***Response A to Sidley Summary of Legal Structure for CWG Proposal***

**1. Seun Ojedeji**

To Client committee,

Kindly find a few comments/questions below:

1. The existing IANA naming functions department, administrative staff and related resources, processes, data and know-how would be legally transferred into PTI

I don't think there is "IANA naming function department" but there is "IANA functions department" So I propose the following:

The IANA naming functions, related administrative staff and resources, processes, data and know-how would be legally transferred into PTI from the exiting "IANA functions department"

2. The IANA portion of the ICANN budget would be subject to

I think it may be useful to be more specific about the IANA budget referred. So the wording below may be useful:

The IANA portion of the ICANN budget **related to naming** would be subject to.......

3 .....conducted by a multi-stakeholder body, independent from ICANN

There is no section of the document that describe what independent in that statement meant. If it mean independent of ICANN board then it should be clearly stated.

4. The strengths of this proposed structure are as follows:

Isn't item c on also a weakness in practical sense considering that ICANN is the source of funding of IANA?

5. The weaknesses of the proposed structure are as follows:

I think introduction of new entity/structures creates accountability concerns which i think should be included as a weakness. Also the running cost of those structures should be included as a weakness (overall the end-user bears the cost)

Last but not the list, the overall statement seem to miss mention of the formation of the charter/bylaw for the PRF?

**2. Chuck Gomes**

Regarding 3, I think we need to be very careful how we use ‘independent of ICANN’ because that could mean not using existing SOs and ACs, which I think would be a mistake.

**3. Milton Mueller**

I don't think there is "IANA naming function department" but there is "IANA functions department" So I propose the following:

The IANA naming functions, related administrative staff and resources, processes, data and know-how would be legally transferred into PTI from the exiting "IANA functions department"

MM: Not quite right. It is the entire IANA functions department, not just the naming-related parts of it, that would be transferred to PTI.

The IANA portion of the ICANN budget **related to naming** would be subject to.......

MM: Again, it makes no sense to keep the other parts of the IANA functions separate from the naming parts. The entire department must be legally separated.

**4. Avri Doria**

On 19-Apr-15 13:37, Milton L Mueller wrote:

The IANA portion of the ICANN budget **related to naming** would be subject to.......

MM: Again, it makes no sense to keep the other parts of the IANA functions separate from the naming parts. The entire department must be legally separation.

As the other operational communities are clients of ICANN, is ICANN's internal construction an issue for them?  Isn't this just an implementation issue? Does the IETF contract/MOU specify how ICANN is organized internally?  And as long as ICANN keeps delivering the service they want, they won't need to resort to their remedy of finding another provider and ICANN can be organized as it wants.

Personally, I would have preferred a solution where the other operational communities jointly owned/controlled the affiliate, but that idea was not treated favorably by those operational communities, so now we have  a possible solution that leaves them with the status quo for their relationships with ICANN.

**5. Seun Ojedeji**

Well I don't think it makes sense to propose on behalf of the 3 communities without consulting the affected communities pre-PC. (Especially as the other 2 communities already submitted their proposals to ICG)

Also if your explanation is the case, then there is still need to reword the statement to refer to "IANA functions department" and not "IANA naming functions department".

That said, as it stands, I am no longer sure I understand our proposal but again I am just one out of the entire CWG who may have a good understanding. I just like to flag that there seem to be a lot of ambiguity that would be important to clarify before going for PC.

Preparing a FAQ list could be a good start.

**6. Milton Mueller (responding to #4)**

Personally, I would have preferred a solution where the other operational communities jointly owned/controlled the affiliate, but that idea was not treated favorably by those operational communities, so now we have a possible solution that leaves them with the status quo for their relationships with ICANN.

