

Brasília, 22 December 2014

**Comments of the Brazilian Government on the  
"Cross Community Working Group On Naming  
Related Functions - Draft Transition Proposal"**

The Brazilian Government commends the CWG on naming related functions' members for their collaborative effort in producing a draft proposal for the IANA transition process and presents preliminary comments on both structural and substantive aspects of the said proposal.

**Comments on the proposal structure**

- In some cases, chapters' renumbering and reordering is required in order to enhance the text intelligibility;
- A glossary of terms and acronyms could be included.

## Comments on substantive aspects

Although some of its aspects need further elaboration, the multi-institutional architecture proposed by the CWG seems to be appropriate for the purpose of the IANA transition process.

With respect to the "**Contract Co.**" organization, Brazil considers that any institution replacing NTIA's role as IANA function contract administrator should not be subject to the jurisdiction of a single country, unless all stakeholders should so decide.

Therefore, having in mind that an innovative multistakeholder model is required, Brazil recommends that the CWG proposal should resort to International Law expertise in order to evaluate different alternatives of juridical personality for the proposed "**Contract Co.**".

On the other hand, the Brazilian Government understands that the proposed **Multistakeholder Review Team (MRT)** should include members from all interested stakeholder sectors (civil society, private sector, government, academia and technical community), taking geographical and gender balance into account.

As the **MRT** would have stewardship responsibilities towards the IANA functions operator, its composition should not be necessarily based on the current multistakeholder model adopted within ICANN (i.e.

distribution based on SOs/ACs).

Although not within the scope of the CWG, it would seem natural that the **MRT**, by being the main decision body in the IANA functions contract administration set up, should have responsibilities beyond the naming related IANA functions. It would necessarily be involved in administrative issues of the other parts of the contract, namely the number and protocol parameters related functions.

With respect to the **Customer Standing Committee (CSC)**, the Brazilian Government considers that its activities should be of a technical nature, strictly limited to assessing performance data of IANA operations and transactions. It should not be within the scope of the **CSC** to make decisions, but rather to provide regular reports with objective information related to the performance of the IANA Function Operator.

The Brazilian Government also welcomes the suggestion of establishing an **Independent Appeals Panel (IAP)** the competence of which should, by the way, extend beyond the areas within the scope of the CWG. The **IAP** would be instrumental to ensure that the management of IANA functions involves clear separation and independence of powers.

However, it is important to be more precise about the scope of work of the **IAP**. A clear dispute settlement process should be defined, by which parties should be encouraged

to refer to the **IAP** as a last resort only. The draft proposal should also contain concrete examples of dispute cases in order to improve the understanding of **IAP**'s functions.

In order to make sure that decisions emanating from the **IAP** are absolutely independent, it is of utmost importance to ensure that the panel is not pre-determined to be subject to the jurisdiction of a single country or a particular regional block. Hence, any arrangement that would outsource **IAP**'s arbitration function to a commercial company would gravely undermine the panel's autonomy.

In this regard, the Brazilian Government would be more inclined towards the suggestion of setting up "ad hoc" **IAP** panels, composed of three experts, two of them chosen by the parties at dispute and one chosen by the other two selected panelists. WTO's Appellate Body constitutes in our view a possible example that could be considered in this regard.

With respect to the role of "Root Zone Management Process Administrator", the replacement suggestion contained in the draft proposal is not clear. In particular, chapter "3.4.3.2" suggests that a "counsel independent from ICANN" should submit a written opinion whether TLD delegation/redelegation requests meet policy requirements, but no further descriptions of the "counsel" is given. As an alternative to the "counsel", the **MRT**, as the main body in the new proposed replacement architecture, could perform the given administrator role.

Brazil is particularly concerned about the "Subcontracting" terms of the proposed IANA Post-transition contract, as it would require (or assume) the IANA functions operator to be a company based in the United States and the related functions to be performed in that country as well. In Brazil's view, this would contradict the purpose of globalizing the management of Internet's unique identifiers and should, therefore, not remain in the new contract.

For the sake of clarity and to avoid unnecessary concerns, it would be advisable to specify the role of governments in the new proposed arrangement, not as "oversight" authorities or "sole public policy makers" but as interested stakeholders, on an equal footing with other actors.

Lastly, although fully cognizant of the fact that the issue of who performs the Root Zone Maintainer (RZM) role is not within the scope of the CWG's work, the Brazilian Government considers that the current contractual agreement with Verisign needs to be included in the efforts to revisit and evaluate existing pre-transition arrangements in order to propose possible changes, if that would be the case, in the arrangements for the post-transition period.

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