

Country Code Names Supporting Organization

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Submitted via electronic mail to: *IANAFunctionsFNOI@ntia.doc.gov*

Comments of the Country Code Names Supporting Organization NTIA Further Notice of Inquiry on the Internet Assigned Numbers Authority Functions Docket No. 110207099-1319-02

About the ccNSO

The Country Code Names Supporting Organization (ccNSO) is the ICANN supporting organization responsible for developing global policy recommendations relevant to the operation of the Domain Name System's 241 country code top-level domains (ccTLDs). Nearly half of all ccTLD operators have formally joined the ccNSO since its creation in 2003. ccNSO members come from all ICANN regions, represent over 90% of all ccTLD domain name registrations, include six of the ten largest TLD registries, and account for nearly 40% of all domain name registrations.

While ccTLDs embody the variety and diversity of the global Internet community, they also share a common heritage of service to their local Internet communities. The ccNSO's working methods, including the use of working and study groups, facilitate the participation and input of all ccTLD managers, irrespective of their membership status.

General Comments

The ccNSO welcomes the opportunity to provide comments in response to the Further Notice of Inquiry (FNOI) issued by the National Telecommunications and Information Administration (NTIA) regarding its contract with the Internet Corporation for Assigned Names and Numbers (ICANN) for certain Internet Assigned Numbers Authority (IANA) functions (the IANA Functions Contract).

ccTLDs are consumers of IANA services, and are therefore directly affected by ICANN's delivery of those services. As such, the ccNSO appreciates the NTIA's consideration and adoption of a number of comments included in the ccNSO's 29 March 2011 response to the 25 February Notice of Inquiry on IANA. In particular, the ccNSO welcomes NTIA's commitment to ICANN's multi-stakeholder process for coordination of the Internet's Domain Name System and its decision to keep the three core IANA functions processes bundled and performed by a single entity. The ccNSO also appreciates and supports the NTIA's commitment to automation of the IANA's root zone management functions by the third quarter of 2011 and for improvements to the transparency and security with which this function is executed.

At a broader level, the ccNSO welcomes the consultative nature of the NTIA's approach to reviewing the IANA functions contract, and its openness to consider specific textual edits to the draft Statement of

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Work (SOW). In accordance with this offer, the ccNSO would be willing to discuss the SOW further, in particular drafting formulations.

The ccNSO offers commentary below in relation to a number of sections of the draft SOW that it deems of particular importance to ccTLD stakeholders. This commentary represents the consensus position of the ccNSO membership.

Importance of the multi-stakeholder model

The ccNSO strongly agrees with the NTIA that ICANN's multistakeholder processes must continue to respect and facilitate the participation of all stakeholders, including governments. While there is always room for improvement, the ccNSO has been involved in several IANA-related policy and process development efforts that demonstrate the success of an inclusive approach to ICANN's work.

The IDN Fast Track, adopted by the ICANN Board on the recommendation of the ccNSO, is a very good example of how the process can and should work. In this case, while primary policy development authority lay with the ccNSO under ICANN's bylaws, the foundation for that process was the product of a working group that included members of the GAC, ccNSO, gNSO, and ALAC. This group was tasked with developing and reporting on feasible methods to enable the fast track introduction of a limited number of IDN ccTLDs and, as a result of that cross-stakeholder work, 30 IDN ccTLDs, representing 21 different languages, have been entered into the authoritative root in the last year. While difficult issues have arisen in connection with implementation, those have been the distinct exception. Indeed, we have learned that consultation between IANA and affected stakeholders may be helpful to prevent implementation-related conflicts, especially where new and untested processes are involved.

Another good example of the way in which the IANA functions are dependant upon multi-stakeholder action is the cross-stakeholder work now underway to consider the use of country and geographic names in the DNS. This study group, which includes representatives of the ccNSO, GAC, gNSO, and ALAC, is developing an overview of the scope and issues associated with the use of Country and Territory names as TLD strings and the scope and impact of alternative action paths on IDN ccTLD and new gTLD processes.

