Name: Francis Hopkinson

Submission ID: 105

Dear Icann,

Please accept the attached public comment form.

Regards,

Francis Hopkinson

IANA Stewardship Transition Proposal - Public Comment Form

Disclaimer: The ICG will not use the information collected for any purpose other than analyzing public comments. Submitters' names, affiliations, and comments will be public.

Identifying Information

 Indicates required field

First Name *: Francis

Last Name *: Hopkinson

Email Address *: REDACTED

Country/Economy: United States

Organization

Questions Concerning the Proposal as a Whole

1) **Completeness and clarity: Is the combined proposal complete? Each of the operational community proposals contains aspects to be completed in the future when the proposal is implemented. Is the combined proposal specified in sufficient detail such that it can be evaluated against the NTIA criteria?**

Comment: No, the combined proposal has significant gaps.

Gap 1: The domain names community proposal specifically defines ICANN as the organization where the NTIA authority and responsibility would reside for the Domain Names Function. The Numbers Community proposal says "This proposal will place the RIRs in the role currently occupied by the NTIA" but it is not clear precisely to whom NTIA would transition its responsibilities for the IP Numbers Function.

The Number Resource Organization (NRO) is an unincorporated consortia, made up exclusively of the 5 Regional Internet Registries ("RIRs") but which, from a legal perspective, does not exist. If NTIA were to delegate its responsibilities to an unincorporated entity there would be zero accountability for the entire IP Numbers Function. Therefore, since the NRO legally does not exist and accountability is a cornerstone of the NTIA requirements, NTIA should not, or perhaps cannot, transition its responsibilities to this unincorporated "organization".

The RIRs are, by definition, regional registries. Each RIR has established control over a portion of the IP numbers in their region, controlled by their individual regional policies, and contractually controlled by their individually unique service contracts. If NTIA were to transition responsibility for a portion of the IANA Numbers Function to each individual RIR, it would truly be a "balkanization" of the IANA Numbers Function into 5 separate, autonomous regional functions each with their own policies, processes, procedures, legal venues and applicable laws. "Balkanization" of the IANA Numbers Function is both undesirable and incompatible with the principle of a unified global Internet. NTIA should not, or perhaps cannot, transition portions of its responsibility for the IANA Numbers Function to the 5 individual regional registries located all over the globe.

Alternatively, if NTIA were to transition its responsibilities for the entire IANA Numbers Function to the 5 RIRs, regardless of which registry had what portion of the numbers in their region or service contracts in place, then a whole host of other questions emerge. From an accountability perspective, perhaps the most pressing question would be, who is actually accountable? Fracturing accountability for a single IANA Function across 5 separate organizations, four of which are outside the United States, each with its own policies, processes, procedures, legal venues and applicable laws, would create accountability ambiguity and invite instability and insecurity. Therefore, since fracturing the accountability for a single IANA Function across multiple organizations would in effect remove accountability, NTIA should not, or perhaps cannot, transition responsibility for the entire IANA Numbers Function to the 5 individual regional registries.

If neither the NRO, nor the 5 separate RIRs for a portion each of IANA Numbers Function, nor all 5 individual RIRs for the entire IANA Numbers Function, are an acceptable answer, then precisely to whom would NTIA transition its responsibility for the IANA Numbers Function?

Gap 2: The combined proposal is silent on how, or if, ICANN's internal supporting community organization roles and responsibilities will change post transition. For example, as proposed "the RIRs" would assume the oversight role of NTIA with regard to the Numbers Function in addition to their existing roles as (1) the ICANN Address Supporting Organization (ASO) that provides advice and guidance to the ICANN board on all matters related to IP numbers, creates global IP number policies, and is empowered to select and appoint two ICANN board members, (2) the individual regional policy making bodies, and (3) the exclusive regional providers of IP number registry services. There is no separation of the Numbers Function oversight role, the role to select the Numbers Function Operator, the role to select and appoint two members of the ICANN board, the role of the collective RIRs as the global policy body, the role of the individual RIRs as regional policy bodies, and the role of the RIRs as the regionally exclusive providers of IP number registry services. If, as proposed, the RIRs assume the oversight role of the NTIA then the RIRs would in effect be sitting on both sides of the contract with ICANN, i.e., the party issuing the Functions Operator contract and the contracted party supporting organization responsible for providing recommendations to the board of ICANN for all IP number related matters and two (2) of the ICANN board seats. In a legal analogy, the RIRs would simultaneously be judge, jury, prosecutor, and counsel for the defendant. The combined multiple roles of the RIRs, would consolidate all power over the IANA Numbers Function within the RIRs, eliminate any potential for independent review of the performance or policies of the RIRs, and create serious conflict of interest throughout the proposed governance model for the IANA Numbers Function. A similar, but less severe, situation would arise with regard to the Protocol Parameters Function for the Internet Engineering Task Force (IETF). What are the organizational and operational changes within ICANN, or elsewhere in the governance model, which would occur to avoid the introduction of these serious conflicts of interest?

