Staff Report of Public Comment Proceeding Template (v4.0)

> *__Overview__:*
> *This template is being provided to assist staff in the preparation of a report that summarizes and, where appropriate, analyzes public comments. Please save the document in either *.doc/*.docx and submit to: public-comment@icann.org.*

Instructions:

- **Title**: Please enter the exact title that was used in the original Announcement.

- **Comment Period**: Enter the original Open, Close, and Staff Report Due Dates. *(Format: Day Month Year, e.g., 15 June 2016).* Please note if any extensions were approved.

- **Prepared By**: This field will accommodate a situation where an individual or group other than the principal staff contact, e.g., a Working Group, develops a report.

- **Important Information Links**: Do not enter any information in this section; the Public Comment Team will provide the appropriate links.

- **Section I: General Overview and Next Steps:** Please use this area to provide any general summary or highlights of the comments and indicate the next steps following publication of the report.

- **Section II: Contributors**: Please use the tables provided to identify those organizations/groups and individuals who provided comments. It is not necessary to identify "spammers" or other commenters who posted off-topic or irrelevant submissions. In addition, if there is a large number of submissions, it is acceptable to characterize the respondent communities rather than attempt to list them individually in tables.

- **Section III: Summary of Comments:** This section should provide an accurate, representative, and thorough review of the comments provided. As the disclaimer explains, this is a summary only of those contributions that the author determines to be appropriate to the topic's purpose. Authors are cautioned to be conscious of bias and avoid characterizing or assessing the submitted public comments. If an analysis of the comments is intended, please use Section IV below.

- **Section IV: Analysis of Comments:** Please use this section for any assessments, evaluations, and judgments of the comments submitted and provide sufficient rationale for any positions that are advocated. If an analysis will not be undertaken or, if one will be published subsequently, please add a note to that effect in this section.

  Note: You may also utilize, for this section, the Public Comment Issue Tracking Checklist template, which is available at: https://community.icann.org/x/d67hAg.

Staff Report of Public Comment Proceeding

Draft PTI Bylaws	
Publication Date:	18 August 2016
Prepared By:	ICANN Staff

Public Comment Proceeding	
Open Date:	12 July 2016
Close Date:	11 August 2016
Staff Report Due Date:	18 August 2016

Important Information Links
Announcement
Public Comment Proceeding
View Comments Submitted

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Section I: General Overview and Next Steps

As required in the IANA Stewardship Transition Coordination Group (ICG) proposal that was transmitted to and accepted by the National Telecommunications and Information Agency (NTIA), one of the key implementation planning items is the development of an ICANN affiliate to perform the naming-related IANA functions. On 10 August 2016, ICANN formally incorporated an affiliate entity, referred to as PTI (or Public Technical Identifiers) to house this work. ICANN also intends to subcontract the performance of the numbering- and protocol parameter-related IANA functions to PTI.

The Bylaws for PTI still need to be finalized, including issues such as the composition of the Board, conduct of Board meetings, the powers of the Board and PTI officers, and budgeting, planning and record keeping requirements.

The proposed draft of the PTI Bylaws was developed collaboratively by the ICANN legal team and the independent counsel retained to advise the IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship).

These proposed draft Bylaws were out for a 30-day public comment from 12 July – 11 August to allow any interested party to review and provide feedback. This timeline allows for comments to be analyzed and incorporated in time for an approval of the PTI Bylaws by the ICANN Board and PTI Board prior to the anticipated expiration of the IANA Functions Contract between ICANN and NTIA.

Next Steps:

The PTI Bylaws have been updated to reflect changes to address comments. The updated document is provided along with this Summary, in clean and redline form. ICANN will be presenting this document to the ICANN Board and PTI Board for their approval.

Section II: Contributors

At the time this report was prepared, a total of four (4) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Business Constituency	Steve DelBianco	BC
Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions	Lise Fuhr	CWG-Stewardship
Registries Stakeholder Group	Stephane Van Gelder	RySG

Individuals:

Name	Affiliation (if provided)	Initials
Chuck Gomez		

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above [*(View Comments Submitted)*](link).

The BC addressed its comments to the four issues highlighted in the public comment documentation.

