Rationale for PTI Staffing Recommendations

In making a proposal for how to staff PTI, ICANN recognizes that the recommendation must:

* Fulfill the community’ proposal, while taking into account potential separation.
* Provide for the stability and security of the IANA functions. Consider and care for our employees – their preferences, morale, retention, and career growth and development.
* Ensure the long-term viability of the PTI staffing model.

Although the staffing of PTI could follow different models, ICANN proposes a secondment approach because it best allows ICANN to ensure continuity and quality in the performance of the IANA functions. At the same time, secondment satisfies the requirements of the CWG Proposal that: “The existing IANA functions department, administrative staff, and related resources, processes, data, and know-how will be legally transferred to PTI.”[[1]](#footnote-1)

*Greg Shatan comment: I do not think that a “secondment” is a “transfer.” A secondment is comparable to a loan. A transfer typically refers to a movement from one place to another that is complete and leaves no ongoing connection to the transferor. This can be seen in the list of transfers to PTI – “related resources, processes, data, and know-how.” Clearly, these will be assignment and transferred to PTI so that ownership (title) moves to PTI; this is inconsistent with the concept of a loan. Consider also the “transfer window” in professional soccer – the transfers referred to there are complete assignments to the new club. As such I believe that “secondment” does not satisfy the requirements of the CWG Proposal*.

Kurt Pritz comment: I agree that secondment is generally of a temporary nature. We can call it something else but I believe what is being suggested is the creation of an instrument where the IANA staff are assigned in a formal way to PTI, perform IANA duties only, report up through the PTI President or Manager, and also remain employees of ICANN. I support that approach for the reasons below.

## Staffing Proposal

ICANN proposes that:

* Current IANA department staff be seconded from ICANN to PTI, via contract, to perform the IANA functions.
* The PTI President be a seconded ICANN employee, and the role of the PTI President be filled by ICANN’s Vice President of IANA.

*Shatan: This raises questions about loyalty to ICANN vs. PTI.*
Kurt: I don’t see this as an issue; there is little difference between the PTI President (the PTIP?) reporting to the PTI Board as an ICANN staff member seconded to PTI and an alternate that is any other form of PTI transfer or assignment. On a more basic issue, I see no daylight between the loyalty to performing the IANA function and working toward the ICANN mission. They were inextricably bound up at the formation of ICANN. Every organization has some tension between the executive/Board and the operating entities underneath. But I see the mission of PTI and ICANN more aligned than any other combination of PTI and some other organization.
* The PTI Treasurer and Secretary be ICANN direct shared resources.

*Shatan: I am unclear on the concept of people as “direct shared resources.” How does this differ from secondment? If the PTI Treasurer and Secretary are ICANN employees, then all of PTI’s Officers will be ICANN employees. That raises significant concerns.*
Kurt: I don’t see the concern. The Treasurer and Secretary, both Board support roles and not IANA-function roles, are part time and are reporting functions, not performing functions. I believe this arrangement is better for PTI accountability. The other officer, the PTIP, is full-time PTI staff, seconded from ICANN to PTI.
* All future PTI staff be seconded from ICANN to PTI.

**Separation**

There are multiple ways that separation could occur. The ICANN-PTI contract(s) will allow for any separation scenario that the community decides to take. The contract(s) will require ICANN to facilitate a smooth transition and cooperate with the community’s choice of separation.

*Shatan: If secondment remains, it needs to be clear that this includes best efforts by ICANN to ensure that all PTI secondees become PTI employees (in a separation where PTI will continue to provide IANA services, but not under the ICANN umbrella). [NOTE: We need to consider what happens in the event of partial separation.]*
Kurt: I do not agree. ICANN is required to use best efforts to ensure a smooth transition, as it should. But requiring ICANN to use best efforts to ensure the PTI staff move to a new company is unrealistic, undefinable, unenforceable and is antithetical to a smoothly running PTI. First, if PTI is transferred, ICANN and PTI have failed in some way. This enforced separation makes it more likely that any failure would be due to PTI performance and not ICANN performance. Why would a new oversight entity seek to hire the staff that failed in some way and why would ICANN, tasked with ensuring a smooth transition attempt to force existing PTI staff on the new entity? Second, if PTI staff members are told that a path to returning to ICANN is shut out to them, they are likely, much more likely, to leave. Such a policy would be taking away at least 80% of the current staff’s ICANN career options. The transition plan should not result in incentives to leave PTI. Third, if PTI is separated from ICANN and a PTI staff member applies for an open ICANN position, are you suggesting ICANN would refuse to consider it? Such rules are generally illegal in California. Fourth, you can’t force someone to go somewhere to work in the U.S. due to the 13th amendment to its Constitution, they will only go if they want to go.

