



The coordination of numbers, names, and addresses across the Internet began very early, as an obvious requirement to be sure that identifiers were globally unique and well known to all who might be using them. Maintaining this tight coordination remains to date a clear priority for the Internet technical community as a fundamental requirement for a functioning Internet.



The culture of the time is highly technical, and policy discussions are a product of this background. The experiences of the most influential members of the community are firmly rooted in research, academia, and open sharing of ideas. Tension grows between commercial and national interests and the history and viewpoints of the Internet's leaders. In RFC 1591, Postel writes: "The designated manager is the trustee of the top-level domain for both the nation, in the case of a country code, and the global Internet community. Concerns about "rights" and "ownership" of domains are inappropriate. It is appropriate to be concerned about "responsibilities" and "service" to the community."



The IAHC narrowly focused on gTLDs, leaving aside the existing country-specific TLDs and policies regarding the control and operation of the root servers. The IAHC clearly attempts to separate the mechanics of IANA's operation from the policy-making associated with the DNS. The IAHC proposed a policy framework with a Policy Oversight Committee containing representatives from ISOC, IANA, IAB, UN ITU, the World Intellectual Property Organization (WIPO), the International Trademark Association (INTA), and "CORE," the Council of Registrars made up of all gTLD registrars, incorporated and housed in Switzerland. Although there is substantial support for the IAHC approach, there is also substantial opposition, for a variety of reasons.



In December, 1996, a US government working group (under the leadership of Vice President Gore) publishes the first draft of “A Framework For Global Electronic Commerce” that outlines the principles for policy development, provides positions on key issues, and gives a road map for future work. When the Framework is finalized on July 1, 1997, the US President will specifically direct the Department of Commerce to “make the governance of the domain name system private and competitive and to create a contractually based self-regulatory regime that deals with potential conflicts between domain name usage and trademark laws on a global basis.”^{26,27}



The White Paper called for stakeholders to come together to create a private non-profit organization to undertake DNS management functions. The White Paper explicitly disclaims that it is not a general governance document for the Internet. Rather, it sets forth a framework, based on public comment, for how names and numbers should be managed and administered in the future. (Irving, 1997)

The publication of the White Paper ignited several discussions amongst stakeholders that eventually informed the management and governance structure of “a new private, not-for-profit corporation responsible for coordinating specific DNS functions for the benefit of the Internet as a whole.” [White Paper]

Incorporated and headquartered in the US—this eventually became ICANN, the Internet Corporation for Assigned Names and Numbers. This single organization would take over four parts of Internet administration and management (including all of the IANA functions), specifically:

- *setting policy regarding IP numbering;*
- *overseeing operations of the root name servers;*
- *overseeing policy for new gTLDs in the DNS;*
- *coordinating the assignment of other technical parameters (such as protocol numbers);*

The White Paper also anticipated that the US Government involvement in this new organization would end before September, 2000. Having explicitly forbidden the new organization to be controlled by a governmental or intergovernmental organization, such as the United Nations, the US Government wanted to hand over these policy-making and administrative functions to the Internet itself.^{27,1}



The establishment of ICANN was controversial, and a variety of groups had widely different ideas on how the organization should be constituted. In all, five different groups proposed structures for what would become ICANN, including IANA, the Boston Working Group, the Open Root Server Coalition, Ronda and Michael Hauben, and Jeffrey Williams on behalf of the fictitious Information Network Engineering Group³². Readers may wish to review extensive resources on the formation of ICANN and International Forum for the White Paper at 33 and 34.



The IANA Functions Contract is renewed in February 2000, and then extended through a long series of new contracts in 2001, 2003, 2006, and 2012. Although the contracts become more detailed and specific, the most significant recent additions make it clear that the IANA Functions do not include policy development. In fact, IANA is prohibited from changing policies without permission, and IANA functions staff are not allowed to “initiate, advance, or advocate” any policy related to IANA.^{39,40,41,42,43} At the same time, ICANN and IETF establish annual Memorandum of Understanding detailing the execution and service level agreements for some (but not all) of the IANA functions in the NTIA contract. Specifically excluded from the IETF MOUs are operation of the DNS and IP address assignments.⁴⁴



