***Discussion of the Composition and Duties of the PTI Board***

**1. Milton Mueller:**

Regarding the composition of the board, the Summary of Legal Structure says only: “The PTI board could be an ICANN-designated board” and that we should “avoid the need to replicate the complexity of the multistakeholder ICANN board.” I agree with the latter concern, but we will need to flesh out more detail regarding the composition of the PTI board.

 I have missed most recent calls, so perhaps this has been discussed already, but if it has, it didn’t appear in the Sidley Austin draft.

 I think a simple and easily implementable solution would be to have ICANN-designated members be fixed by rules or bylaws (as opposed to wholly discretionary).

In my view, the PTI board should consist of the following 3 members:

1.       The existing IETF liaison on the ICANN board

2.       Someone designated by the ASO

3.       Someone designated by ICANN’s board essentially representing the naming community. One could add to this a recommendation from the CSC if one wanted, I would be amenable to that.

 This PTI board would be balanced across the 3 operational communities and thus would be in a good position to provide oversight for the IANA functions.

**2. Brenden Kuerbis**

Hi MM,

I mostly support that approach, but I'd propose the following modifications. Instead of one naming community representative, I'd suggest one from the GNSO and one from ccNSO.  In addition, I'd suggest adding the Exec Dir of the PTI to the board. In total, a lightweight and small five person board.

**3. Avri Doria**

Hi,  
  
I do not think we should avoid putting some multistakeholder character in the PTI.    
And still keep it small.   
  
If I understand, so far we have:  
PTI Exec Director  
IETF liaison (are we sure they would agree to this extra level of participation?  We should be cautious assigning roles & responsibilities to them that they may not wish to have)  
RIR liaison (see about re IETF)  
GNSO rep  
ccNSO rep  
  
I think we should consider  a CSC rep (same caution as above,  this may be too operational for the CSC)  
  
I would also recommend  
a GAC rep  (government participation)  
an ALAC  (user participation)  
  
and possibly  
an ICANN Board rep  
  
If all accepted, that would bring it to 9.   
Still a small number.

**4. Andrew Sullivan (responding to Avri Doria)**

On Mon, Apr 20, 2015 at 12:17:53PM -0400, Avri Doria wrote:  
> Hi,  
>  
> I do not think we should avoid putting some multistakeholder character  
> in the PTI.  
  
It seems to me that the proposal \_is\_ multi-stakeholder.  There are stakes -- names, numbers, protocol parameters -- and they're represented.  
  
> IETF liaison (are we sure they would agree to this extra level of > participation?  
>We should be cautious assigning roles & responsibilities to them  
  
I agree with this worry and thank you for raising it.  One thing that's attractive about Milton's proposal, however, is that it simply adds a responsibility to a role already defined, so we don't have to find more volunteers and so on (though we do need to add this to the list of things the liaison would have to do).  It certainly needs to be confirmed.  
  
> a GAC rep  (government participation)  
> an ALAC  (user participation)  
  
Why?  IANA is a clerical job for a specific purpose.  What ought the GAC or the ALAC have to say about it?  By constraining the board to this narrow scope of those actually directly affected, we have the hope of constraining PTI from becoming the leverage with which to force other issues (much as has been done in this process, where the entirely clerical IANA job is getting used as the lever to cause ICANN governance changes).  
  
> an ICANN Board rep  
  
Since the other appointees are already ICANN board members, why is an additional one needed?  
  
> If all accepted, that would bring it to 9.  
> Still a small number.  
  
In my experience, a team of five can make a decision that a group of 9  
cannot.  
  
Best regards,  
  
A

**5. Jonathan Robinson**

All,  
  
In thinking about the composition of the board, we need to be clear about the purpose or function of the board and what (if any) tasks it needs to undertake and or decisions it needs to make.  
  
It is clear to me that it has (at minimum) a legal function but that function may well be filled by a minimum board that we previously referred to as an internal or insider board.  
  
Are we clear that the PTI board has a function beyond that minimum and that the functions we may require it to perform are not already to be performed elsewhere?

**6. Matthew Shears**

Jonathan  
  
In that regard, one of the questions I think we have to answer is what responsibility does the PTI Board have vis-a-vis the IANA functions team, if any?  If there is a management responsibility (and I would assume there is if PTI is the operator) then the PTI Board is more than just a legal function.  The IANA team I assume would be accountable to the PTI Board, the PTI Board in turn to the ICANN Board.  So, if as a result of the periodic review undertaken by the PRT there are changes that should be implemented in the IANA team or its operations, the PTI Board (as operator) would implement those changes.  Seems to me that this points to a PTI Board that has a broader role than just a legal purpose related to the affiliate.