## Employment Details

### Employment

The seconded employees will be employed by ICANN with job descriptions that specify their responsibilities to perform a role exclusive to the IANA functions. Any employee in these roles will be employed by ICANN and seconded contractually to PTI.

The seconded employees will follow ICANN’s policies and procedures, including any specific policies and procedures required to perform the IANA functions.

Shatan: “Specific policies and procedures required to perform the IANA functions” should be PTI policies and procedures, not ICANN policies and procedures.

Pritz: This characterization is fine. The IANA functions will be performed by the Post Transition IANA. The organization is changing, not the functions.

### Benefits

The seconded employees will be offered the same benefits as other ICANN employees.

*Shatan: This almost certainly could be done through a Shared Services Agreement, without the need for secondment. Was this explored?*
Kurt: I don’t know if it was considered and I am sure the same benefits could be the same initially. What the *Benefits* term is saying is that the secondment (or equivalent mechanism) *can* accommodate equal benefits. It is not saying that secondment is *the only way* to accommodate equal benefits. Under the banner of retaining PTIANA staff, the staff knowing that benefits will always be the same because there is a single mechanism for administering them will be an important factor.

### Payroll

The seconded employees will be part of the same payroll system as other ICANN employees.

*Shatan: This certainly could be done through a Shared Services Agreement, without the need for secondment. Was this explored?*
Kurt: Same as above. This document does not claim that secondment (or an equivalent mechanism) is the only way to accomplish payroll. The document, for good reasons, recommends secondment and then says the same payroll system can be used under this regime.

### Performance Management

The seconded employees will be subject to the same performance management program as other ICANN employees. Under this performance management program, employees will be assigned objectives pertaining exclusively to performing the IANA functions. For the role of PTI President, the PTI Board will set goals and review performance.

*Shatan: Will non-PTI ICANN employees be involved in performance management and review of PTI secondees?*
Kurt: I am not sure of the concern you are raising. Are we not still holding ICANN accountable for PTI performance, saying that if PTI fails in some way, it can be removed from ICANN? Does that not necessitate an ICANN role in performance assessment? Without knowing, I would think performance would be assessed the same as other companies: the ICANN head of HR would be involved and for the PTIP and her direct reports, the PTI Board would be involved.

## Advantages of Secondment

### Employee Considerations

* The staff members who currently perform the IANA functions have indicated that they prefer to remain ICANN employees rather than become employees of a new, unfamiliar entity. Secondment reduces the risk that these employees will seek other employment because they do not want to become employees of PTI.

*Shatan: There’s very little that’s unfamiliar about it. It will have all the same people and responsibilities as the IANA group currently has. This seems overblown.*
Kurt: This issue cannot possibly be overblown. Your comment is contrary to any sound management principles developed since 1980. This chattel-like concept of employment led the Ford Motor Company to organize in 1941.

Say “Sam” is an eager-beaver staff attorney. After 10+ years of hard work, s/he believes s/he is poised to become partner. Sam works full time for one of the firm’s major clients, and the client does not trust the law firms conflict management protocols and demands full time staff be seconded to the client, separations be put in place, and when the engagement was over, the law firm would be required to encourage Sam to find employment with the client or successor law firm. Sam would have all the same duties as before. Would s/he stay?

That is what the IANA staff are hearing from the community right now. If you want to keep staff you empower them with, among other things, career mobility and a sense of team. If the transition takes those motivators away, it has failed.
* With secondment, ICANN can maintain the employee-employer relationship without disruption, and PTI will not have to enter into new employment relationships with the affected staff to enable them to perform their same jobs. Stability of the current IANA team is critical to the secure and stable performance of the IANA functions. The secondment approach is the optimal staffing approach because it is designed to maximize the possibility of continuity within the current IANA team.
* Secondment also helps ensure that there will not be two different classes of employees – ICANN and PTI. ICANN proposes that secondment be used for current as well as future PTI staff to eliminate potential disparities. A non-secondment path at any time will invariably create two classes of employees. As employees of ICANN, individuals performing the IANA functions will have the same options as other ICANN employees. This arrangement will make it easier to recruit and retain high performers – ultimately a benefit for the customers of PTI.

