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Preliminary Comment of the Intellectual Property Constituency on the Draft Proposal of the Principles and Mechanisms and the Process to Develop a Proposal to Transition NTIA's Stewardship of the IANA Functions

May 8, 2014

The Intellectual Property Constituency (IPC) of the GNSO offers the following comments on the Draft Proposal (see http://www.icann.org/en/about/agreements/iana/transition/draft-proposal-08apr14-en.htm). Due to the very limited time available to prepare comments, and the simultaneous need to prepare comments on several other important ICANN documents, we offer the following as our preliminary views, and in a terse format. We look forward to participating in further community discussion regarding how to develop a proposal regarding the transition of the IANA functions, and to future opportunities to present more detailed views.

- ISSUE: The larger "accountability" function of NTIA in relation to ICANN is essentially ignored in the Draft Proposal.

  o ICANN announced a separate proposal for "Enhancing ICANN Accountability" two days before the end of the comment period for the Draft Proposal. See http://www.icann.org/en/news/public-comment/enhancing-accountability-06may14-en.htm. This makes it effectively impossible to consider the two proposals together, or the effect of each proposal on the other, in these Comments.

  o The resolution of these two issues is inextricably intertwined and the processes and mechanism for doing so need to be tightly coordinated; this is impossible if the processes and mechanisms are not being developed at the same time.

  ▪ PROPOSAL: The process for transitioning IANA functions stewardship must not be finalized until it can be coordinated with the process for replacing NTIA's accountability function.

- ISSUE: The "Steering Group" concept seems more "top down" than bottom up.

  o ICANN Community members interested in serving submit a "statement of interest" directly to ICANN, and then get picked by the Chair of the ICANN Board and the Chair of the GAC; they are not nominated or chosen by the organizations they represent.

- ▪ Exception: GAC has 2 seats on proposed Steering Group, so the GAC Chair will have a say in who represents the GAC.

  - o By contrast, the "affected parties" (IETF, IAB, ISOC and NRO) each pick their own representatives

  - ▪ PROPOSAL: The ICANN community members should each pick their own representatives.

- • ISSUE: The composition of the Steering Committee is troublesome.

  - o From the GNSO point of view, having only two members on the Steering Committee is inconsistent with the multistakeholder composition of the GNSO. The GNSO is an "umbrella" for seven distinct organizations,[1] representing different categories of stakeholders, with widely differing and often opposed points of view. It is not acceptable that at least five, if not six, of the GNSO constituent organizations, and at least two, and possibly three, of the GNSO Stakeholder Groups will not be represented on the Steering Committee. Who will not be represented and why?

  - o On the other hand, the ASO (as an ICANN SO) and the NRO (as an "affected party") each get 2 representatives. However, the ASO and the NRO are essentially the same organization pursuant to their 2004 Memorandum of Understanding. (This MoU establishes that the NRO fulfills the role, responsibilities, and functions of the ASO as defined within the ICANN Bylaws. See http://www.nro.net/documents/icann-address-supporting-organization-aso-mou, Art. 1.)

  - o Viewed from outside ICANN, this is an even more troublesome proposal. For example, if one or both of the GNSO representatives is from either the Registry or Registrar SG, there would be no representative of the "private sector" (i.e., CSG) or no representative of "civil society" (i.e., NCSG), or both. At the same time, it is possible that the Registries could have representatives coming through IETF or IAB channels, giving them additional representation.

  - ▪ PROPOSAL: The Steering Group should be reconstituted so that each of the seven constituent organizations of the GNSO has a Steering Committee seat, while the NRO/ASO (combined) entity has two seats.

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[1] The Intellectual Property Constituency, the Commercial and Business Users Constituency and the Internet Service and Connectivity Provider Constituency (each of which is a member of the Commercial Stakeholder Group); the Noncommercial Users Constituency and the Not-for-Profit Operational Concerns Constituency (each of which is a member of the Non-Commercial Stakeholder Group); the Registrar Stakeholder Group; and the Registry Stakeholder Group.

o   While we support many of the points made in the Interim Comments of the ccNSO Council, see http://mm.icann.org/pipermail/ianatransition/2014/000894.html , the IPC does not support the ccNSO proposal "to expand the proposed steering group to include two representatives selected by the ccTLD community and two representatives selected by the Registry Stakeholder Group … in addition to the [ccNSO and RySG] representatives contemplated in the ICANN Draft." The RySG and the ccNSO already have two representatives each; this is sufficient.

- ISSUE: The Steering Group timeline is unrealistic and counterproductive.

o   The group is supposed to convene for the first time in London in approximately 6 weeks, yet the concept of a Steering Group is not finalized, much less its composition or how it would be chosen.

o   The Steering Group is also supposed to "finalize the group's charter" "in the London 50 timeframe." Charters are critical documents, and they take a number of hours over a number of weeks to be created, much less finalized. How would the group have a draft charter before London that could be finalized in London?

▪   Furthermore, Charters are typically put out for public comment. This proposal does not contemplate public comment. It must.

- ISSUE: Steering Group's role should be "stewardship," design, facilitation and coordination of the mechanism; it should not be executing the process to develop the proposal or drafting the proposal.

▪   PROPOSAL: Change name and clarify role as "Coordination Committee."

- ISSUE: If the Coordination Committee is coordinating, who is doing the work of developing the actual transition proposal?

▪   PROPOSAL: A preliminary view of the IPC is that a representative multistakeholder "Internet Working Group" could be chartered to actually prepare the transition proposal, based on community inputs, using processes coordinated by the Coordination Committee.

- ISSUE: Aside from the Steering Group concept, the actual process and timeline for developing the transition proposal are not well developed.

o   Aside from the "Circle of Life" graphic, there is very little detail.

▪   PROPOSAL: The process needs to be further developed, including consideration of the creation of the Internet Working Group proposed above.

- • ISSUE: The Scoping Document
  (http://www.icann.org/en/about/agreements/iana/iana-transition-scoping-08apr14-en.pdf) states that "ICANN's role as the operator of the IANA functions" is out of scope. While the IPC does not necessarily support any removal of the IANA functions from ICANN, removing this from the scope of consideration flagrantly contravenes ICANN's recent championing at the NETmundial meeting of the bottom-up, multistakeholder model.

- ▪ PROPOSAL: This statement should be removed from the Scoping Document.

Thank you in advance for considering IPC's Preliminary Comments.

Respectfully submitted,

GNSO Intellectual Property Constituency

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