Selection of PTI Chair – The BC expressed its concern with the proposal that the Chair of the PTI Board be selected from among the two Nominating Committee-identified chairs, as this level of specificity was not in the CWG Proposal, while understanding the intention behind this recommendation. The BC recommended an alternative approach, that the Nominating Committee be given a four month time frame to identify whether it can find a candidate with the potential to serve as PTI Chair, and then if it cannot find a sufficient number, then the criteria could be relaxed to include ICANN-Nominated director. The BC also noted its support for the qualifications for Board members as set out in the proposed Bylaws.

Quorum – The BC confirmed its support for the proposed definition of quorum that requires one ICANN-nominated and one Nominating Committee-nominated director.

Higher Thresholds for Certain Issues – The BC agreed with ICANN's concern that requiring both Nominating Committee-nominated directors' approval for certain actions would place the power for a single director to block PTI action. The BC noted its support for a simpler 4/5 definition of super-majority, as it still requires at least one of the Nominating Committee-nominated directors to be in favor of the action.

Limiting PTI's Remit – The BC requested that more language be inserted into the PTI Bylaws to express PTI's limited role in performing the IANA functions, so that it does not become a venue to re-litigate policy decisions.

The CWG-Stewardship provided comments on 10 topics, and provided proposed revisions to the Bylaws as an attachment to its comments. The CWG addressed the following items:

Principal office identification – The CWG-Stewardship recommended that PTI's principal office be described in the same manner that ICANN's principal office is described, for consistency.

Purpose – The CWG Stewardship recommended that the purpose of PTI be aligned with the language that was developed for PTI's Articles of Incorporation, which specifically identifies PTI's role in performing the IANA functions on behalf of ICANN.

Selection of PTI Chair – The CWG-Stewardship agreed with concerns that had been raised regarding a requirement that the PTI Chair be selected from among the Nominating Committee-appointed Directors, as that could place unintentionally limitations on how the selection processes. The CWG-Stewardship therefore recommended that any Director could be selected to serve as Chair, under the following conditions: a majority of the Board selected the Chair, including at least one ICANN-nominated Director and one Nominating Committee-nominated Director. Further, the CWG-Stewardship requested that any Chair should be limited to six years of service as Chair, so that it does not become a permanent position.

Initial Directors – The Bylaws call for two directors to be nominated by the ICANN Nominating Committee. However, the Nominating Committee will not be in a position to complete nominations until 2017. The CWG-Stewardship noted a community proposal that its Co-Chairs serve as the initial directors in those two seats until the Nominating Committee could complete its selection process. The Bylaws, however, require modification to allow for the two seats to be filled prior to the Nominating Committee completing its nomination process. As a result, the CWG-Stewardship recommended the addition of language specifying that there will be Initial Directors, and the seats that would be filled by the Nominating Committee would be instead filled upon the recommendation of the CWG-Stewardship.

Terms of Directors – The CWG-Stewardship noted its agreement with concerns that had been raised regarding the two-year terms previously recommended by the CWG-Stewardship, particularly when coupled with a two-term limit. The frequency of the onboarding and election processes could become quite burdensome. As a result, the CWG-Stewardship proposed that the Nominating Committee-nominated Directors serve for a maximum of two consecutive three-year terms. The ICANN-nominated Directors would also serve for three year terms, but without limitation. The CWG-Stewardship recommended revisions to the identification of when the Director terms begin and end, to account for both the Initial Director term and the three-year terms.

Supermajority for Certain Board Actions – The CWG Stewardship identified that language at Section 5.11.3 should be clarified to specify a threshold that required four of five Board Director approval, as opposed to a 4/5 threshold. The use of the fraction could be subject to interpretation that less than four Board members are required to approve, depending on the number of Board members available to vote on the action.

Unanimous Written Board Consent – The CWG-Stewardship noted that written consent to Board action is authorized under California law, but only if all Directors in office approve, and then only if the number of Directors then in office constitutes a quorum. The CWG-Stewardship recommended that the quorum requirement be specified to require at least one ICANN-nominated Director and one Nominating Committee-nominated Director.

Establishment of Board Committees – The CWG-Stewardship, similar to the concerns raised in the Supermajority section, requested a clarification that four Directors would have to approve the establishment of Committees, as opposed to a 4/5 threshold.

Annual Budget – The CWG-Stewardship identified some clarifications to the PTI Budget process in the PTI Bylaws that more accurately describe the budget process developed by ICANN, in coordination with the CWG-Stewardship's budget design team.

