COMMENTS ON NOTICE OF INQUIRY
Models for a Governance Structure for the National Strategy for Trusted Identities in Cyberspace
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RESPONSE FILED BY:
U.S. PUBLIC POLICY COUNCIL OF THE ASSOCIATION FOR COMPUTING MACHINERY

On behalf of the U.S. Public Policy Council (USACM) of the Association for Computing Machinery (ACM) we are submitting the following comments in response to the Notice of Inquiry by the National Institute of Standards and Technology about the governance of the National Strategy for Trusted Identities in Cyberspace (NSTIC).

With over 100,000 members, the Association for Computing Machinery (ACM) is the world's oldest and largest educational and scientific computing society. The ACM U.S. Public Policy Council (USACM) serves as the focal point for ACM's interaction with U.S. government organizations, the computing community, and the U.S. public in all matters of U.S. public policy related to information technology. Our comments are informed by our previously submitted comments on a draft version of NSTIC.[1] Should you have any questions or need additional information, please contact Cameron Wilson, our Director of Public Policy, at 202-659-9711 or at cameron.wilson@acm.org

Good Governance is Key to Trust

Stronger authentication is an important part of ensuring trust in online transactions, for all parties involved. And trust in how the Identity Ecosystem is guided and managed will be important to the acceptance and use of NSTIC. Effective governance could mitigate many concerns that USACM had with the Draft Strategy, provided that the emergent governance structure remains vigilant in adhering to the four Guiding Principles of the Strategy.

Include Technical and International Expertise

Consistent with our role as a computing society, we want to stress that technical expertise and interests must be a part of the governance structure of NSTIC. We are not proposing specific governance structures, but would recommend that NSTIC leadership examine other entities responsible for systems that rely on technology to fulfill intended functions. Standards bodies such as the American National Standards Institute (ANSI) have useful expertise and experience in the area of developing and promulgating technical standards. We also recommend examining entities such as the Elections Assistance Commission (EAC), which has a designated technological advisory capacity to support a broader function – assuring more secure, reliable, verifiable, accessible and auditable elections. The successes and challenges entities such as the EAC have had in developing technical guidelines and incorporating them into its processes and procedures may have relevance as the NSTIC steering group tries to incorporate technical guidance into its other missions.

While NSTIC is a U.S. enterprise, the nature of online commerce and activity means that the Identity Ecosystem will reach beyond U.S. borders. What the U.S. does in this policy area will influence the actions of other countries, and making sure that NSTIC governance has the expertise and flexibility to engage with international partners, as appropriate, will help in the event of cross-border differences. This would require participation by relevant U.S. government and non-government parties, but as noted in the Strategy, the U.S. government should not lead the effort.

Leadership Is Important

While a successful governance structure will allow for the flexibility to adapt to changing technical capabilities and user practices, it will be up to the leadership to ensure that the principles of NSTIC are followed. Vacancies in NSTIC governance need to be filled quickly with people who have the appropriate background and/or expertise for

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[1] http://usacm.acm.org/PDF/USACM_Secure_Identity_Comments_final.pdf

each particular position. The Identity Ecosystem will operate and change regardless of how many governance vacancies there may be.

Specific Questions

Question 1.1 - *Given the Guiding Principles outlined in the Strategy, what should be the structure of the steering group? What structures can support the technical, policy, legal, and operational aspects of the Identity Ecosystem without stifling innovation?*

Because the Identity Ecosystem, as envisioned, would change over time in ways that cannot be easily predicted, there should be a certain level of flexibility to the governance structure, particularly as the Strategy unfolds. With the number of different components involved in a fully operational NSTIC, there will be many different stakeholders. This suggests that a single governing body may be too small, unless it works with other bodies to gather relevant advice and concerns (technical, legal, consumer behavior, etc.) for its decision-making processes. Entities such as the Elections Assistance Commission operate with multiple subsidiary advisory bodies, and this may be one model worth considering. Some large technical organizations employ similar models, with working groups assigned to particular subfields (the Association for Computing Machinery operates with several Special Interest Groups organized around particular computing interests).

