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Please find attached comments from the Pacific ICT Regulatory Resource Centre (PiRRC).
Grateful for acknowledgement of receipt.

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Pacific ICT Regulatory Resource Centre (PiRRC) comments on the proposed IANA Transition

1.0 BACKGROUND

The Pacific ICT Regulatory Resource Centre (PiRRC)¹, was established in November 2011 at the Japan Pacific ICT Centre at the University of the South Pacific, with a mandate is to provide capacity building and to be an efficient, effective, reliable and independent and on-going source of advice and information to ICT regulators and policymakers, in Pacific Island Countries. The Centre's objective is to strengthen the capacity of ICT regulatory institutions in the participating countries, and enhance regional collaboration and knowledge sharing on ICT Regulatory issues.

2.0 Review of the proposal for transition

The proposed transition was reviewed taking into account the following aspects:

- Completeness and clarity
- Compatibility and interoperability
- Accountability
- Workability
- Support and enhancement of the multi-stakeholder model
- Maintenance of security, stability and resiliency of the DNS
- Meeting the needs and expectations of global customers and partners of the IANA services
- Maintenance of the openness of the Internet
- Replacement of NTIA's role
- Future upholding of NTIA criteria
- Accuracy of the IGG Report and Executive Summary

This review follows the format of the questions raised.

¹ Pacific Island Countries, who are members of the Pacific Islands Forum Secretariat (Forum), are eligible for membership in PiRRC. Current PiRRC membership includes: Cook Islands; Fiji; Federated States of Micronesia(FSM); Kiribati; Marshall Islands; Nauru; Niue; Papua New Guinea (PNG); Samoa; Solomon Islands; Tonga; Tuvalu and Vanuatu.

3.0 Comments on the Proposal

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?

The combined proposal appears complete, in that it addresses all aspects in a manner that allows for evaluation against NTIA criteria. However, there are some issues that have been designated for the “future completion” referred to above that might be better resolved, or at least partially resolved, prior to the implementation of the proposal. Two of these are the assumed amendment/rewrite of the ICANN bylaws and the process by which the Board of the proposed PTI is selected.

CWG’s proposal effectively places ICANN in the position now held by NTIA, and proposes a new ICANN subsidiary/affiliate, referred to as “PTI,” to implement the naming policies on a daily basis.

The ICANN bylaws and Board selection process for the successor naming process operator do not directly bear upon the transition of the IANA operational responsibility from NTIA to PTI, which NTIA envisions as a non-governmental multi-stakeholder organization. However, as noted by the law firm of Sidley and Austin in its comprehensive report to CWG on PTI, accelerating discussion of certain decisions (such as the legal structure of PTI) into the



transition planning process, rather than waiting to hold them post-transition, will allow for a reasoned, inclusive debate away from the harried atmosphere and deadlines of the implementation process. It also defuses any argument that decisions were made in haste, opaquely, or excluded any interested party.

Given the impact a change in ICANN bylaws and the composition of the PTI Board could have on the selection and supervision of the PTI, and the harm delay or uncertainty over the implementation of the naming process could have on the global internet community, it might best serve the transition planning process if the proposal at least described if/how/when the ICANN bylaws would be changed and how the PTI Board selection process proposals would be debated and decided upon.

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?

The proposals do not appear to include any inconsistencies that inhibit compatibility or interoperability. However, as noted above, if some proposals assume the ICANN bylaws remain unchanged, while others assume an imminent rewrite, potential downstream difficulties are easy to envision. Additionally, the CWG-Stewardship Transition Proposal contemplates that ICANN's proposed multi-stakeholder leadership, and PTI's subsidiary status, will "avoid the need to replicate the complexity of the multi-stakeholder ICANN Board at the PTI level."² However, the Sidley and Austin memorandum clearly posits that PTI may someday have to be spun off from ICANN. In such case, PTI will no longer benefit from the diversity of ICANN's

² IANA Stewardship Transition Proposal at p. 42

Board, and the PTI Board selection process contained in the Proposal will require significant revision. An argument can be made that the Proposal should include at least a process for establishing those revisions.

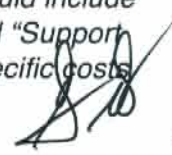
3. Accountability: Do the operational community proposals together include appropriate and properly supported independent accountability mechanisms for running the IANA functions? Are there any gaps in overall accountability under the single proposal?

As with the Completeness issue discussed above, the Accountability aspects of the proposal contain critical caveats that, under some circumstances, will require reinitiating some, if not all, of the proposal process. As shown immediately below, some of these caveats involve potentially contentious issues. Accordingly, the proposal may not meet NTIA's expectations in this regard.

