



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

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July 29, 2011

Fiona M. Alexander  
Associate Administrator, Office of International Affairs  
National Telecommunications and Information Administration  
1401 Constitution Avenue, NW  
Washington, DC 20230

Subject: Further Notice of Inquiry on the Internet Assigned Numbers Authority (IANA) Functions.  
(Docket Number 110207099-1319-02)

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 DNS. 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 19 ICANN meetings. NetChoice also has participated in all meetings of the Internet Governance Forum (IGF) and IGF-USA, and testified before multiple Congressional hearings on ICANN and Internet governance.

NetChoice strongly supports NTIA's deliberative approach to reviewing the IANA functions in light of comments from all global stakeholders. In the previous request for comments on the IANA contract, NetChoice submitted<sup>1</sup> several suggestions, one of which is particularly relevant to this FNOI. Specifically we have two recommendations related to the administration of IANA functions and completion of the draft SOW published with the FNOI.

**1. Requiring the IANA contractor to include documentation on "consensus support" and "global public interest" for new gTLD delegation requests.**

Paragraph C.2.2.1.3.2 of the Draft SOW would require for new gTLD delegation requests:

"the Contractor shall include documentation to demonstrate how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest."

Along with many other observers, NetChoice initially perceived this as requiring the Contractor to independently assess the level of consensus support and public interest for new gTLDs. (We raised this concern during the Public Forum at the ICANN meeting in Singapore last month). After further examination and discussions, we came to understand that the IANA Contractor

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<sup>1</sup> NetChoice comments, at <http://www.ntia.doc.gov/files/ntia/comments/110207099-1099->

would only be responsible for including documentation *provided by the entity requesting the new gTLD delegation*. It's a relief to know that the contractor would not have to pass judgment on consensus or public interest support.

However, we still have concerns about requiring the IANA Contractor to determine the type and quantity of documentation it must request and include in order to meet this requirement.

This will not be so difficult when it comes to documenting "consensus support", which can readily be shown by evidence of processes where relevant stakeholders contributed to the system and substance of evaluations that resulted in a new gTLD string delegation.

But how would the IANA Contractor know if they had gathered documentation adequate to show that a string was "supported by the global public interest"? NetChoice applauds NTIA for focusing on the global public interest, but the IANA Contractor should not be asked to define the "global public interest" in order to fulfill its obligation under the proposed SOW.

While it may be outside the scope of this FNOI, it is worthwhile for NTIA to develop a working definition of the term "global public interest" as it relates to the IANA functions for the DNS. Because the IANA functions are, by definition, technical, it is important that the term "global public interest" not be used to expand the responsibilities or scope of the IANA contractor into policy interpretation or application.

In previous discussions of the global public interest in the context of DNS management, NetChoice has offered a definition that includes two terms: *availability* and *integrity*.<sup>2</sup> From the perspective of domain registrants and Internet users around the world, these terms are the principal "public interests" served by the technical operators and managers of the DNS:

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| <b>Availability</b> | <ul style="list-style-type: none"><li>• Registrants should have availability of suitable top-level domains in all languages and scripts</li><li>• DNS resolutions must be available 24 hours a day, 365 days a year, from anywhere on the globe</li></ul> |
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| <b>Integrity</b> | <ul style="list-style-type: none"><li>• gTLD operators must be held to the terms of their registry contracts, including promised restrictions and standards for community gTLDs</li><li>• Internet users and law enforcement require integrity of registrant data displayed in Whois</li><li>• Preventing falsification or redirection of DNS resolutions</li></ul> |
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<sup>2</sup>NetChoice post at [www.circleid.com/posts/to\\_serve\\_the\\_public\\_interest\\_you\\_first\\_have\\_to\\_define\\_public\\_interest](http://www.circleid.com/posts/to_serve_the_public_interest_you_first_have_to_define_public_interest)

These definitional elements are equally applicable to the IANA functions, so it may be worthwhile to use this starting point for developing a technically focused definition of the term “global public interest”.

## **2. Continue the IANA Functions contract under a one-year term to support continued accountability – particularly since ICANN is likely to retain the contract.**

In the FNOI, NTIA discusses the IANA Functions contract as having a typical term of one year, while previous contracts could span as long as five years if renewal options were exercised. Given the current state of flux in both DNS management specifically and in global Internet governance, NetChoice believes it is appropriate to maintain a one-year term for the IANA functions contract.

Particularly insofar as the changes contemplated under the Draft SOW are intended to improve accountability, transparency and efficiency in the IANA process, a one-year contract renewal term provides a unique opportunity to review the impact of any changes made to the SOW and to ensure that those improvements have had the desired effect.

Moreover, we believe that NTIA should retain *annual* IANA contract reviews in order to hold ICANN – the most appropriate and likely IANA Contractor – to uphold the *Affirmation of Commitments*.

In its comments in the prior round, ICANN contended that NTIA “relinquished its oversight role” when it signed the *Affirmation of Commitments*.<sup>3</sup> ICANN offered 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*, NTIA is the only entity to formally commit to the ICANN model and to hold ICANN to fulfill its commitments. NTIA 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.

However, 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.

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<sup>3</sup> *Id.* p. 4

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 of 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. Annual reviews for the IANA Contract can provide such a powerful reminder.

ICANN's role as IANA contractor should be terminated if ICANN were to walk away from its *Affirmation of Commitments*. The annual review process allows sufficient time to find another contractor to manage IANA functions if ICANN isn't willing to live by its commitments.

Furthermore, a one-year term gives the current IANA contractor an opportunity to continue meeting its obligations under the *Affirmation* and demonstrate its commitment to improving accountability and transparency. As the IANA contractor rises to the challenge of meeting those requirements, it will increasingly secure its global legitimacy and stabilize global Internet governance. When those goals are met, it may become appropriate for NTIA to extend the term of the IANA functions contract, with the knowledge that the contractor has earned the trust of the global Internet community.

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)*