation 5 at 26 [hereinafter individual Recommendations are referenced as “Recommendation” followed by the specific Recommendation number]. Additionally, Recommendation 9 would add a series of commitments drawn from the NTIA and ICANN Affirmation of Commitments to the ICANN Bylaws, providing even greater guidance to fiduciaries and others with a role in ICANN governance.

<sup>8</sup> In addition to the human rights component of ICANN’s revised mission statement, Recommendation 12 would require ICANN “to develop a Framework of Interpretation for ICANN’s Human Rights commitment.” This effort would provide additional guidance on this important part of ICANN’s mission.

<sup>9</sup> See Recommendation 3 at 21. (Designating all ICANN Bylaws as either Fundamental Bylaws or Standard Bylaws, the latter of which would be considerably easier to alter. Fundamental Bylaws could be changed only by approval of both the ICANN board and the Empowered Community, and include the bylaws that create the Empowered Community, and its powers and enforcement tools. The Fundamental Bylaw designation would further stabilize ICANN governance by preventing unilateral changes to its fundamental components.).

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Committee (NomCom) and appointments by its Supporting Organizations (SOs) and Advisory Committees (ACs), the new Empowered Community is granted powerful authority to hold the Board to account. Under Recommendations 2 and 4, the Empowered Community, to be made up of SOs and ACs that opt to participate, is granted the right to take seven significant actions. It may:

1. Reject an ICANN budget, strategic plan, or operating plan
2. Approve a change to the Fundamental Bylaws or articles of incorporation, or a sale of all, or substantially all, ICANN assets
3. Reject a change to the Standard Bylaws
4. Remove an individual director, whether that director was nominated by an SO or AC, or by the ICANN Nominating Committee
5. Recall the entire ICANN Board
6. Initiate a binding Independent Review Process (IRP) or request for reconsideration of a board decision
7. Reject an ICANN board decision related to reviews of the IANA functions.

Each of these extraordinary actions can only be taken if the SOs and ACs are in considerable consensus about the need for action (individual levels of consensus are designated for each power) and only after an exhaustive escalation process.

While few organizations would find such an extremely complex framework attractive, it is well-suited to the unique nature of ICANN. The roles and processes identified by the CCWG Recommendations are not simple, but they are clear, and should provide for orderly decision-making processes at the Empowered Community level. The proposal contemplates that governance processes at the SO and AC level will be reviewed and enhanced in Work Stream 2. This task is important, as the internal operations of these constituent parties will greatly impact the Empowered Community's ability to function effectively and accountably.

Finally, the CCWG Recommendations establish constraints that limit key actors' ability to undermine or oppose the best interests of an organization and its stakeholders. As a California nonprofit corporation, each ICANN director is subject to fiduciary duties of care and loyalty. The California statute requires that:

“[a] director shall perform the duties of a director ... in good faith, in a manner that the director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.”<sup>10</sup>

Recommendation 5 recommends bylaw language signaling the overarching constraint of mission, requiring ICANN to “act strictly in accordance with, and only as reasonably appropriate, to achieve its Mission.”<sup>11</sup> This Mission, in turn, clearly identifies the obligation to comply with local and international law.<sup>12</sup> In addition, the design of the Empowered Community

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<sup>10</sup> Calif. Corp. Code § 5231(a).

<sup>11</sup> Recommendation 5 at 28.

<sup>12</sup> See Recommendation 5 at 29.

construct reinforces the obligation of representation. It is empowered only to translate the decisions of participating SOs and ACs into action, and has no authority to act beyond their direction. This design will constrain the Empowered Community's ability to veer from its representational commitments.

## B. Auditing & Transparency

### a. Framework Overview

It is very difficult for stakeholders, shareholders, or board members to hold an organization accountable if its actions and reasoning are opaque, secretive, or enigmatic. For that reason, good governance principles place a significant emphasis on mechanisms that compel the organization to open its key records and documents for those entitled to review the actions of the organization. This authority generally encompasses both organizational, financial, and governance records. Good governance principles create an affirmative right on the part of board members and other key stakeholders to access these records. Moreover, good governance principles necessitate that these records be intelligible and actionable. Simply having access to records is insufficient without the ability to pose questions about the decisions they reflect to the executives and officers responsible for their production. Thus, good governance principles provide opportunities for boards and stakeholders to question organization officials in order to provide meaning and context to organizational records.

In some cases, organizational records may be insufficient to identify failings or malfeasance, particularly when the records are incomplete or falsified. Under such circumstances, the discovery of such behavior may hinge upon either external, independent assessments or on internal whistleblowers. Thus, good governance principles call for periodic external reviews of organizational practices and behavior. Similarly, good governance principles require mechanisms that protect whistleblowers who help bring to light organizational failings. Whistleblower protections cannot be *carte blanche* to disclose organizational secrets without cause, but should create an environment that enables employees to act in good faith to preserve the integrity of the organization without risk of retribution.

