Center for Democracy & Technology

Comments on ICANN's IANA transition *Scoping Document*[1] and ICANN's *Draft Proposal of the Principles and Mechanisms and the Process to Develop a Proposal to Transition NTIA's Stewardship of the IANA Functions*.[2]

The Center for Democracy & Technology (CDT) welcomes this opportunity to contribute to the development of the convening process for the transition of NTIA's "key Internet domain name functions to the global multistakeholder community."[3] This is an important process and one the community and beyond must see as being open, transparent, and multistakeholder. We consider this process to be an important step in the evolution of the Internet ecosystem and seek an outcome that will both be supported by the global community and ensure the continued security, stability, and resiliency of the Internet.

This said, we have a number of concerns with both the scoping document and the draft process proposal. In summary:

- CDT does not agree with the restrictive framing in the scoping document that effectively rules out a full and open discussion regarding the future operation and accountability of the IANA functions. We also do not believe that two separate processes for addressing 1) the IANA transition and 2) the broader issue of ICANN accountability (including accountability associated with the USG's "backstop" role) reflect the importance of appropriate accountability mechanisms for the IANA functions themselves.

- The draft process proposal itself is too limited in its reach and does not meet the responsibility ICANN has to engage "other interested global stakeholders." We see no reason for the participation mechanisms to revolve solely around I* organizational meetings; much greater effort needs to be made to reach beyond these communities.

- We are also surprised to see the pronounced role of the ICANN Board and GAC Chairs and do not support the proposed placement of the ICANN Board in an oversight role. This is a clear conflict of interest given that the current scoping document assumes ICANN will have ultimate control of the IANA functions.

In general, we are concerned that both documents position ICANN in too determinative of a role, and thus inadequately address the NTIA's express call for the "global multi stakeholder community," as a whole, to develop the proposal to transition the current role played by NTIA.

---

[1] http://www.icann.org/en/about/agreements/iana/iana-transition-scoping-08apr14-en.pdf
[2] http://www.icann.org/en/about/agreements/iana/transition/draft-proposal-08apr14-en.htm
[3] http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions

Conveners can wield a great deal of influence on the outcome of a process, and it is vital to the legitimacy of this process that ICANN demonstrate restraint. It is thus important that ICANN, and the Internet technical community in general, do more to ensure that this process is not perceived to be a *fait accompli*. As stakeholders in the Internet ecosystem, we all have an obligation to ensure that this process is truly open, transparent, global, and multistakeholder.

<u>Scoping Document</u>

ICANN has been entrusted with the responsibility to "convene global stakeholders to develop a proposal to transition the current role played by the NTIA in the coordination of the Internet's domain name system" and should not limit, constrain, or pre-determine the outcome. As we noted in our submission to the consultation during the Singapore ICANN meeting, the convening "process should not make any assumptions as to where or how the NTIA's responsibilities will be transitioned. It is particularly important that ICANN not prejudice the outcome of this process. At this point, there is concern that ICANN sees itself as the default repository of the IANA functions. Any proposal(s) for ICANN to assume the IANA functions must be assessed and considered on an equal basis with all other proposals." These comments remain equally applicable to the scoping document and the proposal for the convening process.

We believe that the overarching goal of the transition is to ensure the continued stable performance of the IANA functions – not, necessarily, the preservation of the existing operational structure for the functions. It may well be that the ultimate conclusion of this transition process is a proposal that finds that ICANN should remain the operational home of the IANA functions, but the global multistakeholder community must have the opportunity to reach consensus on that (or a different) conclusion through full and robust debate. Unfortunately, we do not believe that the ICANN scoping paper or ICANN's March 14 FAQs[4], with their explicitly limited scope, reflect what was envisioned in the NTIA announcement.

