Brasília, 20th May 2015

Comments of the Brazilian Government on the "Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship)"

1. The Brazilian Government commends the CWG-Stewardship for their remarkable effort in drafting the aforementioned document.

2. Brazil reaffirms its understanding that the transition proposal on naming related functions is a paramount element of the overall IANA transition proposal to be presented to the NTIA.

3. This paper reflects Brazil's comments on substantive aspects of the CWG-Stewardship proposal.

Comments on substantive aspects

4. Brazil has traditionally advocated a clear separation between operational and policymaking functions within the ICANN structure. The proposed establishment of a separate

legal entity – called PTI – as the IANA Functions Operator seems to address, in principle, this concern.

5. However, given that PTI would be a "wholly owned subsidiary" (item III.A.i.a) of ICANN, there is a risk that such a subordinate legal relationship between the two companies could defeat the purpose of the aforementioned functional separation. This situation could be possibly mitigated in case appropriate decision-making and accountability mechanisms were established beforehand.

6. It is the understanding of the Brazilian Government that the new proposed structure releases ICANN from being subject to the oversight of any external entity, as no proper replacement for NTIA is being suggested. In order for this new structure to be successful checks and balances need to be in place.

7. In order to fully accomplish the objective "to transition key Internet domain name functions to the global multistakeholder community" the transition proposal must be more explicit in identifying how the global multistakeholder community will exercise its stewardship function if this is not done through a proper external entity.

8. Moreover, since it is generally accepted that the "global multistakeholder community" is comprised of

representatives from governments, private sector, civil society, technical and academic communities from all geographic regions in the world, it is equally important that the transition proposal clearly indicates how all these different groups will be represented in the new proposed structures.

9. None of the suggested structures (PTI, CSC, IFRT) or processes (IFR) seem to adequately address the requirement of stakeholder and geographic representation in their corresponding descriptions.

10. As an example, the fact that no other stakeholder group than the gNSO and the ccNSO can submit a request to initiate a Special Review of the IANA functions raises concerns. Although the aforementioned SOs are considered direct customers of the IANA naming functions, other stakeholders – including governments – also have a legitimate interest in making sure that the IANA Functions Operator (IFO) is meeting its functional and performance requirements and therefore should not, by principle, be preempted from initiating a Special Review.

11. With regards to the leadership of the PTI (item III.A.i.b), although it is highly welcome that the election of board members be as simple and straightforward as possible, it is equally important that the selection process is transparent to the global multistakeholder community and follow pre-established and objective criteria.

12. With respect to the IANA Statement of Work (Item III.A.i.c), it is of paramount importance to define the specific legal status of such a document and how its provisions can be made binding to the IFO.

13. About the Service Level Expectations (item III.A.ii.b), it would be advisable to allow enough time for the multistakeholder community to review and comment on the IANA documentation that will serve as input to the SLE for the post-transition environment. One month to process and prepare the SLE documentation might not be enough.

14. With respect to the Root Zone Maintainer - RZM (item III.A.iii), although it is indicated that the given role will be subject to deliberations within the context of a separate transition process, the CWG-Stewardship should make recommendations about a future relation between ICANN, the IFO and the RZM. In particular, similar stewardship and accountability arrangements must be conceived in order to oversee the performance of the RZM, including the process of reassigning the given role to another company in case service levels or other expectations are not met.

15. Concerning the Independent Appeal's Panel for ccTLD delegation and redelegation, Brazil considers it to be a fundamental mechanism and believes that the multistakeholder community should continue to work on defining its structure and procedures.

16. Lastly, Brazil reiterates its recommendation to specify the role of governments in the new proposed structure. Brazil considers that governments should be involved not as "oversight" authorities or “sole public policy makers”, but as an interested stakeholder, on an equal footing with other actors.

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