The “Affirmation of Commitments” is a significant event in the evolution of ICANN and Internet Governance. By allowing the Memorandum of Understanding to lapse (and be replaced by the “Affirmation of Commitments”), the Department of Commerce gave up a significant supervisory role over ICANN, including the ability to “fire” ICANN. Although the Affirmation, like almost every other action involving ICANN, was the subject of heated criticism, it changed the governance function within ICANN. The US Department of Commerce “surrendered the most formal and visible legal control [it] had over ICANN.”⁵⁰

Notwithstanding the US Government’s role in the management of ICANN by virtue; of its participation in the Government Advisory Committee (GAC), which the Affirmation of Commitments increased in power, the only remaining direct relationship is the IANA Functions Contract between ICANN and US Department of Commerce. This contract⁴³ lists four specific IANA functions that ICANN provides under a zero-dollar contract:

- 1. the coordination of the assignment of technical Internet protocol parameters;*
- 2. the administration of certain responsibilities associated with the Internet DNS root zone management;*
- 3. the allocation of Internet numbering resources; and*
- 4. other services related to the management of the ARPA and INT top-level domains (TLDs).*



The May Resolution by Congress acts as unequivocal instructions to the Department of Commerce: like all other stakeholders, governments have a role to play, but cannot be in charge of Internet governance. The US Government will insist on a multistakeholder model. Although IANA and Internet governance are not the same thing, Congress' support of the multistakeholder model will be a key influence on the IANA stewardship discussions.



The Montevideo Statement is considered to be highly political, and directly references the issues related to mass and pervasive surveillance. Many feel that the Montevideo Statement helped spur the NTIA into beginning the IANA transition process.



In early 2012, preparations for the UN International Telecommunications Union (ITU) World Conference on International Telecommunications (WCIT) in December 2012 are fully underway and some proposals by Member States are clearly aimed at bringing the Internet under the jurisdiction of the International Telecommunication Regulations (IRTs). Although the role that the NTIA has in the IANA Functions contract is clerical, the contract itself is symbolic to many as US Government control over the operation of the Internet.

The prospect of the UN and the ITU trying to assert their own control inspires discussion and action, and the House Committee on Energy and Commerce, Subcommittee on Communications and Technology hold hearings in May, 2012 on “International Proposals to Regulate the Internet.”



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Not everyone agrees how much US Government oversight the IANA Functions contract brings with it. The Department of Commerce maintains that the role of the government is clerical.

For example, when Larry Strickling, Assistant Secretary for Communications and Information at NTIA is questioned by Texas Representative Blake Farenthold at an official hearing⁶⁵ on the IANA transition, Strickling is adamant:

“Mr. FARENTHOLD. We basically invented [the Internet], you know.

Our tax dollars funded DARPA which became the Internet. I would argue, it may be the only successful computing project this government has actually ever undertaken. So, you know, I am concerned about giving up our leadership role. Finally, I—

Mr. STRICKLING. Sir, please, I must push back on you. We are not giving up our leadership role. We are stepping out of a clerical function that we

currently perform, but [...] we are not giving up our leadership role in this space.”

However, there is a “last resort option” that does represent leverage that NTIA holds over ICANN: because the IANA functions are performed under a contract, the NTIA does have the ability to terminate the IANA functions contract or award it to another organization if they feel that ICANN has not performed adequately or fairly.

In the end, the plan to do away with the contract is called the “transition plan of NTIA’s stewardship of IANA functions,” leaving open the argument whether “oversight” and “stewardship” are synonyms.



Rep. John Shimkus (Illinois) introduces House Resolution 4342, the “DOTCOM (Domain Openness Through Continued Oversight Matters) Act of 2014,” which requires that GAO prepare a report on whatever transition plan is received by NTIA before NTIA can act. 56,76 (The requested GAO report is available as77.) On April 2, Rep. Mike Kelly (Pennsylvania) introduces House Resolution 4367, the “Internet Stewardship Act of 2014.” On April 4, Sen. Sean Duffy (Wisconsin) introduces House Resolution 4398, the “GIF (Global Internet Freedom) Act of 2014.”78,79 Both bills prohibit NTIA from moving forward. None of the bills are passed.



