



Comment on CWG Draft Proposal for Transition of Naming-Related Functions

Status: FINAL

Version: 2

22-Dec-2014

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Summary Comment

ICANN has called for public comment on the Cross Community Working Group (CWG) on Naming Related Functions Draft Transition Proposal.¹ The draft proposal was posted for public comment on 1-Dec-2014 and allowed 20 days for comment submission, with no provision for a reply comment period.

The CWG proposes to create a new contracting entity (Contract Co.) to enter into a contract with ICANN for the performance of the IANA naming functions. It also proposes to create a customer service committee and a multistakeholder review team. Most of the power of the contracting company would be in the hands of the multistakeholder review team, whose composition is not yet defined. The CWG also proposes to create an independent appeals panel, whose terms of reference and composition are still being fleshed out.

Overall, the CWG draft proposal raises more questions than it answers.

Specific Comments

Regarding the draft proposal to create multiple new entities, the BC has three principle concerns:

1. The proposal would create too much in the way of new structures, considering that the present IANA arrangement is much simpler and everyone agrees that it is working relatively well.
2. Creating several new entities creates both opportunities for capture and opportunities for forum shopping. These concerns are exacerbated by uncertainty around the jurisdictional home of the Contract Co. and choice of law for the contract between the Contract Co. and ICANN as the IANA functions operator.
3. Some of the key accountability reforms suggested by the CWG (e.g., broader the scope of “appellate” review) would be best addressed in the CCWG on Enhancing ICANN accountability, because they should have broader application to ICANN as a whole and not just the IANA functions.

¹ <https://www.icann.org/public-comments/cwg-naming-transition-2014-12-01-en>

Given those concerns, the BC reached these conclusions regarding the draft transition proposal:

1. The BC does not support the proposed creation of a new contracting entity.
2. A number of the accountability improvements are best addressed in the broader accountability group. Otherwise, we risk creating competing accountability mechanisms, thereby enabling forum shopping for stakeholders seeking redress or reversal of ICANN decisions.

Of course, this means that structural accountability improvements will have to be agreed before the transition can take place.

3. The BC supports incremental changes proposed to establish a customer service committee and to publish delegation and re-delegation information
4. This proposal makes clear that we need to do the IANA transition and accountability processes in tandem, and that we cannot support the transition until we have a plan for broader ICANN organizational accountability enhancements.

The best reason to create a separate contracting entity is to retain the possibility that the IANA contract could be removed from ICANN in the event of negligence or malfeasance. But the BC believes that we could address the possibility of ICANN negligence or malfeasance in two ways:

- 1) Require ICANN to enter a contract for an emergency back-up provider for IANA; and
- 2) Establish stronger accountability mechanisms (e.g., spilling the board) in the broader process.

Finally, the accountability process and the IANA transition process are clearly linked. As a result, the BC finds it extremely difficult to evaluate the CWG transition proposal without the accompanying accountability enhancements.

Commenters are being asked to judge the early results of one process while the other is still in its organizational stage. This challenge is exacerbated by the fact that the CWG framework is largely a blueprint that lacks critical detail. Moreover, the timeframe for comment was a mere three weeks.

The issues associated with the transition are so important that they call for further development of the proposal and an additional thirty-day comment period, followed by a reply period, to allow for true community understanding, participation, and consensus.

--

This comment was drafted by Aparna Sridhar and Philip Corwin, and was approved in accordance with the BC charter.