

29 July 2016

Samantha Eisner
Associate General Counsel
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: Draft PTI Articles - Comments from the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship)

Dear Ms. Eisner,

We write in response to ICANN's recent publication of the draft articles of incorporation for Post-Transition IANA ("PTI") dated as of 1 July 2016 (the "[Draft PTI Articles](#)"). We have prepared this comment letter on behalf of the CWG-Stewardship in our capacities as its co-chairs. We kindly request that ICANN address the CWG-Stewardship's comments in the revised version of the PTI articles of incorporation, which we understand will be shared with the CWG-Stewardship for final review following the public comment period.

The formation of PTI as a separate legal entity is a critical component of the CWG-Stewardship [final transition proposal](#) that was submitted for approval to the chartering organizations on 11 June 2015. As a result, the CWG-Stewardship has had significant involvement in the drafting process for the PTI formation documents. We note that the CWG-Stewardship will also be submitting comments on the draft PTI bylaws dated as of 12 July 2016; however, we understand that the PTI articles of incorporation may be filed with the California Secretary of State while the public comment period for the PTI bylaws is still open. Given the different timelines for these interrelated governance documents, we understand that, to the extent changes to the PTI bylaws impact provisions in the PTI articles of incorporation, the PTI articles of incorporation can be further amended and re-filed.

The CWG-Stewardship is firmly committed to finalizing the PTI governance documents, and we look forward to working with ICANN to resolve the remaining open issues. Our substantive comments on the Draft PTI Articles are discussed in detail below. We have also attached, as [Exhibit A](#), a mark-up of the Draft PTI Articles, which includes some additional minor comments in the nature of conforming edits.

1. Purpose (Article 3)

- ***Text from Draft PTI Articles:*** Article 3 of the Draft PTI Articles describes the "specific purpose" of PTI as follows:

"The specific purpose of the Corporation is to operate exclusively for the benefit of, to perform the functions of, and to carry out the purposes of the Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN")."

- **CWG-Stewardship Comment:** The CWG-Stewardship understands that the purpose that is currently set forth in Article 3 addresses certain tax requirements that need to be met in order for PTI to qualify as a tax-exempt “supporting organization.” However, as discussed with and agreed to by ICANN legal, Article 3 should be modified to reflect the following description of PTI’s purpose, which addresses the applicable U.S. federal tax requirements, while being tailored to the anticipated role of PTI:

“The specific purpose of the Corporation is to operate exclusively ~~for the benefit of, to perform the functions of, and~~ to carry out the purposes of the Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), by performing the IANA functions on behalf of ICANN.”

2. Amendments (Article 13)

- **Text from Draft PTI Articles:** Article 13 of the Draft PTI Articles sets forth the following approval requirements for amendments to the articles of incorporation:

“These Articles may only be adopted, amended, or repealed in whole or in part with the approval of (a) at least two ICANN Directors (as defined in the Corporation’s bylaws), (b) two Nominating Committee Directors (as defined in the Corporation’s bylaws) and (c) the Member.”

- **CWG-Stewardship Comment:** The CWG-Stewardship proposes that Article 13 be modified as provided below to clarify the required threshold of directors needed for Board approval of articles amendments. With respect to the requirement that this threshold also include two Nominating Committee Directors, the CWG-Stewardship agrees with concerns that this would give too much power to one Nominating Committee Director to block a vote, and this requirement has been removed from the proposed language below.

“These Articles may only be adopted, amended, or repealed in whole or in part with the approval of (a) at least four of the five authorized directors of the Corporation ~~two ICANN Directors (as defined in the Corporation’s bylaws), (b) two Nominating Committee Directors (as defined in the Corporation’s bylaws) and (c) ICANN the Member.~~”

Thank you for your consideration of the CWG-Stewardship’s comments on the Draft PTI Articles. We look forward to working with you to address these PTI governance matters.

Best regards,

Lise Fuhr and Jonathan Robinson
Co-chairs, CWG-Stewardship

Attachment

Exhibit A