



I E T F[®]

IETF Trust

Restructuring Webinar

May 23, 2022

Agenda & Format

Introduction to the IETF Trust

- Current Trustees
- Mission
- Structure

Consultation on Restructuring

- Motivation
- Restructuring Proposal
- Budget Impact
- Consultation Details
- Timeline

Submitting comments

Webinar format note:

This Webinar is a good format to present the background and high-level aspects of the proposal, we recognize that many comments may be at a level of detailed that do not fit easily into the webinar format.

Please direct detail heavy comments to the TLP-INTEREST@IETF.ORG list that is being used for this consultation.

IETF Trustees



Glenn Deen
Chair



Kathleen Moriarty
Treasurer



Joel Halpern



John Levine



Stephan Wenger

IETF Trust Purpose

Enable usage of IP Assets while protecting ownership

Hold IP Assets for IETF, IANA, ICANN, Internet Community

Domain ownership

IETF.ORG, IESG.ORG, IRTF.ORG, IAB.ORG, IANA.ORG,...

Copyrights

IETF RFC's, Logos, Photos, Videos

Contributions to the IETF: Internet Drafts, discussions, etc.

Trademarks

IETF, IANA Marks, additional IETF marks (logos etc.)

Software

IETF Tools, IETF YANG Catalog



IETF TRUST

Legal Provisions Relating to IETF Documents

Effective Date: March 25, 2015

1. Background

The IETF Trust was formed on December 15, 2005, for, among other things, the purpose of acquiring, holding, maintaining and licensing certain existing and future intellectual property used in connection with the Internet standards process and its administration, for the advancement of science and technology associated with the Internet and related technology. Accordingly, pursuant to RFC 5378, Contributors grant the IETF Trust certain licenses with respect to their IETF Contributions. In RFC 5377, the IETF Community has provided the IETF Trust with guidance regarding licenses that the IETF Trust should grant to others with respect to such IETF Contributions and IETF Documents. These Legal Provisions describe the rights and licenses that the IETF Trust grants to others with respect to such IETF Contributions and IETF Documents; as well as certain restrictions, limitations and notices relating to IETF Documents. These Legal Provisions also apply to other document streams that have requested that the IETF Trust act as licensing administrator, as described in Section 8 below. Capitalized terms used in these Legal Provisions that are not otherwise defined have the meanings set forth in RFC 5378.

Current Trust Structure

- Commonwealth of Virginia Trust
- IRS 501c3 Non-Profit
- Independent from ISOC and IETF Administration LLC
- Website: trustee.ietf.org
- 5 Trustees
 - IETF Nomcom 3, IESG 1, ISOC BoT 1
 - No financial support (travel or compensation)
 - Knowledge of IP law useful
 - Trustees are personally legally responsible/owners
- Annual budget ~100K
 - Legal & Administration Services, TM Registrations,
 - Document Storage (IETF bluesheets, other materials)
 - Domain Registrations, Trustee Insurance

Proposal Info Page

Information page about the proposal: <https://trustee.ietf.org/>

Details provided:

- **IETF 2nd Amended Trust Agreement**
 - Basis that the current Trust operates under
- **Draft of the proposed Bylaws**
 - Basis for the the new not-for-profit corporation
 - Drafted based on the current IETF Trust Agreement, but translated into a format appropriate for filing as the articles of incorporation for the new entity.
- **IETF RFCs affected**
 - RFC 5377 Introduction text has several references regarding Trustees and IAOC
 - RFC 5378 Section 1.h refers to the IETF Trust as a “Virginia Trust”
 - RFC 8715 Section 2 refers to the IETF Trust as a “Virginia Trust”
 - RFC 8714 Section 2 has a short history of the IETF Trust
- **This presentation**
- **Link to this webinar recording**

Motivation

Why is the IETF Trust proposing restructuring?

- Insurance
- Trustee Personal Liability

Trust Insurance Concerns

- The IETF Trust carries \$1 million Professional Liability and \$3 million Directors & Officers insurance
- Levels are out of date having not kept up with inflation or risk levels
- Trust has tried to increase these amounts to appropriate levels
 - Current insurance provider won't increase coverage limits
 - Very few companies providing insurance to trusts
- Quite possible that coverage may one day become unavailable from any source

Impacts

- Without adequate insurance the Trust and Trustees face a significant risk
- Without any insurance the Trust would be very high risk
- Trustees have personal liability

Discussion

- Insurance companies don't like trusts due to their extensive use in family real-estate/wealth holding and tax optimization strategies
- Insurance Companies are comfortable with not-for-profit corporations
 - Large marketplace of insurance providers
 - Pricing more competitive due to large marketplace

