

Potential Resolution of Top 6 Legal Issues: IANA IPR Transition Agreements (Contreras-Hofheimer joint proposal 8/2/16)

1. ICANN or PTI as the “Licensee”.
 - Three separate licenses (one for each IANA Service) will be granted by the Trust to ICANN (“Licensee”).
 - Licensee will have the right to sublicense, with the consent of the Trust, not to be unreasonably withheld or delayed. Initial sublicenses to PTI are approved.
 - Licensee will remain responsible and liable for all actions and omissions of its sublicensees.
2. Termination of License.
 - The Trust will not terminate a License without (a) the support of the applicable Operational Communities/CCG, or (b) an independent finding of fact (e.g. Arbitration) that a material breach has occurred and has not been cured.
 - The License will acknowledge that unauthorized use of the IANA IPR may give rise to an infringement or other action by the Trust. This would be done in consultation with the OCs, but unlike termination, would not be a formal matter requiring their support.
3. Maintenance of IANA IPR.
 - The IETF Trust will be committed to maintaining the IANA IPR. It will maintain the registrations (including domain names) assigned to it in the current jurisdictions.
 - If in the future, additional registrations may be requested by a Licensee or the OCs, which the IETF Trust will consider in good faith.
 - The IETF Trust reserves the right to require the Licensee or the requesting OC to pay out of pocket costs for any additional registrations, which will be owned by the Trust.
4. Enforcement of IANA-IPR.
 - The IETF Trust would have the initial right, but not the obligation to enforce the IANA IPR against third party infringers
 - If the IETF Trust chooses not to enforce the IP, then subject to the Trust’s prior approval (not to be unreasonably withheld or delayed), the Licensee may seek to enforce against third party infringers
 - The allocation of damage awards is a business issue TBD.
5. Consultation with the CCG. When the IETF Trust is required, under the Community Agreement, to consult with and seek the advice of the CCG, the Trust will give thoughtful consideration to the advice and recommendations provide by the CCG. There will be a rebuttable presumption that the Trust will accept the advice and recommendations of the CCG, and if the Trust, in its reasonable discretion, elects not to accept such advice, it will state the

reasons why.

6. IETF Trust Breach of the Community Agreement.

- Under the current Trust Agreement, the IETF Trust may not transfer assets once it receives them.
- Upon the request of the CCG, the IETF Trust will request from the IETF community (after transition) approval of an amendment to the Trust Agreement to permit transfer of the IANA IPR, only, in the event of a serious (to be defined) breach of the Community Agreement that remains uncured after a reasonable dispute resolution process has been completed.
- In addition, the parties would expressly acknowledge that specific performance and equitable relief that may be awarded by a court following a proven breach of the Community Agreement by the IETF Trust could include divestment of the IANA IPR assets.

7. Governing Law and Venue.

- Use California law to govern the Agreements, but remain silent on venue, so there would be no requirement to litigate in California.