*Shatan: This is antithetical to the idea of a transition from ICANN control to self-sufficiency. PTI will forever be a “colony” of ICANN under this relationship. That is not what was intended. What options were explored to incentivize the VP of IANA to join as an employee? What are these “options”? Do they include transferring out of PTI? That does not seem optimal.*
Kurt: I don’t think this will affect PTI self-sufficiency. There is already and will be a separated full-time staff. They will rely on ICANN for certain services. I don’t think creating separate payroll, benefits function and other trappings of separation for a percentage of PTI staff will make PTI more self-sufficient. As explained above, I think such a development would curtail loyalty significantly and make PTI less self-sufficient.
* During this transition period, for the stability and security of the performance of the IANA functions, continuity in the leadership of the IANA functions is also important. ICANN proposes that the role of President of PTI be held by the existing Vice President of IANA. The Vice President of IANA has expressed a preference for secondment rather than enter into an employment relationship directly with PTI. The IANA employees will benefit from a leader whom they know and trust to carry them through this transition period. For this reason and because of the importance of historical and direct knowledge of the IANA functions operations, secondment for the PTI President role is also optimal.

*Shatan: What options were explored to incentivize the VP of IANA to join as an employee?*
Kurt: There are two interpretations to your comment. Do you mean joining the PTI as an employee of ICANN seconded to PTI? I think that addressing Elise’s primary concern, clearly (and I think accurately) described in this document is the best step ICANN could take.

Or do you mean to join as employee of PTI and leaving ICANN? Reading this document carefully, it is clear to me that the secondment plan is strongly supported by the IANA VP and her staff. Is your position that ICANN should counter the dissatisfaction caused by terminating Elise’s ICANN employment by increasing her compensation and benefits to a level above that of similarly situated ICANN peers? Employment satisfaction studies have demonstrated that improving some work conditions at the expense of an employee’s primary issues fail. In addition, such an arrangement would serve to increase dissatisfaction among ICANN staff.

### Operational Considerations

* Secondment allows the positions and employees performing the IANA functions to be exclusively dedicated to IANA operations, based on the explicit and detailed conditions of the contract between ICANN and PTI.

*Shatan: This would be the same under an employment scenario, which would be easier because they would not need to be the subject of a contract with “explicit and detailed conditions.”*
Kurt: Again, this document is not claiming that secondment is the only way to accomplish a dedicated staff, just that it can easily be accomplished under a secondment regime. It seems to me, ICANN went out of their way in this paragraph to guarantee to the community that steps will be taken to ensure this happens. You turned the intent on its head by claiming in some way that writing an agreement with specific conditions to address this issue is overly onerous. It is not.
* Secondment allows for ICANN to leverage the existing payroll system instead of setting up a new payroll system for PTI, which is costly and time consuming to establish and manage.

*Shatan: As noted above, I’m confident ICANN can provide payroll services to ICANN under a Shared Services Agreement. Was this explored?*
Kurt: Again, I believe ICANN realizes that all these services can be provided in ways under secondment and other schemes. The purpose of this Operational Considerations section is, given that secondment is the recommended path, ICANN wants to ensure that all operational duties can be met.
* Secondment also allows employees to continue to have access to the same benefits, the same performance compensation programs, the same legal protections and the same career development opportunities. Although PTI could possibly provide similar benefits, compensation programs and legal protections if it directly employs staff members, as a small organization, PTI could not give employees the same career growth and development options.

*Shatan: I’m glad to see some grudging acknowledgement that PTI could offer essentially the same “package” as ICANN. Career growth and development options that take secondees out of IANA would seem to be detrimental to PTI – not a selling point.*
Kurt: No. You are absolutely incorrect. Taking career growth opportunities away is detrimental to PTI. Imagine you are told that, starting tomorrow, you would be barred from applying for 80% of your firm’s openings. If you are the PTIP, no new job for you. If you report to the PTIP, you can wait for her to retire or get fired; otherwise, no other new jobs for you. If you want to grow, you leave.
* The roles of the PTI Treasurer and Secretary are not expected to require full-time employees. As such, cost-effectiveness and operational efficiency can be gained by ICANN providing qualified shared resources to PTI to serve as Secretary and Treasurer.

*Shatan: See concerns expressed above.*
* ICANN will also provide shared resources and support services to support PTI operations. This will allow PTI access to ICANN’s resources and expertise to maintain the same customer support service levels. This is the most cost effective approach as opposed to PTI having to create new functions for HR, finance, procurement, IT, office management, etc.

*Shatan: Shared services and resources are unrelated to secondment and was always considered the most likely option.*
Kurt: Right, in this section, ICANN is describing these services for completeness.

### Separation Considerations

There are multiple ways separation could occur. Secondment and shared services allow for flexibility in accommodating the various possible separation scenarios, while ensuring the stability and security of the IANA functions at the time of separation.