Question 3.1 – *What should the make-up of the steering group look like? What is the best way to engage organizations playing each role in the Identity Ecosystem, including individuals?*

As noted above, we strongly recommend a structure such that technical expertise and experience are included in the NSTIC Steering Group. This could be achieved through designated spots in the steering group, or with some liaison capacity between the group and any technical bodies or advisory groups that the steering group seeks to use as part of the governance structure for NSTIC. Identifying the various roles and aspects that the Steering Group will address should help define some of the stakeholders that should be included.

Question 3.2 – *How should interested entities that do not directly participate in the Identity Ecosystem receive representation in the steering group?*

While not the same as representation, interested entities and the general public will need to have ready access to the meetings, activities, and work product of the steering group to the widest extent possible. Such material should be made available online in digitally-signed, open standard, machine-readable formats that allows for analysis and re-use of the data. This is good transparency practice, which can help generate trust in the NSTIC.

Question 3.3 – *What does balanced representation mean and how can it be achieved? What steps can be taken to guard against disproportionate influence over policy formulation?*

Disproportionate influence over policy formulation can be mitigated through rotation of terms for members in the steering group, and through the use of sunset provisions for governance structures and policies. Operating with a high degree of transparency would also allow for outside entities to analyze and comment on NSTIC governance processes. For those comments to inform policymaking there could be some form of oversight established (outside audit, ombudsman, inspector general, etc.). Requiring super-majority votes for some high-impact changes may also be a method to protect against some forms of influence.

Question 3.4 - *Should there be a fee for representatives in the steering group? Are there appropriate tiered systems for fees that will prevent "pricing out" organizations, including individuals?*

While the need to support the governance body is clear, the use of membership fees could serve as an anti-transparency measure, making governance of NSTIC accessible only to those who can afford to participate. A sliding scale of fees and possible fee waivers could address this concern.

Even though it is intended for the private sector to lead this effort, there are a number of public goods and interests served by an effective, voluntary NSTIC. As the success of NSTIC hinges on participation in the services that it supports, some kind of income stream to supplement representative fees would be appropriate.

Question 3.5 - *Other than fees, are there other means to maintain a governance body in the long term? If possible, please give examples of existing structures and their positive and negative attributes.*

Certification of products and services that are to be used within NSTIC would be a potential source of revenue worth exploring. Such certification should have mechanisms in place that would not unduly burden or exclude open software efforts and/or small companies.

Existing entities that might serve as good models for NSTIC include the Internet Engineering Task Force (IETF) (http://www.ietf.org/), and bodies using consensus-focused procedures such as the American National Standards Institute (ANSI) (www.ansi.org) or the International Organization for Standardization (ISO) (www.iso.ch).

Question 3.6 - *Should all members have the same voting rights on all issues, or should voting rights be adjusted to favor those most impacted by a decision?*

Without knowing exactly what issues will be under the review of the steering group, it is difficult to answer this question definitively. There could be many different reasons to adjust voting rights accordingly (or, alternatively, to target those questions to the groups most affected). To prevent some from voting on questions should not prevent them from having input into the governance of NSTIC. Voting is simply one means of affecting the system.

An alternative to adjusting voting rights would be to make certain proposals require consensus or supermajorities for passage. Organizations such as ANSI and ISO operate under such procedures and could provide guidance.

Question 4.1 – *How should the structure of the steering group address international perspectives, standards, policies, best practices, etc.?*

Including the participation of entities (both private sector and non-governmental organizations) with international scope (such as ACM, the IEEE Computer Society, and the International Federation for Information Processing) would be one means of addressing international perspectives. Additionally, the interest of other countries in the NSTIC could encourage collaboration of many different kinds, and it would be useful to structure the steering group in a way that keeps that possibility open, rather than foreclosing it because the steering group does not comply with any international best practices or other codes of conduct in this area.

Question 4.2 - *How should the steering group coordinate with other international entities (e.g., standards and policy development organizations, trade organizations, foreign governments)?*

The makeup of certain organizations, such as ACM, includes members from outside the U.S., so including them in NSTIC governance will support coordination with other countries. U.S. government participation in NSTIC should include appropriate State Department personnel and others responsible for international coordination with relevant bodies. This could include appropriate Department of Commerce and Department of Justice agencies, among others.