Trustee Personal Liability

Trustee Personal Liability

The IETF Trust is a Virginia Common Law Trust

- ❖ Trustees aren't just officers – they are in some cases the owners of the Trust assets
- ❖ Trademark (TM) Registrations are a good example
 - Individual Trustees are listed along with the IETF Trust in registrations as the owners
 - Some TM Registrations don't allow trusts to be listed leaving IETF Trustees as the direct owners
- ❖ IETF Trust's legal liabilities can carry over into individual Trustees legal liabilities
- ❖ Trustees sign IETF Trustee Agreement acknowledging role, responsibilities and risk when joining
 - This is one agreement you really want to read before signing

Impact

- Many potential trustees have avoided being IETF Trustees due to the required personal risk
- Trustees take on direct personal liability as owners of IETF Trust

Discussion

- Corporations directly own IP Assets and can register them worldwide
- IETF Trustees act, and community expectations, are very much like corporate directors
 - They oversee but do not personally own
- Corporate directors have better legal separation protections from personal liability

IETF Trust Restructuring Proposal

Proposal is to restructure IETF Trust to a not-for-profit corporation

What would change:

- All IETF Trusts assets would transfer
- All current licenses would transfer
- Trustees would become “demoted” to “directors” on the new Board of Trustees of the new not-for-profit corporation
- Would move from Virginia to Delaware

What would be the same:

- Role & Responsibilities to IETF & Internet Communities
- All Licenses terms would stay the same
- Would stay non-profit (501c3) entity
- Selection of “Directors would follow process per RFC 8714
 - 5 Directors: 1 from IESG, 1 from ISOC, 3 from IETF nomcom

Budget Impact

Budget impact to the IETF Trust is expected to be neutral after initial setup

Cost are tracked under “Special Projects” in the 2022 IETF Trust Budget

- <https://trustee.ietf.org/about/financials/>
- “Special Projects reflects legal consultation services from Gesmer Updegrave LLC”

Primary costs were upfront as part of analysis & development of proposal

- Legal review of various approaches - COMPLETED
- Legal evaluation of feasibility - COMPLETED
- Draft Bylaws based on current IETF Trust Agreement - COMPLETED

Costs not yet incurred

- Any bylaw changes resulting from (this) consultation
- Articles of incorporation filing in Delaware
- IRS request for not-for-profit status
- Insurance for new entity
 - Expected to be cheaper than current costs
- Transferring copyrights & existing licenses
- Updating Trademark Registrations
 - Already by current IETF Trust each time a new Trustee is appointed
- Updating IETF Trust web site
- Costs related to “spin” down of current IETF Trust trust
- Potential overlap in overhead caused by having two legal entities active during transition

Timeline

Trustees will publish results of consultation & resulting plan of action

- After Consultation closes on June 30th, 2022

File articles of incorporation with State of Delaware

- This will create the entity following the proposed bylaws
- IETF Trustees will serve as new Board of Trustees
- Entity will start with no assets
- Administrative tasks including obtaining insurance for new entity

File application to IRS for not-for-profit status

- This may take a while to receive - possibly up a year!

After IRS Approval of not-for-profit status

- Transfer current IETF Trust IP assets to new entity
- New entity takes over responsibility for managing transferred assets
- Current IETF Trust is “spun” down

The restructuring is expected to last well into 2023

Consultation Details

Consultation Goal

Seeking constructive input to help ensure IETF Trustees have examined and addressed the important aspects that need to be considered in evaluating and possibly implementing the conversion proposal.

Key questions we hope to get input on from the consultation:

- (1) Does the proposed change interfere with the Trust's mission? If so, how ?
- (2) Are there any legal or factual mistakes in the proposed bylaws?
- (3) Is there any deviation in the proposed bylaws from the current Trust agreement in either principle or fact, recognizing that some changes in formalities are required by the change from a trust to a corporation?
- (4) Will converting expose the IETF Trust's mission or holdings to new and likely threats that need to be addressed?

Consultation Feedback

Feedback is being solicited on the IETF Trust's t1p-interest@ietf.org mailing list. (registration as a list member is required to post).

Note: Each & every comment will not likely receive individual responses, but Trustees will read each comment and will incorporate the feedback in the evaluation

Duration of the consultation

This consultation will run through **June 30th, 2022**.

Sending Feedback

Information page about the proposal: <https://trustee.ietf.org/>

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Thank You



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TLP-INTEREST@IETF.ORG



WEB:
TRUSTEE.IETF.ORG