**Scenario 1 – PTI becomes independent from ICANN.** In this scenario, PTI will offer all seconded employees employment with the independent PTI. ICANN will continue to provide shared resources and support services to PTI until PTI is capable of sustaining operations on its own.

*Shatan: Secondment creates much greater uncertainty under this scenario, as opposes to having PTI employees. If the latter is done, the employees don’t need to do anything and neither does PTI; the employees are already “on board.” [The second sentence is u]nrelated to secondment.*
Kurt: If this happens, we have bigger problems than terminating secondments. In this scenario, ICANN and PTI have failed in some way and the ICANN formed in 1998 is broken apart.

Incremental work is not the winning argument for refusing a secondment-like plan; empowering and satisfying the PTI staff is more important. I also don’t think your characterization that PTI doesn’t need to do anything is accurate. There will be ton of administrative work that will distract PTI from its task, which is one reason why the legislative history of this discussion repeats the mantra that any transition discussion should not be undertaken lightly or without good cause.

Also, I don’t think this ICANN scenario is odd. How can ICANN, now out of the picture, force PTI to hire all current employees. In this case and in order to succeed, the new entity should not be forced to take all the current employees or why would a successor agree to it.

Finally, I think the second sentence was included for completeness; if the affirmation was not there, commenters would ask why ICANN has not explicitly stated that it will continue to provide services during the transition.

**Scenario 2 – A successor is created or selected, and all seconded employees transfer.** In this scenario, the new successor would offer employment to all seconded employees. If the successor requires, ICANN will provide shared resources and support services to the successor to ensure continued performance of the IANA functions until the successor is capable of sustaining operations on its own.

*Shatan: This is equally true if the employees are PTI employees. [The second sentence is u]nrelated to secondment.*

Pritz: I think this ICANN paragraph is unrealistic. “Company A: we invite you to bid on performing the IANA oversight role, which has failed in some way. You must guarantee to keep all the staff.”

**Scenario 3 – A successor is created or selected, and some seconded employees are selected to transfer.** In this scenario, the new successor would offer employment to selected seconded employees, while the remaining employees would be made available to the successor until the successor puts a team in place. ICANN will provide every opportunity for employees not selected by the successor to explore other employment opportunities within ICANN. If the successor requires, ICANN will provide shared resources and support services to the successor to ensure continued performance of the IANA functions until the successor is capable of sustaining operations on its own.

*Shatan: This could be accomplished equally well without secondment. [The final sentence is u]nrelated to secondment.*
Kurt: Yes, but the point of this paragraph is that this can be easily accomplished with secondment, not that secondment is the only way to accomplish a transfer.

**Scenario 4 – A successor is created or selected, and no seconded employees transfer.** In this scenario, ICANN continues to operate the IANA functions until the new successor puts a new team in place, and ICANN will cooperate in the training of the team as needed. ICANN will provide every opportunity for employees to explore other employment opportunities within ICANN. If the successor requires, ICANN will provide shared resources and support services to the successor to ensure continued performance of the IANA functions until the successor is capable of sustaining operations on its own.

*Shatan: This implies that some or all of the know-how and skill involved in the IANA functions will remain the property and knowledge of ICANN and not PTI; this is troublesome. This could be done equally well without secondment.*
Kurt: This is troublesome but a distinct possibility. In this scenario, a company would have submitted a bid and convinced the decision maker that retaining no staff is the best alternative. So it would be the decision-maker making that choice, not ICANN.

## Conclusion

If IANA staff were required to enter into a direct employment relationship with PTI in order to continue performing the same jobs performed today, retention problems could result. This lack of continuity could jeopardize the immediate as well as long-term stable performance of the IANA functions. Therefore, for the reasons stated above, ICANN recommends that all IANA staff be employed by ICANN and seconded to PTI for the performance of the IANA functions. The secondment arrangement should be structured in a way that meets the community’ separability goals without jeopardizing the performance of the IANA functions.

*Shatan: This seems like an issue to be overcome, rather than letting it dictate the terms of the transition, at variance with the CWG’s plan. This will require a series of complex safeguards that could be avoided if IANA staff were PTI employees.*
Kurt: The goal of the community in creating PTI was to create a roadmap for success. Part of that roadmap includes increased separation but not in a way that might defeat the ultimate success of the organization.

I believe retaining and energizing the PTI staff is the most important consideration in planning for success. No one calls “IANA”; s/he calls a person. I worked at Disney with an amazingly talented staff, without whom, the leaders would be lost. We hung a banner in the executive offices as a reminder to ourselves about what is important, “It’s the people, stupid.”

1. Paragraph 1109 of the CWG-Stewardship Proposal. [↑](#footnote-ref-1)