

Response to NSTIC NOI

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July 22, 2011

1. Structure of the Steering Group

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?

A first assumption is that the words of the NSTIC document are sound and worthy of being implemented, without material change. While clarifications and application of the words, and instantiation of the vision in practice will require much new and creative thinking and work, it is assumed that the terms of the NSTIC document itself are good. The structure of the steering group should first and foremost be chosen so as to ensure that the Guiding Principles and the affirmative statements of policy and direction comprising the NSTIC document will be achieved. That is the success metric for the steering group and the governance of NSTIC in general, and it is the criterion against which any governance structure should be initially chosen and adapted as needed over time.

Structures of governance should be capable of adapting and evolving over time, and initially should include the following three focus areas: business, legal and technology.

The business dimension should ensure that a competitive and vibrant marketplace of relevant solutions, including services, products and business models, can operate and thrive within the identity ecosystem. In addition, the business dimension of the identity ecosystem should ensure open architecture and public infrastructural components will emerge (for more information on this, please see: <http://www.civics.com/2011/04/infrastructure-and-architecture-in-the-information-age.html>).

Beyond the particular infrastructural components that may be unique to the public sector (such as birth, death and licensing information described below), it may also be appropriate to adopt or promulgate market-making tools for the identity ecosystem, such as by using approaches like the CommerceNet eCo Architecture (see: www.connect-once.com/docs/ecoframework.pdf). In this example, section 3.5.2 of the eCo Architecture would describe a marketplace or marketplaces of services related to the identity ecosystem framework. These types of approaches to business infrastructures enabling open architecture can promote competitive, multi-technology, multi-vendor marketplaces of products, services and other solutions to develop and evolve in an identity ecosystem.

The legal dimension should ensure that each of the Trust Frameworks that are recognized for operation within the NSTIC identity ecosystem and approved to use the NSTIC Trust Mark can interoperate at the level of policy and rules. The legal

dimension of the identity ecosystem framework should reduce the need for exponentially expanding use of bi-lateral contracts among players within the identity ecosystem by recognizing and supporting multilateral contractual mechanisms that can scale, interoperate together and meet minimum requirements related to the identity ecosystem.

Privacy, limited liability and rights of identity autonomy for individual human members of the NSTIC identity ecosystem must be supported, protected and advanced as a chief priority. Legal certainty, scalability and reduction in transaction costs for organizational members of the identity ecosystem should be addressed as part of the legal dimension of the work of the steering group.

Another key element of the legal dimension of the identity ecosystem framework will be the trademark, contractual and other rules related to usage of an NSTIC Trust Mark. Careful consideration should be given to how accreditation, certification and trademark law can be woven into the contractual and Trust Framework fabric of the identity ecosystem framework.

1.2. Are there broad, multi-sector examples of governance structures that match the scale of the steering group? If so, what makes them successful or unsuccessful? What challenges do they face?

While to some extent, other groups exist that exhibit certain aspects of the types of governance needed, the NSTIC vision is so unique that fresh thinking will be required to develop appropriate governance to achieve the strategy.

1.3. Are there functions of the steering group listed in this Notice that should not be part of the steering group's activities? Please explain why they are not essential components of Identity Ecosystem Governance.

The creation of individual Trust Frameworks should be left to the bottom-up process of each community to which the Trust Framework applies, and should not be governed by the steering group in any detail. Creation of a model Trust Framework or samples and examples, may be helpful work of or supported by the steering group, however. In addition, developing "default terms" that would apply in the absence of a other explicit, written (including electronically recorded) terms may also be helpful.

Internal dispute resolution within a Trust Framework community or between such communities should ordinarily be left to the disputants to resolve among themselves or via alternative dispute mechanism or if necessary through litigation, and should not be part of the steering group's activities. However, by agreement of all the parties, or in special cases implicating the core security or integrity of the identity ecosystem, it may be appropriate for a dispute resolution process that is authorized and governed by the steering group. Disputes related directly to the essential work and scope of the steering group, however, could be within the purview of the steering group, such as disputes regarding approved or violating use of an NSTIC Trust Mark.

1.4. Are there functions that the steering group must have that are not listed in this notice? How do your suggested governance structures allow for inclusion of these additional functions?

Most likely there will be functions of the steering group that will emerge appropriately over time and that are not currently envisioned or listed in this notice. Assuming the NSTIC identity ecosystem is a success and widely adopted, eventually the systems and interdependencies will be more complex and core to the economy and jurisprudence of the nation, necessitating deeper, more numerous and potentially broader functions for governance and steering.