Effective accountability often requires more than knowledge of the current quarter or fiscal year; understanding historical decisions and why they were made can be critical for both understanding current organizational issues and ensuring fulfillment of past commitments. Good governance principles call for maintenance of historical records in order to preserve institutional knowledge. This becomes even more important in multistakeholder organizations, in which stakeholder groups or representatives may engage or disengage in proportion to their stake in any particular topic. When organizations cannot rely on the presence of a shared base of knowledge among a stable set of participants, maintaining institutional history is critical.

### b. Auditing & Transparency in the CCWG Recommendations

The CCWG Recommendations largely comply with good governance principles that relate to auditing and transparency. In particular, the Recommendations demonstrate a commitment to making financial and governance materials available, allowing for participants to question

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executives and the Board, and imposing regular audits and reviews. However, although the Recommendations recognize the importance of enhancing ICANN's document disclosure policies, whistleblower protections, and accountability reviews of SOs and ACs, the Recommendations propose fully addressing those matters in an ongoing work stream.

The CCWG Recommendations, if fully implemented, would ensure that the participants in the accountability mechanisms would have access to ICANN's key financial and governance records. Recommendation 1 would amend the bylaws to grant to any participant in the Empowered Community a right under California law to inspect "the accounting books and records and minutes of proceedings."<sup>13</sup> Similarly, Recommendation 8 would require that the Board publicly post recordings and transcripts of debates over requests for reconsideration of Board decisions.

The CCWG Recommendations also reflect a strong commitment to public consultation and dialogue throughout ICANN's processes, enabling participants to pose questions to ICANN executives and Board members. At the core of these commitments is use of public consultations and public forums within the various escalation mechanisms in Recommendations 1 and 2. Under Recommendation 2, the Board will be required to "undertake an extensive engagement process" before taking any number of steps, including approving the operating budget, modifying the bylaws, or any Board decisions relating to a review of the IANA functions.<sup>14</sup> Similarly, the public forums required in the escalation process are intended to provide an opportunity for "the ICANN Board and the Empowered Community [to] resolve their issues"<sup>15</sup> through dialogue before escalating further to the use of Community Powers. And Recommendation 4 requires that an interim board "consult with the community through the SO and AC leaderships before making major decisions."<sup>16</sup> In many ways, these recommendations are intended to strengthen multistakeholder processes that ICANN already follows, and Recommendation 5 elevates those multistakeholder processes to that of a "Core Value" of ICANN.<sup>17</sup>

The CCWG Recommendations also include numerous commitments to auditing and periodic review. For example, Recommendation 1 enables participants in the Empowered Community to compel ICANN to hire an independent auditor to investigate issues of potential fraud or gross mismanagement of ICANN resources. Recommendation 9 would require numerous periodic reviews (albeit not necessarily independent) including: accountability and transparency;<sup>18</sup>

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<sup>13</sup> See Calif. Corp. Code § 6333 ("The accounting books and records and minutes of proceedings of the members and the board and committees of the board shall be open to inspection upon the written demand on the corporation of any member at any reasonable time, for a purpose reasonably related to such person's interests as a member.").

<sup>14</sup> Recommendation 2 at 15. Recommendation 3 has a similar requirement of consultation before any changes to the Bylaws.

<sup>15</sup> Recommendation 2 at 17.

<sup>16</sup> Recommendation 4 at 25.

<sup>17</sup> Recommendation 5 at 27.

<sup>18</sup> See Annex 9 at 11.

security, stability, and resiliency;<sup>19</sup> competition, consumer trust, and consumer choice;<sup>20</sup> effectiveness of the WHOIS directory service;<sup>21</sup> and IANA functions.<sup>22</sup>

Although the CCWG Recommendations demonstrate a strong commitment to auditing and transparency, in some narrow areas the Recommendations commit only to improving accountability in the future. In particular, Recommendations 8 and 12 commit to improving ICANN's document disclosure policies, and Recommendation 12 commits both to improving the whistleblowing policy, and to conducting a future review of SO and AC accountability. Of all of these future commitments, the latter appears to be the most important, given the importance of the SOs and ACs in the Empowered Community. Weaknesses in the accountability of the SOs' and ACs' own accountability mechanisms could potentially weaken the effectiveness of the Empowered Community as a whole.

### C. Deliberative Frameworks

#### a. Framework Overview

An important component of each of the above categories of good governance principles is the ability of participants to have the foundational knowledge necessary to activate the available accountability mechanisms. One element of this, already discussed, is that good governance systems require that organizations be transparent about a variety of aspects of the organization. But good governance systems go beyond this, and enable not just the opportunity to access material, but also the resources necessary to engage and deliberate meaningfully within the accountability systems. One piece of this is the availability of materials in formats that are accessible without burdensome levels of expertise; every member of the governance system should have an equal opportunity to support the accountability of the organization without requiring specialized knowledge or expertise. Similarly, resources should be made available to enable effective engagement in the governance system, including financial, educational, and legal resources.

