



22 July 2011

Fiona M. Alexander
Associate Administrator
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 4701
Washington, DC 20230
IANAFunctions@ntia.doc.gov

RE: Further Notice of Inquiry on the Internet Assigned Numbers Authority Functions

I. Introduction

The Internet Corporation for Assigned Names and Numbers (ICANN) welcomes the National Telecommunications and Information Administration (NTIA) request for further public comment on potential enhancements to the performance of the Internet Assigned Numbers Authority (IANA) functions.¹ ICANN supports the open and transparent manner in which NTIA has sought input from the Internet community on this topic.

The IANA functions serve the global public interest to ensure the integrity of the Domain Name System (DNS) root zone file, the efficient and equitable allocation of IP numbering resources and the coordination of the assignment of technical Internet protocol parameters. Given their importance, the IANA functions are and must continue to be managed and performed in the most neutral, transparent and accountable manner, for the benefit and under the guidance of the ultimate users of the IANA functions, based on clear policy and according to efficient and documented processes.

¹ Further Notice of Inquiry, Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 34658 (June 14, 2011), available at http://www.ntia.doc.gov/frnotices/2011/fr_iana_furthernoi_06142011.pdf.



As stated by NTIA, the scheduled expiration of the current IANA functions contract provides the opportunity for a “comprehensive review of the IANA functions contract since the award of the first contract in 2000.”² It is an opportunity to increase global confidence that the governance and performance of the IANA functions are carried out in the spirit of the multistakeholder approach. ICANN’s comments in the FNOI are guided by this objective and focus in particular on whether the proposed Statement of Work (SOW) provisions enhances:

- The quality of service for the users of the IANA functions
- The transparency of the process workflow
- Accountability to all stakeholders and respect for the outcome of their respective policy development processes, and
- The stability and predictability of the IANA functions contractual framework.

ICANN submits these comments in response to the Further Notice of Inquiry based on its experience developed over 12 years of operation of the IANA functions and to highlight some implementation issues that may arise from ambiguous wording in the current draft SOW.

II. Continued bundling of the IANA functions

The draft SOW rightly supports a continued bundling of the different functions, which ensures stability in the ongoing performance of IANA functions and takes into account the interdependencies among them.

With respect to the management of the protocol parameter registry and the .arpa domain, the FNOI proposes that they remain subject to the IANA functions agreement. We agree that these functions are closely associated with the other IANA functions and should be operated by the same

² Notice of Inquiry, Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 10569 (Feb. 25, 2011), available at http://www.ntia.doc.gov/frnotices/2011/fr_iananfunctionsnoi_02252011.pdf.



entity. But the functions can continue to be bundled and operated by the same entity without being governed by a single contract. Separating the governance of these functions from the procurement contract would not jeopardize their performance. It would however increase global confidence in the performance of these functions by allowing them to be subject to the oversight of the affected organizations, consistent with the multistakeholder model. Nevertheless, it should be the principal responsibility of IAB and the IETF to comment on whether these should be formally included in the IANA functions contract or left to separate agreements.

III. Performance metrics

In the course of the last 12 years, metrics have progressively been developed for the performance of IANA functions in close cooperation with the relevant users.³ In the spirit of the bottom-up, multi-stakeholder approach, it is the primary responsibility of the relevant stakeholders to determine, with the operator, the appropriate parameters and objectives. Accordingly, the COTR should not have the responsibility to formally approve such agreed performance metrics but, at most, to comment on whether they conflict with any other aspect of the IANA functions agreement.

Under the proposed SOW, the IANA functions operator would become accountable to the U.S. Government rather than to the relevant stakeholder communities. The introduction of a formal approval by the COTR appears to be at odds with the U.S. Government's repeated support for the multistakeholder model and should be replaced with a requirement to object only in the event that the performance metrics conflict with other provisions of the contract.

³ See, e.g., <http://www.icann.org/en/general/ietf-iana-agreement-v8.htm>, <http://www.iana.org/about/performance/ietf-statistics/>. These performance metrics related to the maintenance of the protocol and parameter registry were developed and implemented without a requirement for approval by the COTR.



IV. Process transparency

Ensuring the integrity of the root zone file to guarantee against tampering by any actor is a common and legitimate concern of all stakeholders. Increasing transparency in the workflow of the IANA functions processes is essential to develop confidence in the neutrality, efficiency and accountability of this function. The SOW appropriately envisions that the new contract should include enhanced transparency measures.

As much as possible, without compromising confidentiality requirements, transparency should take place in a timely and predictable fashion. For example, progress in root zone modification requests should become publicly available as soon as is reasonably possible and the requesters should be kept informed of the progress of their requests.

V. Functional separation

The FNOI proposes a complete functional separation of the IANA functions staff from any policy development related to the performance of the IANA functions. Under this approach, it appears that the IANA functions staff would be walled off entirely from policy development efforts and isolated from ICANN staff who may support policy development related to the performance of the IANA functions. While there should be clear separation between the performance of the IANA functions and the development of related policies, the strict functional separation proposal in the FNOI is counterproductive. As explained below, this separation already exists in a manner that permits the IANA functions staff to make valuable and transparent contributions to the policy development process without compromising the integrity of the performance of the IANA functions.



