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Domain Names

NTIA Pulls Plug on IANA Functions RFP, Raising Questions About Contract's Future

The National Telecommunications and Information Administration's abrupt March 10 cancellation of its request for proposals for the Internet Assigned Numbers Authority contract raises more questions than answers.

The IANA functions covered by the contract include the technical processes that make the domain name system work: protecting the integrity of the domain name system root zone file; the efficient and equitable allocation of Internet Protocol (IP) numbering resources; and the coordination of the assignment of technical internet protocol parameters.

These tasks are completely separate from the Internet Corporation for Assigned Names and Numbers' domain name policymaking, but have operated hand-in-hand with ICANN since NTIA first awarded ICANN the contract in 2000.

Concurrently with cancelling the RFP, NTIA extended the current contract for six months. It will expire Sept. 30.

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DAVID TAYLOR, HOGAN LOVELLS, PARIS

NTIA did not explain its reasons for cancelling the RFP. In announcing the cancellation, the agency said that it “received no proposals that met the requirements requested by the global community.”

Those new requirements included added conflicts of interest and transparency standards. NTIA's draft statement of work would also have required the IANA functions operator to, prior to implementing a new generic top-level domain, “include documentation to demonstrate how the proposed string has received support from the relevant stakeholders and is supported by the global public interest” (16 ECLR 1037, 6/15/11).

The NTIA eliminated the “public interest” requirement from the approval of new TLDs after it was not supported by public comment.

ICANN signed up as an interested vendor, and presumably applied. A pair of other businesses signed up, too—Maine-based USA Webhost, and Virginia-based

Bluemont Technology & Research Inc.—but it was widely expected that NTIA would award ICANN the contract.

There is a lot of speculation about why NTIA pulled the plug on this RFP, but there are no public answers yet.

Public speculation on the possible reasons run the gamut of scenarios:

- ICANN's application was simply incomplete;
- ICANN failed to meet the contract's new standards on separation between policymaking and implementation; transparency; or conflict of interest policies;
- the rejection could represent a more general backlash to ICANN's leadership and recent activities, including approval of .xxx and the new gTLDs program; or
- caution on the part of the NTIA in light of international pressures—particularly as the International Telecommunications Union prepares to meet in Dubai, United Arab Emirates, in December to renegotiate a 24-year-old global telecommunications treaty.

NTIA told Bloomberg BNA that it could not comment on the matter due to procurement rules. ICANN spokesperson Andrew Robertson told Bloomberg BNA that the Department of Commerce advised ICANN that it can seek a debriefing on the decision to cancel the bid.

“ICANN intends to promptly seek the debriefing and hopes to be able to have additional information to share to the extent permitted under U.S. federal procurement laws and regulations,” Robertson added.

The announcement came on the eve of ICANN's San Jose, Costa Rica meeting. The meeting runs through March 16.

NTIA: No Proposal Met Requested Requirements. In anticipation of the impending expiration of the IANA contract, NTIA requested public input on how to enhance the performance of the IANA functions.

Based on the input it received from stakeholders around the world, NTIA added new requirements to the IANA functions' statement of work:

- structural separation of policymaking from implementation;
- a robust companywide conflict of interest policy;
- provisions reflecting heightened respect for local country laws; and
- a series of consultation and reporting requirements to increase transparency and accountability to the international community.

“[W]e are cancelling this RFP because we received no proposals that met the requirements requested by the global community,” NTIA said.

It is not yet clear where the proposals were lacking.

What Happened? And What Now? The development caught many in the ICANN community by surprise, although there have been hints that all was not well between ICANN and NTIA, Steve DelBianco, executive director of NetChoice, a Washington, D.C.-based trade association, told Bloomberg BNA.

David Taylor, Hogan Lovells, Paris expressed a similar view.

“It is quite a surprise that NTIA have done what they have done but when you think about there is some logic—ICANN is in such a state of flux at the moment, with new gTLD application window closing in 4 weeks’ time, the whole process of new gTLD evaluation and objection ahead, the current CEO leaving in July—that the NTIA may simply be waiting to see how things play out,” Taylor said.

“Think of this as NTIA showing ‘tough love’ for ICANN, since this reduces the risk of ICANN approving highly controversial new TLDs in this year’s expansion program,” DelBianco added.

“Any controversy between ICANN and governments would be an opening for the United Nations and ITU to close-down ICANN’s model of private sector leadership in a multi-stakeholder model,” DelBianco added.

ICANN has said that it will provide more information, as permitted under procurement laws, after its debriefing with the Commerce Department.

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MILTON MUELLER, SYRACUSE UNIVERSITY SCHOOL OF INFORMATION STUDIES

“Both NTIA and ICANN have an obligation to be more open about what has actually happened here,” Milton Mueller, co-director of the Convergence Center at Syracuse University School of Information Studies, and longtime participant at ICANN, told Bloomberg BNA. “Otherwise we will have to conclude that NTIA is not acting in good faith,” Mueller added.

NTIA’s cancellation of the RFP is not necessarily inconsistent with its recent public statements supporting ICANN’s multistakeholder model, Mueller said.

“If ICANN truly was not responsive to specific aspects of the RFP then it would be incumbent upon Commerce to not award the contract,” Mueller said.

“On the other hand, if ICANN is simply being zapped with a cattle prod in order to get it to conform to U.S. government policy expectations, that, too would not be entirely inconsistent with NTIA’s recent attempts to push and even bully ICANN into certain policies that are only supported by certain interests via the Government Advisory Committee (GAC),” Mueller said.

“The U.S. government wants ‘multistakeholderism,’ but a multistakeholder institution that is tied to a string that it can jerk,” Mueller added.