Gap 3: The domain names community proposal specifically defines Post Transition ICANN (PTI) as the Function Operator for the Domain Names Function. The numbers community and the protocol parameters community both specify ICANN as the initial Function Operator for the other two IANA Functions. As proposed, initially there are two Function Operators i.e., PTI and ICANN. There is no mention in the proposal about how ICANN and PTI would coordinate their activities as the two initial Function Operators or resolve any conflicts that might arise. Furthermore, there is no mention anywhere in the proposal on what the means or mechanisms for the coordination

of activities between three separate Function Operators would be if, after the initial Function Operator contracts expire, the numbers community and/or protocol parameters community selected an organization other than ICANN as the Function Operator. The absence of any plan for coordinating the activities of multiple Function Operators, and resolving any conflicts which might arise, is a serious omission.

Gap 4: There is a total absence of any details regarding the legal arrangement(s), mechanisms and means by which the manager of the authoritative root zone file, which is presently Verisign, would interact with multiple independent Function Operators when NTIA is no longer in contractual control of ICANN as the sole operator of the Protocol Parameters, Domain Names and Numbers Functions. The proposal makes the enormous assumption that "somehow" the required agreements and arrangements will occur to keep the heart of the Internet beating.

2) Compatibility and interoperability: Do the operational community proposals work together in a single proposal? Do they suggest any incompatible arrangements where compatibility appears to be required? Is the handling of any conflicting overlaps between the functions resolved in a workable manner?

Comment: The domain names community proposal specifically defines Post Transition ICANN (PTI) as the Function Operator for the Domain Names Function. The numbers community and the protocol parameters community both specify ICANN as the initial Function Operator for these other two IANA Functions. As proposed, initially there are two Function Operators i.e., PTI and ICANN. There is no mention anywhere in the proposal how ICANN and PTI would coordinate their activities as the two initial Function Operators. Furthermore, there is no mention anywhere in the proposal on what the means or mechanisms for the coordination of activities between three separate Function Operators would be if, after the initial Function Operator contract expires, either the numbers community or protocol parameters community selected an organization other than ICANN as the Function Operator. The absence of any plan for coordinating the activities of multiple Function Operators, and resolving any conflicts which might arise, is a serious omission.

The ICG identified a potential compatibility issue regarding the IANA trademarks and the iana.org domain name. The numbers proposal detailed specific requirements related to IANA intellectual property, whereas the other two proposals are silent on this issue. The Patent and Trademarks records indicate that the IANA Trademark is the property of ICANN. On the other hand, the registration of the IANA.ORG domain name by ICANN, like all other domain names, is not the property of ICANN (or anyone else for that matter) but rather an exclusive right-of-use subject to the terms and conditions of the registration service agreement. Armed with this knowledge it is possible to intelligently address what legal arrangements must, or more accurately could, be made with regard to these two particular assets and who would be the controlling party. There is a legal basis for enforcement of authority over the assets and a means for the commercial enterprises in that chain of authority to protect themselves and the use of the assets. Unfortunately, for a host of other critical assets over which NTIA presently has authority there is a great deal of ambiguity about who holds what rights. For example in the case of the Domain Name System (DNS), NTIA has contractually delegated to ICANN the authority over the creation of new top level domains and the authority to contractually assign exclusive authority to Domain Name Registries for particular top level domains. Did NTIA delegate that authority to ICANN without the legal right to do so? Absolutely not. This strongly suggests that NTIA possesses the legal rights to the DNS or, at a minimum, authority over the DNS (which in itself is a legal right).

