

## **Asia Pacific Top Level Domain Association**

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### **Comments of the Asia Pacific Top Level Domain Association NTIA Further Notice of Inquiry on the Internet Assigned Numbers Authority Functions**

#### **About APTLD**

The Asia Pacific Top Level Domain Association (APTLD) is an organisation for country-code Top Level Domain (ccTLD) registries in the Asia Pacific region. APTLD was established in 1998, and was legally established in Malaysia in 2003.

APTLD works as a forum for information exchange regarding technological and operational issues relating to domain name registries in the Asia Pacific region. Also, as an interface to other international Internet coordinating bodies, APTLD fosters and elevates participation of AP ccTLDs in these global fora, as well as acting in the best interest of APTLD members in global Internet policy making processes. APTLD's vision is for all members to operate world class ccTLDs.

#### **General Comments**

APTLD 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). APTLD appreciates the open spirit of consultation through which this process has been undertaken and welcomes the NTIA's acknowledgement and adoption of a number of stakeholder comments – particularly from ccTLD managers – in response to the initial Notice of Inquiry issued on 25 February 2011.

In particular, APTLD welcomes NTIA's:

- decision to keep the three core IANA functions processes bundled and performed by a single entity;
- stated commitment a multi-stakeholder model for coordination of the Internet's Domain Name System; and
- commitment to automation of the IANA's root zone management functions and to the transparency and security with which this function is executed.

In addition to these general observations, APTLD would like to offer a number of comments on specific aspects of the draft Statement of Work, reflecting issues that are of most relevance to its membership.

## **Separation between policy processes and IANA's operational role**

### ***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.***

APTLD welcomes NTIA's recognition of the importance of structural separation between policy-related activities and the purely operational nature of the management of the IANA functions. The IANA function should, at all times, follow due process based on agreed consensus policies and, in the absence of policy, IANA must seek clarification from affected stakeholders, rather than developing policy itself. Given the critical nature of this tenet, APTLD believes it must be very clearly stated in the SOW.

That said, APTLD does not believe that a complete prohibition on participation by IANA staff in policy development and policy-related activities would serve the interests of the communities who are empowered to develop IANA related policies. Rather, APTLD believes that IANA staff engagement during these processes – for the provision of information, advice and suggestions – would facilitate better communication between the community and staff, inform and improve the outcomes of policy processes and facilitate a smoother transition to staff implementation of policies.

As currently worded, C.2.2.1.1 could be interpreted to mean that IANA staff would be completely precluded from such engagement or any discussion on applicable policies. To remove this ambiguity, APTLD supports the revision of this clause and offers the following wording:

*“In executing the IANA functions, the Contractor shall ensure that multistakeholder 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”.*

APTLD also welcomes NTIA's acknowledgement that: “. . .the inconsistencies in delegation and redelegation policies might not have occurred if there had been functional separation between execution of the IANA functions and the associated policy development processes.”

However, APTLD notes that the ccNSO Delegation and Redelegation Working Group<sup>1</sup> had its greatest concerns with the ICANN Board's decisions on delegations and redelegations of ccTLDs and their interpretation or creation of policy, rather than any general trend from IANA staff to do so.

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<sup>1</sup> The DRDWG was a cross-constituency group tasked with advising the ccNSO Council whether it should launch a policy development process to recommend changes to current policy for delegation, re-delegation and retirement of ccTLDs. The group delivered its final report in February 2011 - <http://ccnso.icann.org/workinggroups/final-report-drd-wg-17feb11-en.pdf>

To remove any doubt regarding the decision making process, an additional clause as follows may be appropriate for inclusion:

*“Decisions on delegations and redelegations 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”.*

### **Reference to applicable local law**

Section C.2.2.1.3.2 of the draft SOW requires that *“the Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves.”* As a general principle, APTLD 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. In addition, conflicts regarding the operation of a ccTLD should, in the first instance, be resolved locally. Failure to adhere to this principle could undermine stakeholders’ right to due legal process.

However, APTLD notes that the question of local law is extraordinarily complex for ccTLDs and phrasing in this section of the SOW must be extremely clear and precise so as to avoid increased frustration and confusion with regard to the applicability of local laws and urges the NTIA to consider appropriate modifications. While APTLD has refrained from proposing textual edits to this part of Section C.2.2.1.3.2, we would welcome further clarification and the opportunity to contribute further to the development of suitable language.

### **Powers and responsibilities of the Contracting Officer’s Technical Representative (COTR)**

C.2.2.1.3.2 of the draft SOW requires COTR approval of changes in policies, procedures, documentation, and mechanisms used to process requests related to TLDs. APTLD suggests that this wording may be unnecessary and inconsistent with existing work within ICANN and the US Government’s stated commitment to a multi-stakeholder governance model.

Specifically, APTLD notes that substantial work has been undertaken by the community to develop and refine the interpretation of policies, procedures and mechanisms that could be interpreted as part of this clause. This includes the recommendations of the DRDWG and, in the case of new gTLDs, the development of the gTLD Applicant Guidebook. APTLD also cites, as an example, the ongoing collaboration between the ccNSO and the GAC in consultation with other relevant stakeholders via the Framework of Interpretation Working Group.

Excluding such policies, processes, documentation, and mechanisms from the SOW approval requirements would be consistent with the USG’s 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.

## **Alignment between SOW and 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. Also, as noted in the commentary above, Section C.2.2.1.3.2 calls on ICANN 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.

APTLD supports the clarification and standardisation of IANA documentation and processes, though notes that this requirement relates closely to the recommendations of the DRDWG and the ongoing work of the multi-stakeholder FOIWG.

In this regard, APTLD suggests that NTIA ensure that the SOW does not pre-empt the process under way through the FOIWG to better manage one of the most critical and contentious aspects of IANA services. The task of adopting standardised documentation should be informed by the output of the FOIWG and APTLD proposes that the wording of the draft SOW be amended to allow mechanisms for accommodating this input, and addressing the deficiencies and inconsistencies cited in the findings of the DRDWG.

## **Contractor fees**

APTLD notes that section C.2.2 of the draft SOW 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.

APTLD also notes established principles and practices, as recognised by the US Government, with regard to sovereignty in the management of ccTLDs and the voluntary nature of ccTLD contributions to the maintenance of the IANA functions.

APTLD shares concerns expressed by the ccNSO and cautions against the retention of language in future drafts of the SOW that would be inconsistent with these recognised principles and practices.