Good governance systems also provide numerous opportunities and paths for engagement and participation in the governance system. In some cases, this requires subsidizing or fully funding the travel of participants to support attendance of meetings and full engagement in the governance system. In other cases, this may involve relying upon a variety of remote participation tools, ranging from conference call lines to video chat, participation hubs, and collaborative drafting tools. Such tools enable the participation of those who would otherwise be unable to fully participate in the deliberative and accountability process, and in turn ensure a more diverse and representative governance system.

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<sup>19</sup> See Annex 9 at 12.

<sup>20</sup> See Annex 9 at 13.

<sup>21</sup> See Annex 9 at 14.

<sup>22</sup> See Annex 9 at 15.



b. Deliberative Frameworks in the CCWG Recommendations

The CCWG Recommendations reflect a general commitment to ensuring that participants have the ability to support and engage in the governance system. For example, Recommendation 5 outlines a series of Core Values (to be enshrined in the difficult-to-change Fundamental Bylaws), and classifies some of these as “Commitments,” which are values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.”<sup>23</sup> One of these new Commitments is that ICANN use processes that “ensure that those entities most affected can assist in the policy development process.”<sup>24</sup> Similarly, Recommendation 5 also establishes as a Core Value: “Seeking and supporting broad, informed participation reflecting the functional geographic and cultural diversity of the Internet at all levels of policy development and decision-making.”<sup>25</sup> Enshrining these values within the Fundamental Bylaws will help ensure that ICANN continues and enhances its efforts to help participants fully engage in its governance system.

The CCWG Recommendations operationalize these commitments in a few important ways. For example, under Recommendation 7, ICANN must bear the administrative costs of running the Independent Review Panel (IRP) to ensure that it is available as needed. More importantly, when the Empowered Community invokes its power to bring an IRP against ICANN, ICANN must pay the Community’s legal fees, ensuring that cost will never prevent the Community from exercising this accountability mechanism. Additionally, the same recommendation requires ICANN to provide translation services during IRPs so that claimants can fully participate regardless of geography and language.

Because of the significant resources—both financial and time—that are required in order to travel to meetings around the world, opportunities for remote participation can be an important mechanism for ensuring that all participants can engage in accountability processes. ICANN has historically offered opportunities for remote participation, and the CCWG Recommendations would require ICANN to further enhance this commitment, particularly for the Community Forums that are a central component of the escalation process. As is repeated several times in the CCWG Recommendations: “It is expected that for most powers, this will only involve remote participation methods such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face-to-face. The one exception to this is the power to recall the entire Board, which would require a face-to-face meeting.”<sup>26</sup>

Overall, the CCWG Recommendations reflect a commitment to ensuring that all participants can effectively engage within the ICANN governance system. In several cases, however, the exact mechanisms for accomplishing this are left unstated. Although it would be helpful to see how ICANN intends to honor these commitments, because they are embodied within the mission and Core Values of the organizations, the expert panel believes there is little risk of ICANN failing to

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<sup>23</sup> Recommendation 5 at 27.

<sup>24</sup> Recommendation 5 at 30.

<sup>25</sup> Recommendation 5 at 30.

<sup>26</sup> Annex 2 at 8; *see also* Annex 4 at 8, 13, and 17.

uphold them. Additionally, Recommendation 7 encourages, but does not require, ICANN to provide pro-bono representation to lesser-resourced participants, and it would further strengthen accountability to see ICANN embrace this suggestion.

#### D. Checks & Balances

##### a. Framework Overview

Clear mission and duties, transparency, and opportunity for deliberation and participation all serve to ensure that participants have sufficient knowledge of organizational actions necessary to catch lapses, malfeasance, and deviations from the mission. But equally important is the ability to act on this knowledge and remedy problems that arise. This ability takes two forms in good governance systems: (1) sets of checks and balances that ensure governance systems are protected (discussed in this subsection), and (2) tools for participants to address accountability issues (discussed in the following subsection).

Mechanisms that allow for unilateral action can facilitate both organizational capture and the elimination of minority rights. Therefore, good governance principles call for systems of checks and balances that serve as a brake on organizational action in the absence of institutional cooperation across a diversity of perspectives. Preventing capture and preserving minority rights are important goals in any organization, but the emphasis will vary depending on the needs of the entity. Checks and balances assure accountability and consensus at the expense of efficiency. Accordingly, corporations and nonprofits may use checks and balances more sparingly in order to carefully balance the accountability benefits against a need for efficiency. By contrast, multistakeholder organizations often serve quasi-regulatory functions, wherein assuring accountability is worth risking deadlock or inefficiency, and therefore they will rely more heavily on checks and balances to preserve accountability.

Under good governance principles, there are three interrelated components of an effective system of checks and balances, as it relates to accountability. First, accountability mechanisms should be independent of the day-to-day operations of the organization and independent of any one set of stakeholders. Second, there should be a diversity of stakeholders and perspectives who can activate these accountability mechanisms. And third, mechanisms should be in place to ensure that those stakeholders are free from conflicts of interests. Taken together, these three components ensure accountability mechanisms are activated only when a diverse set of stakeholders, representing a diverse set of views, agree and act in concert.

