

Name: Jyoti Panday

Submission ID: 89

Hi,

Request you to please accept my comments to the ICG consolidated proposal on the IANA Stewardship Transition.

Regards,

Jyoti Panday

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 * **Jyoti**

Last Name * **Panday**

Email Address ***REDACTED**

Country/Economy **India**

Organization **Independent Researcher**

I commend the progress and congratulate the IANA Coordination Group (ICG) and the Cross Community Working Group (CCWG) for their tireless efforts to produce proposals for community review and comment and for raising and seeking resolution of issues that impact the stability, security and trust in the operations of the global DNS. My comments are restricted to the Combined ICG Proposal, however there are two critical aspects of the transition related to the role of the Root Zone Maintainer and the role of VeriSign as a TLD operator that must be addressed if this transition is to be of any consequence to the global Internet community. I have elaborated on my concerns below.

Questions Concerning the Proposal as a Whole

Names and the Accountability WS1 track

While the names proposal¹ is the most detailed yet there remain many significant gaps. In part this is because the proposal is dependent on accountability changes to ICANN that are yet to be finalized or approved by the CCWG-Accountability². One possible outcome of the transition is that ICANN may end

¹ 2nd Draft Proposal of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions, See: <https://www.icann.org/public-comments/cwg-stewardship-draft-proposal-2015-04-22-en>

² CCWG on Enhancing ICANN Accountability, See: <https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability>

up maintaining the IANA function for two operational communities and is envisioned as taking on a stewardship role for the IFO for the names community. Therefore, it is imperative that the discussion of the IANA transition be closely tied to the discussion on ICANN accountability.

Presently, there is a lag in the proposal development timeline for the IANA Stewardship transition and accountability track largely due to accountability being included much further into the transition timeline. I recommend that this gap be addressed by the ICG by allowing the combined proposal to be reviewed by the operational communities while the public comments from accountability are assimilated by the CCWG-Accountability. Further, both revised proposals should be put out for comments so that the global multistakeholder community can comprehensively decide the impact of the accountability track on the role of the future IFO for names. Further this would allow the names, numbers and protocols community to take into account recent developments in the transition process such as the VeriSign/ICANN Proposal in Response to NTIA Request Root Zone Administrator (RZA) Proposal.³

Accountability Proposal Relies Heavily on Names Community

Linked to the issue of the accountability track being developed behind the operational communities proposals is that the accountability proposal heavily relies on one community-names community. While some of this is circumstantial, it is important that the numbers and protocols communities reflect on proposed changes and how it may impact how the IFO can perform all of the functions related to all three communities in a reliable and predictable way. Of particular relevance of this skewed symmetry are decisions regarding the budget, bylaws changes, strategic and operational plans. It is to reasonably expected and within the right of individual operational communities to ensure that the transition meet their needs of funding. Further, it is of consequence for the stability and security of the global DNS operations that the balance between the communities and stakeholder groups is not upset and that power to control management and operations does not remain with any single body, stakeholder group or institution. An interrelated issue the principle of separability and accountability. In the event of a common IFO being subcontracted through ICANN for all numbers and protocols communities and ICANN as a steward for the names community renders possibility of future separation of the IFO weak for all three communities.

This arrangement places ICANN in an asymmetric relationship with the other two communities, a position it may misuse to block future separation. ICANN's hold over the future IFO (currently proposed

³ Verisign/ICANN Proposal in Response to NTIA Request Root Zone Administrator Proposal Related to the IANA Functions Stewardship Transition See: http://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf

as Post-Transition IANA or PTI) would mean that it has more control of this DNS management aspect than IETF or the RIRs which do not retain this exclusive control over the IANA operator. Finally, in view of this asymmetric relationship, I would also reiterate that the ICG should seek that any accountability structure of any future IFO for all three communities places a higher dependence on external accountability measures. This is of particular relevance to maintain the possibility of numbers or protocols communities changing the IANA operator to a third party in the future. With ICANN as the sole steward of PTI this internal mechanism will be ineffective and a potential roadblock if IETF or the RIRs chose to move to an arrangement outside of ICANN.

