



July 28, 2011

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Comments of the Internet Governance Project (IGP) on the Further Notice of Inquiry on the Internet Assigned Numbers Authority Functions

The Internet Governance Project (IGP) is an alliance of independent academic experts on Internet governance issues. IGP appreciated the NTIA's initiative in organizing a comprehensive review of the IANA functions contract. The questions posed in the original NOI were important and stimulated a valuable round of comments and advice. With the release of the Further Notice of Inquiry (FNOI), however, we were unpleasantly surprised by several items in the proposed Statement of Work (SOW). The FNOI contains proposals for major changes that have no basis in the public comments or in the original set of questions in the NOI.

There are elements in the proposed SOW which could radically alter the nature of the IANA functions contract. Historically, the IANA contract has been a minimal framework for the supervision and auditing of changes to the DNS root in order to ensure neutrality, transparency and accountability. The IANA contract has never been – and must not become – a mechanism by which the U.S. government attempts to influence or second-guess the policies developed by ICANN.

Section C.2.2.1.3.2 of the proposed SOW, however, seems to threaten this principle. In it, the NTIA proposes to require ICANN to document, for each new gTLD it wants to enter into the root, that the proposed gTLD string enjoys “consensus support” and is “in the public interest.” Apparently, the IANA is supposed to make a determination that any new gTLD enjoys consensus support and is in the public interest before it can enter the new string into the DNS root. Note that this review would come after the ICANN Board had already approved a TLD and sent it on the IANA for entry into the root. Note also that

ICANN's elaborate policy for approving a new gTLD does not require global consensus on a gTLD string, nor does it require that new strings make a public interest showing. Indeed, ICANN's policy nowhere defines the global public interest or any metric for assessing TLD applications against a public interest standard. What criteria, then, would IANA use to determine whether a public interest showing had been met? How could IANA make such a determination without also making policy?

We view C.2.2.1.3.2 as a dramatic transformation of the IANA function, one that is unwelcome, unsupported by public comment and dangerous. NTIA seems to be asking the IANA to second-guess the ICANN Board's decision to approve a new gTLD. Both of these documentation requirements would put the IANA in a position to veto the creation of a new TLD after it has been approved by the ICANN Board. This creates unwholesome incentives for industry players or political interests who might oppose the creation of a specific gTLD to lobby the IANA in an attempt to influence the outcome of its consensus and public interest determinations.

We note with some relief that it is possible that the wording of Section C.2.2.1.3.2 is a product of confusion or unintentional error. The objectionable proposal comes in the context of NTIA's discussion of Question 3 in the February 2011 Notice of Inquiry. Question 3 pertained specifically to "root zone management requests for **country code TLDs (ccTLDs)**" (our emphasis). And yet in the FNOI, NTIA has used responses to Question 3 as the basis for establishing new requirements for IANA's delegation of new **generic TLD names (gTLDs)** as well. Indeed, the whole discussion mixes up gTLD and ccTLD issues in a confusing manner. In the case of ccTLDs, it may make sense for IANA to ascertain whether a new delegation or a re-delegation enjoys consensus support among the parties involved, and serves the local and global public interest (as RFC 1591 vaguely suggests it should). It makes no sense, however, for newly approved gTLDs, which will have already passed through an elaborate, expensive process ensuring conformity to ICANN policies, to go through such a review at the hands of the IANA. We hope the NTIA can clarify whether it has confused the criteria that should be applied to the delegation or re-delegation of ccTLDs with the criteria that should be applied to the delegation of new gTLDs.

We were also surprised by NTIA's decision to include in the IANA contract a provision that gives NTIA authority over who ICANN hires as a security director. We saw no question in the original NOI about this topic, and found in the public record no comments by any participants specifically requesting it.

IGP however does strongly support the NTIA's proposal to completely separate the IANA functions staff from any policy development related to the performance of the IANA functions. We think such a separation would help to maintain the independence and neutrality of the IANA. The IANA staff should not develop policies, lead policy development processes, or make policy decisions in the course of performing the IANA functions. We do not think such a separation would prevent IANA staff from being asked factual questions about their activities by other parties involved in policy development.