As noted previously, participating in accountability systems often requires resources: financial resources to cover personnel, travel, and legal counsel, time to monitor organizational behavior and review documents, and human resources to participate in organizational activities. Thus resource constraints can undermine the effectiveness of checks and balances, as well-resourced participants can sometimes play an outsized role, unbalancing accountability mechanisms. For that reason, good governance principles also make resources available to prevent the less privileged in an organization from being overwhelmed by those with more. One of the most important of these resources is legal counsel. This is particularly true in multistakeholder organizations, in which participants are more likely to come from diverse backgrounds and

communities, including technical or international communities that may have little experience in legal and policy matters in a given jurisdiction.

b. Checks & Balances in CCWG Recommendations

The CCWG Recommendations embody several checks and balances that aim to prevent capture and preserve minority rights. Importantly, these numerous accountability mechanisms exist outside of ICANN's day-to-day operation, enabling any coalition of participants to activate these tools. At the core of these mechanisms is the Empowered Community and the Community Powers. As Recommendation 2 outlines, any coalition of SOs and ACs can call for a Community Forum or vote to exercise a Community Power, so long as the thresholds are met and there is no more than a single objection. For example, to recall the entire Board, any three SOs and ACs must call for a Community Forum to discuss recalling the Board, and any four SOs and ACs must agree to exercise the power to recall. Similar independence exists for initiating an IRP or seeking Board reconsideration, where flexible rules allow an even wider variety of stakeholders to activate the accountability mechanisms.<sup>27</sup> Moreover, Recommendation 7 ensures that the Empowered Community can effectively use the IRP process by directing ICANN to cover the legal fees of the Community in such circumstances. Critically, Recommendations 1 and 3 would preserve the independence of these accountability mechanisms by making their rules part of the difficult-to-change Fundamental Bylaws.

The checks and balances of the CCWG Recommendations are bolstered by the diversity of participants that must agree to exercise the Community Powers. As noted above, to call for Community Forums and exercise Community Powers, anywhere from two to four SOs and ACs must reach consensus. The SOs and ACs represent different constituencies, selected in different ways, often reflecting geographic diversity. Additionally, the remit of each SO and AC varies, with some having more technical orientations, and others are focused on specific policy development areas.

There is also considerable diversity within each of the SOs and ACs.<sup>28</sup> For example, The Generic Names Supporting Organization (GNSO) has members that span businesses and civil society groups.<sup>29</sup> By comparison, the members of the Address Names Supporting Organization (ASO) come from five geographically diverse regional organizations, each with their own independent membership and selection process.<sup>30</sup> The Asia Pacific Network Information Centre (APNIC), for example, has three seats in the ASO—one selected by the Executive Council of the regional organization, and two selected through an election open to all APNIC members (and monitored

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<sup>27</sup> See Recommendation 7 at 34 (“Any person/group/entity ‘materially affected’ by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress.”).

<sup>28</sup> For further discussion of the diversity of the SOs and ACs, *see infra* Part III.C.a.

<sup>29</sup> The GNSO membership is quite varied, included constituency groups of commercial, non-commercial, registry, and registrar stakeholders. More information about the GNSO structure, and links to the membership lists of each constituency group is available on the GNSO website. *See* GNSO, *Stakeholder Groups and Constituencies* (last updated Oct. 3, 2013), <http://www.gnso.icann.org/en/about/stakeholders-constituencies>.

<sup>30</sup> *See* ASO Address Council Elections, <https://aso.icann.org/advisory-council/address-council-elections/>.

by independent observers).<sup>31</sup> Thus, the exercise of any Community Powers represents consensus among a diversity of expertise, geography, and perspective.

A third aspect of the checks and balances in the CCWG Recommendation is the protection against conflicts of interest. The Recommendations place the greatest emphasis on ensuring that the Empowered Community remains free from conflict when monitoring the Board's response to governmental advice provided through the Governmental Advisory Committee (GAC). Any SO or AC can provide advice to the Board, but advice from the GAC poses unique accountability risks because it is more difficult for the Board to reject GAC advice that is made without objection.<sup>32</sup> Because it is more difficult for the Board to oppose GAC advice, the Empowered Community becomes a more important check on ICANN in this context. Generally, the GAC could, if it elected to, be a decisional participant in the Empowered Community, which would raise a potential situation in which the Board follows GAC advice and the GAC votes against the exercise of Community Powers to block the Board decision. Recommendations, 1, 2, and 11 all respond to this potential for conflict with the "GAC carve out." This provision blocks the GAC from "participat[ing] as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice."<sup>33</sup> Additional protections against conflicts of interest include the use of independent audits,<sup>34</sup> IRPs with independent, neutral arbitrators,<sup>35</sup> and a commitment to neutral, fair, and non-discriminatory processes.<sup>36</sup>

Taken together, all of these checks and balances serve to protect minority rights. For example, the Board must give special consideration to consensus GAC advice, but under Recommendation 11, a single country's objection is sufficient to eliminate this special consideration. Under Recommendation 2, two objections from SOs and ACs are sufficient to block exercise of a Community Power. And Recommendation 6 makes preservation of human rights a Core Value, an obligation that will be enforceable through the IRP if and when ICANN develops a Framework of Interpretation on Human Rights.