Definitive confirmation of who holds what rights to the critical operational assets of the Internet, e.g., the Domain Names System, IP numbers, the .arpa registry (and its component registries), the root zone file, etc., is necessary to determined precisely what rights would be transitioned from NTIA, intelligently address what legal arrangements must, or more accurately could, be made with regard to these assets, and who would be the controlling party. Any ambiguity in this matter would introduce serious litigation risk to all parties engaged in the operations of the Internet as well as threaten the security and stability of the Internet. In any event, the absence of a clearly articulated consistent plan regarding the intellectual property referenced in the proposal, and equally importantly the operational assets, is a serious omission.

3) **Accountability: Do the operational community proposals together include appropriate and properly supported independent accountability mechanisms for running the IANA functions? Are there any gaps in overall accountability under the single proposal?**

Comment: There are significant accountability gaps in the proposal. None of the Transparency and Accountability work, still on-going with ICANN, to prevent capture by a foreign government and/or state-sponsored corporations, and to insure appropriate checks and balances of authority are in place, has been undertaken with any of the RIRs or the Internet Engineering Task Force (IETF) which is a subsidiary organization of the Internet Society (ISOC). We would respectfully submit that, in the interest of Internet security and stability, independent review and assessment of the Transparency and Accountability of any and all organizations that would assume NTIA responsibility as part of a transition should be a fundamental prerequisite requirement prior to any transition.

There is no external audit process or procedure to verify that the RIRs, as the exclusive operators of the IP Number registry services, are conforming to, and are in compliance with, the global and/or regional IP Number policies that have been established. There is no enforcement mechanism, contractual or otherwise, to compel compliance with the policies of the community and there are no penalties whatsoever for failure by an IP number registry to adhere to the global or regional policies created. In summary, the operators of the IP number registries are not legally or contractually accountable to the holders of IP number blocks, regardless of whether the number block holders are RIR members or not, and there are no definition of services, or commitments to any standard of performance, for the operation of the IP number registries.

As proposed "the RIRs" would assume the oversight role of NTIA with regard to the Numbers Function in addition to their existing roles as (1) the ICANN Address Supporting Organization (ASO) that provides advice and guidance to the ICANN board on all matters related to IP numbers and creates global IP number policies, (2) the individual regional policy making bodies, (3) the organizations empowered to select and appoint two ICANN board members, and (4) the exclusive regional providers of IP number registry services. There is no separation of the Numbers Function oversight role, the role to select and appoint two members of the ICANN board, the role of the collective RIRs as the global policy body, the role of the individual RIRs as regional policy bodies, and the role of the RIRs as the regionally exclusive providers of IP number registry services. This universal comingling of oversight, policy making and operations creates layers of obvious and fundamental conflict of interest within the RIRs. Moreover, due to the complete absence of any independent oversight the RIRs are only accountable to themselves. In the interest of Accountability and Transparency this must be resolved prior to any transition by NTIA.

An iron clad, irrevocable, legally binding commitment that the RIRs will never assume the role as the Numbers Function Operator themselves would seem a necessary and appropriate safeguard against the consolidation of all IANA Numbers Function roles within the RIRs. It should be noted that the names community proposed creation of PTI was specifically motivated to avoid the creation of similar concentration of power but less pervasive conflict of interest within ICANN (the proposed recipient organization for the NTIA responsibilities related to the Domain Names Function).

4) Workability: Do the results of any tests or evaluations of workability that were included in the operational community proposals conflict with each other or raise possible concerns when considered in combination?

No comments

Questions Concerning NTIA Criteria

5) Do you believe the proposal supports and enhances the multistakeholder model? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.

Comment. No, the proposal does not enhance the multistakeholder model. Within the Numbers Function proposal there is no provision for the tens of thousands of holders of over 25% of the IPv4 numbers, i.e., more than a billion numbers, to have any voice in the governance of the Numbers Function. The recipients of IPv4 number blocks allocated prior to the creation of the RIRs, which are not members of an RIR, are denied any representation in the proposed governance model. In fact, the RIRs have not proposed any end-user representation in the governance model for the Numbers Function.