Names Proposal - Community Mechanisms

The names proposal submits the creation of PTI and calls for associated oversight mechanisms that are subject to community review. These mechanisms have been developed within a short time frame and having been developed through participation from the community have evolved as complex structures. I would request the ICG to address the issues of complexity, lack of consensus and seek more details on implementation. I would like to reiterate that while I am fully supportive of the accountability efforts being undertaken in the transition process, the success of a transition is dependent on ensuring that existing arrangements that do not serve the sustainability the DNS ecosystem as a whole are rooted out by introducing alternatives to existing arrangements. Any alternative must be developed through careful consideration and understanding of its implication on long term stability of DNS management. Neither a measured approach nor the rushed implementation of underdeveloped measures should lead to maintaining the status quo of existing stakeholders or institutions in DNS management.

Of particular importance is that the ICG should seek to ensure that the implementation of any new mechanism going forward should be not be closed to the Internet community. Therefore, it is important that the ICG ensure that proposal being shared with NTIA maintains that implementation of new mechanisms are subject to early and frequent reviews by operational communities and the broader multistakeholder community of Internet users. This would ensure that complexity alternatives are made clearer through the interactions and may be simplified if needed by community review and are accepted in the future.

Linked to the point above is that participation in ICANN processes is burdensome and costly and comes at a high threshold of engagement. It is imperative that the ICG and the NTIA take note that firstly there should be a distinction between policy development and policy implementation stages. Further the ICG should also address the requirement that the overhead for participation at any stage of the transition process be kept low including minimizing physical meetings and teleconferences. Further progress on the

transition should be maintained and developed through publicly auditable mechanisms such as mailing lists and meetings in far flung places should not be built in to the process nor essential or serve as a barrier for participation. I would like to commend the transition process which albeit being voluminous has been successful in initiating discussions over mailing lists which are publicly archived.

Compatibility of the IFO for Operational Communities

I posit that the role of the ICG as a mere facilitator and its decision to purposefully and steadfastly suggesting alternatives or mandating necessary steps for the development of the proposal need to be revisited. In particular I believe that the ICG should seek clarification from the operational communities on an arrangement for the IFO that is compatible with all three community transition plans. A consideration of the role of the ICG becomes even more relevant as the transition moves from phase of developing a plan to working out the implications, testing proposed mechanisms and initiating and implementing reforms necessary before a successful transition.

Further, the ICG should expand its scope as a neutral body that coordinates the transition efforts of the three communities. This is a necessary and important step as each community is uniquely placed in the transition process. The numbers and protocols communities have superior accountability mechanisms than the names community. Further, it is not possible for the names community to organise outside of ICANN in the same manner as the other two communities. These differences will give rise to proposals of structural changes or workable settlements that will have to be negotiated between the communities working towards their individual expectations and objectives of a successful transition. For example, currently there are no incentives for the numbers and protocols communities to agree to additional mechanisms designed specifically to address names' issues.

Complicated institutional arrangements could lead to the perception that the protocols and numbers communities are being 'held hostage' by the names communities and could also affect the principle of institutional and functional separation. As a negotiated outcome is harder to achieve there is a need for a neutral body created from within the communities to oversee these arrangements and the ICG fills the role perfectly and should step up to ensure that this transition is neither risky nor a failure. In addition there are details of the consolidated proposal that need resolution and clarification from the communities. For example, the names proposal suggests that the numbers and protocols should subcontract IFO responsibilities to the body created by the names community to take over the IFO role. Presently working out the details of development and implementation of such a subcontracting arrangement is outside the scope of all three operational communities and I believe the ICG should not

only take it up as within its scope of work and should also ensure that this arrangement are worked and where necessary in force before the transition proposal is sent for approval to the NTIA.