The checks and balances will almost certainly serve as a drag on ICANN's overall efficiency, but that appears to be a conscious choice in order to emphasize deliberation, encourage consensus, and preserve accountability. At the same time, the mechanisms also have fail-safe mechanisms to ensure that they cannot be used to paralyze ICANN. For example, the exercise of the Community Powers can neither be initiated nor blocked by a single SO or AC.<sup>37</sup> Similarly, although the CCWG Recommendations make it easier to initiate IRPs or ask the Board for reconsideration, which creates a risk that a single entity could attempt to block policies or decisions, "proposed

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<sup>31</sup> See APNIC NRO NC Election Procedures, <https://www.apnic.net/community/participate/elections/nro-elections/nro-election-process>.

<sup>32</sup> See Recommendation 11 (noting that the Board requires 60% of its members to vote to reject GAC advice submitted without objection, but only a majority to reject non-consensus advice).

<sup>33</sup> Recommendation 1 at 14.

<sup>34</sup> See Recommendation 1 at 13.

<sup>35</sup> See Recommendation 7 at 35.

<sup>36</sup> See Recommendation 5 at 27.

<sup>37</sup> See Annex 15 at 22.

Reconsideration and IRP enhancements include the ability to dismiss frivolous or abusive claims and to limit the duration of proceedings.”<sup>38</sup>

## E. Enforcement Capacity

### a. Framework Overview

Once the participants have determined that accountability issues need to be addressed, good governance systems provide mechanisms for response. At such times of organizational conflict, ambiguity in processes can inject unnecessary risk or confusion. For that reason, good governance systems have clearly defined mechanisms in place well before they are needed. Given that governance systems are often most needed when the routine operations of the organization have stalled or been compromised, these extraordinary accountability measures must be clear, robust, and resilient so that they can be activated without provoking unnecessary questions about the legitimacy of the mechanisms themselves. While such questions may be impossible to avoid, good governance systems reduce their effect by relying upon clearly defined processes.

One example of clearly defined processes important for activating accountability measures is the use of voting. In many organizations, particularly multistakeholder organizations, consensus is the preferred means of decision-making. However, in times of organizational conflict, consensus may be unobtainable. Good governance systems provide for flexible decision-making mechanisms that can adapt as the situation escalates. Where consensus proves unobtainable, good governance systems may offer a fallback to voting, and provide clear thresholds and caps that establish the precise standards under which decisions are made.

Finally, good governance systems provide participants the ability to go beyond the internal processes of the organization and seek external intervention when necessary. In particularly challenging circumstances, the internal processes of an organization may be insufficient to address accountability issues. At such times, participants need an independent, legitimate recourse as a last resort. Good governance systems subject the organization to clearly established, stable, and legitimate legal authority that provides for cognizable rights whose violation can be redressed, and ensure access to courts or independent court-like bodies to adjudicate these rights.

### b. Enforcement Capacity in the CCWG Recommendations

The CCWG Recommendations meet good governance practices for providing clearly defined and detailed processes for enforcing accountability. Indeed, a substantial portion of the Recommendations are exactly that: detailed descriptions of the mechanisms by which participants can engage in and activate a variety of accountability mechanisms. Perhaps the most important and detailed descriptions relate the Community Powers and the rules under which such powers can be activated. Recommendations 1 and 4 in particular spell out these Community Powers and the process of escalation that culminates in the use of the Community Powers to take actions such as approving changes to Fundamental Bylaws, removing a Board Director, or

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<sup>38</sup> Annex 15 at 22.

recalling the entire Board. Further details on the processes are provided in the Annexes. For example, Annex 7, explains in detail how SOs and ACs can begin to activate an IRP, and explain the method by which a “Chairs Council” will take the ministerial steps necessary to pursue an IRP. Thus, the CCWG Recommendations describe a robust framework that will provide clear direction in moments of potential conflict.

Clearly defined enforcement mechanisms explicitly and carefully address the processes by which decisions are made. The CCWG Recommendations emphasize consensus, but the Recommendations also provide clear rules for voting when consensus is unobtainable. For example, a key stage in the escalation mechanisms in Recommendation 2 is the use of Community Forums, open “for any interested stakeholder in the community to participate.”<sup>39</sup> These forums provide an opportunity for the ICANN Board and the Empowered Community to resolve disputes through dialogue and consensus. However, recognizing that consensus may not always be possible, Recommendation 2 provides detailed descriptions of the exact number of votes that each Community Power requires in order for the Empowered Community to activate it. Similarly, although ICANN must give special consideration to consensus GAC advice, Recommendation 11 is clear that 60% of the ICANN Board can vote to reject such advice. Consensus is an important part of the CCWG Recommendations, but the Recommendations do not rely exclusively on it, and instead provide accountability mechanisms that can be exercised in the absence of consensus.

