

Meeting: LLC Board

Date: June 8, 2022

Attendees

LLC Board:

Maja Andjelkovic
Lars Eggert
Jason Livingood
Sean Turner
Peter Van Roste

Staff/Secretariat:

Brad Biddle
Jay Daley
Alexa Morris
Lee-Berkeley Shaw
Greg Wood

Observers/Guests:

Sandy Ginoza

Scribe:

Michelle Cotton

Conflicts of Interest Declared:

None.

Part I: Open to the Public

1. Record e-vote results

Two e-votes have been completed since the previous Board meeting.

a. The strategic planning retreat meeting minutes were approved with the board e-voting as follows:

Maja Andjelkovic: YES
Lars Eggert: YES
Jason Livingood: YES
Sean Turner: YES
Peter Van Roste: YES

b. The May board meeting minutes were approved with the board e-voting as follows:

Maja Andjelkovic: YES
Lars Eggert: YES
Jason Livingood: YES
Sean Turner: YES
Peter Van Roste: ABSTAIN

2. IETF LLC feedback to the IETF Trust

The following email was sent to the IETF Trust and the IETF LLC Board agreed to enter this into the meeting minutes.

Jason noted that he has heard that there is a strong view that the IETF Trust wants to be fully independent from the IETF LLC.

Lars suggested that they hold an additional consultation in-person at the Philadelphia IETF-114 meeting and Jason agreed to pass this feedback to the IETF Trust via email. That will also be included in the minutes.

[AS SENT - 23 May 2022]

To: IETF Trust (trustees@ietf.org)

Subject: Comments from the IETF LLC on IETF Trust Structure

We took note of your request for comment on the future structure of the IETF Trust at IETF-113 [1] and offer these comments for your consideration as you determine your next steps.

First and foremost, we completely agree that the current structure of the IETF Trust is unsustainable and should change for all of the reasons you listed. This approach is consistent with our recommendation in the IASA Retrospective in October 2021 [2] that “the IETF Trust initiate a community consultation concerning improvements in their legal structure”.

We believe that a key question in this consultation is whether the IETF Trust should be a standalone incorporated body or an incorporated body underneath the IETF Administration LLC. In order to answer this, we see two key areas for analysis:

1. Risk/benefit of each option
2. Any legal or contractual constraints that prevent or favor one of the options

Risk/Benefit Analysis

All incorporated not-for-profits incur a non-negligible cost to maintain their corporate structure, including maintaining company registration, legal representation, insurance, technical operations, fundraising, and more. In addition, there are multiple legal and “good practice” requirements including governance and operational policies, regular audits, financial reporting, and more. While the IETF Trust has some of this in place, the move to an incorporated body is a significant step up and will incur notably greater administrative and operation costs and effort. The IETF LLC already has this full structure in place and can absorb the additional work with minimal impact on cost, as it largely does today.

In addition, under the current structure, the trustees of the IETF Trust can focus largely on their area of subject matter expertise, the management of intellectual property. The risk of moving to a separate corporate structure from the IETF LLC is that significant time will be spent on the corporate governance, reducing focus on the IETF Trust’s core focus of managing the IETF’s intellectual property. This appears to be another argument in favor of being incorporated under the IETF LLC.

If the IETF Trust was incorporated under the IETF LLC, however, it seems important that the IETF Trust retain a board of trustees with expertise in managing intellectual property rather than simply making this a function of the current IETF LLC Board. Such a change would lose significant subject matter expertise that the IETF Trust has today and that is essential to the mission of managing and protecting the IETF’s intellectual property.

So it may well be the case that the path of least risk, least cost, and least time to fully effect the change in structure is for the IETF Trust to sit underneath the IETF LLC, taking advantage of the full operational and governance structure that the IETF LLC has in place, while retaining the IETF Trust’s trustees and their subject matter expertise as the decision makers on policy regarding intellectual property. In addition, the greater support provided to the IETF Trust’s

trustees by the IETF LLC would allow for resolution of long-standing problems such as the reassignment of international trademarks (which are currently held by individuals on the IETF Trust personally, and in many cases these registrations are out of date and are held by former members of the IETF Trust) [3].