Amendments – The CWG-Stewardship identified a clarification to the amendment threshold that would do two things: (1) clarify that four Directors would have to approve the establishment of Committees, as opposed to a 4/5 threshold; and (2) remove language that appeared to be carried over from an older draft of the Bylaws, that identified that both of the Nominating Committee-nominated Directors would have to approve Bylaws modifications.

Chuck Gomes commented on the portion of the Bylaws related to the PTI Budgeting Process, noting the coordination with ICANN's Finance and IANA Departments. He relayed that the CWG-Stewardship's budget design team (or DT-O) supported the budget process that was provided to the CWG-Stewardship for consideration, and that that DT-O members agreed that the process met the requirements within the CWG-Stewardship's proposal. Chuck confirmed his assessment that the PTI Bylaws do not have to include the full level of detail of the entire budget process, and his support for the language confirmed through the CWG-Stewardship on this topic.

The RySG thanked the PTI Bylaws drafters for their work in service to the ICANN Community.

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

The comments submitted have resulted in modifications to the proposed Bylaws as posted for public comment. The changes proposed by the CWG-Stewardship have been adopted in full, and these modifications also resolve concerns raised or noted by other commenters.

Specifically, the comments resulted in the following changes:

Principal office identification – The language at Article 2 has been updated to mirror how the principal office is identified in ICANN's Bylaws.

Purpose – The language at Article 3 has been updated to reflect the language agreed upon in finalizing the PTI Articles of Incorporation. As both the CWG-Stewardship and BC noted, it is important to reflect PTI's narrow remit in performance of the IANA functions. The modified text now does this.

Selection of PTI Chair – Both the CWG-Stewardship and the BC provided comments on this topic. The CWG-Stewardship's proposed approach has been incorporated at Section 5.4. Each approach was addressed to the concern that limitation of the PTI Board Chair to one of two individuals could be unduly limiting. The CWG-Stewardship's approach of expanding to any Director (other than the President), while requiring support from at least one each of the Nominating Committee-nominated Directors and the ICANN-nominated Directors, provided a simpler solution that did not create an additional burden on the ICANN Nominating Committee or cause changes to their selection cycle. The requirement that this role could not be served for more than six years at a time also places a limitation on the ability of any single ICANN-nominated Director to make the Chair a "permanent" role.

Initial Directors – ICANN understands the community's wish to have community-nominated directors in place from the initial seating of the PTI Board, and not have a one-year period where the Board is only made up of ICANN-nominated Directors. The definition proposed for Initial Directors is satisfactory to ICANN and we agree serves the purpose needed. The proposed modifications have been incorporated into Section 5.2.2.

Terms of Directors – The proposed modifications to Section 5.5.1 have been incorporated into the Bylaws. The three-year term seems a good compromise to the concerns raised. With the development of the "Initial Director" concept, ICANN and the counsel to the CWG-Stewardship also developed language for inclusion at Section 5.5.2 regarding term limits, to confirm that the single year term for Initial Directors would not be counted as a "term" when calculating the two-term limit.

Supermajority Thresholds – ICANN accepted the modifications at Sections 5.11.3, 6.1 (Board Committee establishment); and Article 12 (Amendments) that were proposed by the CWG-Stewardship. The language presented clarifies the meaning of the language, and removes the opportunity for interpretation of how many directors should be available to vote on any matter requiring a threshold that was previously identified at 4/5. This formulation also builds in a requirement that for any of these areas requiring a heightened threshold, at least one of the Nominating Committee-nominated Directors must support the action. This modification also directly addresses the BC's comment supporting a simple 4/5 threshold, as opposed to requiring support from both Nominating Committee-nominated Directors.

Unanimous Written Board Consent – ICANN has incorporated the revision to Section 5.15 as proposed by the CWG-Stewardship, clarifying that quorum even in this special case requires at least one ICANN-nominated and one Nominating Committee-nominated Director. This supports the Quorum definition already within the Bylaws at Section 5.11.1. This modification also furthers the BC's comment in support of the definition of quorum.

Annual Budget – ICANN has incorporated the proposed revisions at Section 9.2 that clarify the PTI Budgeting process that has been agreed upon with the involvement of the CWG-Stewardship's budget development team (DT-O). Chuck Gomes' comment is also directly supported by this modification.

No edits were required to address the RySG's comment.