1.5. To what extent does the steering group need to support different sectors differently?

Different sectors will need to be supported differently to a large extent, especially in the early years of establishment of an NSTIC identity ecosystem. However, many aspects of the governance must be completely common across all sectors. The underlying Trust Frameworks, usage of technology, business models, legal contexts and myriad assumptions of different sectors will be largely unique and will require appropriately tailored treatment. This is especially true regarding the way that assessment criteria for approved use of a Trust Mark will be applied and whether approaches such as levels of assurance will be relevant or helpful to some sectors and other communities of use. Over time, presumably, more common approaches and assumptions will evolve, but quite likely unique aspects will continue indefinitely across sectors. The steering group must be prepared to permit and support legitimate differences across sectors as it develops its assessment criteria and the paradigms, roles, business models, practices, legal arrangements and assumptions that apply across sectors.

1.6. How can the steering group effectively set its own policies for all Identity Ecosystem participants without risking conflict with rules set in regulated industries? To what extent can the government mitigate risks associated with this complexity?

Careful requirements, constraints, drivers and inhibitors analysis must be completed as part of research and development for policies as they will effect and apply to regulated industries so as to avoid conflicting or confusing application of NSTIC policies to such industries. This process of careful mapping at an industry by industry level to define relevant needs can mitigate the risks associated with this complexity. The process of research and adopting intelligently synthesized solutions for this task within NSTIC steering group requires resources, time and focus to succeed.

1.7. To what extent can each of the Guiding Principles of the Strategy— interoperability, security, privacy and ease of use—be supported without risking “pull through” regulation from regulated participants in the Identity Ecosystem?

Please see reply to 1.6.

1.8. What are the most important characteristics (e.g., standards and technical capabilities, rulemaking authority, representational structure, etc.) of the steering group?

If the question is which of the named examples within the parenthesis are most important, then the answer is first and foremost, the “scope and application” of the rule making authority and the power of the steering group to fund work and therefore govern, to some extent, the work and resulting components, services or other aspects of the identity ecosystem framework it has funded. If the scope included funding and governance of large-scale core public identity infrastructure project to promote businesses and services, that would be an important characteristic. However, even without significant funding capacity, if the scope and application of rule making authority at least extended to the functions described as part of the “identity ecosystem framework” described on page 24 of the NSTIC document (<http://www.nstic.us/strategy.html#sec6para10item1>), then the rulemaking authority would be important. The technical capabilities of the steering group itself may not be as important, in the sense that the right people could govern well using rotary phones and parchment, however the management and staff should have access to advanced analytics, real time reporting related to core components of the ecosystem and capacity to use and master the key systems at work in the ecosystem.

1.9. How should the government be involved in the steering group at steady state? What are the advantages and disadvantages of different levels of government involvement?

There would be no more important participant in the steering group at steady state than government, even assuming the group is led by the private sector. The essential nature of individual human identity in a free republic, such as the United States of America, requires the legitimacy, cooperation, support and oversight of the public sector in governance of a nationwide identity ecosystem. This is most obviously and especially true to the extent that the identity of a citizen is used to enable civic participation, democratic engagement in political or electoral processes, freedom of expression and religion, freedom of association, freedom of movement and other core freedoms and liberties. In addition, to the extent government is both a core identity provider - especially at the state and local levels - for individual human members of the identity ecosystem and well as a key relying party, the participation of government is also essential.

Government in its role as infrastructure provider - which is core to the development of nation-wide foundations supporting all manner of markets, architectures and industries - likewise means close participation by the public sector in the steering group at steady state is very important. To the extent that information infrastructure of the future will include identity infrastructure, and assuming that some such components will of necessity relate to key public sector functions such as birth, death and other vital statistics as well as licenses, permits and other attributes, it is clear that the governance, funding, usage and operation of those public infrastructural components by government will be highly relevant to the everyday business of the steering group for an identity ecosystem of the United States of America.

It is important to note that while the presence and full participation by government is important at the start and at steady state for the steering group of NSTIC, the basic axiom of NSTIC that the identity ecosystem and even the steering group should eventually be private sector led is important. The private sector should lead, fund and drive the identity ecosystem and the public sector should provide the initial vision and start-up resources (as it is doing in the current NSTIC process) and set into motion a continuing process whereby the rule of law, public processes and a legitimate, transparent, participatory and accountable process for ongoing governance will adhere.

