

Matrix on comments on draft SLA version 2

	Source	Issue	Comment/ Summary of comments	Legal Team's response
1	Richard Hill, 6 August 2015, posted on ianaxfer ML	Arbitration	13.2.1, I'm not sure that the ICC Court of Arbitration will be able to comply with the stated provisions. So I think that it is important to check with them. If they can comply, then the stated provisions are OK for me. If they cannot comply, then I suggest to revert to the standard method for ICC arbitrations: each party appoints one arbitrator, and the two of them appoint the Chairman.	Prior to finalization the article will be reviewed by external lawyers.
2	Richard Hill, 6 August 2015, posted on ianaxfer ML	Arbitration	13.2.1(b), I suggest replacing "California contract law" with "relevant law", because, even if ICANN is located in the US, it is not obvious that California contract law would be the only law applicable to a dispute.	The provision is sufficiently clear.
3	Richard Hill, 6 August 2015, posted on ianaxfer ML	Governing Law	14.1, I reiterate my previous comment: "The effect of this article is that the laws of the USA will apply to the agreement. That is, in my view, highly problematic, because the USA could pass laws (e.g. sanctions) that could force the IANA operator to do things other than what is requested by the RIRs. In my view, it is important that the agreement be subject to the laws of a neutral country, for example Switzerland". The response to that comment was: "We believe that it is important to have a governing law that has the capacity and capability of enforcing the terms of this agreement. A	The inability for the Operator to perform the services according to Global Policies for any reason is addressed in Article 4.3.

		<p>Court in Switzerland, by way of example, does not have jurisdictional reach over ICANN."</p> <p>The response misses the point. My comment concerned the governing law, not the venue of litigation. The venue of litigation is arbitration in Paris, France. Pursuant to the New York Convention, the arbitration award will be enforceable in most countries, and it will be enforceable in the USA. US courts will enforce an arbitration award against ICANN in the USA, Dutch courts will enforce an arbitration award against RIPE-NCC in the Netherlands, etc. And they will do this no matter what law governs the contract. So enforcement has nothing to do with the choice of law clause. An arbitration award rendered regarding a contract governed by Swiss law will be enforced in exactly the same way as an arbitration award rendered regarding a contract governed by US law. Further, there are many laws governing contracts that are essentially the same in terms of enforcing the terms of this agreement. In particular, Swiss law is perfectly adequate for enforcing the terms of this agreement. So my previous comment still applies in full to the new version: the contract should be governed by the law of a neutral country such as Switzerland, in order to avoid ICANN having to comply with, say, US law that imposes sanctions on some country or other.</p> <p>Follow up by Seun Ojedeji, date 6 August 2015, posted on ianaxfer ML: "Richard's response seem to agree that ICANN/RIR</p>	
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			would be subject to US law on either of the party violating. Based on that understanding, the non-legal me thinks there will be 2 jurisdiction laws to comply with if what you are suggesting is done. Which sounds complicated to me. However, may I request that legal response be shared on the list if it's indeed determined that it's not a list discussion as Richard pointed."	
4	ICANN, 28 August 2015, posted on ianaxfer ML	General remarks	<p>Most of the requirements in the proposed SLA document describe pre-existing requirements from the NTIA's Statement of Work (SOW) with ICANN for the performance of the IANA functions as bound together today. ICANN believes that a thorough and detailed operational review will result in an SLA agreement that is tailored more to the needs of the RIRs and ICANN. This review would include identification of some of the commitments that ICANN currently undertakes in the NTIA agreement that do not necessarily impact delivery of an excellent service to the numbering community. ICANN fully supports the open and transparent process that the RIR community has followed up to now and anticipates that the process of arriving at a final SLA will require review and acceptance by the number community. ICANN proposes that the process between the RIRs and ICANN includes an operational review between RIR and ICANN staff directly involved in the IANA functions-related operations through a series of meetings. The proceedings of these meetings will be open to community observers and recorded for transparency purpose. Remote participation facilities will be made</p>	<p>The intention of the RIRs is to reflect in the SLA the actual current practices of the IANA operator for the delivery of the IANA Numbering Services without any substantial modifications.</p> <p>As a result of reviewing the current practices of the IANA operator, the SLA_v3 has been updated to better reflect such current practices.</p> <p>From this point RIRs intend to have further discussions with ICANN lawyers in an open and transparent manner to finalize the SLA.</p>