Legal and Contractual Constraints

The IETF Trust's consultation stated that the 2005 Trust agreement [4] constrains the IETF Trust from being legally associated within or under the umbrella of the IETF LLC because the IETF LLC is a disregarded entity of the Internet Society. However, this constraint expired on July 1, 2010, after which date the IETF Trust can independently make amendments to its own trust agreement including dissolving itself and reassigning its assets. We note that it is this same authority that would allow the IETF Trust to reform itself as an incorporated not-for-profit body as you are proposing.

We note that if any association of the IETF Trust with the Internet Society were truly problematic, then concerns would have been raised at the time of the formation of the IETF LLC, given that the IETF Trust currently receives administrative and financial support from the IETF LLC, which in turn is a disregarded legal entity of and receives a significant proportion of its funding from, the Internet Society.

As a result, we recommend that the IETF Trust reach out to the original signatories of the IETF Trust agreement to understand their position on the various options and share that information with the IETF community. While the possibility remains that one of the original signatories may dispute any transfer of IETF Trust assets to any other organization ultimately controlled by the Internet Society, as noted above, they have no legal basis on which to do so.

You also raised the issue of the IANA agreement, suggesting that because the Internet Society is a registry operator (as the delegated manager for the .org top-level domain) that this would create a conflict if it were the ultimate owner of the IANA intellectual property. However, we note firstly that there is no mission-critical reason to the IETF for the IANA intellectual property to be held by the IETF Trust and that the transfer to the IETF Trust was a late development in the IANA transition, rather than part of the original plan. Secondly, the IANA IPR Community Agreement [5], despite the large number of signatories and extensive community consultation, does not include any such prohibition or related conflict of interest restrictions.

At the same time, we agree that some members of the broader ICANN and IETF communities may raise objections given the lingering concerns over the Internet Society's past proposed sale of .org, but we are confident that the terms of the IANA IPR Community Agreement already provide the necessary safeguards, and that if any enhancement to these safeguards is required then that would receive strong support. In the unlikely event that this issue prevents an otherwise sensible transfer, then we recommend consideration be given to transfer of the IANA intellectual property to a separate third party, potentially entirely independent of all ICANN and IETF communities. In other words, the status of the IANA intellectual property does not appear

important enough to the IETF that it should constrain the IETF from organizing itself in what it thinks is the best way for the IETF.

Conclusion

Our analysis is therefore that there is no true legal constraint on housing the IETF Trust under the umbrella of the IETF LLC.

It is the view of the IETF LLC, based on analysis of these areas, that the IETF would best be served by the IETF Trust becoming an incorporated body underneath the IETF LLC or other associated body, with the IETF Trust's trustees continuing to set the policy for IETF intellectual property as members of a subsidiary board.

Thus, we suggest that you ask the IETF community for comment on this option rather than ruling it out. We believe, based on consultation with our Counsel, that this appears to be a legally viable option.

We also suggest that the IETF Trust publish a list of all RFCs/BCPs that would need to be updated as the result of any change in the IETF Trust, as well as any legal agreements that would similarly require amendment or transfer. In addition, you may wish to consider sharing a high-level estimate of IETF Trust's 2 - 3 year funding needs in either scenario, as well as timing for the achievement of key milestones.