The contract’s new public interest requirement for gTLDs is a major issue, Taylor added. “The concerns of the GAC for strings in the root being ‘in the public interest’ is certainly at the forefront of discussion,” Taylor said.

“There is a lot at stake at present in the internet world—with the launch of new gTLDs and the risk these present, the potential threat to brand owners, the continuing discussion over rights protection mechanisms, numerous voices crying out against them, and a potential claim to move internet governance to the ITU, ICANN certainly has a lot on its plate!” Taylor added.

Mueller remarked that, if NTIA ultimately does not award the contract to ICANN, there could be a rather interesting parting of the ways between the large community of DNS actors organized around ICANN and the U.S. government.

“The registrars and registries would be able to declare their independence of the U.S. government, if they had the guts,” Mueller said. “That, from my point of view, might not be a bad outcome,” he added.

Negotiations between ICANN and NTIA could fare better after other uncertainties at ICANN are resolved in the coming months. “The good thing is that NTIA has nevertheless extended ICANN’s current IANA contract . . . so that gives everyone time to work through the issues, and there will also be a new CEO at the helm of ICANN then to negotiate with the NTIA,” Taylor said.

NTIA intends to reissue the RFP at a future date, saying that it will ensure that the requirements of the global internet community can be served.

Technical Duties Covered Under IANA. Under the current IANA functions contract, ICANN is permitted to carry out administrative duties that are crucial to the operation of the internet. These duties include: management of the domain name system, administration of the root server system, and allocation of internet address space.

ICANN has controlled the primary IANA functions since the NTIA awarded ICANN a contract to do so in 2000. The contract was renewed in 2001, 2004 and 2005.

This is the first time NTIA has put the contract out for bids, and the second time it has exercised its option, at Clause 1.5, to extend the contract by six months to complete the procurement process.

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STEVE DELBIANCO, NETCHOICE

The contract states that it can be extended in six-month increments, but the total duration of the contract cannot exceed 66 months. The current contract went into effect Aug. 11, 2006.

Re-Writing of gTLDs Approval Process? In NTIA's draft statement of work on IANA, it proposed language that could have given the IANA administrator something akin to final approval over which new gTLDs get added to the root.

At the time, Mueller told Bloomberg BNA that the change could result in chaos. Despite the NTIA's recognition of the need to create a barrier between the policy development and the technical implementation of internet governance duties, the revisions to the contract would have required the IANA operator to make a policy determination after ICANN has already made a policy decision to approve a new top-level domain.

ICANN similarly criticized that proposed change, saying it overstepped NTIA's role in the multistakeholder internet ecosystem (16 ECLR 1258, 7/27/11).

Among other things, ICANN said that NTIA appeared to be unnecessarily intruding into the already agreed-upon approval process for ICANN's new top-level domains initiative by requiring documentation of consensus approval from relevant stakeholders.

"The IANA functions contract should not be used to rewrite the policy and implementation process adopted through the bottom-up decision-making process[.]" ICANN wrote.

In the end, Mueller noted that NTIA eliminated that requirement, following public comments that did not support it.

ITU Talks Loom in Background. Some international governments, dissatisfied by what they see as a U.S.-controlled approach to internet governance under ICANN, have proposed giving the ITU greater control over internet governance matters.

The ITU operates under the auspices of the United Nations. Earlier this year, Lawrence Strickling, assistant secretary for communications and information at the Department of Commerce, and NTIA administrator, said it was important for the U.S. government to stand behind ICANN's multistakeholder approach to internet governance, saying the ITU World Conference on International Telecommunications in December presents an opportunity for countries like Russia to "shoehorn the internet into a supranational regulatory body," (17 ECLR 132, 1/18/12).

In a Jan. 23 memo, the administration predicted that the ITU meeting poses little threat of an internet "take-over."

"One year ago, there was great and widespread concern that [the meeting] would be a battle over investing the ITU with explicit Internet governance authority, and that the U.S. would be confronting wholly-new, stand-alone draft treaty texts built on Internet governance and cybersecurity provisions[.]" they wrote.

In response, the United States developed a draft position that sought to use existing ITU regulations as the basis for treaty negotiations and, within their more narrow scope, achieve further deregulation of international telecommunications markets.

Negotiations thus far have been a success, the administration added. In what the administration deemed "round one" of the negotiations, the existing regulations were chosen as the framework for negotiations.

Looking forward to round two, key challenges include developing nations' hesitance to embrace the U.S. minimalist approach, they added.

Looking ahead, the ITU will host council working group meetings April 23-25, and June 20-22. ITU staff will produce a report on the negotiations after the June meeting, including all inputs and reports on preparatory activities, presenting all options and views for the December meeting.

ICANN Also Seeks Comments on Board Conflicts Policy.

ICANN requested comments March 11 on revisions to the board's conflict of interest policy.

Comments must be submitted by April 2.

At the ICANN meeting's opening ceremony in San Jose March 12, CEO Rod Beckstrom said it is time for ICANN to strengthen its conflict of interest rules. "This is necessary not just to be responsive to the growing chorus of criticism about ICANN's ethics environment, but to ensure that absolute dedication to the public good supersedes all other priorities," Beckstrom added.

By AMY E. BIVINS

NTIA's extension of current IANA contract at <http://ntia.doc.gov/other-publication/2012/notice-extension-internet-assigned-numbers-authority-iana-functions-contract>.

NTIA's announcement regarding cancellation of the IANA RFP at <http://ntia.doc.gov/other-publication/2012/notice-internet-assigned-numbers-authority-iana-functions-request-proposal-rf>.

ICANN's call for comments on conflicts of interest at <http://www.icann.org/en/news/announcements/announcement-2-11mar12-en.htm>.