



Implementation Oversight Task Force (IOTF) Meeting

Call #12 | 15 June 2016

Agenda

1. Opening Remarks
2. Implementation Items
 - PTI Bylaws and Articles of Incorporation: Chairs' response to Sidley's question
 - PTI Staffing
3. AOB
 - Helsinki implementation update session
 - Work plan to finalize PTI formation documents and ICANN-PTI contracts
 - Decision Log
4. Closing Remarks

PTI Bylaws and Articles of Incorporation

<https://docs.google.com/document/d/1rm5p569qRrkWtNSNrJsZzENxFKLwbXVcTDWSGZJEqCU/edit?usp=sharing>

PTI Bylaws	
<p>Section 5.2.3 – Qualifications (Page 4) Only the qualification in Section 5.2.3.3 comes from the CWG Final Proposal. Please advise if the other qualifications in Sections 5.2.3 and 5.3, which come from Sections 7.3 and 7.4 of the ICANN Bylaws, are acceptable. Please note that the ICANN Bylaws also include criteria concerning cultural and geographic diversity.</p>	<p>Generally these are acceptable. No additional qualifications required.</p> <p>Additional language needs to be inserted to include appropriate diversity <u>considerations</u> criteria. Possibly applied separately to ICANN & NomCom appointees.</p>
<p>Section 5.3.3 – Additional Qualifications (Page 5) CWG to advise. If these limitations are appropriate, exceptions could be made for the initial directors for the first term. Please note that ICANN Board members are not disqualified in this Section 5.3, but see Section 5.5.3, which includes the ICANN-proposed definition of “independent” for purposes of the Nominating Committee Directors and disqualifies ICANN Board members from serving as Nominating Committee Directors.</p>	<p>These are acceptable.</p> <p>They do not seem to preclude the proposed interim directors Lise Fuhr & Jonathan Robinson. To be confirmed.</p> <p>No additional qualifications required.</p>
<p>Section 5.4 – Election of a Chairperson (Page 5) Please advise whether the Bylaws should provide for a Chairperson elected by the Board, and if a Chairperson is desired, whether the President, who we assume will be the PTI Manager</p>	<p>Chairperson is required. Chairperson must be elected by the board. Chairperson must not be the PTI manager.</p>

<p>(elected by ICANN), may serve as Chairperson. Section 7.6.1 currently provides that if there is no Chairperson, then the President will act as the Chairperson. Under California law, the corporation must have the following officers: (i) a chair of the board or a president (and may have both), (ii) a secretary, and (iii) a CFO or treasurer (and may have both).</p>	<p>Chairperson must be one of the NomCom / independent directors. <u>NomCom-appointed director chairperson is preferred if possible.</u></p> <p>President may be PTI manager (must be PTI manager?). <u>I would prefer that the one or the other - chair or president - not be a seconded ICANN employee to ensure some level of independence and arms length</u></p>
<p>Section 5.5 – Terms Election of Successors (Page 5) As structured, all directors (ICANN and Nominating Committee) will be elected annually for a one-year term. CWG to advise if any preference on length of terms (maximum of 4 years) and whether term limits will apply.</p>	<p>All directors elected for [2/3] year terms.</p> <p>Nom Com / independent directors elected on alternating years. Note: One (or both) interim directors may need to serve for more than one year in order to accommodate this.</p> <p>Nom Com / independent directors not to serve for more than [3/2] consecutive terms i.e. 6 years in total.</p>
<p>Section 5.5.3 – Terms Election of Successors (Page 5-6) This is the ICANN-proposed definition of “independent” for purposes of the Nominating Committee Directors. Are there different/additional disqualifications that should be included? CWG to advise.</p>	<p>The provision that the NomCom / independent director should not have been an ICANN employee for three years is a good one. In addition, this should be widened to a professional (paid for services) consultant to ICANN.</p>
<p>Section 5.5.2 – Removal (Page 6)</p>	