Warm regards on behalf of the IETF LLC Board,

Jason Livingood
Board Chair, IETF LLC

[1] <https://datatracker.ietf.org/meeting/113/materials/slides-113-ietf-sessa-ietf-trust-report-ietf-113-00>

[2] https://www.ietf.org/media/documents/IASA2_Retrospective.pdf

[3]

https://app.iponz.govt.nz/app/Extra/IP/Mutual/Browse.aspx?sid=637887009425387422&op=EXTRA_PS_CB&headerVisible=0&idMark=751468&tyApp=1

[4] <https://trustee.ietf.org/documents/founding-documents/>

[5] <https://trustee.ietf.org/wp-content/uploads/Community-Agreement-2016-09-30-Executed.pdf>

[AS SENT 8 JUNE 2022]

To: IETF Trust (trustees@ietf.org)

Subject: IETF Trust in PHL at IETF-114

Hi – We had an IETF LLC board meeting today. We discussed our recent comments sent to you on 23 May and entered them into our meeting minutes (which will post in a week or so). In today's discussion, it was suggested that you consider having an additional consultation meeting during IETF-114. This may enable you to get even greater engagement with the IETF community.

Warm regards on behalf of the IETF LLC Board,

Jason Livingood
Board Chair, IETF LLC

3. Review & approve prior month's financial statement

No financial statement was ready for this meeting so review and approval will take place by email.

4. Update on the IETF's technical work

The RFC for HTTP3 was shipped this week which is a major milestone. There is some media work surrounding the release. Looking forward, the IETF would like to better plan the dates of these important releases with Greg to coordinate on media announcements.

There is a discussion on the IETF list regarding the topic of guns at meetings in response to the recent shooting in Philadelphia. There is an open question on whether the community needs to give guidance on this issue or because it is regarding the safety and security for participants at meetings that the IETF LLC should provide that guidance. Some fraction of the community would prefer a No Gun at IETF policy. It may be a non-issue because most US venues have a No Gun policy. The IETF follows the policies for the venue.

5. Executive Director Report - Public

Public Executive Director Report

For the IETF Administration LLC Board meeting on 8 June 2022

This report is provided by the IETF Executive Director and is read through at the meeting as it is not available to observers. This report is public and there is no separate confidential report.

1. Strategic Matters

Annual report

The 2021 Annual Report is waiting for the final audited accounts and will then be published.

2. Policies

Misuse of IETF systems

I am still to consult with the community on the broader aspects of misuse of IETF systems and the legal implications from the DMCA and general laws. I will aim to do this before IETF 114 to allow for further discussions there if required.

Gender data collection and preferred pronouns

This consultation has now closed and the responses were generally supportive of our proposals, with some amendments that we have now incorporated. A private gender field has been added to the registration system and work is underway to add a public pronouns field to Datatracker.

Antitrust

I recently met with our two sets of external counsel (SDO specialists and antitrust litigators) and ISOC Counsel (general counsel and antitrust litigator), and the ISOC CEO to discuss the subject of antitrust.

The meeting began with the ISOC GC, Ilona Levine, explaining that they were happy with our antitrust settings for the standards setting process but remained concerned about IETF meetings and the interactions there between participants. The discussion focused on this latter point and the risk to the IETF LLC and the Internet Society of being drawn into any US DoJ litigation or litigation between participants,

The substantive question is, will having a directive policy (e.g. “do not discuss ...”) rather than an informative training programme (e.g. “if you were to discuss ...”) make any difference to our risk profile? Our counsel (internal and external)

remain of the view that it is not a material difference, while ISOC counsel believe that it will.

We have already agreed internally to two work items both of which are in line with the [outcome](#) of the 2012 BoF and the 2020 board [statement](#) on competition law issues:

1. A document that can potentially be added to the NoteWell that reminds people of the existence of antitrust risk and how the various processes and policies address that. This in essence covers the standards setting side of things.
2. New training from us that sets out what areas of discussion between participants may give rise to an antitrust claim. That covers the meetings side (and our online systems).

We will continue with these work items and I expect these to be in place by the time of our next annual compliance report to ISOC.

