Integrated IANA model - outline and legal questions

The Integrated IANA model[1], proposed immediately after the Singapore meeting, attempts to reconcile the internal and external models. The model enhances separation between policy making and IANA registry implementation activities, and creates parity between all of the policy making communities (based in ICANN for names, the RIRs for numbers, and IETF for protocol parameters) with regard to the operation of the IANA functions.

The model proposes the creation of a Post-Transition IANA (PTI) entity that would:
- be comprised of ICANN's existing IANA functions department resources and processes, in order to ensure continuity, stability, security and resiliency;
- respond to Customer Standing Committees (or the equivalent) established within the policy making communities, which would develop and monitor service level expectations of the PTI;
- be contracted by the policy making organizations (ICANN, RIRs, IETF[2]) to maintain the respective IANA registries according to policies approved by those organizations, thereby being consistent with existing numbers and protocol communities approaches to the transition, and maintaining portability of the registries if ultimately needed;
- overseen by a small Community Board (e.g., 7 seats) or similar body, representing the three policy communities equally along with the director of the PTI. The respective policy making communities would determine the selection mechanism(s) for their representatives to this body, thereby ensuring that each community had a clear understanding of powers delegated to their representatives, and maintaining direct accountability to each policy community.
- be responsive to any independent appeals mechanism that may be set up as part of the transition process.

It is envisioned that the model could be implemented in one of several variations with increasing levels of vertical separation (all include accounting separation):
- IANA subsidiary, wholly-owned by ICANN, providing operational separation;
- IANA shared services arrangement[3] (SSA), jointly controlled by the policy making organization(s), providing functional separation;

A third option, which would not involve ICANN ownership per se, is:
- free standing IANA, providing complete structural separation.

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[1] A more detailed, working description of the Integrated model is <u>available</u> at
https://docs.google.com/document/d/1ZpCjh4hoRJ1CaYpw30f3zB0gogGa7ZS1eKyum-rJvCI
[2] The IETF uses the IAOC to execute its current contract with ICANN.
[3] This variation is supported by the co-authors.

Questions for legal advice

Many of the existing questions in the legal scoping document are also applicable to the model. E.g., questions of jurisdiction, protection or immunity from litigation are also applicable when considering the creation of a PTI. However, the co-authors have developed some additional questions for consideration. In the opinion of the legal analysis team:

Structure of PTI

Can a PTI that is a wholly owned subsidiary of ICANN have sufficient independence from ICANN's DNS policy development process?

Are there other examples of separate subsidiaries being created to provide coordinated but distinct services? What kind of governance structures have been used if so?

How would a shared services arrangement (SSA) be legally established (bearing in mind the three parties to the agreement ICANN, the IETF and the RIRs) and where?

What corporate governance structure could make the PTI co-owned by the IETF, RIRs and ICANN?

Can an SSA be established as a membership organization (as elaborated on in the detailed model description document)? Can a membership organization be established with a single charter member?

Is it possible to devise a PTI where one or more policy organizations could join the PTI over time?

If ICANN were to initially own the PTI, are there any legal impediments to ICANN partially divesting itself from the PTI in order to create the SSA governance arrangement?

How should the Community Board be structured? How should the relationship between the Community Board and the IANA functions team be structured?

How difficult would it be for the names, numbers or protocol communities to terminate their contracts with ICANN's IANA department if IANA is not separated from ICANN in the manner proposed here?

<u>Separation of policy and registry implementation</u>

Which variation(s) of the model provides the clearest delineation between policy making activities and IANA registry implementation?

Do any variations undermine or support 1) the ability of the Community Board to act independently, 2) the ability of the policy organizations to have their adopted policies implemented?

How might the above mutual objectives be achieved in either the PTI's corporate governance structure, or the contract(s) between the policy organizations and the PTI?

<u>Accountability</u>

Which variation of the model provides the clearest lines of accountability between 1) the PTI department operations and the Community Board, and 2) between the Community Board and policy organizations?

Assuming clear lines of accountability, does this effectively mitigate risks of "capture" of the PTI?