<p>Under California law, the board may remove directors for missing a required number of meetings, if at the time a director is elected, the bylaws provide that a director may be removed for this reason. CWG to advise regarding inclusion of this provision and whether Member approval, which is optional, will be required.</p>	<p>Provision is reasonable provided it is included as may remove not must remove AND approval of member is required (provides an additional check / balance).</p>
<p>Section 5.6.2 – Removal (Page 7) Under California law, the board may remove directors for failure to meet any required director qualifications, if the bylaws prescribe qualifications for service as a director. CWG to advise regarding inclusion of this provision and whether Member approval, which is optional, will be required.</p>	<p>Provision is reasonable provided it is included as may remove not must remove AND approval of member is required (provides an additional check / balance).</p>
<p>Section 5.11.1 – Quorum (Page 9) To avoid the situation where there are no ICANN Directors or no Nominating Committee Directors present at the meeting, we recommend that at least one ICANN Director and one Nominating Committee Director be required for purposes of a quorum.</p>	<p>Quorum must include at least one ICANN director and one NomCom Director.</p>
<p>Section 5.11.3 – When a Greater Vote is Required for Valid Board Action (Page 9) Consider whether a higher threshold than three of five (i.e., four of five) should be required for these actions, which would ensure that the PTI Manager and either the ICANN Directors or the Nominating Committee Directors could not act without the other</p>	<p>Board approval to require the higher threshold of four of the five directors [AND two of the directors must be the NomCom / independent directors].</p>

<p>two</p> <p>Section 6.1 – Committees of Directors (Page 12) See footnote 16, above, regarding the voting threshold for the creation of committees and certain other actions.</p>	<p>Board approval to require the higher threshold of four of the five directors [AND two of the directors must be the NomCom / independent directors].</p>
<p>Section 5.16 – Fees and Compensation of Directors (Page 11) Typically, directors of wholly-owned subsidiaries are not compensated, but may want to consider compensation for the two Nominating Committee Directors. CWG to advise.</p>	<p>ICANN Directors undertake their duties as part of their role and are NOT to be compensated in addition for this role. NomCom / independent directors [are / are NOT] compensated for their work.</p> <p>NomCom / independent directors are to be reimbursed reasonable expenses (including travel) incurred solely in connection with their work on the PTI / IANA board.</p>
<p>Section 6.3 – Quorum Rules for Board Committees (Page 13) CWG to advise whether to require at least one ICANN Director and one Nominating Committee Director for purposes of a Committee quorum.</p>	<p>See 5.11.1 above (Quorum must include at least one ICANN director and one Nom Com Director).</p>
<p>Section 6.6 – Advisory Committees (Page 14) CWG to advise whether the creation of advisory committees will be permitted. The ICANN Bylaws permit the ICANN Board to create advisory committees, and GAC, ALAC, SSAC and RSSAC are established under this authority</p>	<p>Advisory committees are not appropriate or necessary in the case of the IANA / PTI Board.</p>

<p>Section 7.1 – Officers (Page 14) CWG to advise (i) whether to permit additional officers at the discretion of the Board (and, if so, with or without Member approval) and (ii) whether the appointment/removal of officers (other than the President) will require Member approval.</p>	<p>The Corporation will not need additional offices therefore the Board does not need this capability.</p>
<p>Section 7.6.1 – President (Page 15) CWG to advise: “The President may delegate his or her responsibilities and powers subject to the control of the Board. He or she shall have such other powers and duties as may be prescribed by the Board [, with the approval of the Member,] or these Bylaws.”</p>	<p>Board may approve delegation of responsibilities or powers of President.</p> <p>Member approval NOT required for the prescription of additional duties by the board to the President.</p> <p>Member approval required for the prescription of additional powers by the board to the President.</p>
<p>Section 9.2 – Annual Budget (Page 18) CWG to advise regarding additional public comment periods. [After reviewing the comments submitted during the public comment period, the Board may direct the Corporation to post a revised draft of the Annual Budget on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN’s public comment processes.]</p>	<p>This seems like a reasonable provision to have in place providing that it remains at the discretion of the board.</p>