**7. Avri Doria (responding to #4)**

On 20-Apr-15 12:36, Andrew Sullivan wrote:

> an ICANN Board rep

Since the other appointees are already ICANN board members, why is an additional one needed?

while the IETF liaison might already be an ICANN board member, I did not think any of the others were.  
  
As for the GAC and ALAC.  While the work that IANA can be called primarily clerical,  the way it does its work, its budget, the degree to which it responsive, the way it deals with crises &c. are larger issues and in this multistakeholder environment, just seemed appropriate.

**8. Seun Ojedeji (responding to #3)**

Hi,

If PTI is meant to coordinate/oversee operation of IANA then it needs to be clear if its [board] members would be representative or act in the interest of the overall subsidiary. Its accountability measures also needs to be clear (I presume that would be within the scope of CCWG to worry about)

In terms of composition, I don't think the CSC needs a special seat on PTI since PTI is now understood be managing entire IANA. The overall decision making powers of PTI may determine if GAC/ALAC Reps will be required.

**9. Andrew Sullivan (responding to #6)**

On Mon, Apr 20, 2015 at 06:00:06PM +0100, Matthew Shears wrote: > those changes.  Seems to me that this points to a PTI Board that has a > broader role than just a legal purpose related to the affiliate.  
  
The maximal responsibilities the PTI board can have are its legal function and the normal board function of managerial oversight.  If it can be any larger than that, we're well into Contract Co land.  
  
So even if there is a slightly larger function, it still militates in favour of a small, tightly-focussed board along the lines Milton proposed.

**10. Andrew Sullivan (responding to #7)**

On Mon, Apr 20, 2015 at 01:36:20PM -0400, Avri Doria wrote:  
> while the IETF liaison might already be an ICANN board member, I did not  
> think any of the others were.  
  
Hmm.  Ok.  Could this be a liaison instead?  
  
> As for the GAC and ALAC.  While the work that IANA can be called  
> primarily clerical, the way it does its work, its budget, the degree to  
> which it responsive, the way it deals with crises &c. are larger issues  
> and in this multistakeholder environment, just seemed appropriate.  
  
If it were possible for me to disagree with this more, I would disagree with it that much too.  
  
1.  "The way it does its work": a singular and recurring weakness of ICANN is the constant dragging of the board into decisions that ought properly to be operational ones.  The only question is whether what goes in and what comes out is acceptable.  
  
2.  "Its budget": PTI does not need a multistakeholder process to establish.  It needs clear managerial oversight with respect to what IANA is going to need to do, and that will establish what the costs and expenditures are.  Moreover, since we know where the money is going to come from, that portion of the budget is already subject to multistakeholder observation.  
  
3.  "Degree to which it is responsive": Responsiveness is dealt with under the service level expectations for the various communities. This shouldn't be the job of the board, because it's the job of the CSC.  
  
4.  "The way it deals with crises": I'd like to know what these looming crises are supposed to be before we vastly expand representation on the board.  It seems to me that the greatest opportunity for crisis comes from PTI not sticking to its narrow function.  The surest way to cause that is to appoint board members who do not have an interest in the narrowest possible interpretation of PTI's mandate.

**11, Christopher Wilkinson**

Good evening:

May I suggest that the present thread is off-topic, if not invidious.

The composition of the eventual PTI Board, if any, should be discussed in open process with all stakeholders concerned, when the time comes.

CWG is not the appropriate forum.

**12. Avri Doria (responding to #10)**

Hi,

If it were possible for me to disagree with this more, I would

disagree with it that much too.

Let’s see if I can inspire you further.

On 20-Apr-15 14:14, Andrew Sullivan wrote:

2. "Its budget": PTI does not need a multistakeholder process to

establish. It needs clear managerial oversight with respect to what

IANA is going to need to do, and that will establish what the costs

and expenditures are. Moreover, since we know where the money is

going to come from, that portion of the budget is already subject to

multistakeholder observation.

Depends on what degree of Independence this has in terms of setting its budget.  
And are we sure that ICANN will always fund all for the services for ever more?  
If IANA wants to improve some aspect of its capitalized capabilities and ICANN says no, is that the end of the story.

3. "Degree to which it is responsive": Responsiveness is dealt with

under the service level expectations for the various communities.

This shouldn't be the job of the board, because it's the job of the

CSC.

And after all of the ICANN escalation processes who is it that is responsible for decision on how to deal with it?    
Is this all in the hands of the ICANN Board?

4. "The way it deals with crises": I'd like to know what these looming crises are supposed to be before we vastly expand

vastly would be, at least > 10  
adding two people is not vast in my opinion, though they do represent a vast number of stakeholders, that is true.

representation on the board. It seems to me that the greatest

opportunity for crisis comes from PTI not sticking to its narrow

function. The surest way to cause that is to appoint board members

who do not have an interest in the narrowest possible interpretation

of PTI's mandate.