The ICG's role is critical in ensuring that the three proposals are interoperable. As of today, both the registry operations and policy functions reside in ICANN and any possibility of disentangling them needs to be seen with immense coordination between the three communities. For example, one way forward could be transferring all the staff and operations related to IANA functions to a new entity that has no policy capabilities nor discretion to take decisions outside of this technical role of implementing the IANA functions for the other two communities. However, in the absence of an implementation plan it is difficult to evaluate potential risks or unintentional consequences of such an arrangement and the ICG should seek the development of such a plan and factor it in its recommendation to the NTIA.

One way to move forward on this would be for the ICG to include the proposal of a common IFO for all three communities in the combined proposal if. Any such arrangement should be sent back to operational communities for review providing an opportunity for the communities to assess implementation necessities for such a proposal. Further, any such proposed arrangements should address the issue of ICANN's dual role as a steward for names community and as the IFO contracting party for the numbers and protocols community. This is also necessary to ensure logistical coherence in the performance of all three services. In the event that the IFO ends up being the same entity the IFO contract should only include references to the entities such as the IETF, the RIRs and ccTLD operators but should not include any reference to the policies that these entities should develop, neither the instructions that the contractor should follow these policies.

The ICG should also urgently address the issue of developing the subcontracting arrangements for numbers and protocols between ICANN and PTI. While the IANA Functions Contract between ICANN and PTI for the names function has been annexed to the CWG proposal a similar contract is missing for other two communities. This makes the ICG proposal incomplete as it stands and has an impact on the interoperability of the IFO operations post transition. The ICG should expand the scope of its work if necessary to ensure the compatibility of high level details of a consolidated IFO arrangement including ensuring that checks and balances for external accountability, functional and institutional separation are included. All three operational communities represented by the CWG, CRISP and IANAPLAN should finalise and develop a framework for such subcontracting arrangement including MoU between ICANN and IETF, and the SLA between ICANN and the RIRs. Any planned changes to the MoU or the RIRs contracts must be placed in the public domain prior to finalising the proposal.

Institutional Separation of IANA

I believe a key measurement of the success of the IANA transition will be the functional and institutional separation of the IANA functions related to the three communities. In my opinion this is a combined responsibility of the ICG and the operational communities to ensure that the power of separation remains in the hands of respective steward. I also believe that it is within the ICG's scope of work to ensure that any future IFO arrangement should be premised on achieving such an institutional and functional separation in the future and dependent on the needs of the operational communities. Therefore, the ICG should seek that in addition to developing subcontracting IFO role to one body with IETF and RIRs, the subcontracting body should also be asked to produce a document explaining how such institutional and functional separation can be achieved within a time period agreed by each community.

Further the ICG should also seek clarity on the required arrangements that must be implemented for each community at the time of separation if only one of the communities decides to move IANA, before the transition process is finalized. All three IANA functions are currently performed together using shared human and material resources, complicating the practical implementation of the separability envisioned by the three communities. Addressing such questions prior to the proposal approval shall ensure that workable arrangements are devised as a result of the transition.

ccTLDs delegation and redelegation

As the ccNSO have submitted⁴, that ICANN's Board of Directors adopted and endorsed the Framework of Interpretation without reservation. The Board directed that "the CEO & President or his designee to develop an implementation plan for the recommendations for community consideration through a public comment, and to implement the plan when finalized."

In the context of delegation and re-delegations of ccTLDs, it is also important that the ICG develop a transition proposal that reflects the evolving state-of affairs with respect to the adoption of this framework. I support the ccNSO submission that the ICG should seek that there be a defined and current baseline documentation available before it submits its final transition proposal to the Board. The ICG should further note the amendments to inclusion of a reference to ICP-1 and keep abreast of the developments around the issues of redelegation of ccTLDs.