The issue of accountability is particularly important for the DNS and naming community. Both the Protocol Parameters and Numbering Resource groups see ICANN/IANA as a contractor that could be, if necessary, replaced with another organization at their discretion. Thus, they would determine whether ICANN/IANA is acting in their best interests.

The DNS and naming community doesn't have the same option to establish a contract because the name community is represented by ICANN, and the IANA functions operator would be ICANN as well. ICANN would be contracting with itself.

Thus, the community seeks very strong accountability within ICANN and proposes the creation of "Post-Transition IANA," a wholly-owned subsidiary of ICANN that would execute the IANA Functions, while oversight and accountability would be maintained within ICANN.

The linkage between the Names Group (CWG) and Enhancing ICANN Accountability Group (CCWG) calls for the seven specific accountability additions (proposed on June 25) to

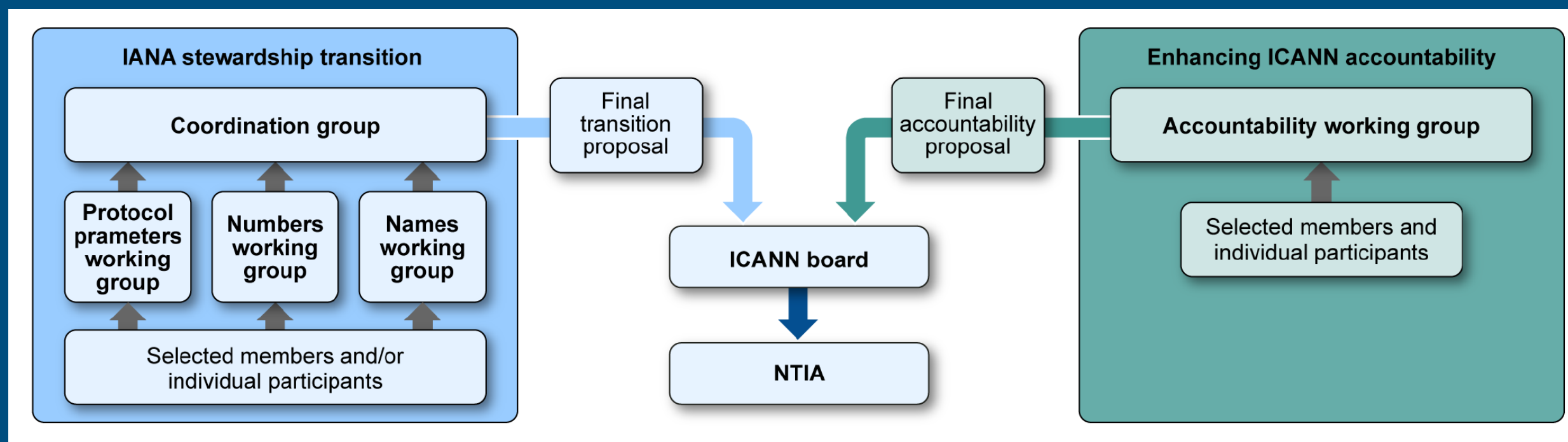


The Enhancing ICANN Accountability Group (CCWG) makes a significant step forward at ICANN 54 in Dublin (October, 2015) when the ICANN board and the CCWG agree on an enforcement mechanism for new governance model. This is a complicated and contentious issue, not only because it codifies how the powers of the community will be enforced within ICANN, but also because it requires a structure that can fit within normal corporate law. The main accomplishment of the second draft and its ensuing discussion was the resolution of this major issue.

Now that governance enforcement is agreed, other undecided issues within the CCWG discussions, such as human rights, mission and scope of ICANN, and the role of governments (the famous “Stress Test 18”) in ICANN begin to be discussed in earnest and are the focus of the third draft.⁹⁶



Producing the final report by the Enhancing ICANN Accountability Group was a significant effort: it counted 28 members and 175 participants, 209 public meetings taking over 400 hours and 16,500 person-hours of time in meetings, and something close to 14,432 email messages across 14 mailing lists, delivering a 335 page document.



FOOTNOTES:

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