The RIRs have not proposed any RIR independent oversight or appeals body which is perhaps understandable since there is also no commitment by the RIRs to the accuracy of the IP number registries they operate or any performance standard by which they could be measured or held accountable. At present, and as proposed, there is no external audit process or procedure to verify that the RIRs, as the exclusive operators of the IP Number registry services, are conforming to, and are in compliance with, the global and/or regional IP Number policies that have been established. There is no enforcement mechanism, contractual or otherwise, to compel compliance with the policies of the community and there are no penalties whatsoever for failure by an IP number registry to adhere to the global or regional policies created. In summary, the operators of the IP number registries are not legally or contractually accountable to the holders of IP number blocks, regardless of whether the number block holders are RIR members or not, and there are no definition of services, or commitments to any standard of performance, for the operation of the IP number registries. At an absolute minimum, this lack of accountability must be corrected prior to any transition of responsibilities from NTIA.

The RIRs are not, individually or collectively, parties to the Affirmation of Commitments (AOC) and have not proposed any mechanism or means for the introduction of accountability or competition, to themselves, for IP number registry services. In summary, the Numbers Function proposal limits the governance power over IP number blocks to only the RIRs and artificially limits the participation in the governance to only the stakeholders which are RIR members. At a minimum the Numbers Function proposal should include RIR independent oversight, an RIR

independent appeals body, RIR performance metrics, a commitment to the AOC, and a means for meaningful participation by end-users that are not RIR members.

6) **Do you believe the proposal maintains the security, stability, and resiliency of the DNS? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.**

Comment: As proposed "the RIRs" would assume the oversight role of NTIA with regard to the Numbers Function in addition to their existing roles as (1) the ICANN Address Supporting Organization (ASO) that provides advice and guidance to the ICANN board on all matters related to IP numbers and creates global IP number policies, (2) the individual regional policy making bodies, (3) the organization empowered to select and appoint two ICANN board members, and (4) the exclusive regional providers of IP number registry services. There is no separation of the Numbers Function oversight role, the role to select and appoint two members of the ICANN board, the role of the collective RIRs as the global policy body, the role of the individual RIRs as regional policy bodies, and the role of the RIRs as the regionally exclusive providers of IP number registry services. This universal comingling of oversight, policy making and operations creates layers of obvious and fundamental conflict of interest within the RIRs which, in the interest of the security, stability and resilience of the Internet, must be resolved prior to any transition by NTIA. It should be noted that the names community proposed creation of PTI was specifically motivated to avoid the creation of similar concentration of power but less pervasive conflict of interest within ICANN.

7) **Do you believe the proposal meets the needs and expectations of the global customers and partners of the IANA services? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary. Please indicate if you are a customer or partner of the IANA services.**

No comments

8) **Do you believe the proposal maintains the openness of the Internet? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.**

No comments

9) **Do you have any concerns that the proposal is replacing NTIA's role with a government-led or inter-governmental organization solution? If yes, please explain why and what proposal modifications you believe are necessary. If not, please explain why.**

Comment: The proposal does raise serious concerns in that it completely fails to address some very significant concerns. None of the Transparency and Accountability work, still on-going with ICANN, to prevent capture by a foreign government and/or state-sponsored corporations, and to insure appropriate checks and balances of authority are in place, has been undertaken with any of the RIRs or the Internet Engineering Task Force (IETF) which is a subsidiary organization of the Internet Society (ISOC). We would respectfully submit that, in the interest of Internet security and stability, independent review and assessment of the Transparency and Accountability of any and all organizations that would assume NTIA responsibility as part of a transition should be a fundamental prerequisite requirement and the recommendations implemented prior to any transition of NTIA responsibility. Absent an independent review and assessment of the

Transparency and Accountability of the RIRs, and the IETF, it is not possible to respond to the question asked or provide concrete suggestions for proposal modification.

10) Do you believe that the implementation of the proposal will continue to uphold the NTIA criteria in the future? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.

No comments

Questions Concerning ICG Report and Executive Summary

11) Do you believe the ICG report and executive summary accurately reflect all necessary aspects of the overall proposal? If not, please explain what modifications you believe are necessary.

No comments

General Questions

12) Do you have any general comments for the ICG about the proposal?

No comments