
Reproduced with permission from Electronic Commerce & Law Report, 20 ECLR 162, 2/4/15. Copyright © 2015 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

ICANN Policy

IANA Transition Group Will Consider Internal, External Contract Plans at Singapore Meeting

Four different models for the transition of Internet Assigned Numbers Authority naming functions will be considered by a working group at the upcoming ICANN Public Meeting in Singapore, a working group member told Bloomberg BNA Feb. 2.

On the table for consideration are the Cross-Community Working Group (CWG) to Develop an IANA Stewardship Transition Proposal on Naming Functions's Dec. 1 draft plan plus three alternative approaches. Gregory S. Shatan, a partner at Abelman Frayne & Schwab in New York, said that while the three alternative IANA transition proposals are unfinished, they are nevertheless sufficiently well-formed to be presented in a discussion document expected to be released in advance of the Singapore meeting, which begins Feb. 8.

Meanwhile, Capitol Hill is paying close attention to the IANA transition planning process, and may be planning to put its giant thumb on the scale. A Senate resolution has already been introduced to bring public attention to the process and to send a message to the transition drafting participants, and a congressional staffer told Bloomberg BNA that the author of last year's "Domain Openness Through Continued Oversight Matters Act" (DOTCOM Act) is about to introduce an updated version.

All of this is happening on the heels of Assistant Commerce Secretary for Communications and Information Lawrence Strickling stating Jan. 27 that the National Telecommunications & Information Administration is monitoring the CWG's progress and has certain concerns and questions arising out of the CWG's Dec. 1 draft proposal (see related article).

Internal and External Contract Solutions. The four concepts the CWG will discuss in Singapore involve two different so-called internal and external solutions for dealing with the contracting issue. Syracuse University information science professor and CWG member Milton Mueller said that he expects that the CWG's efforts in Singapore will focus on the issue of whether a separate contracting entity is needed as an ICANN counterparty — the external solution proposed by the committee — or whether the contract should simply be turned over to ICANN — the internal solution advocated by the ICANN board and the At-Large Advisory Committee.

"All we will do in Singapore is review the division that currently exists within the CWG (external vs. inter-

nal) and the various parties will discuss the problems with both and perhaps some of the alternative proposals that try to square that circle," Mueller said.

The draft plan put forth by the CWG in December 2014 called for a contracting entity to replace the NTIA's role as counter-signatory to ICANN (19 ECLR 1560, 12/10/14). Another external model, Shatan said, would create a external trust that would monitor ICANN's IANA performance with the power to take necessary steps to correct future deficiencies, up to and including replacing ICANN as IANA functions performer.

Shatan said that the document will also contain two internal models as well. In one, ICANN would take over the IANA functions contract but binding bylaw revisions would be implemented that could not be changed by the board. Those provisions could similarly provide for the automatic loss of the IANA functions role in the event of unacceptable performance. Lastly, another internal solution would put the IANA functions role into a trust with ICANN as the trustee.

DOTCOM Act Reintroduction Confirmed. David Retl, chief counsel to the House Energy and Commerce Committee, said Jan. 27 that the "Domain Openness Through Continued Oversight Matters Act" (DOTCOM Act), which passed the House in May 2014 (19 ECLR 620, 5/14/14) will likely be reintroduced within the next few weeks.

"I hope we focus on the big issues in Singapore.

The devil is not in the details here."

GREG SHATAN, ABELMAN FRAYNE & SCHWAB, NEW YORK

A member of Rep. John Shimkus's (R-Ill) staff told Bloomberg BNA that the congressman is looking for co-sponsors and intends to reintroduce the DOTCOM Act in February. The revised version will be similar to last year's bill, with some additional language asking the GAO to investigate and report on ICANN's security practices. He confirmed that this language was added, in part, in response to a spearphishing attack against ICANN in November 2014.

The staffer also echoed Retl's observation that the committee is generally pleased that NTIA and the multistakeholder transition proposal process are heeding concerns raised in last year's IANA transition congressional hearing, pointing in particular to stress testing that has been incorporated into the process.

CWG Responds to Strickling. Strickling said Jan. 27 that while NTIA is allowing the process to play out, it did have several questions to help guide the deliberations of the CWG. Those questions included whether the new proposed entities would create security, stability or accountability issues, whether alternative suggestions are being considered fairly and transparently, and whether adding a new committee to the IANA functions process would delay routine processing.

Mueller told Bloomberg BNA that most of Strickling's questions cannot be fully answered until there is a final proposal, which is not imminent. "The CWG is quite a long ways away from converging on a final proposal," Mueller said.

The exception is whether the committee is open to alternative suggestions, which Mueller said it considering perhaps to a fault. "I would say there is no doubt that they are. If anything, the CWG has bent over backwards to give consideration to proposals that are proposed by very small minorities, e.g., ALAC or the AuDA [au Domain Administration] proposal," he said.

The CWG addressed Strickling's questions during its weekly conference call meeting Jan. 29. Donna Austin, CWG representative of the gTLD Registry Stakeholder Group (RySG), said the questions made clear for her that NTIA was paying close attention to the group's proceedings and that the CWG should be mindful of the signals it was sending.

"The message that I take for this is that perhaps NTIA isn't comfortable with the road that we're traveling down and that's why they've raised these questions," Austin said. "And whether we agree with that or not, we need to be mindful that they ultimately will be the ones that decide whether the transition proposal is acceptable or not."