Optimist.  
  
I believe you need someone assigned to deal with crisis before they happen.  
It is called exception management  - but you don't wait for the first exception before figuring out who is ultimately responsible.  Maybe this is in the hands of the ICANN board as well?  
  
I know that is not everyone's way.

**13. Greg Shatan (responding to #11)**

I would disagree with CW's suggestion.  This is germane and on-topic for this forum.  The PTI board is a reasonably significant aspect of the CWG's proposal.  It would be an abdication of our responsibilities not to propose a board when we are proposing such an entity.  "All stakeholders" will be free to comment during the public comment period (which is, of course, an open process).  The other IANA "customer" communities can also weigh in directly during the ICG phase.  It should also be kept in mind that this is the board of an entity wholly-controlled by ICANN, so it is essentially an internal-to-ICANN matter.

**14. Martin Boyle**

I’d see Milton’s approach as a good one – the PTI is an operational structure that has to take responsibility for delivering the quality of service and technical excellence required from the PTI:  essentially we need a management Board that can keep the IANA functions operation team focussed and resourced.

I could certainly go with one ccTLD and one gTLD rep as Brenden suggested – and why not chosen from ICANN Board members as they are going to be responsible on the Board for ensuring that the PTI has the resources necessary?  I also like his idea that the PTI’s executive director be on the Board – this seems to me to be quite usual practice.

While I have some sympathy for ensuring multi-stakeholder engagement, I think we actually need a Board that has the skills and expertise to ensure a successful operation.  The multi-stakeholder accountability should be from the ICANN Board as this is where resources (budget) come from.  It also comes in through the PRF and the general transparency that we should expect from the process.

We do *not* improve accountability by growing the Board or by stuffing it with people with little knowledge of the service they are managing.

**15. Milton Mueller (responding to #3)**

Can’t accept this.

I would also recommend  
  
a GAC rep (government participation)  
an ALAC  (user participation)  
  
and possibly  
  
an ICANN Board rep  
  
If all accepted, that would bring it to 9.  
Still a small number.

MM: Not small at all. Bigger than the IANA affiliate. Absurd.

**16. Andrew Sullivan (responding to #12)**

On Mon, Apr 20, 2015 at 02:36:09PM -0400, Avri Doria wrote:  
> And are we sure that ICANN will always fund all for the services for  
> ever more?  
> If IANA wants to improve some aspect of its capitalized capabilities and  
> ICANN says no, is that the end of the story.  
  
No, but we're not carving letters in granite, either.  In the event there is a deep, abiding, and unresolvable conflict between ICANN and PTI, then we'll have a crisis and have to deal with it.  We have no way of knowing now what form that will take.  We cannot possibly create a board that will be ideally suited for all logically possible worlds.  What we have before us is a specific set of responsibilities with specific directly-affected users.  We should solve that problem, and not work on problems we do not have, cannot describe concretely, and may never face.  
  
> > 3.  "Degree to which it is responsive": Responsiveness is dealt with  
> > under the service level expectations for the various communities.  
> > This shouldn't be the job of the board, because it's the job of the  
> > CSC.  
>  
> And after all of the ICANN escalation processes who is it  that is  
> responsible for decision on how to deal with it?  
> Is this all in the hands of the ICANN Board?  
  
Yes.  Or anyway, on the ICANN side of the operation.  How the customer deals with that is how the customer deals with it.  This is \_exactly\_ the same rationale for why the IETF will not give up its termination  
language: the ultimate power is that of the customer to go find someone else to do the work.  Why should this case be different?  
  
> vastly would be, at least > 10  
> adding two people is not vast in my opinion, though they do represent a  
> a vast number of stakeholders, that is true.  
  
And a set of interests that have approximately no direct stake in the actions of IANA.  The moment one starts adding representatives to the board who have an agenda that is anything other than, "Make this narrow clerical function go well," one invites pet projects to become part of the task.  We see this over and over again, and there is a pretty good argument to be made that it is part of the problem we're trying to address with ICANN accountability.  So we should keep the focus very narrow.  
  
> Optimist.  
  
That is only the second time in my life anyone has hurled that epithet at me, and I believe the other time had to do with IANA transition as well :)  
  
> I believe you need someone assigned to deal with crisis before they happen.  
  
Yes, sure, the board must be able to cope with a crisis.  That's what "board" means.  But I don't to begin with see why adding more people to the board is likely to increase its resilience in that way. Moreover, it's not clear to me that the skills needed are going to come from the GAC or ALAC.  In order to answer these questions, we'd need to have some inkling of what sort of crises we're likely to see and what challenges they represent.  What are the crises that you think could arise?  I can imagine a budget one, or a serious problem with the staff, or something like that.  Why would adding ALAC and GAC representatives help?   What other crises are you thinking of?

