



*Promoting Convenience, Choice, and Commerce on the Net*

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March 31, 2011

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National Telecommunications and Information Administration  
1401 Constitution Avenue, NW  
Washington, DC 20230

Subject: Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions.  
Docket Number 110207099–1099–01

Please accept these comments from NetChoice, a coalition of global e-commerce and online companies and over 10,000 small businesses that rely on the Domain Name System. NetChoice works to promote the integrity and availability of the global Internet, and is significantly engaged in Internet governance issues. As an ICANN Business Constituency officer, NetChoice has attended the last 17 ICANN meetings. NetChoice also has participated in all 5 meetings of the Internet Governance Forum (IGF) and testified before several Congressional hearings on ICANN and Internet governance.

NetChoice commends NTIA for asking global stakeholders for ways to “Enhance the performance of IANA functions.” Actually, the specific questions in the RfC go beyond performance, by exploring efficiency improvements for IANA functions while maintaining accountability and transparency. In addition, NTIA asks about disaggregation of IANA functions, which could generate benefits from specialization and diversification of risks.

But before responding to specific questions in the RfC, we address the comment filed by ICANN on March 25, arguing to remove Commerce Department review of IANA function performance. For reasons explained below, we believe that Commerce must retain regular IANA contract reviews in order to hold ICANN to its *Affirmation of Commitments*.

ICANN summarizes the history of IANA functions with “Once ICANN was firmly established, the DOC would fully transfer the management of these functions to the private sector.”<sup>1</sup> But that does not presume that ICANN is the most capable and desirable private sector entity to handle IANA functions. Nor should anyone accept the presumption that ICANN is now “firmly established” at a time when many governments are expressing frustration with the ICANN model. Some governments have even stated they will turn to the United Nations and and ITU to address their concerns with ICANN’s plan to expand generic top-level domains (gTLDs).

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<sup>1</sup> p.3 of ICANN response, at <http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/ACF2EF%2Epdf>, March 25, 2011

In its comments, ICANN contends that the Department of Commerce “relinquished its oversight role” when it signed the Affirmation of Commitments.<sup>2</sup> ICANN offers this insight to urge Commerce to similarly relinquish its oversight role for IANA functions.

It’s true that Commerce relinquished oversight for the *transition* process described in the *Memorandum of Understanding* and the *Joint Project Agreement*. But Commerce did not relinquish its role of holding ICANN accountable to its Bylaws, Articles of Incorporation, and the *Affirmation of Commitments*. Instead, the *Affirmation* broadens ICANN’s accountability to serve the global public interest from this point onward.

Unless and until more parties sign the *Affirmation*, the Commerce Department is the only entity to formally commit to the ICANN model and to hold ICANN to fulfill its commitments. Commerce takes that commitment seriously, as shown by senior officials engaging in the GAC and in *Affirmation* reviews. Many other ICANN stakeholders are engaging in *Affirmation* reviews too, with the expectation that this agreement is how the global community will assess and improve ICANN’s adherence to core commitments and accountability to global Internet users.

Thing is, ICANN can terminate the *Affirmation* with just 120 days notice. And the ink was barely dry on the *Affirmation* when ICANN’s chairman told a gathering of European parliamentarians that he saw the *Affirmation* as a temporary arrangement that he’d like to eventually terminate.

This sentiment seems to hold true for more than just the chair of ICANN. In a breakfast meeting last summer in Brussels, I asked ICANN board members if the commitments in the *Affirmation* should be permanently adopted as part of ICANN’s official charter. One board member immediately disagreed, saying the AoC made no commitments that weren’t already in ICANN’s bylaws. I responded that the *Affirmation* includes important new commitments in paragraphs 3, 4, 7, and 8 – even before we get to the periodic reviews required in paragraph 9. But the present board seemed unconvinced of the need to embrace the *Affirmation of Commitments* as a permanent fixture in ICANN’s future.

All of this to say that ICANN needs a persistent and powerful reminder that it serves at the pleasure of global stakeholders; that it has no permanent lock on managing the Internet’s name and address system.

ICANN’s role in IANA functions should disappear the moment it walks away from the *Affirmation of Commitments*. As noted above the *Affirmation* is cancelable with 120 days notice, which is enough time to find another independent contractor to manage the IANA functions if ICANN isn’t willing to live by its commitments.

In their comments, ICANN contends that the IANA functions should be managed through a long-term cooperative agreement instead of a procurement contract with annual renewal options.<sup>3</sup> Frankly, I don’t think it matters what term and title we use for the agreement by which Commerce allows ICANN to manage some or all IANA functions. For reasons stated above, I

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<sup>2</sup> *Id.* p. 4

<sup>3</sup> *Id.* pp. 4-5

think what really matters is that *someone* – Commerce, for the time being – has the necessary leverage to ensure that ICANN upholds the *Affirmation of Commitments*.