Shatan cautioned fellow CWG members against viewing Strickling's concerns as uniquely NTIA's, stating that they track questions raised by other stakeholders that are likely in discussions with NTIA.

"I think that some of these questions seem to be echoes of questions that have been raised by certain stakeholders at certain points," Shatan said. "That's not to devalue them and clearly the fact that they're coming from the NTIA, which is the ultimate arbiter of the success of our work should not be belittled. But I think we need to kind of read them not so much with a grain of salt but with the sense that they have been to some extent placed here.."

Chuck Gomes of Verisign Inc. seconded Mueller's point that Strickling's questions at this point are merely preliminary, but should be taken seriously as the drafting work proceeds.

"I don't think we can definitively answer the questions until we get close to a final proposal, but we should keep them in mind and work towards having good answers to those," Gomes said, "and make sure that we have answers when we finalize a proposal that the majority of us can support."

IANA Contract as Big Stick. Mueller also told Bloomberg BNA that the most divisive remaining issue in CWG remains whether or not a distinct contracting entity is needed to maintain the IANA functions contract. The idea behind such an entity is that it provides accountability because it creates the possibility that the contract could be granted to a bidder other than ICANN in the future if ICANN's performance deteriorates.

Steve DelBianco, executive director of NetChoice and a CWG member representing the Business Constituency, agreed Jan. 27 that the greatest power NTIA holds in maintaining the IANA functions contract, is not any individual provision but in the contract itself.

"It's better to imagine the entire IANA contract as a single piece of paper that, if you roll it up, it becomes a stick, a club," DelBianco said. "And that is where its most effective and important effect is on ICANN."

Mueller said he believes that the internal models will eventually fall away and that within the next two month the CWG will coalesce around the original draft proposal's external model.

IANA Transition Timeline

March 14, 2014: NTIA announces intention to transition IANA functions oversight (19 ECLR 362, 3/19/14)

June 6, 2014: ICANN creates IANA Stewardship Transition Coordination Group (19 ECLR 779, 6/18/14)

October 3, 2014: Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions charter approved

December 1, 2014: CWG released draft transition proposal (19 ECLR 1560, 12/10/14)

March 13, 2015: ICG to produce draft transition proposal, merging CWG naming proposal with Regional Internet Registries' numbers proposal and Internet Engineering Task Force protocols proposal

July 31, 2015: ICG to submit finalized, merged proposal to ICANN Board

September 30, 2015: Current IANA functions contract expires unless renewed/Target transition date

"The message that I take for this is that perhaps NTIA isn't comfortable with the road that we're traveling down and that's why they've raised these questions. And whether we agree with that or not, we need to be mindful that they ultimately will be the ones that decide whether the transition proposal is acceptable or not."

DONNA AUSTIN, gTLD REGISTRIES STAKEHOLDER GROUP

"ICANN's board and ALAC are putting up a big fight to retain these functions, but no one can describe a mechanism for keeping them accountable that does not also involve a new entity of some kind," Mueller said. "Since the whole internal option is designed to avoid creating a new entity to replace the NTIA role, sooner or later we are going to have to accept reality and fig-

ure out what kind of a new entity will work. Whether it is an external appeals body, or a contracting entity, or a Multistakeholder Review Team plus Customer Standing Committee, something new will be created.”

Regardless of whether the internal or external model carries the day, Shatan said he believes the CWG can use the best aspects of all four options and create a comprehensive proposal in the next month or two still meeting the Sept. 30 target date for the transition. As for the Singapore meeting itself, he said the face-to-face interaction can provide an opportunity for the group to take stock of the big picture rather than day-to-day drafting minutiae.

“I hope we focus on the big issues in Singapore,” Shatan said. “The devil is not in the details here.”

Senate Resolution. Sen. Orrin Hatch (D-Utah) and Roy Blunt (R-Mo.) introduced Jan. 27 a Senate resolution declaring Feb. 8-14 “Internet Governance Awareness Week” to coincide with the ICANN 52 meeting in Singapore. The resolution seeks to increase public awareness and education about the proposed IANA transition process.

The resolution also sends a message to the CWG and other Singapore meeting participants, directing their attention to seven principles for a transition proposal, saying any proposal should:

- assure the security, stability, resiliency and openness of the Internet,
- ensure a separation of policy making, policy implementation and dispute resolution,
- continue to limit ICANN’s authority to unique Internet identifiers,

- protect ICANN from capture or undue influence by governments or another single set of stakeholders,

- maintain the commitment that final actions will have broad support from the multistakeholder community,

- reinforce and expand accountability and transparency measures and

- incorporate these elements of the transition into ICANN’s articles of incorporation and by-laws as appropriate and subject to dispute resolution and remediation.

“It’s better to imagine the entire IANA contract as a single piece of paper that, if you roll it up, it becomes a stick, a club, and that is where its most effective and important effect is on ICANN.”

STEVE DELBIANCO, NETCHOICE

A member of the Senator’s staff told Bloomberg BNA that they are still signing on cosponsors but are hopeful that the nonbinding resolution will pass this week.

BY JOSEPH WRIGHT

To contact the reporter on this story: Joseph Wright in Washington at jwright@bna.com

To contact the editor responsible for this story: Thomas O’Toole at totoole@bna.com