Finally, as the FNOI acknowledges, significant cross-stakeholder work is underway with regards to IANA's management of ccTLD-related root zone changes, including the policies for ccTLD delegations, redelegations, and retirement. Over the last year, the ccNSO undertook an exhaustive review of IANA/ICANN handling of delegation, redelegation, and retirement requests. That work highlighted the need for new policy development with respect to ccTLD retirement, and the urgent need for more transparency and consistency in delegating and redelegating ccTLDs under existing policy. Members of the Government Advisory Committee participated in that work, which involved draft reports, numerous public comment periods, and final reports on delegation, redelegation, and retirement issues. Following

publication of the final reports, a cross-stakeholder working group was tasked with developing a “Framework of Interpretation” for applying core policies such as RFC 1591. Members of the GAC, along with representatives of the GNSO and ALAC are full participants in the FOI Working Group, which has commenced its work.

Separation of policy development and operational roles

The IANA function management is an operational role and should follow due process based on agreed consensus policies. The clear separation of policy-related activities from the management of the function is an important principle, however the ccNSO does not believe this concept has been clearly expressed in the current draft SOW.

However, section .2.2.1.1 of the draft SOW requires IANA staff remain “separated and removed” from IANA-related policy development. This does not respond to our concerns about functional separation and while the ccNSO agrees that it is prudent and appropriate that there be clarity regarding the separation of functions and that the key focus of IANA staff should be the technical management functions, we do not think that the community would be well served by a complete prohibition on participation by IANA staff in policy development and policy-related activities that appropriately sit within ICANN’s mandate.

Rather, the ccNSO believes IANA staff should, within the appropriate boundaries noted above, be directed to cooperate with, and provide information and resources to, related policy and process development activities. This collaborative model has been shown, on a number of occasions, to:

- facilitate better communication between the ICANN community and staff;
- inform and improve the deliberations and outputs of Working Groups and policy processes; and
- improve staff understanding of the meaning and objectives of Working Group and policy processes, facilitating a smoother transition to implementation.

For example, IANA staff has served as an important resource for the Delegation and Redefinition Working Group (DRDWG) and it is expected that IANA staff will provide equally important input to inform the deliberations of the Framework of Interpretation Working Group.

Accordingly, we believe that Section C.2.2.1.1. of the draft SOW should be revised to permit IANA-dedicated staff to serve as a resource in support of ICANN policy-related activities that touch on delivery of the IANA functions, as determined by the relevant supporting organization.

In providing this input, the ccNSO notes that its comments, like the FNOI itself, specifically relate to the IANA functions and appropriate IANA staff involvement as a resource to inform policy and policy-related activities. Support for any ICANN Board involvement in policy development should not be inferred as, within the multi-stakeholder model, this appropriately remains the responsibility of the community

through Supporting Organisations and Advisory Committees. As outlined in the ICANN Bylaws, it is the role of the ICANN Board to facilitate the execution of due process through the approval of community-developed policy recommendations, adhering to consistent and transparent processes in taking decisions in relation to delegations and redelegations and to direct staff in implementation of policy recommendations.

Alignment between SOW requirements for standardised documentation and the work of the DRDWG and FOIWG

Section C.2.2.1.3.1 of the draft SOW requires IANA to develop standardised user documentation for root zone changes. Section C.2.2.1.3.2 also calls on ICANN, as part of the IANA functions contract, to develop a process for documenting the source of the policies and procedures and how it has applied the relevant policies and procedures, such as RFC 1591, to process requests associated with TLDs.

In its response to the NOI, the ccNSO expressed support for the clarification and standardisation of documentation and processes. But the ccNSO also noted – and this was adopted in the FNOI - that this relates closely to the recommendations of the DRDWG and the ongoing work of the multi-stakeholder FOI WG which will almost certainly require implementing user documentation.