2. Steering Group Initiation

2.1. How does the functioning of the steering group relate to the method by which it was initiated? Does the scope of authority depend on the method? What examples are there from each of the broad categories above or from other methods? What are the advantages or disadvantages of different methods?

No reply.

2.2. While the steering group will ultimately be private sector-led regardless of how it is established, to what extent does government leadership of the group's initial phase increase or decrease the likelihood of the Strategy's success?

Government will have to be very careful not to stifle NSTIC's implementation with too heavy a hand. However, especially to start, governments role in creating a marketplace, setting rules and ensuring continued legitimacy and oversight will be essential and uniquely important going forward. It will be important to develop a method to transition from initial public sector leadership of the process through the NSTIC National Program Office at NIST to the private sector through such methods as nominations processes, staged and staggered hand-off of responsibilities and leadership of certain functions, and adoption or approval of private sector processes to replace or expand the initial public sector leadership.

2.3. How can the government be most effective in accelerating the development and ultimate success of the Identity Ecosystem?

By tracking to the complete and explicit sections, provisions and words of the NSTIC document, the ultimate implementation will be prone to success because, as is widely agreed, the strategy document is sound and good. To accelerate the development of the identity ecosystem, government can wisely fund key elements of the vision into being (including by coordinating funding and support between the federal, state and local levels of government for key public infrastructural components), it can reform and update statutes and regulation to eliminate barriers and create enabling laws for key aspects of the identity ecosystem, it can be a large user and buyer of the services of the identity ecosystem

and it can commit experienced, senior and energetic public servants to participate in standing up the steering and other functions of the identity ecosystem.

2.4. Do certain methods of establishing the steering group create greater risks to the Guiding Principles? What measures can best mitigate those risks? What role can the government play to help to ensure the Guiding Principles are upheld?

See above replies.

2.5. What types of arrangements would allow for both an initial government role and, if initially led by the government, a transition to private sector leadership in the steering group? If possible, please give examples of such arrangements and their positive and negative attributes.

See reply 2.2.

3. Representation of Stakeholders in the Steering Group

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?

The steering group should include an executive committee of a relatively small group of the best, brightest, most capable and dedicated Americans who are expert in and focused upon the task of bringing the various aspects of the excellent NSTIC document to life and establishing a lasting identity ecology for the country.

There should be three key action groups supporting the steering group, dedicated, respectively, to establishing the business, legal and technology dimensions of the “identity ecosystem framework”, as it is described on page 24 of the NSTIC document (i.e.: “The Identity Ecosystem Framework is the overarching set of interoperability standards, risk models, privacy and liability policies, requirements, and accountability mechanisms that structure the Identity Ecosystem.” <http://www.nstic.us/strategy.html#sec6para10item1>). In it’s simplest form, the identity system framework should be comprised of a document that has a set of general sections, and a business, legal and technology oriented sets of sections, all of which tightly integrate to achieve the functions described for the steering committee on page 24 of the NSTIC document (i.e.: “A steering group will administer the process for policy and standards development for the Identity Ecosystem Framework in accordance with the Guiding Principles in this Strategy. The steering group will also ensure that accreditation authorities validate participants’ adherence to the requirements of the Identity Ecosystem Framework.” <http://www.nstic.us/strategy.html#sec6para10item2>).

Each element of the section of NSTIC titled “The Identity Ecosystem” starting on page 21 (<http://www.nstic.us/strategy.html#sec6>) should be carefully tracked to the scope and application, goals and objectives, deliverables and job descriptions of the steering group, it’s sub or supporting action groups, and the groups that the steering group will contract with, partner with, collaborate with or otherwise coordinate with, so as to ensure alignment with the sound and widely supported terms of the NSTIC document.

Special attention must be paid to the unique and invaluable role of the individual human being in the NSTIC identity ecosystem. According to NSTIC: “An individual is a person engaged in an online transaction. Individuals are the first priority of the Strategy.” (<http://www.nstic.us/strategy.html#sec6list1item1>). It is noteworthy that NSTIC defines online transactions as “electronic communications among two or more parties, connected via networks, systems, and

computers.” (<http://www.nstic.us/strategy.html#sec2para12>). Therefore, the definition of individuals as people who are “engaged in an online transaction” in effect posits the broadest possible scope, and correctly reflects the fundamental primacy of individual people as the source-point of sovereignty in the United States of America. Given that NSTIC appropriately articulates the axiom that individual human beings are the first priority of the identity ecosystem, it stands to reason the the governance and the steering group will support and reflect that policy.

