

*DRAFT INTERNET SOCIETY RESPONSE TO FNOI
FOR COMMENT ONLY (V.2: 20110715)*

The Internet Society thanks the United States Department of Commerce National Telecommunications and Information Administration for providing a summary of comments submitted to the Notice of Inquiry on The Internet Assigned Numbers Authority (IANA) Functions along with accompanying responses to the major points identified. We appreciate NTIA's providing an additional opportunity to offer detailed comments on a Draft Statement of Work (SOW) and a related series of questions. In issuing the FNOI, the NTIA is demonstrating an increased commitment to open and transparent process, instituting an interactive dialogue that we believe can only lead to better public policy. The outreach to various stakeholders in the Internet community that the Department has undertaken, and their responsiveness thus far to inputs received will contribute to broadening transparency, predictability and global confidence in the way it deals with the IANA function.

We are pleased to provide the following response, and ask that these remarks be read as supplementary to the Internet Society's contribution to the earlier Notice of Inquiry.

In general terms, the Internet Society agrees with many of the points contained in the NTIA comments on the intervenors' comments in response to the March 2011 NOI; however, there are some areas where we believe further clarification would contribute to clarity in the Statement of Work.

First, we welcome the NTIA's restatement of support for the multistakeholder process as an essential strategy for dealing with Internet policy issues in general, and with the IANA functions specifically. The Internet Society has long been a proponent of this model; however, in the context of the IANA Functions Contract, we believe that additional precision about the respective roles, responsibilities and capabilities of the various stakeholders is needed. Specifically, the Internet technical community¹ must be recognized clearly in the Contract as having a different level of responsibility and a greater need for involvement than other stakeholders. While all stakeholders share with the Internet technical community the need for confidence in the IANA contractor, for transparency and accountability, and for engagement in aspects of the policy making process;, the Internet technical community should be singled out as "materially affected parties" to the contract. Making clear this distinction would be consistent with the need to avoid any perception that the Contract is intended to expand the scope of

¹ In this instance referring to ICANN for the DNS, the Regional Internet Registries through the NRO for addresses and AS number registries, and the IETF for other protocol parameters.

IANA, or to assert authority over those organizations, while allowing for the evolution of the roles and responsibilities of the multistakeholder model.

Second, an examination of the roles and responsibilities of the Internet technical community also will highlight the fact that, although the DNS component of the IANA Functions Contract attracts the bulk of the attention of the other non-materially affected stakeholders, it is only one of three IANA functions that are of equal importance to the well-functioning Internet. The Internet Society believes it is imperative that the Contract be drafted in such a way that the full range of IANA functions to be performed by the Contractor are reflected throughout the document and treated as separate functions of equal importance.

A third area where we believe further clarification would be helpful before settling on the final wording of the SOW pertains to the functional separation between the processing of the IANA functions and the development of associated policies. While the Internet Society continues to believe that the staff dedicated to executing the IANA functions should remain separate and removed from making decisions on policies related to the performance of the IANA functions, we also believe that the IANA staff are sometimes uniquely qualified to provide informed inputs to the policy making process, based on their technical expertise and operational experience. We recommend there be explicit permission for such staff to provide technical advice or advice on operational considerations upon request. Their expertise may be helpful in order to provide background information, perform impact analyses, or provide data and statistics during the development of policy. A good policy development process requires informed technical advice from professional staff to understand why a proposed policy may or may not be implementable, or where it could be more effective if it is put forward in one way rather than another.

Finally, we strongly encourage the NTIA to refine and clarify the requirement for the IANA Contractor to document compliance with relevant policies and procedures or, more critically, with relevant national laws as suggested in the Draft SOW. To be consistent with the requirement for the functional separation between the processing of the IANA functions and the development of associated policies, it is essential that IANA staff not be required to assess whether or not requests for processing are compliant with relevant policies and procedures, and most certainly not whether they are compliant with relevant national laws originating in a number of jurisdictions. Compliance is a matter for the policy-making bodies – the ICANN Board, the RIRs through the NRO, and the IETF. Those bodies are responsible for properly carrying out their duties, including where necessary obtaining expert advice as, for example, in the case of complying with national law when required, and the responsibility must remain there. The final SOW must make it clear that the IANA Contractor's staff is responsible only for documenting that the relevant organization has stated that

their decision is compliant with policy, procedures and laws, and not for judging the accuracy of such statements. Assessing compliance is a key policy function, and must therefore remain separate. The same applies to certifying community support; the responsible bodies should inform the IANA Contractor that a decision has been determined to have community support; but the Contractor cannot reasonably be expected to judge whether or not that is true.

Turning to the questions posed in relation to the Draft SOW the Internet Society offers the following comments:

Question 1. Does the language in “Provision C.1.3” capture views on how the relevant stakeholders as sources of the policies and procedures should be referenced in the next IANA functions contract. If not, please propose specific language to capture commenters’ views.