In this regard, the ccNSO urges NTIA to ensure that the SOW for the IANA Functions Contract does not pre-empt, foreclose, or circumvent the multi-stakeholder process under way to better manage one of the most critical and contentious aspects of IANA services. Rather, the ccNSO believes that the task of adopting standardised documentation must be informed by the output of the FOIWG and, in the interim, we would welcome modifications in IANA documentation and ICANN consideration of IANA reports to address the deficiencies and inconsistencies cited in the findings of the Delegation and Redelegation Working Group.

In addition, the ccNSO recommends that the SOW provide that the timelines specified for performance standards development activity may be modified by the “Contracting Officer’s Technical Representative” (COTR) at the request of the Framework of Interpretation Working Group. This will help ensure that the relevant performance standards reflect any interim and recommendations of the Working Group.

As a procedural note, the published work plan of the ccNSO¹ outlines a two year schedule for the work of the FOI WG, which will produce reports capable of being implemented progressively during the period through to June 2013.

Reference to applicable local law

¹ <http://ccnso.icann.org/about/ccnso-work-plan-2-jun11-en.pdf>

² http://www.ntia.doc.gov/ntiahome/domainname/USDNSprinciples_06302005.htm

The ccNSO agrees that IANA's work should be conducted in a manner that respects all stakeholders, including in particular, the Internet community in the relevant country or territory. The ccNSO also agrees, as a matter of principle, that conflicts regarding the operation of a ccTLD should, in the first instance, be resolved in-country. The ccNSO notes that this perspective is consistent with the stated position of the US Government during the World Summit for the Information Society (WSIS) and its 2005 statement of "Principles on the Internet's Domain Name and Addressing System"².

That being said, the ccNSO wishes to raise a number of issues with respect to section C.2.2.1.3.2 of the draft SOW, which directs the Contractor to "act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves." In the event of a contested delegation or redelegation, the Contractor should not be called upon to determine whether a particular law is applicable, and if so, whether that law complies with the relevant country's standards. In addition to putting the Contractor in an extremely difficult position, the current language of the SOW could operate to deprive ccTLD operators of fundamental due process rights and undermine the rule of law by circumventing domestic judicial and other review processes. The ccNSO suggests, as would normally be the case with respect to delegations made under RFC 1591, that ccTLD operators be required to maintain an in-country presence, giving local government meaningful personal and subject matter jurisdiction to enforce its law with respect to a ccTLD operator.

As a threshold matter, the question of applicable local law is extraordinarily complex. As previously stated, the ccNSO supports the proposition that disputes between a ccTLD operator and the relevant country or territory should be resolved in country. But the ccNSO also believes it is vital that the Contractor not be required to play a role in implementing or enforcing local law applicable to ccTLDs. As a practical matter, a statement in a contract between the U.S. Government and the Contractor is unlikely to determine applicable law in the context of a relationship between the Contractor and a third party, including a ccTLD operator. Given the wide variety of contexts in which ccTLDs were awarded, and the lack of clarity associated with early delegations in particular, the ccNSO recommends that it would be prudent to acknowledge the potential for competing and contradictory jurisdictional claims, which should be addressed on a case-by-case basis.

The ccNSO believes that it is important that the phrasing in the SOW be extremely clear and precise so as to avoid increased frustration and confusion with regard to the applicability of local laws. In light of these observations, the ccNSO urges the NTIA to consider appropriate modifications to references to the applicability of local laws in the draft SOW. Given the complexity of this matter, and the relatively tight timeframes for response prescribed in the FNOI, the ccNSO has refrained from proposing textual edits to this part of Section C.2.2.1.3.2, though would welcome the opportunity to contribute further to the development of suitable language.