Finally, the CCWG Recommendations provide clear mechanisms for participants to obtain external intervention, in the form of court orders, if the internal accountability mechanisms prove inadequate. Recommendation 1 establishes the Empowered Community as a Sole Designator, which is a California unincorporated association with certain legal rights, including standing. For example, the Empowered Community can initiate a binding IRP; if the ICANN Board refuses to follow a panel decision, the Empowered Community could enforce that decision in any court recognizing international arbitration results, including both the United States and other countries.<sup>40</sup> Similarly, if the ICANN Board refuses to comply with an Empowered Community decision to remove an individual ICANN Director or the entire Board, the Community can immediately bring a claim in a court with jurisdiction. An important safeguard to these legal rights is that the proposed bylaws bar ICANN from challenging the standing of the Empowered Community in the exercise of these legal rights.<sup>41</sup>

### **III. Overall Observations on the CCWG Recommendations**

In the above section, the expert panel evaluated the extent to which the CCWG Recommendations meet good governance practices in each of the five broad categories of the good governance framework. However, the principles of the framework represent a constellation of responsibilities, duties, and tools that operate in concert to create a system of good governance. As such, although it is important that the CCWG Recommendations meet the good

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<sup>39</sup> Recommendation 2 at 16.

<sup>40</sup> See Recommendation 2 at 16; Annex 7 at 11.

<sup>41</sup> See ICANN Proposed Bylaws, at §§ 4.3(b)(i)(A), 4.3(b)(i)(B), 4.3(f), <https://www.icann.org/en/system/files/files/proposed-new-bylaws-20apr16-en.pdf>.

governance practices within each category, it is equally important that they operate as a collective whole—across categories—to create a network of accountability safeguards. Although the expert panel cannot look at every such circumstance that might necessitate the activation of the accountability mechanisms, we consider below one particularly illustrative example: how the CCWG Recommendations could mitigate the risk of a takeover of ICANN by governments or other third-parties. This example demonstrates how the CCWG Recommendations together are consistent with sound principles of good governance that lessen the risk of such a threat to ICANN’s accountability. Although it is but one example, the expert panel believes that the good governance practices reflected in the CCWG Recommendations will aid in preserving ICANN’s accountability from other potential challenges as well.

### A. Mitigating the Risk of ICANN Capture

From early in the transition process, NTIA has made clear that it would not accept a proposal that could lead to a single government (or a coalition of governments) replacing its oversight role. NTIA’s position is entirely logical because domination of ICANN by a single government (or coalition of several governments) could jeopardize one or more of the four core criteria that NTIA has emphasized must be satisfied.<sup>42</sup> Nonetheless, some commentators have expressed fear that, in the absence of NTIA’s supervision, some foreign government, or a small group of them, would come to dominate ICANN, with resulting loss to its openness and security.<sup>43</sup> Although such fears are understandable, we find them to be largely without foundation. In this section, we undertake a realistic appraisal of ICANN’s exposure to a takeover after the proposed transition. This inquiry is necessarily incident to our appraisal of the proposed corporate governance structure for ICANN, because a governance structure that is unstable and exposes ICANN to a sudden takeover can hardly be considered optimal. Our appraisal is necessarily provisional, as important aspects of the transition remain to be determined at the Work Stream 2 stage. Still, at least, on the conceptual level, we consider the prospects to be extremely remote for a takeover of ICANN by any of (a) a single government, (b) a group of governments, or (c) one or more economic actors.

### B. The Takeover Risk: A Conceptual Overview

In the case of public corporations, takeovers, whether effected by a hostile tender offer or a proxy context, do occur—but they have been infrequent in recent years, probably because of a variety of defensive measures that public corporations commonly today use. ICANN is, of course, very differently situated from a public corporation. The key difference is not that ICANN lacks shareholders. After all, the five Decisional Participants in the Empowered Community will have voting rights and could in principle replace the entire ICANN board. Rather, the most important difference is that the preferences of shareholders in a public corporation are highly homogeneous, while the preferences of ICANN’s major stakeholders (i.e., its Decisional Participants) are predictably heterogeneous. That is, stockholders in a public corporation

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<sup>42</sup> We take it to require no elaboration that a government-dominated ICANN would by definition be inconsistent with (1) “supporting and enhancing” the multistakeholder mode; (2) maintaining “the security, stability, and resiliency of the Internet domain name system”; (3) meeting “the needs and expectations of the global customers and partners of the IANA services”; or (4) maintaining “the openness of the Internet.”

<sup>43</sup> See, for example, L. Gordon Crovitz, “Stop Obama’s Internet Giveaway,” *The Wall Street Journal*, March 20, 2016 (op/ed article predicting increased governmental role and likely dominance of China from proposed transition).

basically want to maximize their share value. Thus, if a bidder makes a tender offer at a substantial premium over the current market price, they are likely to accept that offer and tender their shares. The only area of real disagreement is likely to be whether they can hold out for an even higher premium.