ISOC Response: The language in “Provision C.1.3” is unnecessarily restrictive. Since only some of the data submitted by applicants in connection with the IANA functions is confidential, protection should be limited in scope to apply to only the confidential data. Otherwise, the Contract should presume in favour of transparency. This approach would help to inspire all stakeholders’ confidence that the Government and the Contractor are properly carrying out their functions. Suggested wording (additions are underlined):

C.1.3 The Government acknowledges that some data submitted by applicants in connection with the IANA functions is confidential information. To the extent permitted by law, the Government shall accord any data submitted by applicants in connection with the IANA functions that is justifiably agreed to be confidential with the same degree of care as it uses to protect its own confidential information, but not less than reasonable care, to prevent the unauthorized use, disclosure, or publication of confidential information. In providing data that is subject to such a confidentiality obligation to the Government, the Contractor shall advise the Government of that obligation. The Government shall provide notice that the identified data is being held confidential and explain why such treatment is justified (e.g., “commercial confidential,” “private personal data,” etc.).

Question 2. Does the new “Provision C.2.2.1.1” adequately address concerns that the IANA functions contractor should refrain from developing policies related to the IANA functions? If not, please provide detailed comments and specific suggestions for improving the language.

ISOC Response: As noted above, the new “Provision C.2.2.1.1” seems to go too far in that it could prevent the IANA Functions Contractor staff from providing

important technical advice to the policy development process. It would be preferable to clarify that the IANA Functions Contractor staff should remain separate and removed from the decision making process, but not from providing technical input or input based on operational considerations to the discussions leading to a decision. Suggested wording:

C.2.2.1.1 The Contractor shall ensure that any and all staff dedicated to executing the IANA functions remain separate and removed (not involved) from decision making concerning any policy development that occurs related to the performance of the IANA functions. It is expected that such staff may occasionally be requested to provide expert, technical advice and opinion or input based on operational considerations germane to the policy development process.

Question 3. Does the language in “Provisions C.2.2.1.2, C.2.2.1.3, C.2.2.1.4, and C.2.2.1.5” adequately address concerns that the IANA functions contractor should perform these services in a manner that best serves the relevant stakeholders? If not, please propose detailed alternative language.

ISOC Response: With regard to Provision C.2.2.1.2, we recommend that two important changes be included. First, there should be a clarification that the materially concerned parties specifically should be requested to collaborate in developing appropriate standards and metrics. The wording proposed below recognizes the importance of the knowledge and experience resident in the Internet technical community and their distinct status as clients of the IANA Functions. Second, it needs to be made clear that the role of the Contracting Officer’s Technical Representative (COTR) is to certify the compatibility of the proposed standards and metrics with the terms of the contract, and not to judge their relevance or utility for the clients of the Function. Suggested wording:

... Within six (6) months of award, the Contractor shall submit to NTIA performance standards and metrics developed in collaboration with materially concerned parties for approval. The performance standards and metrics will be approved by the Contracting Officer’s Technical Representative (COTR) unless they explicitly contradict some aspect of the contract. Upon approval by the COTR the Contractor shall perform this task in compliance with approved performance standards and metrics.

Question 5. Does the new “Provision C.2.2.1.3.2 Responsibility and Respect for Stakeholders” adequately address concerns related to the root zone management process in particular how the IANA functions contractor should document its decision making with respect to relevant national laws of the jurisdiction which the TLD registry serves, how the TLD reflects community

consensus among relevant stakeholders and/or is supported by the global public interest. If not, please provide detailed suggestions for capturing concerns. Are the timeframes for implementation reasonable?

ISOC Response: Please refer to the comments above regarding the need to avoid putting the Contractor in the position of having to judge the adequacy of the relevant policy development bodies' performance of their functions. The direction the text in these sections seems to suggest is a significant and major area of concern for the Internet Society. In terms of specific language, ISOC would suggest, for example:

C.2.2.1.3.2 Responsibility and Respect for Stakeholders—The Contractor shall confirm that a request for it to take action refers to the source of the policies and procedures, such as RFC 1591, that have been followed in taking a decision to request the Contractor to process requests associated with TLDs. For delegation requests for new generic TLDS (gTLDs), the Contractor shall affirm that the ICANN Board has passed a resolution approving the new generic TLD (gTLD)

Question 9. Does the new “Section C.4 Performance Standards Metric Requirements” adequately address concerns regarding transparency in root zone management process, and performance standards and metrics? Should the contractor be required to gather and report on statistics regarding global IPv6 and DNSSEC deployment? If so, how should this requirement be reflected in the SOW? What statistics should be gathered and made public?

ISOC Response: With regard to performance standards and reporting, we believe the contract should emphasize openness and transparency to the greatest extent possible. Thus, we believe that the performance progress reports recommended should be posted publicly and not just submitted to the COTR, as suggested in C.4.1. The reporting should be high-level and should respond to the needs of all stakeholders, while being consistent with the recommendations made above with regard to Provision C.2.2.1.2, where the special expert role of the materially affected parties is highlighted. In the same spirit, ISOC recommends that the materially affected parties should be specifically included in the development of the Root Zone Management dashboard to ensure that client needs are met.

The Internet Society does not think it is appropriate for the Contractor to be required to gather and report on statistics regarding global IPv6 and DNSSEC deployment. The Performance Standards Metrics requirements should be limited to the registries IANA operate; for example, concerning DNSSEC, gathering information on the number of DS records in the root zone is appropriate, while monitoring the rate of global DNSSEC deployment is probably outside the scope.