The IANA functions are primarily neutral administrative functions, executed by the IANA functions staff, in application of policies developed separately by the relevant stakeholders. The IANA staff does not develop policies, lead policy development processes, or make policy decisions in the course of performing the IANA functions.

To the extent that the separation proposal is motivated by a concern that the policies and principles applied by the IANA functions staff are unclear, the solution is to allow relevant stakeholders to develop new or clarify existing policies. The multistakeholder community is taking up this charge. For example, to clarify the policy rules applicable to ccTLD delegations and redelegations, considerable joint work between the ccNSO and the GAC is being conducted through the Delegation and Redelegation Draft Working Group. In addition, the ccNSO and the GAC are currently developing a “Framework of Interpretation”, based on RFC 1591 and the GAC Principles. Similarly, the IAB and the IETF are responsible for developing policy related to the coordination of Internet port and protocol parameters, and the addressing bodies (NRO, ASO, RIRs) are responsible for developing policies related to IP numbering resources.

The IANA functions staff have no policy development responsibility with respect to any of these functions but apply the policies developed by the relevant stakeholders in the performance of the IANA functions. The practical distinction between policy development and operational execution of the IANA functions is therefore already a reality. The rigid structural separation introduced in C.2.2.1.1 of the SOW does not appear to be justified by any particular risk of conflict of interest and would unnecessarily prevent the IANA functions staff from contributing their operational and background expertise to external policy processes. IANA functions staff have provided constructive input to a range of past policy development work and their technical expertise



and experience helped inform the multistakeholder policy development process. This approach can and should be allowed to continue as it poses no threat to the neutral and objective performance of the IANA functions.

VI. Compliance with national laws

Paragraph C.2.2.1.3.2 of the SOW states that: “the Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves.” This text is ambiguous and, taken literally, would place the IANA contractor in an untenable position.

The text does not distinguish between ccTLDs and gTLDs but only makes sense in the context of ccTLDs. Existing and future gTLDs are likely to serve many different populations, located in many jurisdictions. However, even among ccTLDs, a growing number have opened their second level domain space to registrants from multiple jurisdictions.

The IANA functions operator should not be placed in the position of having to determine whether or not a particular ccTLD request complies with the law of the relevant jurisdiction. The operator is not equipped, and should not be expected to become equipped, to make such legal determinations. This requirement would place the operator in a potentially untenable position, particularly in the event that a jurisdiction presents conflicting laws, regulations, administrative or judicial decisions. It would create an enormous risk of politicizing the role of the IANA functions operator, and therefore run contrary to the distinction between policy-making and operational implementation.

VII. Documentation requirements for new gTLDs

Paragraph C.2.2.1.3.2 of the draft SOW states: “For delegation requests for new generic TLDs (gTLDs) the contractor shall include documentation to demonstrate how the proposed string



has received consensus support from relevant stakeholders and is supported by the global public interest.” This proposal is inconsistent with the community-approved process for the introduction of new gTLDs as embodied in the Applicant Guidebook (AGB). The AGB was approved in Singapore after intensive multi-stakeholder deliberation that included substantial contributions from virtually all stakeholders, including governments through the GAC. The process for the introduction of new gTLDs is based on a comprehensive set of procedures to address any potential objections from relevant stakeholders. The proposed SOW text seems to replace the process laid out in the AGB with new requirements to demonstrate that each string has explicit consensus support and is consistent with the global public interest.⁴

The IANA functions contract should not be used to rewrite the policy and implementation process adopted through the bottom-up decision-making process. Not only would this undermine the very principle of the multi-stakeholder model, it would be inconsistent with the objective of more clearly distinguishing policy development from operational implementation by the IANA functions operator. Instead, the requirement for the IANA functions operator should be limited to forwarding documentation published by the ICANN Board regarding the approval of each new gTLD delegation request.

VIII. Term of Contract

The FNOI states that in the context of procurement contracts, the current framework is a long-term contract. While that may be true when compared to other procurement contracts, the one-year terms have a destabilizing effect on the DNS and are not helpful in building global

⁴ Explicit support or documented non-objection are required only in certain limited circumstances such as applications for certain geographical names or community-based strings.



confidence. A one-year contract with options to renew exercisable at the sole discretion of the U.S. Government creates a persistent threat that the operator and operations of the IANA functions could be changed at any time. By contrast, a term of at least five years would instill global confidence that the IANA functions will be carried out in a manner that ensures the security and stability of the DNS and other Internet resources. If the current framework must continue, the addition of a presumptive renewal clause would enhance global confidence in the stability of the performance of the IANA functions. Such a modification would also be consistent with NTIA's past practice of routinely exercising the one-year option.

Best regards,

A handwritten signature in black ink, appearing to read "Rod Beckstrom". The signature is fluid and cursive, with a long horizontal line extending to the right.

Rod Beckstrom
President and CEO