<p>Section 9.2 – Annual Budget (Page 18) Paragraph 163 of the CWG Final Proposal provides that “PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services.” Therefore, additional time will need to be factored in for budget development, public comment and PTI Board approval.</p>	
<p>Section 9.3 – Strategic Plan (Page 19) CWG to advise if the strategic plan should follow the same review process as the budget (i.e., consultation with SOs/ACs/stakeholder groups and posting for public comment before board approval).</p>	<p>Strategic Plan to be prepared as part of the process (precursor to) of preparing the budget and therefore to be subject to the same process as the budget.</p>
<p>Article 12 – Amendments (Page 21) For Board approval of bylaw amendments, CWG to consider whether a higher threshold than three of five (i.e., four of five) should be required, which would ensure that the PTI Manager and either the ICANN Directors or the Nominating Committee Directors could not act without the other two. Note that ICANN’s ability to amend certain PTI Bylaw provisions is constrained through the ICANN Bylaws.</p>	<p>Board approval of bylaw amendments requires the higher threshold of four of the five directors [AND two of the directors must be the NomCom / independent directors]</p>
<p>PTI Articles of Incorporation –</p>	
<p>Article 13 (Page 2) Consider whether a higher threshold than three of five should be</p>	<p>Board approval of bylaw amendments requires the higher</p>

<p>required. For example, four of five ensures that the PTI Manager and either the ICANN Directors or the Independent Directors could not act without the other two.</p>	<p>threshold of four of the five directors [AND two of the directors must be the NomCom / independent directors]</p>
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PTI Staffing

Rationale for PTI Staffing Recommendations

In making a proposal for how to staff PTI, ICANN recognizes that the recommendation must:

- Fulfill the community' proposal, while taking into account potential separation.
- Provide for the stability and security of the IANA functions. Consider and care for our employees – their preferences, morale, retention, and career growth and development.
- Ensure the long-term viability of the PTI staffing model.

Although the staffing of PTI could follow different models, ICANN proposes a secondment approach because it best allows ICANN to ensure continuity and quality in the performance of the IANA functions. At the same time, secondment satisfies the requirements of the CWG Proposal that: “The existing IANA functions department, administrative staff, and related resources, processes, data, and know-how will be legally transferred to PTI.”¹

Staffing Proposal

ICANN proposes that:

- Current IANA department staff be seconded from ICANN to PTI, via contract, to perform the IANA functions.
- The PTI President be a seconded ICANN employee, and the role of the PTI President be filled by ICANN's Vice President of IANA.
- The PTI Treasurer and Secretary be ICANN direct shared resources.
- All future PTI staff be seconded from ICANN to PTI.

Separation

There are multiple ways that separation could occur. The ICANN-PTI contract(s) will allow for any separation scenario that the community decides to take. The contract(s) will require ICANN to facilitate a smooth transition and cooperate with the community's choice of separation.

Employment Details

Employment

The seconded employees will be employed by ICANN with job descriptions that specify their responsibilities to perform a role exclusive to the IANA functions. Any employee in these roles will be employed by ICANN and seconded contractually to PTI.

The seconded employees will follow ICANN's policies and procedures, including any specific policies and procedures required to perform the IANA functions.

¹ Paragraph 1109 of the CWG-Stewardship Proposal.

Benefits

The seconded employees will be offered the same benefits as other ICANN employees.

Payroll

The seconded employees will be part of the same payroll system as other ICANN employees.

Performance Management

The seconded employees will be subject to the same performance management program as other ICANN employees. Under this performance management program, employees will be assigned objectives pertaining exclusively to performing the IANA functions. For the role of PTI President, the PTI Board will set goals and review performance.

Advantages of Secondment

Employee Considerations

- The staff members who currently perform the IANA functions have indicated that they prefer to remain ICANN employees rather than become employees of a new, unfamiliar entity. Secondment reduces the risk that these employees will seek other employment because they do not want to become employees of PTI.
- With secondment, ICANN can maintain the employee-employer relationship without disruption, and PTI will not have to enter into new employment relationships with the affected staff to enable them to perform their same jobs. Stability of the current IANA team is critical to the secure and stable performance of the IANA functions. The secondment approach is the optimal staffing approach because it is designed to maximize the possibility of continuity within the current IANA team.
- Secondment also helps ensure that there will not be two different classes of employees – ICANN and PTI. ICANN proposes that secondment be used for current as well as future PTI staff to eliminate potential disparities. A non-secondment path at any time will invariably create two classes of employees. As employees of ICANN, individuals performing the IANA functions will have the same options as other ICANN employees. This arrangement will make it easier to recruit and retain high performers – ultimately a benefit for the customers of PTI.
- During this transition period, for the stability and security of the performance of the IANA functions, continuity in the leadership of the IANA functions is also important. ICANN proposes that the role of President of PTI be held by the existing Vice President of IANA. The Vice President of IANA has expressed a preference for secondment rather than enter into an employment relationship directly with PTI. The IANA employees will benefit from a leader whom they know and trust to carry them through this transition period. For this reason and because of the importance of historical and direct knowledge of the IANA functions operations, secondment for the PTI President role is also optimal.