**17, Avri Doria (responding to #14)**

On 20-Apr-15 14:48, Martin Boyle wrote:

While I have some sympathy for ensuring multi-stakeholder engagement, I think we actually need a Board that has the skills and expertise to ensure a successful operation.  The multi-stakeholder accountability should be from the ICANN Board as this is where resources (budget) come from.  It also comes in through the PRF and the general transparency that we should expect from the process.

Why is there an assumption that this people would not have skills?  
  
With CSC being just registries and IGOs (the .int registrants), and the PRT being periodic, it does seem like we are well on our way toward a nearly multistakeholder free solution.    
  
Is that really what we want to present?  
  
I am comfortable with taking the CSC - they already are represented by GNSO/ccNSO  & IETF  and RIRs (they are ICANN customers not IANA direct customers) out of the mix if it is too big.

**18. Milton Mueller (responding to #17)**

Why is there an assumption that this people would not have skills?

MM: Because you are proposing to put them there to represent policy perspectives, not to manage a registry. The whole point of legal separation is to put some distance between IANA functions operator and the MSH policy process. By proposing a fully MSH board with GAC and ALAC you are inviting policy intervention in IANA functions, and to quote Andrew,

> If it were possible for me to disagree with this more, I would disagree with it that much too.

**19. Chuck Gomes (responding to #18)**

I have trouble accepting this as well.  In my opinion, the PTI board needs to be made up of a few people with the right skill sets to manage a very limited function.  The CSC will oversee performance and the IANA Review Team will serve as the M-S body that deals with big issues including systemic problems.

**20. Chuck Gomes (responding to #2)**

This makeup seems fine to me with one condition: each of the directors need to have the right skill set to match the PTI functions, i.e., a strong understanding of the IANA services and their value to the community.

**21. Chuck Gomes (responding to #6)**

In my experience, Boards usually don't have operational management responsibilities although the management team would answer to the Board.  I think it is accurate though that the Board will direct management to implement agreed to changes.

**22. Greg Shatan (responding to #21)**

We can always get more clarity on this from counsel.  Here's a generic description of the duties of a California non-profit corporation from the website of another firm (Adler & Colvin).  The fourth bullet is most germane to the present discussion.

The following are the general duties and responsibilities of nonprofit directors in California. Many states have similar provisions, although the specific laws of nonprofit corporate governance will differ from state to state:

* The Board of Directors, as a group, is ultimately responsible for overseeing the corporation's affairs. Individual directors as such have no authority over the corporation or its staff.
* The Board may delegate its responsibilities to others (staff, professional advisors, officers), but it retains the obligation to supervise those persons. Directors may rely on reports from officers and employees, reliable outside experts, or Board committees, so long as the director has no reason to believe that reliance is unwarranted.
* Directors must act in good faith, in what they believe to be in the corporation's best interests (the duty of loyalty), with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under the circumstances (the duty of care).
* Board functions generally include strategic planning; hiring, firing, reviewing and compensating (if applicable) the Executive Director; approving the annual budget and annual financial statements; overseeing investments; fundraising (if necessary); ensuring legal compliance (including tax-exempt status) in administration and program operations. Boards should avoid micromanagement.
* Both California corporate law and Federal tax law permit transactions with insiders, but impose additional procedural protections to ensure the transaction is beneficial to the corporation. Those protective procedures include advance full disclosure of conflicts, reasonable investigation, findings of fairness, approval by disinterested directors, and proper documentation.
* Boards are required to ensure that assets are spent for the charitable purposes for which they were received by the corporation (the charitable trust doctrine), in accordance with the Articles of Incorporation, the Bylaws, and the donor's intent. Deviation from these purposes may require court approval.
* The Board must ensure that assets held for investment are invested prudently.
* A director's breach of fiduciary duty that causes harm to the corporation will make the director personally liable to make the corporation whole. The Attorney General is responsible for enforcement.

**23. Alan Greenberg (responding to #5)**

I agree that some clarity here would be useful.  
  
The Board \*IS\* responsible for the PTI. Perhaps some envision it as a puppet to some other entity (including budget decisions as well as overseeing senior IANA staff). If that is the case, please specify who.

**24. Greg Shatan (responding to #24)**

First, I agree that the PTI board has responsibility for PTI, as described in the excerpt I pasted in earlier.  Generically, "insider" boards are also answerable to the parent company (sole shareholder) and to their board.  It is typically a more constrained set of responsibilities, and much less independent than the board of an independent company.  Even within those parameters, there are more or less active boards.  I doubt that I would describe any as a complete "puppet" -- was that someone else's positive description or just your somewhat negative one?