

At-Large Advisory Committee (ALAC) comments in response to the IANA Further Notice of Inquiry (FNOI)

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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

Via email to: IANAFunctions@ntia.doc.gov

RE: Comments on Billing Code 3510-60-P, Department of Commerce National Telecommunications and Information Administration Docket No. 110207099-1319-02RIN 0660-XA23 The Internet Assigned Numbers Authority (IANA) Functions Further Notice of Inquiry.

The At-Large Advisory Committee (ALAC) 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). The ALAC prepared and submitted a Statement of the ALAC to the earlier NOI in March (our reference AL/ALAC/ST/0311/4), and we welcome this opportunity to respond to the Further Notice of Inquiry.

These ALAC Comments to the NTIA were discussed during the July meeting of the ALAC and developed from [wiki](#)-based draft materials and text that were open to public comment and input until the end of 28 July, before transmission to the NTIA. They will become a 'Statement of the ALAC' when ratified by an online vote of the ALAC during early August 2011. At that time, a courtesy copy of the Statement in the standard format and with the ICANN staff cover page/Introduction, etc. will be forwarded under separate cover to the NTIA for its records and archived in the ICANN/ALAC documents store for future public record and review.

About At-Large

At-Large is the name for the community of individual Internet users who participate in the policy development work of ICANN. More than 134 At-Large Structures (ALSes), together representing the views of thousands of individual Internet users, are active throughout the world. At-Large Structures are accredited organisations that are included in the ICANN community and its activities, as a way of participate in building the future of the worldwide Domain Name System (DNS) and other unique identifiers which every single user of the Internet relies on with every online visit made. These ALSes are organised into five geographically-defined Regional At-Large Organisations (RALOs). For more detailed information on this and these structures, please see the Google Map of the RALOs and ALSes at: <http://www.atlarge.icann.org/maps>. It is through this unique and well-

balanced model that we claim a truly global spread of influence between ICANN and both end users and individual domain name registrants 'at-large.'

About the At-Large Advisory Committee (ALAC)

The At-Large community selects a 15-person committee with 3 representatives from each of the 5 ICANN Geographic Regions. Two of these are selected/elected for staggered 2-year terms by each of the RALOs. The third is appointed via the ICANN Nominating Committee, again for a 2-year term, staggered with the 3 regions and alternating with the other 2 in appointment rotation. The At-Large Advisory Committee (ALAC) is an essential driving force in maintaining openness, ensuring accountability and transparency in ICANN's role in the naming and addressing of the Internet.

The attached graphic ([At-Large, RALO and ALAC in ICANN diagram](#)) shows the relationships of each of these structures within ICANN.

For more information please visit: [ALAC and At-Large ICANN At-Large Contact](#) staff@atlarge.icann.org

(Reserved Ref. No. AL/ALAC/ST/0711/3)

Specific comments about the FNOI:

Like other respondents and specifically the ccNSO community, the ALAC welcomes the 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 ALAC further appreciates and supports the NTIA's commitment to automation of the IANA's root zone management functions, as well as the intention for improvements to the transparency and security associated with IANA's functions and reporting. In addition, the ALAC is particularly pleased that the NTIA agrees with us and many in the Internet community that ICANN's multi-stakeholder processes must continue to respect and facilitate the participation of all stakeholders, including governments, in these processes.

Like other parts of the ICANN community, the ALAC is concerned about the separation of Policy Development and the IANA function. Like the ccNSO, we believe that a complete prohibition of the participation by IANA staff in policy development and policy-related activities that appropriately sit within ICANN's mandate is not desired. Having the assistance of such IANA staff at hand is advantageous and serves the community's need to draw on expertise and information that such staff experience bring to deliberations in the bottom-up, consensus-based multi-stakeholder model of ICANN. We therefore ask the NTIA to revise Section **C.2.2.1.1** of the draft SOW to allow IANA staff to act as a resource in support of ICANN policy-related activities that touch on delivery of the IANA functions, as determined by the Charters of relevant Work Groups and/or supporting organisations.

C.6.2 states that the IANA functions contract does not, in and of itself, authorise 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 ALAC is most concerned about this matter and asks the NTIA to assure us that this provision is not intended to apply to policies that are properly and appropriately developed in a bottom-up multi-stakeholder manner through an ICANN PDP or policy-related process.

General Comments:

Term of Contract: The ALAC agrees with the points raised by ICANN in its submission to the FNOI and would seek to have a longer-term contractual arrangement for IANA in the order of five years but would, at this point in time, understand a first contract term with ICANN for a shorter period (renewable with a following two-year option), before any future longer-term contracts were arranged for IANA functions.

The ALAC is actively involved in the current consensus-based work being carried out by the “Framework of Interpretation Working Group” (FOIWG) in ICANN as a Cross-Community Work Group (ICANN multi-stakeholder model). Several terms that this group is discussing and defining relating to delegation and re-delegation issues are raised/used in the FNOI. As such, the ALAC is concerned that the agreed meaning(s)/definitions of terms resulting from the FOIWG outcomes and how they are used in IANA functions ‘match’ or ‘properly relate’ to the meanings and intent assigned to them by the NTIA. Considerable detail and rationale for the concerns the ALAC has on these issues are outlined in the observations; attached to this document (**Appendix 1**), for your ease of reference, is text provided by Mr Keith Davidson, Chair of the FOIWG, as his personal comments to the FNOI, which should be read as also being endorsed as comments from the ALAC and as reflecting issues concerning the ALAC about the FNOI on these specific matters.