Governments around the world retain similar leverage in their contracts with private sector managers of public resources. Telecom and video franchise agreements and spectrum licenses are examples where revocation is a prime incentive for partners to fulfill their contract and public policy obligations.

Finally, ICANN’s comment on IANA contends, “there is no compelling reason for these functions to be performed exclusively pursuant to a U.S. Government procurement contract.”<sup>4</sup> Above we made a case for Commerce to retain the threat to revoke ICANN’s role in IANA. But if more reason were needed, consider this: ICANN is about to make the largest change to the root in history by adding hundreds of new gTLDs – doubling the size of the root zone. But the *Affirmation* review on the new gTLD program won't even begin until new gTLDs have been in operation for a year. This is surely not the time to release the last bit of leverage holding ICANN to continued adherence to the *Affirmation of Commitments*.

Below are NetChoice specific suggestions on RfC questions:

1. *The IANA functions have been viewed historically as a set of interdependent technical functions and accordingly performed together by a single entity. In light of technology changes and market developments, should the IANA functions continue to be treated as interdependent?*

NTIA should amend its IANA contract to enable separation of .arpa and .int zone administration from the other IANA functions. This is not to say that these functions should be awarded to separate entities in the next IANA contract. Rather, NTIA should take steps now to re-structure the contract paperwork to eventually enable separate bidders and distinct performance requirements. Page 5 of the present IANA contract, for instance, lists protocol coordination, root management, and address allocation as three paragraphs of a single section on “Contract Requirements”

We were interested to understand the present contractor’s view on disaggregation of IANA functions, since they have over a decade of experience with combined functions. But ICANN’s comment is confusing on the question of disaggregation.

In their comment, ICANN described the benefits of breaking IANA functions into three separate agreements and contracting with separate parties.<sup>5</sup> Then in their answer to question 1, ICANN suggests, “Maintaining these functions as part of a cohesive unit encourages the sharing of best practices and confers economies of scale that would not be possible if these functions were split between separate organizations. ... Spreading the functions across separate organizations would decrease the efficiency and resiliency available to a single team.”<sup>6</sup>

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<sup>4</sup> *Id.* p. 6

<sup>5</sup> *Id.* p. 6

<sup>6</sup> *Id.* p.8

We are interested to know how these statements reconcile and welcome ICANN's clarification based on their actual experience running IANA functions.

*2. The performance of the IANA functions often relies upon the policies and procedures developed by a variety of entities within the Internet technical community such as the IETF, the RIRs and ccTLD operators. Should the IANA functions contract include references to these entities, the policies they develop and instructions that the contractor follow the policies?*

We recommend that the next IANA contract include references to specific entities such as IETF and IAB where appropriate.

*3. Cognizant of concerns previously raised by some governments and ccTLD operators and the need to ensure the stability of and security of the DNS, are there changes that could be made to how root zone management requests for ccTLDs are processed? Please provide specific information as to why or why not.*

NTIA's current IANA contract includes, "Contractor shall develop and implement process ...for consulting with the relevant governments and ccTLD managers to encourage greater efficiency and responsiveness to these entities in processing ccTLD requests, consistent with the processing metrics."<sup>7</sup> By now, this contract requirement should have generated answers to question 3. We were unable to view any submissions from the contractor or ccTLD managers, and look forward to learning about their ideas for changes that to improve ccTLD root zone management.

We are particularly interested to know if the present system provides useful checks and balances on root change requests, to ensure that changes do not undermine the security and stability of the DNS. Especially when you consider that the root zone will double in size when new gTLDs are introduced.

*4. Broad performance metrics and reporting are currently required under the contract. Are the current metrics and reporting requirements sufficient?*

Customers served both directly and indirectly by IANA functions have consistently called for greater transparency from the IANA contractor. To the extent that the IANA contract can support greater transparency by providing customers with a better view into the execution of the IANA functions, this could be a valuable improvement. NTIA should explore contractual changes that would allow IANA metrics to be reported publicly.

Sincerely,



Steve DelBianco  
Executive Director  
NetChoice

*NetChoice is a coalition of leading e-Commerce and online businesses who share the goal of promoting convenience, choice and commerce on the Net. More information about NetChoice can be found at [www.netchoice.org](http://www.netchoice.org)*

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<sup>7</sup> IANA Contract, p. 5, item C.2.2.1.2