Specifically, the CWG-Stewardship proposal states that it is:

"significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) as described below. The co-chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations, if implemented as envisaged, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG. If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this CWG-Stewardship proposal will require revision. (emphasis added) Specifically, the proposed legal structure and overall CWG-Stewardship proposal requires ICANN accountability in the following respects:

1. ***ICANN Budget and IANA Budget.*** The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The CWG-Stewardship recommends that the IFO's comprehensive costs should be transparent and ICANN's operating plans and budget should include itemization of all IANA operations costs to the project level and below as needed. An itemization of IANA costs would include "Direct Costs for the IANA department", "Direct Costs for Shared resources" and "Support functions allocation". Furthermore, these costs should be itemized into more specific costs



related to each specific function to the project level and below as needed. PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis. PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget. The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.

2. *Community Empowerment Mechanisms.* The empowerment of the multi-stakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:

(a) The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;

(b) The ability to exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (i) ICANN Board decisions with respect to recommendations resulting from an IFR or Special IFR and (ii) the ICANN budget; and

(c) The ability to approve amendments to ICANN's "fundamental bylaws," as described below.

3. *IFR.* The creation of an IFR which is empowered to conduct periodic and special reviews of the IANA functions (see Annex F). IFRs and Special IFRs will be incorporated into the Affirmation of Commitments mandated reviews set forth in the ICANN Bylaws.
4. *CSC.* The creation of a CSC which is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the ccNSO and GNSO. The ccNSO and GNSO should be empowered to address matters escalated by the CSC.
5. *Separation Process.* The empowerment of the Special IFR to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group (SCWG) be established to review the identified issues and make recommendations. See Annex L for more detailed information as to approval requirements with respect to the formation of a SCWG and approval of SCWG recommendations.
6. *Appeal mechanism.* An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.
7. *Fundamental bylaws.* All of the foregoing mechanisms are to be provided for in the ICANN bylaws as "fundamental bylaws." A "fundamental bylaw" may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote).³



³ IANA Stewardship Transition Proposal at pp 40-41

Equally important is for the operational communities to be accountable and be transparent in their processes. In any bottoms up structure the organization would only be strong as its base elements and therefore accountability and transparency at all levels needs to be ensured.

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 such conflicts were identified

5. Support and enhancement of the multi-stakeholder model

Do you believe the proposal supports and enhances the multi-stakeholder model? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.

It is difficult to answer this question. The uncertainty regarding changes to ICANN bylaws and the ambiguity surrounding the Board and Management leadership of the proposed PTI leave open the possibility that certain stakeholders will (or will claim to be) excluded from the process, undermining the goals of the multi-stakeholder model.

The suggested remedy for this weakness in the proposal is not a "modification," but rather inclusion of at least a consensus-driven set of principles that describe how the missing details will be decided upon. A bill passed by the US House of Representatives (H.R. 805) and pending before that nation's Senate requires a similar level of specificity prior to allowing NTIA to even commence the transition process.



6. Maintenance of security, stability and resiliency of the DNS

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.

The proposal does not directly jeopardize or diminish the security, stability or resiliency of the DNS. However, the opportunity for implementation delays or inconsistencies due to the above noted uncertainty regarding structure and management selection may cause such unwelcome results. Again, the solution is to include in the Proposal a framework for resolving these open items.

7. Meeting the needs and expectations of global customers and partners of the IANA services

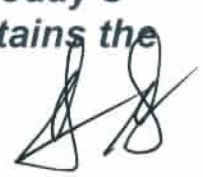
Do you believe the proposal meets the needs and expectations of the global customers and partners of the IANA services? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary. Please indicate if you are a customer or partner of the IANA services.

Communities of those customers and partners have authored the proposal and there has been no claim of exclusion. It is thus reasonable to conclude that the proposal meets the subject needs and expectations.

8. Maintenance of the openness of the Internet

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.

The proposal does not appear to impact the openness of today's Internet. If the status quo is sufficient, the proposal "maintains the openness."



9. Replacement of NTIA's role

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.

The proposal places authority in numerous user, partner, and customer Internet communities, none of which have any formal relationship with one or more governments. The proposal accordingly appears to create a non-governmentally operated Internet.

10. Future upholding of NTIA criteria

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.

The above-noted uncertainties leave open the possibility that the NTIA criteria will not be upheld. While that possibility is slim, it should be noted, since there are available remedial activities that would address this concern, particularly taking additional time to increase the level of detail in the proposal.

11. Accuracy of the ICG Report and Executive Summary

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.

There does not appear to be any inconsistency between the ICG report and the overall proposal



4.0 Summary

Having reviewed the proposal for the IANA transition process, the Pacific ICT Resource Centre has no major problems with the proposals and considers it desirable. There is



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need going forward to ensure that the multi-stakeholder representation and involvement is maintained as well as the transparency of process.

The Pacific as a region needs to become more involved in the governance of the Internet and this would best be done through the fostering and development of local Internet Societies. This is a matter for all of us and cannot be left to any select few without proper representation.

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