Operational Considerations

- Secondment allows the positions and employees performing the IANA functions to be exclusively dedicated to IANA operations, based on the explicit and detailed conditions of the contract between ICANN and PTI.
- Secondment allows for ICANN to leverage the existing payroll system instead of setting up a new payroll system for PTI, which is costly and time consuming to establish and manage.
- Secondment also allows employees to continue to have access to the same benefits, the same performance compensation programs, the same legal protections and the same career development opportunities. Although PTI could possibly provide similar benefits, compensation programs and legal protections if it directly employs staff members, as a small organization, PTI could not give employees the same career growth and development options.
- The roles of the PTI Treasurer and Secretary are not expected to require full-time employees. As such, cost-effectiveness and operational efficiency can be gained by ICANN providing qualified shared resources to PTI to serve as Secretary and Treasurer.
- ICANN will also provide shared resources and support services to support PTI operations. This will allow PTI access to ICANN's resources and expertise to maintain the same customer support service levels. This is the most cost effective approach as opposed to PTI having to create new functions for HR, finance, procurement, IT, office management, etc.

Separation Considerations

There are multiple ways separation could occur. Secondment and shared services allow for flexibility in accommodating the various possible separation scenarios, while ensuring the stability and security of the IANA functions at the time of separation.

Scenario 1 – PTI becomes independent from ICANN. In this scenario, PTI will offer all seconded employees employment with the independent PTI. ICANN will continue to provide shared resources and support services to PTI until PTI is capable of sustaining operations on its own.

Scenario 2 – A successor is created or selected, and all seconded employees transfer. In this scenario, the new successor would offer employment to all seconded employees. If the successor requires, ICANN will provide shared resources and support services to the successor to ensure continued performance of the IANA functions until the successor is capable of sustaining operations on its own.

Scenario 3 – A successor is created or selected, and some seconded employees are selected to transfer. In this scenario, the new successor would offer employment to selected seconded employees, while the remaining employees would be made available to the successor until the successor puts a team in place. ICANN will provide every opportunity for employees not selected by the successor to explore other employment opportunities within ICANN. If the successor requires, ICANN will provide shared resources and support services to the successor to ensure continued performance of the IANA functions until the successor is capable of sustaining operations on its own.