MM: I thought this issue was settled by the Sidley-Austin commentary and via list discussion. First, the fact that IETF doesn’t want a jointly owned affiliate does not mean that they reject having their MoU move to PTI. While Andrew [Sullivan, from the IETF] expressed some concerns about that shift, Sidley made it clear that the MoU between ICANN and IOTC can be assigned to PTI and this posed no problem (indeed, given some of the behind the scenes bargaining that is rumored to be going on between the two might make them more inclined to want PTI rather than ICANN as their counterparty, though that is hearsay at this point). And the contract between the RIRs and ICANN or PTI hasn’t been written yet, so it could easily designate PTI as the counterparty. No one from the numbers community has expressed any concern about that, and having been in contact with several people in that community I suspect that, as with protocols, some might prefer that.

**6. Seun Ojedeji**

On 19 Apr 2015 20:19, "Milton L Mueller" <mueller@syr.edu> wrote:
....And the contract between the RIRs and ICANN or PTI hasn’t been written yet, so it could easily designate PTI as the counterparty. No one from the numbers community has expressed any concern about that, and having been in contact with several people in that community I suspect that, as with protocols, some might prefer that.
>
SO: I happen to be involved in the numbers community and I am not sure I have seen any formal discussion about what you say above Milton. I think it's important we base our actions on transparently provided facts. Sometime ago the chair of CRISP formally wrote the CWG asking that they be informed of any part of the names proposal that could affect them. Noting from the CWG has been sent in that regard so I think it's a little out of line to make assumption on what a whole community wants.

**7. Milton Mueller**

Seun,

Please try to be accurate. I haven’t made any assertions about what “a whole community wants”

I did say I have talked to people in RIRs who might prefer a legally separated IANA.

In fact, your comments are supporting my point that RIRs have not made any formal statements either way.

And as noted countless times before, because the RIRs have yet to write their contract, it shouldn’t make any difference to them whether their future contract is with IANA services provided by a department of ICANN or by an affiliate.

**8. Seun Ojedeji**

I don't see the inaccuracy in my statement; my point is that informal interaction with some RIR members should not determine how CWG acts/reacts. We are in agreement that no formal statement has come out from the RIR community on this subject and i think it's because we've not asked them.

Maybe the PC is then our way of formally asking them.

Just for the record, I don't think change in IANA management to a yet to be clearly defined/tested structures should be seen as "no difference" especially if the community thinks everything is running well under the current management.

**9. Andrew Sullivan** On Sun, Apr 19, 2015 at 07:17:26PM +0000, Milton L Mueller wrote:

> reject having their MoU move to PTI. While Andrew expressed some concerns about that shift
I should be clear, if I haven't been already, that a significant part of my concern is putting such a negotiation on the critical path to transition.  I'm not necessarily opposed to such an eventuality, but it seems to me that actually working out the details would take time, and might fail.  As a matter of prudence, then, proceeding in a way that does not actually require such a shift is better.

>, Sidley made it clear that the MoU between ICANN and IOTC can be assigned to PTI and this posed no problem

My reading of Sidley's response was that this was normally possible. They seemed to be unaware of the actual agreement as it stands, but in the interests of time and because people seemed to be leaning away from an affiliate anyway I thought it was a distraction to continue pressing the issue.

Best regards,

A

**10. Avri Doria**

On 19-Apr-15 19:03, Andrew Sullivan wrote:

and because people seemed to be leaning away from an affiliate anyway

I had not gotten that impression.  It is still the compromise point between an Internal and Contract Co ( still waiting in the background in the event there is no compromise, I expect).  I thought it was still very much in the mix.

**11. Greg Shatan**

I agree with Avri.  It is certainly not my impression that people are leaning away from an affiliate.

I would also say that, if both parties to the MoU agree that ICANN can assign it to an affiliate, there should be no real issues with doing so.  Alternately, the parties could agree that ICANN will provide the services via an affiliate, while keeping ICANN as the contractual party.  In other words, this is basically a non-issue.

**12. James Gannon**

I agree with Avri and Greg, I haven’t seen any move away from an affiliate, quite the opposite, my personal impression has been that there is increasing support for it as we flesh out some of the details.