In contrast, the stakeholders in ICANN have very heterogeneous preferences. The various SOs and ACs that are the vote-holding Decisional Participants in the Empowered Community have different constituencies and orientations. Some are basically comprised of private commercial users of the Internet, whereas others have a more scientific orientation or deep-rooted commitment to preserving the openness of the Internet. Some are more interested in ICANN's Domain Name Policy, while another may care more about its IANA functions. Also, most are geographically dispersed, making it less likely that a single country or outside actor could dominate them. In addition, diversity and regional requirements require at least one board member of ICANN to come from each of the five geographic regions, and no more than five members may come from any one region. Government officials and similar representatives are also barred from serving as ICANN members. All of this is in sharp contrast to the patterns of shareholder ownership in a public corporation, where a substantial majority of the shares will be held by similarly situated institutional investors and where sometimes a majority of the stock may be controlled by a small number of hedge funds and other investors located in the same city or region. This greater dispersion and diversity within ICANN's shareholders implies greater insulation from a takeover.

All in all, because the Decisional Participants do not share the same orientation or interests, there is a much less possibility that a government or other third party could convince them effectively to cede control.

### C. Strategies for a Takeover

Notwithstanding this point that ICANN is accountable to stakeholders having far more diverse preferences than the shareholders in the typical public corporation, it is still necessary to walk through the various tactics by which a government or other third party could attempt to acquire control. Three basic scenarios will be considered:

#### a. Ousting the Board

The simplest means by which to effect a takeover is to oust the board, replacing the incumbent directors with the insurgent's candidates. In the case of ICANN, this is easier said than done. Although the Empowered Community will have the legal right and power to remove the entire ICANN, this requires a number of time-consuming procedural steps to be taken along a gradual continuum of escalation. Ultimately, at the end of this process, an extraordinary supermajority of the Decisional Participants must vote in favor of removal. More specifically, it now appears that there will be five "Decisional Participants"—three SOs and two ACs. Of these, four must support and no more than one may object to the replacement of the board.\*

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\*It appears to be still uncertain whether the GAC will exercise voting power.



Beyond this initial point that a high supermajority is required (and that any two Participants can veto), a further reinforcing point needs to be made: these Decisional Participants are both geographically dispersed and economically diverse. The three SOs are: (1) the Generic Names Supporting Organization (GNSO); (2) the Country Code Names Supporting Organization (ccNSO), and (3) the Address Names Supporting Organization (ASO). GNSO's members consist of both business users and customers, Intellectual Property interests, and civil society groups. Among its members are well-known large corporations, such as AT&T, Microsoft, Facebook, Pfizer, Verizon and General Electric. It seems fairly evident that such users are not likely to be dominated by a single government or to be willing to sacrifice their long-term interests in the Internet for any economic benefit. CcNSO, the second SO, is populated by various registries (its members include Neustar, Nominet, AFNIC, DNIC and SIDN). The Third SO—ASO—consists of the five Regional Internet Registries (ARIN, APNIC, LANIC, RIPENCC, and AFRINIC). All three SOs are thus geographically diverse, such that no single country (or even a coalition of them) could foreseeably dominate the three SOs.

The two ACs are: (1) the Governmental Advisory Committee (GAC), and (2) the At-Large Advisory Committee (ALAC). The GAC has 110 governments plus 35 observers. Its members include the US, the UK, China, Russia, Brazil, etc. It is as likely that a single country (or a small group) could dominate the GAC as a single country (or a small group) could dominate the United Nations. The ALAC is intended to represent the voice of Internet users, and its members include academics, consumer advocates, and civil societies. Again, the diversity of their interests and views is obvious, and they are unlikely to be influenced by the same economic considerations as may motivate other groups.

In short, power within the Empowered Community is highly fragmented, and the prospect seems remote that a single country (or coalition) could dominate or “capture” four out of five of these bodies.

#### b. Capturing the Nominating Committee

An alternative means of gaining control over ICANN might be to capture its Nominating Committee (NomCom). But the NomCom actually holds less power than its name appears to indicate. It selects only eight of the 16 members of ICANN's voting board. Of the other eight, two are selected by the GNSO; two by the ccNSO; two by the ASO, and the ALAC selects one. The final director is ICANN's CEO. Moreover, ICANN's directors serve a three-year term, so that each year the NomCom is selecting no more than three directors.

