

Public comment of the Non-Commercial Stakeholder Group
Draft PTI FY21-24 Strategic Plan

The Non-Commercial Stakeholders Group (NCSG) appreciates the opportunity to comment on the Draft Public Technical Identifiers (PTI) FY21-24 Strategic Plan.

The NCSG represents the interests of non-commercial domain name registrants and end-users in the formulation of Domain Name System (DNS) policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

We understand from this Strategic Plan that the PTI intends to continue delivering high-quality services, bring substantial improvements to various aspects of its operations, and all that without requiring budgetary increases. We salute these undertakings and agree with their spirit and their overall substance.

There are, however, several instances of ambiguous language when it comes to the identification of certain risks PTI faces in the execution of its mission of the fulfilment of the objectives it sets for itself. Particularly, we have identified the second risk of Strategic Objective 1 ("*The evolving data privacy regulation landscape may have impacts on the level of transparency for the IANA registries, which may erode trust and accountability*"), the second risk of Strategic Objective 3 ("*New community policies can trigger a significant increase in workload, and with insufficient lead time or commensurate resource adjustments, can impact overall IANA function*") and the third risk of Strategic Objective 4 ("*Inability to meet community expectations and contractual deliverables due to dependency on ICANN Operating Plan & Budget*") as such uses of ambiguous language.

While we remain uncertain as to the meaning of these sentences, we provide below our best efforts at interpretation, as well as our issues with each of them. We hope that this effort will help PTI improve the clarity of the strategic plan, or bring into a sharper light what may be more fundamental disagreements as to the proper role of PTI as the executor of the IANA functions and its place in the ICANN community.

Strategic Objective 1

We are uncertain what laws or policy PTI is referring to when invoking a risk to "transparency," "trust," and "accountability" borne out of an "evolving data privacy regulation landscape." There appears to be several options:

- The risk is in the substance of "hard" law, such as national data protection statutes, the EU's General Data Protection Regulation, and the like. We do not understand

how such laws can ever represent a risk for PTI. PTI's own customers, registries and registrars, are themselves working towards variable degrees of changes to the way in which they operate to comply with such laws. The only threat in this context would be non-compliance by PTI's own customers. Such non-compliance would cause damage to those very customers, registries and registrars, and in turn would potentially damage individual registrants. Moreover, we are uncertain as to how PTI's involvement with global protocol, name and number coordination would put it in the scope of data protection laws and we look forward to further clarification on that matter. Finally, substantive privacy protections actually enhance trust and accountability on the internet and do not erode it. For example, the reform of DNS Whois to make it compliant with GDPR makes it more difficult for the data to be abused and ensures that those who request disclosure of that data are accountable. Transparency is maintained but with appropriate safeguards.

- The fact of the multiplicity of data protection laws, in the context of global operations. We recognize this may be a valid concern *in abstracto*, especially when these laws (or absence thereof) creates a situation of conflicting obligations with similar or other laws, legal rights or duties. Yet, beyond the fact that such a “clash” or “conflict” needs to be occurring and more than merely hypothetical, we do not see how it would either directly affect PTI, or how it would “erode trust and accountability” generally speaking, or even trust and accountability of PTI as the proper organization in the delivery of the IANA functions. Moreover, if this is the true worry, then we would expect PTI to emphatically support the multistakeholder, global governance model for the DNS and identify the risks where they truly lie. If PTI is really concerned about jurisdictional fragmentation, it should add the following things to its strategic plan:
 - Develop a clearer identification of this risk
 - Support the efforts of ICANN's EPDP to develop a globally applicable privacy and disclosure policy for registration data, and warn against efforts by certain stakeholders to engage in geographic differentiation of the policies.
 - Warn against efforts by national legislative bodies to impose geographically distinct regulations on ICANN.

- The substance of ICANN-developed data protection policies. First, we are uncertain as to the way policies developed by the ICANN community can directly affect PTI. That being said, we believe that the correct default position to assume with regard to policy development processes on PTI's part, especially in the multistakeholder context such as ours, is that every relevant element, item, aspect, and position has been factored into a given final policy. Policy development implies making choices, and these choices are the community's to make. Hence, if what is implied here is that the policies developed by the community in the context of the Expedited Policy Development Process may adversely affect “transparency,” “trust,” or “accountability,” of ICANN registries represents a value judgement, and one with which we emphatically disagree. PTI is not the final arbiter when it comes to the implementation of those values into the policies; the community is.

Strategic Objective 3 and 4

We are uncertain as to the risks PTI wishes to identify. It seems to us that PTI is claiming to be lacking in resources, either human or financial, to properly deal with policy contingencies and satisfactorily serve its customers. If such is the case, then certainly something must be done. Yet we are questioning the inclusion of such a risk in the context of a strategic plan.

That being said, PTI mentions several times the importance of outreach and exchanges with various parts of the community, in order to fulfill the objectives of the plan. This seems to us to be a fruitful approach, in the spirit of multistakeholderism. As the body responsible to execute the IANA Functions, PTI has knowledge of certain realities that may, admittedly, escape the vigilance of community members. A given policy may impose contradictory duties on PTI, or otherwise affect its activities in an inconsistent manner. Multistakeholderism is not a panacea; while the community is not perfect, we strongly believe that the base assumption should be that it does its best with the resources and volunteer expertise it relies upon. Beyond that, if PTI believes that the aforementioned realities are not sufficiently considered as part of the various community processes, it is PTI's responsibility to continue its outreach efforts, as identified in objective 1.2., and work to build capacity to engage in meaningful ways.

We look forward to further clarification of these points in the strategic plan.