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Submission ID: 107

Submission from the Center for Democraacy & Technology (CDT).

Thanks.

Matthew Shears

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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

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Organization Center for Democracy & Technology (CDT)

General comment

The Center for Democracy & Technology (CDT) welcomes the ICG's proposal and applauds the operating communities (OCs) for their considerable efforts in delivering their respective proposals.

CDT has been a participant in the work of the CWG Stewardship for the names community and has seen first-hand the open, inclusive and transparent way in which the work has been undertaken, across stakeholders, in order to facilitate this important transition.

CDT supports the transition and believes that the transition proposal offers a reasonable approach to ensuring evolution while maintaining the imperatives of stability, security and resiliency of the DNS.   Overall, we believe that this transition proposal meets the NTIA's criteria.

We do note however that there are still some areas that require attention before the proposal can be considered complete, as we outline below.

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?

Accountability related dependencies

CDT believes that the proposal is only complete once the identified accountability related dependencies in the CWG transition proposal have been fully met by the proposals and mechanisms in the final and agreed CCWG accountability proposal. While CDT is comfortable with the current CCWG proposal, and believes that as it stands it would satisfy those dependencies, it is currently out for public comment so changes are still possible. Further, we also note that in parallel to the consultation there are discussions underway between the CCWG and the ICANN Board which have highlighted significant areas of disagreement, particularly as they relate to operationalizing the community powers. Therefore the completeness of the CWG's proposal – and therefore the overall ICG proposal – is still very much in question.

It bears repeating that the CCWG Accountability proposal will have to be endorsed by the chartering organizations and then forwarded to the Board for review. It is only once the Board agrees to accept the CCWG's recommendations that the community can state that the accountability-related dependencies have been met. If the CCWG Accountability proposal does not satisfy the dependencies it is far from clear what revisions the CWG would be able to put in place that would be adequate to mitigate the consequences of moving the IANA functions to ICANN, when ICANN would effectively be steward, contracting party and operator.

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?

IPR

We support the conclusion that has been reached that a trust (unspecified at this point in time) would be an appropriate vehicle to hold the trademarks and domain name associated with the IANA services.

IFO change/separation

One of the important characteristics of the overall CWG proposal is that of the possibility of replacing the IANA Functions Operator (IFO), including the possibility of an independent (non ICANN-affiliated) IFO. In the OC proposals there are mechanisms to review and assess the performance of the IFO; however there appears to be no process or mechanism for coordination among the OCs when considering a change of IFO. While CDT appreciates that each OC has its own approach to such a possibility, we wonder, as have other respondents, whether there should be a process whereby the OCs coordinate in

the event of a proposed change in IFO, etc., so as to mitigate any potential procedural or operational disruptions or conflicts that might arise.

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?

See our response to point 1 above.

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?

PTI and related structures/processes

As a participant in the development of the names community proposal, CDT found that the CWG's work was rigorous and complete, resulting in a workable model that while not perfect manages to accommodate stakeholder needs while satisfying various criteria.

The PTI model and the related structures such as the CSC, IFR and SIFR are new but we do not see these as raising concerns – they will however require measured implementation and monitoring. The choice of representatives on the various committees will be important as will the participation of "non-members" in the IFR. Similarly, the appointment of the independent directors to the PTI Board will be central to its all-important neutrality as the home for the IANA functions. The careful implementation of these new structures and bodies and the selection of appropriate expertise will be key to the success of the IFO as a whole and to its workability.

We would like to better understand from the ICG and the OCs as to whether or not there are any implications of the numbers and protocols communities contracting with ICANN as opposed to contracting with PTI? While there is general level of comfort with the existing and relatively informal relationships between the OCs, will these contracting differences have any bearing on the selection of a new IFO, for example, or any other decisions related to the IFO?

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.

Yes, in a number of ways. Among others, it enables the USG to step back from its role in the IANA functions – thereby addressing the perception that one government had a special role in critical internet resources – and in so doing enhances the multistakeholder model of Internet governance. The linkages between the IANA transition and ICANN accountability will also hopefully result in an ICANN that is more accountable to a more empowered multistakeholder community in the future. And with open, inclusive and transparent proposal development processes we have seen multistakeholder approaches to governance and policy in action.

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.

Yes. With the exception of the creation of PTI and associated entities the existing IFO and related mechanisms will remain largely the same post-transition as pre-transition.

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.

Yes. For example, in the work of the CWG there was a conscious effort to ensure that the interests of direct customers/partners and the global community more broadly were taken into account and reflected in the models that were considered and the final model that was agreed upon.

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.

Yes.

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.

        No.

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.

        Hopefully. The transition is dependent upon the accountability enhancements within the CCWG accountability proposal. Without those accountability enhancements – those all-important powers and checks and balances – it is entirely possible that the IANA functions could be subject to capture or undue influence which would undermine the NTIA's criteria.

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.

        Largely, but we refer you to our comments above.

General Questions

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

        See opening comment.