The interests of individuals can be respected, promoted and advocated in many ways. It is important to note that Individuals can directly participate in the steering group as individuals, rather than as representatives of companies, special interests, sectors or other groups. The ancient Roman Republic had a system of governance that enabled direct participation by regular, common individuals (see: http://en.wikipedia.org/wiki/Plebeian_Council). I was myself a member of a new england town meeting, an assembly which in many towns and villages enables any resident who is a voter to directly participate in such matters as setting the local tax rate, deciding priorities such as roads, schools, police, fire, recreation and other services, and setting local public policy. It is an example of direct democracy that lives today as a core feature of governance in these local jurisdictions. Even in the complex and critically important field of healthcare, HHS is now suggesting in it’s proposed rules for Accountable Care Organizations (these “ACO” groups are the new way healthcare is to be organized across the United States) that individual patients play a direct role as members of the governing body for each ACO. At least one person serving it their capacity as an “individual” and on behalf of individuals would be a helpful addition to the steering group, assuming that person was fully capable to engage in the activities of the group.

It would not be difficult to envision methods whereby individuals could participate directly in the steering group, representing and advocating for the interests of individuals directly (perhaps in addition to persons from organizations that represent and advocate for individuals). For example, individuals that participate in the NSTIC identity ecosystem will have identity credentials that could be used to authenticate them as part of authorization to participate in such activities as user groups or even an annual “all members” meeting online, at which time feedback or votes on proposed rules, tools and the choosing of individual representatives on a steering or sub or supporting group for NSTIC could be garnered.

Given the vital importance of online identity to the economy, it will be important to develop an appropriate mix of participants from across many diverse stakeholder groups. The issues, problems and prospects for use of online identity play out in different but important ways depending the context, and it will therefore be important to build in direct participation and other methods of feedback from across the country. The steering and other sub or supporting groups comprising governance of NSTIC should draw from across industries, economic sectors, various roles within the identity ecosystem (e.g. identity providers, relying parties, etc), small, medium and large organizations, geographically diverse organizations and otherwise reflect a representative cross-section of stakeholders.

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

It may be advisable to determine a nominations process whereby many entities can nominate people to participate in aspects of NSTIC governance and operation, and can be directly involved in the selection of at least some members of the steering group. Processes of advice and/or consent related to stakeholders that may not directly participate in the steering group may also be appropriate in some cases, such as when rules or other decisions may effect those entities directly. Surveys, polling and other feedback channels can also ensure relevant stakeholder voices are heard from.

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

Similar to the reply to question 1.6, this question requires and deserves careful consideration that will benefit from an extended process. Initially, the NPO should do the best it can to find and ensure this balance, but it must also build in a longer term process to further study and perfect the achievement of balanced representation among all entities, organizational and individual, alike. There are many methods to protect minority rights, to provide tools to thwart tyranny of the majority, and to afford opportunity for initially unpopular ideas to be heard and considered when they have deep merit and value. This question is central to developing adequate governance and deserves sufficient resources and focus to be adequately studied, considered, implemented and adapted over time.

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?

I have no particular opinion about this, other than to note that the steering group must be funded in some way. This may best be decided by an initial steering group that is at first funded by government itself, and which has as a chief deliverable the development of a more complete and sustainable method of funding for the steering group over time.

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.

In line with the statement in the reply above to question 1.1, it will be important for there to be public identity infrastructure to support an identity ecosystem. There are many ways to create revenue streams from infrastructure, and some of those streams can support the process of governance and steering groups. To the extent that particular components of an identity ecosystem framework can be demonstrated to deliver measurable cost savings, it may also be possible to leverage parts of those savings as a source of funding going forward. There are other methods as well

which should be considered and explored, in line with the reply to question 3.4 above, adequate resources and attention should be afforded this question over time.

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?

No reply.

3.7. How can appropriately broad representation within the steering group be ensured? To what extent and in what ways must the Federal government, as well as State, local, tribal, territorial, and foreign governments be involved at the outset?

Please see the replies above.

4. International

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

Primary focus of NSTIC should be tailored to the unique and special context, culture, jurisprudential and marketplace dimensions of the United States of America. An important aspect of the NSTIC approach is its standards based and pro-interoperability stance, a position that should adequately ensure international compatibility to the extent that makes sense to enable the identity ecosystem framework of the USA. To the extent ideas and approaches from other countries are a good fit for NSTIC, they should be duly considered.