Appendix 1

Comments from the original provided by Mr Keith Davidson, Chair of the Framework of Interpretation Working Group (FOIWG), as his personal comments to the FNOI, copied directly with the author's permission.

“... **Question 5** (NTIA Response): Some commenters stated there should be a process for ccTLDs to appeal root management zone decisions made by the IANA functions contractor, in the event it does not follow existing and documented policies. They also noted the need for the IANA functions contractor to consistently interpret broad policy guidance such as RFC 1591, ICP-1 and the GAC ccTLD Principles and publish information that documents the root zone change request process. Commenters suggested that the IANA functions contractor should better respect national sovereignty as it relates to ccTLDs, including the legitimate interests of governments, the local Internet communities, and the primacy of national laws, which have been clearly stated by the GAC in its ccTLD Principles, and the 2005 U.S. Principles on the Internet's Domain Name and Addressing System

Comment 1: The use of the term “local Internet communities” is not defined, and for clarity in referencing for the future, it may be more appropriate to use the language from RFC1591 which refers to “Interested Parties” or “Parties interested in the TLD”. The FOIWG's first report will be on terminology and is likely to include a reference to how the term 'local internet communities' should be interpreted.

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 any policy development that occurs related to the performance of the IANA functions.

Comment 2a: NTIA's recognition of structural separation is critical to ensure IANA remains a function or process. In the absence of policy IANA is appropriately required to seek clarification from the affected stakeholders, rather than developing policy on the fly.

Noting the NTIA response to Question 3 “Furthermore, NTIA agrees with commenters that the inconsistencies in delegation and re-delegation policies might not have occurred if there had been functional separation between execution of the IANA functions and the associated policy development processes”, it should be noted that the DRDWG had its greatest concerns with the ICANN Board decisions on delegations and re-delegations of ccTLDs and their interpretation or creation of policy, rather than any general trend from IANA staff to do so. To remove any doubt regarding the decision making process, an additional clause may be appropriate for inclusion as follows: “Decisions on delegations and re-delegations of TLDs must be made within existing policy frameworks. Where no policy exists to cover a specific instance, the relevant stakeholder communities responsible for policy development should be consulted and any decision made that is not within policy must be openly and transparently disclosed along with the justification for the decision in the specific circumstances”.

Comment 2b: It is a necessary aspect of many Policy Development Processes that IANA staff be engaged with stakeholders during the policy development, for the provision of information, advice and suggestions. This clause as currently worded could be interpreted to mean that IANA staff would be precluded from such engagement or, indeed, any discussion on applicable policies. To remove this ambiguity I offer the following revision: “In executing the IANA functions, the Contractor shall ensure that multi-stakeholder policy development remains free from undue influence by its staff, noting that, upon request from stakeholders, IANA staff shall continue to provide information and guidance to assist stakeholders with policy development relating to the IANA function”.

C.2.2.1.3 Perform Administrative Functions Associated With Root Zone Management - - This function

addresses facilitation and coordination of the root zone of the domain name system, with 24 hour-a-day/7 days-a-week coverage. This function includes receiving delegation and re-delegation requests, and investigating the circumstances pertinent to those requests. This function also includes receiving change requests for and making routine updates to all top-level domains (TLDs) contact (including technical and administrative contacts), name-server, and delegation signer (DS) resource record (RR) information as expeditiously as possible. Within six (6) months of award, the Contractor shall submit to NTIA performance standards and metrics developed in collaboration with relevant stakeholders for approval.

Comment 3a: The 24/7 coverage of IANA administrative functions will be warmly welcomed by the ccTLD community.

Comment 3b: The FOIWG will not conclude its activities until mid year in 2013. The timeframe of 6 months referenced above would require the IANA Contractor to “second guess” the outcomes of this Working Group's activities, and therefore a staged implementation through to mid-2013 for those aspects relating to ccTLD delegation and re-delegation policies would be beneficial.

C.2.2.1.3.2 Responsibility and Respect for Stakeholders - - The Contractor shall, in collaboration with all relevant stakeholders for this function, 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.

Comment 4: RFC1591 is generally accepted by ccTLD Managers as being the applicable policy guiding the delegation and re-delegation of ccTLDs, and steps by NTIA to confirm and strengthen this by enshrining it as the appropriate applicable policy within the IANA functions contract would be beneficial to the ccTLD community.

C.2.2.1.3.2 (continued) In addition, the Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves.

Comment 5: Appreciating the sentiment of the above wording, it appears potentially ambiguous and lacks clarity. For example, if the majority of registrants in a ccTLD are from one legal jurisdiction, and the registry is operated in another jurisdiction, for a ccTLD that applies to yet another jurisdiction, which “relevant national laws” will apply? Perhaps greater clarity could be achieved through phrasing as follows “In addition the Contractor shall act in accordance with the broad principles of subsidiarity”.

C.2.2.1.3.5 Customer Service Complaint Resolution Process - - The Contractor shall establish a process for IANA function customers to submit complaints for timely resolution.

Comment 6: In commenting on Question 5, NTIA notes “Some commenters stated there should be a process for ccTLDs to appeal root management zone decisions made by the IANA functions contractor, in the event it does not follow existing and documented policies”. The introduction of C.2.2.1.3.5 usefully introduces a valid complaints process, and perhaps could be extended to endorse the natural justice right of appeal against IANA decisions, which might be codified as follows “The Contractor shall establish and publish a process for IANA function customers to appeal any decision made by the Contractor which appears to have been made outside of existing and documented policies”....”