² http://www.ntia.doc.gov/ntiahome/domainname/USDNSprinciples_06302005.htm

Other comments on the Draft SOW

The ccNSO also offers the following specific comments on the draft SOW:

- **Section C.2.2:** The ccNSO notes language in the draft SOW that permits the Contractor to establish and collect fees for the performance of the IANA function on a cost-recovery basis and with the endorsement of the Contracting Officer. The ccNSO also notes established principles and practices, as recognized by the US Government, with regard to national sovereignty in the management of ccTLDs and the voluntary nature of ccTLD contributions to the maintenance of the IANA functions. The ccNSO cautions against the retention of language in future drafts of the SOW that would be inconsistent with these recognized principles and practices.
- **Sections C.2.2.1.2 – C.2.2.1.3:** The ccNSO supports development of standards and metrics applicable to ICANN’s performance of the IANA functions, and appreciates the recognition in the draft SOW that such metrics should be developed in consultation with affected stakeholders, including ccTLD operators. Development of standards and metrics are needed, for example, to ensure that demands on IANA resources in connection with the new gTLD program do not adversely affect IANA’s ability to respond in a timely fashion to root zone change requests for existing TLDs. We continue to believe, as stated in our earlier comments, that metrics, standards, and reporting requirements should be properly designed to deliver the information needed without imposing unnecessary burdens.
- **C.2.2.1.3.2** requires COTR approval of changes in policies, procedures, documentation, and mechanisms used to process requests related to ccTLDs. This may be unnecessary and inappropriate in light of (i) the substantial work undertaken to date, and the ongoing collaboration between the ccNSO and the GAC in consultation with other relevant stakeholders and (ii) the formal incorporation of the principle that matters related to the delegation and operation of ccTLDs should be subject to the law of the corresponding jurisdiction. Excluding such policies, processes, documentation, and mechanisms from the approval requirement is consistent with the commitment to the ICANN multi-stakeholder model and would be welcomed by relevant stakeholders as a concrete demonstration of that commitment. It is also fully consistent with the description of the role of the USG relating to security and stability set out in the FNOI.

Similarly, the ccNSO suggests that proposed requirements for the Contractor to demonstrate that delegation requests for new gTLD strings have consensus support and meet the global public interest could be interpreted as contrary to stated commitments to the multi-stakeholder model. The ICANN community has developed and approved mechanisms to ensure new strings fulfill the aforementioned criteria. A number of processes – including opportunities for objection and specific “early warning” mechanisms for governments - were developed in consultation with stakeholders, including the GAC, and have been codified in the final new gTLD Applicant

Guidebook. While recognising and supporting the need for ensuring that new gTLDs have consensus support and are consistent with the global public interest, the ccNSO proposes that the wording in the draft SOW be revised to acknowledge these important tenets and recognise that these assurances are delivered through the multi-stakeholder policy development process and the Board's fidelity to the outcome of that process, rather than requiring a formal, documented reporting mechanism that could be interpreted to infer a lack of confidence in that process.

While recognising and supporting the need for ensuring that new gTLDs have consensus support and are consistent with the global public interest, the ccNSO suggests that the IANA contractor's role should simply be to verify that ICANN has followed the Guidebook process and that all the evaluation criteria (not just the two referred to) have been met.

- **C.2.2.1.3.3** directs NTIA and VeriSign to deploy an automated root zone management system within six (6) months after date of contract award. The ccNSO welcomes development of such a system. This system should, however, reflect input from relevant stakeholders, including ccTLD operators, and we urge NTIA to include a statement to that effect in this provision.
- **C.3, C.4 and C.5** define obligations for the Contractor regarding security requirements and the development and reporting of performance metrics and auditing. As a general observation, the ccNSO supports these measures. The ccNSO also suggests that, to the maximum extent possible, the full range of the Contractor's stakeholders are afforded the opportunity to provide input to these assessment processes and all resultant performance reports be published. In addition, the ccNSO would welcome the inclusion of international quality standardization.

C.6.2 states that the IANA functions contract does not, in and of itself, authorize ICANN to make material changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA functions. The provision further prohibits ICANN from implementing policy changes without the prior approval of the U.S. government. The ccNSO urges NTIA to clarify that this provision is not intended to apply to policies that are properly and appropriately developed through an ICANN PDP or policy-related process. A current example of such a process is the work of the Framework of Interpretation Working Group, which includes participation by GAC members.

Respectfully Submitted on behalf of the ccNSO,



Lesley Cowley
ccNSO Chair