This is a particular issue may also have overlaps with some aspects of the Accountability work in particular reference the requests to transfer control of the country code domain from one party to another. The ICG proposal notes that the Names proposal should state that RFC 1591 and GAC Principles 2005

⁴ Country Code Names Supporting Organisation Council (ccNSO Council) Comments on the IANA Stewardship Transition Proposal, See: <https://comments.ianacg.org/pdf/submission/submission49.pdf>

are the two policies the ICANN should use for delegations and re-delegations of ccTLDs. The ICG also noted that a dispute resolution mechanism body was required under Section 3.4 of RFC1591 however, it does not exist presently. The NTIA IANA Functions Contract clearly establishes the importance of the GAC Principles 2005 in the delegation and redelegation of ccTLDs. Further as most ccTLDs do not specify a dispute resolution mechanism with ICANN through contracts therefore, GAC and ICANN (Ombudsman and ByLaws) become the dispute related bodies.

The ICG should seek more clarity on the issue of redelegation of ccTLDs bearing in mind the need for clarity on jurisdiction and avenues of dispute resolution for stakeholders. I refer to the recent case where Plaintiffs have requested the US District Court for the district of Columbia to turn to ICANN in order to seize whatever money, property, credit IRAN and Syria have at ICANN as a possible scenario which could remain unresolved under the current transition arrangements. It is important for a successful transition that the ICG seek clarity on whether the future IFO should operate on the belief that ccTLDs are being delegated to country registries and IFO asserts changes into the authoritative root zone file following direction from country registry rather than a particular community.

I also refer to the Tunis Agenda⁵ which states that no country should have authority over another country's ccTLD. The ICG and the global multistakeholder community including but not limited to the operational communities should consider the changes envisioned in ICANN' relationship with ccTLDs. Further this raises the question of how does the resolution of such issues fit within the US jurisdiction being proposed in the current transition proposal. The ICG should seek clarity on whether under proposed California law for the IFO, whether the USG will take a lead from Tunis Agenda point to state that they have no jurisdiction to intervene. Currently it is not clear that as long as the ICANN authorizes root zone entries is it that ccTLDs are considered as being delegated or does national sovereignty take precedence. ICG should also ensure that there is agreement on whether the IANA contract between US and ICANN legally bind ccTLDs or if it is possible to for the RIRs to potentially shift the allocation function to NRO not which is not under US jurisdiction. The ICG should consider any unresolved or ambiguities around ccTLDs and the process for redelegation in developing a final proposal. It should seek clarity from the communities through the multistakeholder process convened in gathering consensus on an acceptable and agreed way forward.

Continuity and Contingency Document

⁵ Tunis Agenda for the Information Society See: <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

With reference to the “Continuity and Contingency Plan” developed by ICANN under clause C.7.3 of the present IANA Functions Contract, the names community has highlighted the deficiencies in the document. Some of these issues relate to operationalising separability and ensuring continuity in case IANA functions are transferred from ICANN to another operator. The ICG should note that, this document is extremely relevant to the numbers and protocol communities as well, and has presently not been reviewed by them at all. I urge the ICG to address this incompatibility to ensure the transition plans remains interoperable and there are no serious implications for the security and the stability of the Internet. The ICG is requested to take serious note of the need to revise this document to ensure continuity, if the IANA is to be split for each community and in the event if only one community wants to enforce separation. It is imperative that a revised document derived through community development process is included in any finalised proposal.

IANA Related IPR

The numbers section of the proposal expects that the ownership of various intellectual property, including the domain name iana.org and the trademarks in IANA be moved to some independent third party. I believe this is an important future safeguard and must be agreed upon and completed before the transition enters an implementation phase. I therefore, urge the ICG to initiate gathering consensus from all three operational communities and overseeing the development of a plan for the transfer of the property within the scope of their work. While all three communities have considered future separability from the IFO, an actual separation of the IANA Functions Operator (IFO) role is dependent on the appropriate transfer of the intellectual property rights (IPR) associated with the IANA function (IANA trademark and “iana.org” domain name) to a neutral and trusted body.

