**IANA STEWARDSHIP TRANSITION CWG RFP SECTION III**

**STRAWMAN PROPOSAL 1**

1. **Creation of an Oversight Body**
   1. Operational Performance Review Committee. A new body, the Operational Performance Review Committee (“OPRC”), will be created to ensure continuity and enhancement of the performance of the administrative and technical functions associated with the IANA naming services by:
      1. developing and entering into a Service Level Agreement (SLA) with the IANA Functions Operator
      2. overseeing and enforcing the IANA Functions Operator’s compliance with the established SLA; and
      3. contracting with an evaluator to perform the authorizations for changes to the root zone previously performed by the NTIA (e.g. affirmation that all relevant policies were followed).
   2. The OPRC will be a committee under a separate incorporated or unincorporated entity.  [NOTE: A full review of the implications to personal liability and insurability of any committee members not associated with an incorporated entity and/or an incorporated entity and committee members under various jurisdictions needs to be conducted by legal experts to (1) protect individuals who serve on the committee and (2) attract the most qualified individuals to serve as committee members without fear of personal liability.] Governing Documents.
      1. OPRC Articles of Association and Bylaws: The OPRC will operate according to Articles of Association and Bylaws to be created by a drafting team.
      2. OPRC MoU with ICANN: The OPRC will also execute a Memorandum of Understanding (MoU) with the IANA Functions Operator that establishes the group’s authority to create and enforce service levels for the performance of the IANA Naming Functions and to appoint an independent evaluator to certify compliance with established policies before undertaking a root zone change. The MoU will also require the separation of policy development from the operational role of the IANA Functions operator.[[1]](#footnote-1)
      3. ICANN Bylaws: The Bylaws shall be modified to
         1. Reflect the role of the OPRC and mandate the IANA Functions Operator’s adherence to the terms of the MoU with the OPRC.
         2. Require the IANA Functions Operator and any employees involved in the operation of the IANA Functions to implement the IANA Naming Functions in accordance with the policies developed by the ccNSO and Generic Names Supporting Organization (GNSO).
         3. Identify a binding appeals mechanism with appropriate redress for parties that have been materially and adversely affected by the failure of the IANA Functions Operator to act in accordance with the authoritative policies.
         4. [NOTE: Restrictions must be put in place to restrict the Board’s ability to change this language within the Bylaws]
2. **Composition of Oversight Body**
   1. **Registry Operators.** The members of the OPRC will be the registry operators, as direct customers of the IANA naming functions.
3. **Documentation to Replace NTIA Contract**
   1. Service Level Agreement. The OPRC and the IANA Functions Operator will enter into a Service Level Agreement for the performance of the technical and administrative IANA Naming Functions. The SLA would run for an initial term of three years and would be renewed upon the agreement of the OPRC and the IANA Functions Operator.
   2. Memorandum of Understanding. The IANA Functions Operator and the OPRC would enter into a MoU establishing the role of the OPRC as it relates to the performance of the IANA Naming Functions. The MoU will also require the separation of policy development from the operational role of the IANA Functions operator.
   3. ICANN Bylaws. The ICANN Bylaws would be updated to describe the role of the OPRC and define the terms of the MoU between the OPRC and the IANA Functions Operator. The Bylaws would also be updated to include the binding appeals process for parties that were materially and adversely affected by a failure of the IANA Functions Operator to follow policies. Restrictions would be placed on the Board’s ability to modify such language in the Bylaws.
   4. Question: Is any other document needed, beyond SLA? For example, will functional separation be set forth in the SLA? If so, does that go beyond the typical scope of an SLA?
4. **Status of IANA Functions Operator**
   1. Division of ICANN. The IANA Functions Operator will initially be a division of ICANN.
   2. Enhanced Separability. ICANN will permanently maintain the current separation between ICANN and IANA. The ICANN Bylaws will require the separation of policy development from the operational role of the IANA Functions operator. Employees involved in the operation of the IANA Naming Functions would be prevented from initiating, advancing, or advocating any policy development related to the IANA functions.
5. **Method of Oversight.** The OPRC would do the following:
   1. Review [existing performance metrics](https://www.iana.org/performance/metrics/20130915) (e.g., that 80% of Root Zone File and WHOIS database change requests be processed within 21 days);
   2. Develop the (SLA) for the performance of these technical and administrative functions and determine performance indicators [to be negotiated with the IANA Functions Operator] and approved by the RySG and ccNSO;
   3. Receive regular performance reports from the IANA Functions Operator and review IANA’s performance of the Naming Functions;
   4. Initiate an independent audit of the performance of the IANA Naming Functions up to once per calendar year to be carried out by an independent auditor agreed to by the OPRC and the IANA Functions Operator and funded by the IANA Functions Operator.
   5. Request explanations and/or other documentary materials from the IANA Functions Operator in the case of any performance deficiencies with respect to the performance of the Naming Functions identified within regular reports or independent audits;
   6. Meet periodically with IANA staff to review performance relative to the SLA, discuss and otherwise address any performance deficiencies; [and consider the need for changes to SLA parameters;
   7. Meet [annually] with the President and CEO of ICANN to review and approve the elements of the Operating Plan and Budget related to IANA naming services for the upcoming fiscal year and the next [five] years .
   8. On a periodic basis, e.g., every 3 to 5 years, initiate a review of the IANA naming services to consider whether new (e.g., the addition of DNSSEC represents an example of a ‘new service’ that was introduced) or improved services (e.g., further improvements to root zone automation) are needed.
      1. This review should be conducted in an open and transparent fashion and provide an opportunity for interested parties to raise new or additional services of interest or other potential improvements to the Service Level Agreement. The OPRC shall review and analyze these proposals and should use such recommendations to inform changes to the IANA Service Levels provided that such recommendations are within the remit of the OPRC. The OPRC shall be focused on changes related to the technical and operational execution of the IANA Naming Functions; changes that seek to introduce policy by way of the OPRC or supersede or undermine the existing policy development structures for ccTLDs and gTLDs shall be considered outside of scope.
   9. Appoint or remove an evaluator assigned to verify that a root zone change request followed all applicable policies and procedures and authorize such change before it is implemented by the Root Zone Maintainer. The independent evaluator should be appointed for set contract periods of [3] years with the possibility of renewal at the agreement of both parties. The OPRC shall be empowered to reassign their responsibilities due to a finding of a conflict of interest or a determination that the evaluator failed to properly perform its duties.
      1. The appointment of an independent evaluator should take place through an open and transparent process, with the opportunity for input by the ICANN multi-stakeholder community.
6. **Funding of OPRC**
   1. Funded by Registries. All ccTLD and gTLD registries will fund the OPRC on a fair and equitable basis to be determined by the OPRC.
      1. Representatives elected to sit OPRC would be unpaid; members would not be entitled to compensation and would be expected to cover expenses associated with participation on the OPRC.
      2. Funding for the OPRC would be used to support: secretariat services associated with the OPRC, as needed; subsidize the independent evaluation role described in 5(h); maintain a community space including information about OPRC members and their terms, election procedures, current agreements, and relevant comment periods; and undertake any enforcement procedures invoked in association with the IANA Functions Operator’s failure to meet established service levels or following a determination by an appellate body that the IANA Functions Operator failed to perform the Naming Functions in accordance with established policies.
7. **Funding of IANA Functions Operator**