This means that ICANN has effectively a “staggered board,” which device has long been recognized as a relatively impregnable barrier to a hostile takeover in the case of public corporations.<sup>44</sup> Moreover, even if the NomCom were somehow “captured” by an insurgent group, it would take three elections before it could elect even 50% of the board. In reality, this implies that ICANN has in effect a unique governance structure that combines both a staggered board and a classified board (with four different classes electing 50% of its board and the NomCom selecting the rest on a staggered basis). In the case of a public corporation, such a

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<sup>44</sup> See, e.g., Lucian Bebchuk, et al., The Powerful Antitakeover Force of a Staggered Board: Theory, Evidence & Policy, 54 Stan. L. Rev. 887 (2002).

combination would be so effectively insulated from a takeover to make any challenge virtually unthinkable. Moreover, if any slow takeover of the NomCom were mounted by an outsider, the Empowered Community could respond by removing those ICANN directors so elected who were perceived to have been captured, using the procedures next discussed.

c. “Capture” Through Corruption.

Recent events have shown that international organizations (especially those in the field of international sports) can be “captured” through corruption. Leading officials of such organizations have pleaded guilty to (or have been indicted for) accepting bribes to determine the location of international sporting events (such as the location of soccer’s World’s Cup). Correspondingly, it is at least imaginable that a government or a private actor could bribe the board of ICANN to vote the way it wishes on some hypothetical critical decision. Of course, this would have also been possible even under the existing structure of ICANN, as NTIA did not have any investigative machinery dedicated to detecting instances of bribery or corruption.

Still, if corruption is a potential threat, it must also be recognized that the Empowered Community has ample checks and balances to protect itself. For example, if one or two (or even a greater number of) ICANN directors appeared to be acting in the interest of some outside entity or country), a simple majority of the Decisional Participants could remove them (provided that no more than one Decisional Participant objected). Alternatively, the Empowered Community could reverse the actual decision by initiating a binding IRP by a simple majority vote of the Decisional Participants. Mediation could also be required.

The bottom line is that the stakeholders in the Empowered Community have far more rights and powers than do the members of the typical not-for-profit corporation. These powers can be brought to bear if decisions appear to have been made that are not in the best interests of ICANN or the Empowered Community. Thus, in our view, a hostile takeover remains no more than a very remote possibility (albeit one that should be kept in mind during the Work Stream 2 process).

#### **IV. Conclusion**

The expert panel, drawing on frameworks and leading scholarship from across the fields of corporate, nonprofit, and multistakeholder governance, created a framework of good governance principles by which to evaluate the CCWG Recommendations. Applying that framework, both within five broad categories of principles, and as whole, the expert panel concludes that the CCWG Recommendations are generally consistent with sound principles of good governance. ICANN has a unique and important mission within the Internet ecosystem, and in service of that mission, it has a unique governance structure. The CCWG Recommendations reflect that, and are tailored to enhance the accountability of that structure in ways that address the unique needs of ICANN and its stakeholders.

Throughout the CCWG Recommendations, we see the choice to emphasize consensus and dialogue over expediency and efficiency. The most significant example is the escalation process of the Community Powers, which supplements the day-to-day ICANN processes already replete

## Attachment 6: Corporate Governance Report

with multistakeholder dialogues. The escalation process provides one further opportunity to reach a consensus solution before turning to more significant measures. 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.

This expert assessment has focused on the CCWG Recommendations compliance with a framework of good governance practices. It is the conclusion of this expert panel that both with respect to the broad categories of governance principles and as a whole, the CCWG Recommendations generally follow good governance principles. And importantly, while the Recommendations tilt toward a more ponderous and deliberate pace, they safeguard against paralysis and encourage the continued, stable operation of ICANN and the IANA functions. The expert panel cannot predict the challenges that ICANN may face in the future, but having seen how the CCWG Recommendations create a network of accountability safeguards, we feel confident that the Recommendations, should they be implemented, incorporate strong protections that will contribute to enhancing ICANN accountability.

### Appendix 1: Foundational Scholarship

1. Independent Sector, *Principles for Good Governance and Ethical Practice* (2015)
2. International Non-Governmental Organisations, *INGO Accountability Charter* (2014)
3. American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* (2008)
4. American Bar Association, *Corporate Director's Guidebook* (2011)
5. Business Roundtable, *Principles of Corporate Governance* (2012)
6. OECD, *Corporate Governance Principles* (2015)
7. OECD, *Best Practice Principles for the Governance of Regulators* (2014)
8. Financial Reporting Council, *The UK Corporate Governance Code* (2014)
9. Australian Securities Exchange Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations* (2003)
10. IGF, *Best Practice Forum on Developing Meaningful Multistakeholder Mechanisms: A Contribution from Members of the Internet Technical Community* (2014)
11. Pins Brown, *Principles that make for effective governance of multi-stakeholder initiatives: updated, final version* (2007)
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13. Sarah Serizawa, *Review of Best Practices for MSI: Recommendations for GIFT, Chapter 4: Legitimacy and Implementation* (2012)
14. Urs Gasser, et al., *Multistakeholder as Governance Groups: Observations from Case Studies* (2015)
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17. Jeanette Hofmann, *Constellations of Trust and Distrust in Internet Governance* (2015)
18. Milton Mueller & Brenden Kuerbis, *Towards Global Internet Governance: How to End U.S. Control of ICANN Without Sacrificing Stability, Freedom or Accountability* (2014)