3. Finance

Audit

There have been a number of areas of discussion with the auditors relating to the IETF Endowment that have taken some time to resolve. Thanks to the detailed work of IETF counsel we have been able to work through these areas with the auditors to help them understand the finer points of endowment law and how they apply to us. At one of the meetings, we were joined by ISOC's external counsel specialising in this area, who concurred fully with our counsel.

At the time of writing, the last of these remains work in progress:

- **What is meant by “permanently restricted” funds.**
The term “permanently restricted” used to mean that the principal of donated funds is never appropriated, under the previous accounting standards that applied until 2016. However the current standards ([ASU-2016-14](#)) removed that definition and instead defined “donor-restricted” and “not donor-restricted”. The financial standards further make a distinction between “purpose restricted” and “time restricted”. The auditors have repeatedly questioned if the endowment funds are “permanently restricted” claiming the answer is central to how the endowment is classified and reported, or even whether or not it is an endowment. Our lawyers have clearly identified why this is no

longer relevant and we are waiting for confirmation that the auditors agree with this.

- **Our approach to “underwater endowments”.**

With the above point cleared up we have been able to agree that our endowment would only be “underwater” if the funds totalled less than \$100k (the amount we have agreed not to spend). As our policy is not to spend (appropriate) below this figure, we have been able to clearly state that we will not spend any more if the endowment goes underwater and will continue to invest to restore it. .

- **Donations to the endowment from the Internet Society**

The auditors have agreed that donations from the Internet Society to our endowment can be considered donor-restricted. However, the ISOC board resolution talks about “permanently restricted” and the auditors want a written confirmation from ISOC that they did not mean that the principal cannot be appropriated. It is expected that we will have that soon.

- **What we can appropriate the endowment for.**

The auditors have repeatedly stated that the restriction imposed on the endowment funds (“To support the IETF and its activities”) is not sufficient for the funds to be categorised as “purpose restricted” and must instead be categorised as “time restricted” (i.e. we follow UPMIFA rules and so cannot spend it all at once). Again our lawyers have spoken to the auditors and explained that our ability to appropriate from the endowment for general IETF operations does not mean that donor restrictions are removed because, for example, we still cannot not give it away or invest it in another business. We are waiting for confirmation from the auditors that they agree with this.

With these areas almost all cleared up, we are close to finalising the endowment page for the accounts, including the accompanying notes.

Separately, the auditors have identified an error with last year’s accounts that will require a restatement. The income from global hosts should be considered as conditional on a meeting taking place and therefore, when a meeting happens all of the global host cost for that meeting should be recognised in that year, not just the annual payment (normally the annual payment is $\frac{1}{3}$ the meeting cost). This did not happen last year. I do not yet know if last year’s auditors will wish to reissue their report as a result.

4. RFPs and contracts

RPC tools refresh project manager

By the time of the Board meeting I hoped to have contracted with the preferred bidder.

5. Meetings

IETF 114

The consultation on COVID management has completed and by the time of the board meeting the final decision, as agreed by the IESG and LLC board, will have been communicated. As a reminder, those results are:

- Clarifying that we will accept FFP2/N95 masks while adding that KN95/KF94/FFP3 masks and equivalent are also acceptable.
- Reiterating that we will use Meetecho for queue management as we did for IETF 113 and an improved mobile Meetecho client will be ready for IETF 114.
- Clarifying that masks must be worn without exception and anyone who is unable to wear one for whatever reason cannot participate onsite and must participate remotely.
- No change to our definition of fully vaccinated.
- Clarifying that we will not make any changes to this plan unless required to by local regulation or if the local situation changes dramatically close to the meeting.

Additionally, we have four children now booked in for our inaugural childcare program.

6. Tools/RPC/RSOC/RSE

Moving off tools.ietf.org

This is now planned for the 2nd/3rd week of June. All the preparations are due to be complete a week before then.

RSCE recruitment

By the time of the Board meeting, the recruitment committee will have had its longlisting meeting and have decided if there are sufficient quality candidates to move to the next stage or if further search is needed. I will update further at the board meeting.