Funded by ICANN. As a division of ICANN, the IANA Functions Operator will continue to be funded as it is currently.

1. **Transparency of Decision-Making.**
   1. To enhance consistency, predictability and integrity in decision-making of IANA related decisions, ICANN would agree in its bylaws to:
      1. Continue the current practice of public reporting on naming related decisions and describe the checks and procedures that were performed in association with such decisions.
      2. Make public all recommendations to the ICANN Board from IANA staff on naming related decisions.
      3. Agree to not redact any board minutes related to naming decisions absent a justifiable cause identified in the Board Minutes. Where a justifiable cause exists, only the specific information of concern should be redacted.
      4. Have the ICANN President and CEO and the Chairman of the ICANN Board of Directors sign an annual attestation that it has complied with the above provisions.
      5. Submit to the outcome of a binding appeals process available to parties that believe that they have been materially and adversely affected by the failure of the IANA Functions Operator to carry out the IANA Naming Function in accordance with the applicable policies and procedures.
      6. Require that the IANA Functions Operator hire independent outside legal counsel to provide advice on the interpretation of existing naming related policy, as needed.
2. **Redress and Consequences of Failure to Perform.** 
   1. The SLA will set forth a process to address failure of the IANA Functions Operator to perform as required under the SLA or other binding agreements including providing notice of breach to the IANA Functions Operator and requiring the IANA Functions Operator to cure the breach. The IANA Functions Operator shall be expected to explain the reason(s) underlying its failure to meet the established service levels and what steps are being taken to avoid future deficiencies. In the event of failure to cure a breach or multiple recurrences of failure, OPRC may:
      1. Initiate a formal Performance Review to determine the underlying cause of the breach. At the end of such Performance Review, the OPRC may:
         1. Allow ICANN to continue as the IANA Functions Operator, subject to any remedial improvements required by OPRC;
         2. Initiate an RFP for a new IANA Functions Operator, subject to approval by the GNSO and ccNSO; or
         3. If the breach appears to be the result of ICANN behavior outside of the IANA group, require the IANA Functions Operator to move outside of ICANN and be established as an independent entity.
3. **Policy Appeal Mechanism**
   1. Independent Review Panel. Where disputes arise as to the implementation of “IANA related policies,” (e.g., disputes over the consistency of ccTLD delegation decisions with accepted policy) there would be recourse available to affected parties through a binding appeals process that includes redress. This appeals process should be provided for within the ICANN Bylaws. While this process could be called upon by a registry operator that believes that it was adversely affected by a delegation or a determination not to delegate, the process would also be available to other stakeholders that believe that they were materially or adversely affected by a failure of the IANA Functions Operator to carry out (or refuse to carry out) a root zone change in accordance with established policy.
4. **Accountability**

The transition must not take place until (1) the requisite accountability mechanisms have been identified by the CWG on Enhancing ICANN Accountability (“Accountability CCWG”), (2) mechanisms that the community determines are necessary pre-transition have been put in place and (3) agreements and other guarantors are in place to ensure timely implementation of mechanisms that the Accountability CCWG decides may be implemented post-transition.

1. Similar to the current NTIA Contract the MoU will require that, the IANA Functions Operator ensure that designated IANA functions staff members will not initiate, advance, or advocate any policy development related to the IANA functions. The IANA Functions Operator staff staff may respond to requests for information requested by interested and affected parties and may request guidance or clarification as necessary for the performance of the IANA functions. [↑](#footnote-ref-1)