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The attached comments are submitted to the ICG on behalf of the Coalition for Online Accountability regarding the IANA functions transition proposal. Please contact the undersigned with any questions.

On behalf of Coalition for Online Accountability (COA) | [www.onlineaccountability.net](http://www.onlineaccountability.net)

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# COALITION FOR ONLINE ACCOUNTABILITY

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## COA Comments on IANA Stewardship Transition Proposal:

September 8, 2015

The Coalition for Online Accountability (COA) appreciates this opportunity to comment to the IANA Stewardship Transition Coordination Group (ICG) on the “Proposal to Transition the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions from the U.S. Commerce Department’s National Telecommunications and Information Administration (NTIA) to the Global Multi-Stakeholder Community,” as published July 31, 2015 (the “Proposal”).<sup>1</sup> See <https://www.ianacg.org/icg-files/documents/IANA-stewardship-transition-proposal-EN.pdf>.

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners. They are the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. COA and its predecessor organization, the Copyright Coalition on Domain Names, have participated actively in ICANN since 1999, including through the Intellectual Property Constituency of the GNSO.

COA’s comments are directed exclusively toward the portion of the Proposal dealing with domain names functions of IANA. We express no view on the protocol parameters and IP numbers aspects of the Proposal.

COA generally supports the Proposal, and believes it satisfies most of the criteria set by ICG and NTIA for approval – but with one significant exception: accountability. The shortfall in this area is significant, and manifests itself in two main ways.

First, the dependence of this Proposal on the adoption and implementation of enhanced accountability mechanisms for ICANN is almost universally acknowledged. As COA believes that the pending second draft report from CCWG-Accountability (see <https://www.icann.org/en/system/files/files/ccwg-draft-2-proposal-work-stream-1-recs-03aug15-en.pdf>) exhibits significant gaps and shortfalls, especially with respect to ICANN commitment to enforcement of its contracts and the rule of law, we cannot agree that the current IANA transition proposal fully meets the relevant criteria. COA will be filing detailed comments on the CCWG-Accountability report that spell out our concerns. Until these are satisfactorily resolved, the transition framework reflected in the Proposal is at best incomplete.

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<sup>1</sup> All page citations in this submission are to the Proposal.

Second, at a more granular level of accountability for the IANA functions themselves, the Proposal reflects a significant omission: there is no provision for oversight, appeal or review of IANA function actions involving the country code Top Level Domains, including delegation and redelegation decisions. All such oversight or review provisions were excised from the Proposal sent to the ICG. The CWG-Stewardship “principles and criteria” against which the Proposal is supposed to be tested include appealability of all decisions of the IANA Functions Operator, and spell out a number of criteria for such appeals. See p. 77 of the Proposal, calling for all “decisions and actions of the IANA Functions Operator [to] .... be appealable by significantly interested parties” [para. 7(v)], and for the process for such appeals to “be independent, robust, affordable, timely, provide binding redress open to affected parties and be open to public scrutiny” [para. 5(vi)]. But the Proposal itself excludes all ccTLD delegation or redelegation decisions from review. (See p. 51, para. 1160)

COA accepts in principle that the appeals mechanism (and other oversight/review tools) for IANA functions decisions related to ccTLDs could be one designed and proposed by the ccTLDs themselves, so long as the mechanism fulfills the “principles and criteria.” But allowing transition to occur with no binding plan or timetable to fill this gap is a major flaw in the Proposal, and raises significant questions about full compliance with the NTIA criteria for acceptance of the Proposal. Eliminating the oversight that currently exists for these decisions cannot be said to fully preserve, much less to enhance, the multi-stakeholder model. Since such decisions certainly could impact on security, stability, and resiliency of the DNS, the omission of oversight mechanisms for these decisions also raises serious questions of compliance with this criterion established by NTIA. We also acknowledge that “consensus may be difficult to achieve on some of the important aspects of such a mechanism,” as noted on p. 115 of the Proposal; but the same can be said about many other issues in the Proposal on which consensus apparently has been achieved. These difficulties cannot be relied upon as an excuse for omitting a critical element the Proposal needs to address.

Finally, COA fully agrees with the statement in the Proposal that “transparency is a prerequisite of accountability” (p. 76), and so urges that this opportunity to improve the transparency of the name-related IANA functions process be seized. Inclusion in the Proposal of the transparency-related provisions of the “draft proposed term sheet” contained in Annex S (see pp. 140-41) could be an important step in that direction. But the status of this Annex as part of this Proposal is uncertain. Perhaps the enhanced transparency provisions of this Annex should be incorporated directly into the Proposal.

COA appreciates the ICG’s consideration of these comments. If there are any questions, please contact the undersigned.

Respectfully submitted,

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