I would also like to stress that even if one community holds the IPR on behalf of the other two communities, that community should be accountable to the other two communities. Under no circumstances should the independence or choice of the IFO for any community should be held ransom to the leverage of the community holding the IPR. I would also stress that given the possibility of expansion of ICANN’s role either as a contracting party for the IFO or as steward for the names community and as a contracting party for the RZA function, under no circumstances should ICANN be allowed to hold the IPR related to IANA. Any arrangements for the IPR must be framed as a non-exclusive license that may be granted to any IFO in the future based on the operational community’s choice and decision. This is necessary in order to ensure that these assets are used in a non-discriminatory, stable and predictable manner for the benefit of all communities, users and the Internet.

Protocol Parameters Data Should be Affirmed to be in the Public Domain

Linked to the issue of IPR, it should be affirmed that the protocol parameters data is in the public domain.⁶ I urge the ICG to gather consensus on the issue from the IETF and protocols and parameters community. If a third body is created to hold the IPR related to IANA, that body should also affirm this.

Numbers Community SLA

I urge the ICG to seek the development of an agreement between the various RIRs and the incumbent IFO to ensure the independence of the policy bodies associated with the numbers community. One example of continuing ambiguity in the proposal submitted by the community is in reference to dispute resolution and arbitration. The numbers community proposal states that "Disputes between the parties related to the SLA will be resolved through arbitration".

While developing the community was limited by the lack of available legal experts to address this issue. While this is a legitimate limitation, I urge that the ICG seeks that legal counsels appointed for the transition process or an external counsel appointed by the numbers community should consider the specifics of dispute resolution avenues for the RIRs and the IFO as part of the work necessary for implementation. Further, if the RIR legal team considers these questions then a proposal should be open to public inputs before it can be submitted as a final proposal to the ICG and subsequently the NTIA. The global multistakeholder community and is limited in its ability to assess the numbers proposal in the absence of the proposed SLA between the IFO and the RIRs and the ICG should seek further clarification on this.

Questions Concerning the Process as a Whole

Precluding Multistakeholder Consultation on RZA and RZM functions

A key aspect of the ICG assessment is to ensure the sustainability of DNS management when the NTIA pulls out of this oversight role of the IFO. In parallel to the transition of the NTIA oversight, the community has also been developing mechanisms to strengthen the accountability of ICANN and has devised two workstreams that consider both long term and short term issues. While under the present arrangements, the root of the Internet's name and address spaces is managed by ICANN as the IFO in coordination with Verisign Inc. acting as the Root Zone Maintainer (RZM). Both entities fulfill their respective operational and policy making roles under separate contracts with the US government, a legacy of the U.S. Defense Department and National Science Foundation foundational role in the Internet's

⁶ Data in the protocol parameters registries is in the public domain. See: <http://www.ietf.org/mail-archive/web/ianaplan/current/msg01149.html>

origins. As it stands the root zone management process is limited to the performance of two specific functions with respect to a root zone change request:

- NTIA verifies that ICANN (IFO) has followed established policies and procedures in processing the request; and
- NTIA (RZA) gives the final authorization to the Verisign (RZM) to update the contents of the root zone to implement the change request.

The NTIA transition criteria and subsequently the ICG consolidated proposal and accountability mechanisms are limited, in that, they only address the concerns of NTIA oversight with respect to chartering organizations involved with the IFO aspect of root zone management. Further, the accountability recommendations stemming from workstream one are narrowly tailored to the names community while long term stability related issues around DNS management have been relegated to workstream two with no defined timeline for resolution of issues. The security, stability, and resiliency of the Internet DNS rests on uncertain foundations with two critical aspects of the DNS Management—the Root Zone Administrator (RZA) and RZM having been precluded from the scope of the transition proposal being developed by the global community through the multistakeholder process.

VeriSign Conflict of Interest

The transition announcement does not state a deadline for termination of the existing cooperative agreement between NTIA and Verisign nor is it evident whether ICANN will be the contracting party or if Verisign will wield the contract over the IFO. Further, as Milton Mueller has pointed out, it is the Verisign Cooperative Agreement, not the IANA functions contract, that gives the US government authority over all root zone file changes.⁷ Since Verisign has operational control of the root zone, if the Cooperative Agreement with NTIA is not modified the US control of the DNS root remains unchanged. In the RZA transition proposal circulated by NTIA, the reasons for the continuation of the agreement is unclear for example, it does not clarify if the continuation is linked to Verisign being shielded from liability of making root zone changes by the USG.