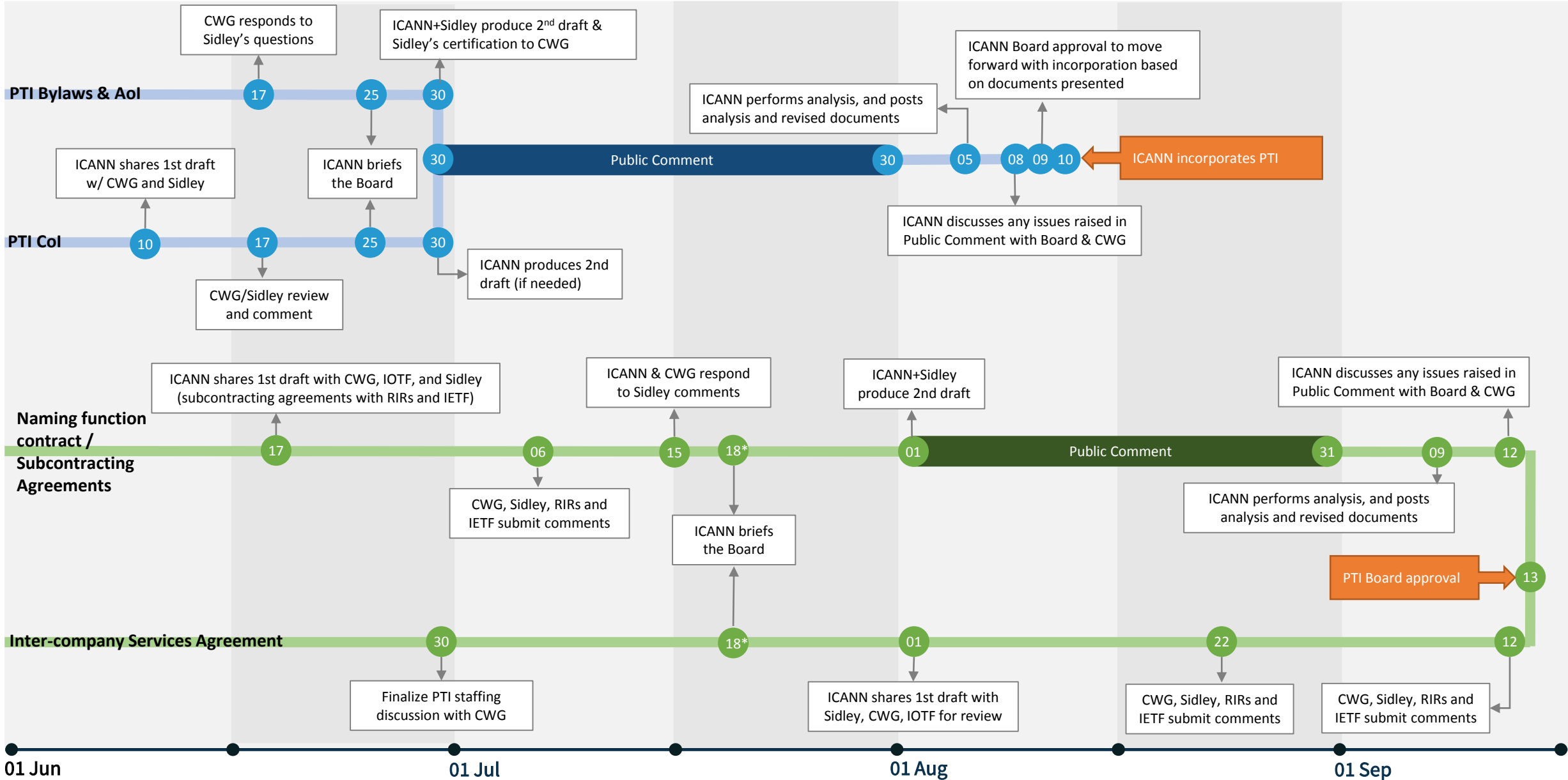
Scenario 4 – A successor is created or selected, and no seconded employees transfer. In this scenario, ICANN continues to operate the IANA functions until the new successor puts a new team in place, and ICANN will cooperate in the training of the team as needed. ICANN will provide every opportunity for employees to explore other employment opportunities within ICANN. If the successor requires, ICANN will provide shared resources and support services to the successor to ensure continued performance of the IANA functions until the successor is capable of sustaining operations on its own.

Conclusion

If IANA staff were required to enter into a direct employment relationship with PTI in order to continue performing the same jobs performed today, retention problems could result. This lack of continuity could jeopardize the immediate as well as long-term stable performance of the IANA functions. Therefore, for the reasons stated above, ICANN recommends that all IANA staff be employed by ICANN and seconded to PTI for the performance of the IANA functions. The secondment arrangement should be structured in a way that meets the community' separability goals without jeopardizing the performance of the IANA functions.

AOB & Closing Remarks

PTI Work Plan



01 Jun

01 Jul

01 Aug

01 Sep



DRAFT FOR DISCUSSION

*ICANN is still trying to confirm this date

PTI Work Plan (DRAFT FOR DISCUSSION)

PTI Bylaws and Aol

CWG responds to Sidley's questions	6/17/2016
ICANN briefs ICANN Board	6/25/2016
ICANN+Sidley produce 2nd draft, includes Sidley's certification for CWG	6/30/2016
ICANN starts Public Comment	6/30/2016
ICANN ends Public Comment	7/30/2016
ICANN performs analysis, and posts analysis and revised documents	8/5/2016
ICANN discusses any issues raised in Public Comment with Board & CWG	8/8/2016
ICANN Board approval to move forward with incorporation based on documents presented	8/9/2016
ICANN incorporates PTI	8/10/2016