RFC clusters

By way of a brief explanation, a cluster is a set of RFCs that contain references to each other and where those references are normative, this imposes an order for publication in order for those references to resolve correctly. However, as the RFCs may have different authors with different approaches and availability to work through the final publication stages, processing whole clusters can take much longer than if each of the RFCs stood on its own.

In my regular meeting with the RPC they noted that clusters of RFCs are increasingly common and increasingly impacting on their processes and outputs. I have raised this with the IETF Chair as a topic for a future strategic discussion.

7. IESG/IAB/IRTF/Trust

IESG/IAB retreat

This retreat went well. The most practical outcome for us is a requirement to look at real-time transcription services.

IETF Trust consultation

At the IETF Trust consultation on restructuring they were asked if there are any differences between a Virginia trust and a Delaware corporation as they envisage it, to which they answered no. I suggested that there might be some, namely the role and powers of the AG, and any standing of the original settlors to sue should the trust go off the rails. The trustees were of the view that neither are the case.

8. Communications/Outreach/Engagement

Nothing to report.

9. Miscellaneous

Nothing to report.

6. ISOC-IETF issues discussion (anit-trust, employee benefits, etc.)

The Board discussed a pattern of requests from and interactions with ISOC that appeared to suggest a desire by ISOC to change the relationship between the IETF and ISOC. In particular, it appears that ISOC wishes to shift from an arm's length relationship with an independent-acting IETF to one with a much greater level of oversight and operational engagement. It was the view of the IETF LLC Board that this would potentially roll back the changes made during IASA2 and is without justification.

The Board noted that this may be that this is due to some sort of misunderstanding, though it appears to correspond to recent senior staff changes at ISOC so new people may be bringing in new notions of how the ISOC-IETF relationship should be structured.

Jason had previously planned to present to the ISOC Board on 18 June 2022 and agreed to use this time to solely discuss these concerns. In part this is because the ISOC Board may not be fully aware of IETF's perception of these recent changes.

The IETF LLC Board discussed a number of possible scenarios, including taking steps to become fully independent of ISOC if needed. But this was also acknowledged to be a worst case scenario and not in the IETF or ISOC's best interests at this time. The best course of action was agreed to be to open a dialogue with the ISOC Board on the matter.

Some of the specific recent issues have included (1) disagreement over what is an appropriate anti-trust policy even after IETF has consulted extensively with our counsel on the matter and consulted with the IETF community, (2) disagreement over what is an appropriate OFAC policy even after IETF has consulted extensively with our counsel on the matter and consulted with the IETF community, (3) ISOC staff directly contacting the IETF's accountants concerning our current audit, asking questions, and appearing to provide the IETF's contracted supplier

direction without the IETF's involvement or awareness, (4) unexpectedly asking whether the IETF would soon stop leveraging ISOC's employee benefits program for IETF staff, and other issues.

As a general matter the board discussed that under the terms of our agreement with ISOC that if they are dissatisfied with compliance or other policies that they have mechanisms to communicate and escalate those concerns, with the IETF having a curative period.

Jason will open this discussion with the ISOC Board in the upcoming meeting and report back.

7. AOB & Questions from Observers

There were no other discussion topics or questions from observers.

Part II: Board + Staff

1. Fundraising update

Lee-Berkeley gave an update on her recent activities, including concluded meetings with potential donors, planned meetings with individuals at the upcoming ICANN 74 meeting and in Washington DC during her visit prior to IETF 114.

2. Update on Asia location meeting agreement

Jay updated the Board on the status of pending contracting issues with the venue. They are being worked through and resolution is expected soon.

Part III: Board + ED Only

1. Discuss org independence: risks, issues, costs, tasks, assessment next steps

Some further discussion to prepare for the ISOC Board meeting occurred.

2. AOB

N/A

Part IV: Board Only

1. AOB

N/A