Nor do we believe that there is anything in the NTIA announcement, the related FAQs, or Assistant Secretary Lawrence Strickling's testimony to Congress[5] on 2 April 2014, to indicate that the future structure and operation of the IANA functions are out of the scope of the transition discussion. In his testimony, Assistant Secretary Strickling elaborated on the four principles outlined in the NTIA announcement. He noted that the "decentralized distributed authority structure of the DNS needs to be preserved so as to avoid single points of failure, manipulation or capture." He also called for the continuation of "separation of policy development and operational activities." And that "the neutral and judgment free administration of the technical DNS and IANA functions" must be maintained. And finally, Assistant Secretary Strickling stated that before any transition takes place stakeholders must "present a plan that ensures the uninterrupted, stable functioning of the Internet and its present openness." None of this argues against a discussion on the future structure and operation of the IANA function. Rather, we believe that the only way for the transition proposal to adequately address the four

---

[4] http://www.icann.org/en/about/agreements/iana/functions-transfer-faqs-14mar14-en.pdf
[5] http://www.ntia.doc.gov/speechtestimony/2014/testimony-assistant-secretary-strickling-hearing-ensuring-security-stability-re

principles is to have an open and thoughtful discussion, without arbitrary scope limitations, that addresses each of these principles and the related concerns.

We note that the issue of separation between policy and operational aspects of the IANA functions was one of the key demands of the NETmundial[6] outcome document with regard to institutional improvements. There is a clear expectation that the discussion of the IANA functions transition should include a robust and full discussion of relationship between operational matters and policy development as they relate to the future structure and operation of the IANA functions.

Proposed Convening Process

CDT appreciates ICANN's effort to draw together various resources and communities to construct a process to develop a transition proposal. At this early stage, however, we have a number of concerns relating to process, structure, and conflict of interest:

- The "steering group" is inappropriately named. ICANN has been asked to convene the process, not to "steer," "steward," or "shepherd" it toward a predetermined outcome. CDT supports the IAB's proposal that it be renamed the "coordination group."

- The NTIA transition announcement identifies a distinct and separate group called "other interested global stakeholders", yet this grouping is not represented on the steering group proposed by ICANN.

- The Chairs of ICANN and the GAC should not be the ones to select the Supporting Organization and Advisory Committee representatives; the SO/AC representatives should be selected within their own communities.

- We do not agree that the ICANN Board should be the overseer of the process; ICANN was asked to convene the process, not oversee it. We believe that there is a conflict of interest in having the Board ensure that the "parameters of the scope document are upheld" particularly when the scoping document does not reflect the consensus of stakeholders and largely presumes the continuation of the status quo. CDT supports the IAB proposal that the coordination group fulfil this role.

- Any review of the final proposal will need to be done by all parties including "other interested global stakeholders," not just the ICANN community and affected parties' organizations.

With regard to the proposed timeline of events, we note again that it revolves around meetings of the Internet technical community, and no others. ICANN will have to do more to fully implement the convening task it has been entrusted with, a key element of which is to engage not only within the ICANN and other Internet organization communities, but also with interested

---

[6] http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

parties outside those organizations. CDT has repeatedly raised these points and they are mentioned in the NETmundial output document. ICANN must include a broader selection of pre-existing meetings in its event timeline in order to foster a more inclusive process. We would recommend at the very least developing a plan for side meetings at the global and regional Internet Governance Fora.

Further, ICANN and the Internet technical community organizations should identify well in advance which days of their meetings will focus on this convening, so that interested parties who wish to attend (either in person or via remote participation options) can plan accordingly. These convening meetings should be open to all interested parties and should actively reach out to engage those beyond the communities of the organizations in question.

On Accountability and the IANA Transition

ICANN has just announced a consultation[7] that is to "address the separate – but interdependent and interrelated – issue of ICANN's accountability", the scope of which is to "look at ICANN remaining accountable in the absence of its historical contractual relationship to the U.S. Government and the perceived backstop with regard to ICANN's organization-wide accountability provided by that role, such as the renewal process of the IANA Functions Contract." We note that this appears to artificially separate the external accountability linked to the award of the IANA contract from the IANA transition discussions. While the IANA transition discussion must also be informed by the parallel ICANN Accountability process, improvements to ICANN's overall accountability do not obviate the need for a discussion on accountability mechanisms related to the performance of the IANA functions, whether undertaken by ICANN or not. Further, clarity is needed on the inter-relatedness of the two processes – and what happens, for example, if one or the other is delayed?

---

[7] http://www.icann.org/en/news/public-comment/enhancing-accountability-06may14-en.htm