Conflict of Interest Policy

ICANN shares 1st draft w/ CWG and Sidley	6/10/2016
CWG/Sidley review and comment	6/17/2016
ICANN briefs ICANN Board	6/25/2016
ICANN produces 2nd draft (if needed)	6/30/2016
ICANN starts Public Comment	6/30/2016
ICANN ends Public Comment	7/30/2016
ICANN performs analysis, and posts analysis and revised documents	8/5/2016
ICANN discusses any issues raised in Public Comment with Board & CWG	8/8/2016
ICANN Board approval to move forward with incorporation based on documents presented	8/9/2016
ICANN incorporates PTI	8/10/2016

Naming function contract / Subcontracting Agreements

ICANN shares 1st draft with CWG, IOTF, and Sidley (subcontracting agreements with RIRs and I	6/17/2016
CWG, Sidley, RIRs and IETF submit comments	7/6/2016
ICANN & CWG respond to Sidley comments	7/15/2016
ICANN briefs ICANN Board	7/18/2016*
ICANN+Sidley produce 2nd draft	8/1/2016
ICANN starts Public Comment	8/1/2016
ICANN ends Public Comment	8/31/2016
ICANN performs analysis, and posts analysis and revised documents	9/9/2016
ICANN discusses any issues raised in Public Comment with Board & CWG	9/12/2016
PTI Board approval	9/13/2016

Inter-company Services Agreement

Finalize PTI staffing discussion with CWG	6/30/2016
ICANN briefs ICANN Board	7/18/2016*
ICANN shares 1st draft with Sidley, CWG, IOTF for review	8/1/2016
CWG, Sidley, RIRs and IETF submit comments	8/22/2016
ICANN+Sidley produce 2nd draft	9/12/2016
PTI Board approval	9/13/2016

* ICANN is still trying to confirm this date

Appendix

Discussion Items & Status

Items	IOTF Agreement	CWG Agreement	Decision	Next Step
Define selection criteria for Nom-Com PTI independent Directors				Fold into PTI Bylaws discussion?
PTI staffing				In discussion
PTI governance documents (Bylaws, AoI, Col)				In discussion
ICANN-PTI Contract(s)				In discussion
IANA IPR - TBD				
IANA Customer Service Complaint Resolution Process	✓		Clarification provided	Implementation
IANA Problem Resolution Process	✓		Clarification provided	Implementation
PTI services	✓	✓	PTI to perform all 3 IANA functions	Implementation
Approach for selection of interim PTI independent Directors	✓	✓	CWG Chairs to serve as interim Directors	Implementation
CSC formation	✓	✓	Issue request for appointment	Implementation
RZERC charter	✓	✓	Post Charter for public comment	Public Comment

Decision Log

- **PTI Independent Board of Directors**
 - Initial Selections
 - Jonathan and Lise to serve as interim PTI independent directors assuming there are no issues around conflict and independence (IOTF Call #1, 21 March 2016 / CWG Meeting #78, 31 March 2016)
 - Ongoing Selections
 - NomCom will be the appointing body for PTI independent directors (IOTF Call #1, 21 March 2016 / CWG Meeting #78, 31 March 2016)
- **PTI Structure**
 - PTI will perform all 3 IANA functions (IOTF Call #2, 25 March 2016 / CWG Meeting #78, 31 March 2016)
- **Document Review Process & Timeline**
 - Agreement reached (IOTF Call #4, 04 April 2016)
- **IANA Escalation Mechanisms**
 - Clarification provided by Chuck Gomes and IOTF has no objections to clarification. (IOTF Call #8, 10 May 2016)
- **CSC**
 - CSC formation process and timeline shared and received no objections via IOTF call and CWG mail list. (IOTF Call #9, 20 May 2016 / CWG mail list 26 May 2016)
- **RZERC Charter**
 - RZERC Charter was shared and finalized over the IOTF and CWG mail lists. (IOTF mail list 03: June 2016 / CWG mail list: 17 May 2016)

Document Review Process & Timeline