			available to the wider community to join.	
5	CRISP team, 1 September 2015, posted on ianaxfer ML	IPR issues	<p>Section 12.1.1 reads as though trademark and will be delegate to RIRs, without description of an entity independent of IFO.,</p> <p>“12.1.1 To the extent that the Operator possesses rights in and to any intellectual property, including but not limited to copyrights, trademarks and service marks, related to the performance of its obligations under this Agreement, Operator does hereby assign and transfer any and all right, title and interest in and to such intellectual property rights to the RIRs, their successors, assigns and designees.”</p> <p>As the proposal only suggests the IETF trust as one alternative and it does not list RIRs, the SLA text could be softened to speak about the IETF Trust or the neutral trust holding the IPRs. Further, it is necessary to have clear definition of intellectual property on the IANA trademark, IANA.ORG domain and other rights, so that the holder of these respective rights are clearly distinguished: With a more clear distinction between the IANA trademark, IANA.ORG domain that are to be transferred to an independent entity as part of the transition, public registry data that should be in the public domain and any other data and IP assets that will be assigned to the RIRs (or their successors, assigns and designees)</p> <p>- IANA trademark, IANA.ORG domain that are to be</p>	<p>The RIRs are cognisant of the CRISP proposal regarding certain intellectual property rights. To give effect to this recommendation, the Operator must first have a contractual obligation to transfer such rights (created in the future) to the RIRs (as the contracting party with the Operator) or the RIRs' designee (as currently provided in the SLA). The IETF Trust, or any other acceptable depository of such rights, is not a party to the contract with the Operator, and can not otherwise enforce such obligation.</p>

			<p>transferred to an independent entity from the IFO as part of the transition</p> <ul style="list-style-type: none"> • - Public registry data that should be in the public domain, and • - Any other data and IP assets that will be assigned to the RIRs (or their successors, assigns and designees). 	
6	ICANN – IANA Operator, 19 October 2015, ICANN 54	Background	Section G should be consistent with the wording of the ASO MoU	The text has been amended accordingly.
7	ICANN – IANA Operator, 19 October 2015, ICANN 54	Definitions	On the definition of “IANA Number Registries”, “IANA Numbering Services” and “Internet Number Resources,” it should be specified that we refer to “unicast” IPv4 and IPv6, and not “multicast” and special number registries whose policies are determined by IETF.	The text has been amended accordingly.
8	ICANN – IANA Operator, 19 October 2015, ICANN 54	Coordination with other operators	On Article 2.1 the Operator may not be able to ensure that the other party will cooperate.	The text has been amended to identify that Operator will use its best efforts to coordinate
9	ICANN – IANA Operator, 19 October 2015, ICANN 54	Role of Operator’s staff	On Article 2.3: The word “designated” may sound as if there will be individuals who’s only role is the numbering services, which may not be accurate. The words “initiate” and “advance” may not reflect the	The text has been amended accordingly.

			current practice of the Operator to engage in cooperative discussions regarding the proposed policies.	
10	ICANN – IANA Operator, 19 October 2015, ICANN 54	Services	Article 4.1 and the title of Article 4.3 refer to the IANA business “processes”, which may include internal business processes, rather than the mere interaction with the RIRs	The text has been amended accordingly.
11	ICANN – IANA Operator, 19 October 2015, ICANN 54	Services	On Article 4.2.2(c) instructs on policies that are outside the RIRs remit.	This Article has been removed accordingly.
12	ICANN – IANA Operator, 19 October 2015, ICANN 54	Service	On Article 4.4.3: Operator’s systems, databases, software and tools are the operator’s property and should not be made available.	It is not the intention to oblige the Operator to share anything that constitutes their property. Article 4.4 has been amended accordingly.
13	ICANN – IANA Operator, 19 October 2015, ICANN 54	Transparency	Article 6.1.1 should be more explicit it refers to existing policies On Article 6.1.2, the Operator may need clarifications on issues of implementation and this may take longer than 30 days post adoption.	The text has been amended accordingly.
14	ICANN – IANA Operator, 19 October 2015, ICANN 54	Reports	Article 6.2: It is suggested that this sections includes any reports referred to in Article 7 and align the requested reports with the actual reports the Operator is currently issuing.	The text has been amended accordingly.
15	ICANN – IANA Operator,	Reviews	On Article 8, the scope of the review is too broad and may include micromanagement issues.	Article 8 has been revised to focus on the periodic review

	19 October 2015, ICANN 54			and the Operator's cooperation with any such review.
16	ICANN – IANA Operator, 19 October 2015, ICANN 54	Continuity	Article 11 should limit Operator's responsibility to the submission of a plan and best efforts for an orderly transition.	The text has been amended accordingly.
17	ICANN – IANA Operator, 19 October 2015, ICANN 54	IPR issues	Article 12,3 should not include Intellectual Property created by the Operator for the purposes of the agreement.	The text has been amended accordingly to address the concern stated and reflect the understanding of treatment of respective intellectual property of the parties.
18	NRO EC, 19 October 2015, ICANN 54	Service	Article 4.3.1 describes the procedure for requests related to the distribution of Internet Number Resources. Other types of requests should also be described. Also some details could be moved to an Annex	The text has been amended accordingly
19	NRO EC, 19 October 2015, ICANN 54	Service	On Article 4.4 since the data will be available upon request, there is no need for periodical submissions	The text has been amended accordingly