Critically, the proposal limits the scope of the RZA oversight transition by continuing with VeriSign in its role in the maintenance and publication of the Root Zone. It ignores the important structural separation that is needed between the DNS-related RZM functions performed by VeriSign and its duties as the exclusive registry for the dot-com registry which it has been managing since 2000. As of 31 December,

⁷ Oops. The Fly in the IANA Transition Ointment, Internet Governance Project
See: <http://www.internetgovernance.org/2014/03/22/oops-the-fly-in-the-iana-transition-ointment>

2014, there were 115.6 million registered dot-com names and the dot-com TLD remains the largest domain based on the number of registered domains. The first mover advantage that VeriSign gives it not only a head start in the domain name business, it also limits its competition as dot-com TLD branding and longevity make it the most trusted and dominant TLD on the Internet. There are several problems with the transition arrangements as they stand and I have listed them elsewhere.⁸ However, as the scope of the ICG is limited to evaluating the IFO transition I shall not elaborate them here.

I do posit that it is imperative that there be effective arrangements among the root zone management partners, if the post-transition RZM process involves more than one organization. It is also important that there be an accountability framework for the resolution of disagreements, ambiguities, and disputes that does not depend on the NTIA or the RZA function as the names community has suggested automating this role. VeriSign may be supportive of the NTIA's goals to "introduce more transparency and measurement to the execution of the IANA functions"⁹ but it also needs to extend the same consideration to its role in root zone management.

Conclusion

I remain strongly supportive of the stewardship of the IANA functions moving away from the NTIA oversight so that the Internet community continues to ensure the stability needed for the growth of the Internet. The importance of the Internet as a critical global public resource must not be negated by any one body retaining a special role. The ICG proposal and the work undertaken by the global multistakeholder community is the way to ensure this.

This peculiar arrangement in the efforts to internationalize the DNS neither meets the needs and expectations of the global customers and partners of the IANA services nor lends credibility or support to a viable multistakeholder model. In view of the recent developments, I urge the ICG to seek that the operational communities deliberate and reflect on ensuring that the IFO transition process should be coordinated and aligned with the transition of the RZA and RZM Functions within DNS Management.

⁸ Jyoti Panday, Transitioning the NTIA Oversight of the DNS Root – Evaluating Progress Made and Problems See: <http://www.orfonline.org/cms/export/orfonline/html/cyber/Cyber-Monitor09.pdf>

⁹ Verisign Inc. Response to National Telecommunications and Information Administration Further Notice of Inquiry on the Internet Assigned Names and Numbers Authority (IANA) Functions [Docket No. 110207099-1319-0] See: http://www.ntia.doc.gov/files/ntia/verisign_fnoi_response.pdf

I believe that all the issues that I have raised are resolvable and the transition should not be blocked. Nevertheless, it is important that the absence of clarity on these issues would result in a transition that is incomplete and fails to address some of the most critical factors related to the DNS management.

In addition, it is also necessary to confirm both from the NTIA and the operational communities that it is possible to implement the transition plans for communities at different paces so that different pieces of IANA may transition at discrete stages of the overall implementation plan. Not only is this necessary to maintain the stability of DNS operations but is also critical for ensuring that potential problems and issues are recognised and addressed as they arise. Establishing consensus amongst the operational communities on whether the transition should move forward in a 'staged' manner or as a combined interlinked effort would serve as a useful complement to the implementation efforts under the extended IANA Functions contract time period.

Preserving the interest of a stable and secure DNS operations, ICG should ensure the development of specific implementation actions and resolution of underlying issues that may be contentious but will maximise the synergies across the names, numbers and protocols communities. This approach will avoid a lock-in on unresolved issues such as jurisdictional resilience of the domain name system, sovereignty and external accountability.