

COALITION FOR ONLINE ACCOUNTABILITY

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July 29, 2011

VIA E-MAIL ONLY: IANAFUNCTIONSFNOI@NTIA.DOC.GOV

Ms. 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

Re: NTIA Further Notice of Inquiry: The Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 34,658 (June 14, 2011)

Dear Ms. Alexander:

The Coalition for Online Accountability (COA) appreciates this opportunity to respond to the above-referenced Further Notice of Inquiry (FNOI).¹

COA commends NTIA for its transparent approach to this important issue, as exemplified by its decision to present for public comment a draft Statement of Work (SOW) to be performed by the IANA functions contractor. The main focus of our comment is to support one critical element of the draft SOW: the provision in paragraph C.2.2.1.3.2 that requires the IANA contractor, in the case of “delegation requests for new generic TLDs,” to “include documentation to demonstrate how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest.” COA fully agrees with

¹ COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company.

American Society of Composers Authors & Publishers (ASCAP)	Broadcast Music Inc. (BMI)	Entertainment Software Association (ESA)
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Time Warner Inc.		The Walt Disney Company

Counsel: Steven J. Metalitz (met@msk.com)

NTIA that such a requirement “provides checks and balances for TLD root zone management changes, to ensure the continued stability and security of the DNS.” FNOI at 34664.

We note that ICANN, in comments filed on July 22 in this docket, has objected to this requirement, on the grounds that it is “inconsistent with the community-approved process for the introduction of new gTLDs,” by which it refers to the process approved by the ICANN board on June 20. See http://www.ntia.doc.gov/files/ntia/icann_fnoi_comments_20110722.pdf, at 7. We reject the implication that any action taken by the ICANN board, or pursuant to a process approved by it, is automatically and conclusively deemed to be in the global public interest, and thus immune from any further scrutiny under that rubric. To the contrary, as spelled out in our response to the initial NOI on March 31, ICANN’s decision to launch an unlimited roll-out of new gTLDs is the best example of an ICANN action that is not being taken “for the benefit of global Internet users.” <http://www.ntia.doc.gov/files/ntia/comments/110207099-1099-01/attachments/COA%20NOI%20response%20re%20IANA%200331111.pdf>, at 2.

Indeed, developments since the initial NOI round have re-emphasized the question “for whose benefit is the new gTLD program being undertaken?”. On July 17, less than a month after convening a special Board meeting on June 20 for the sole purpose of approving the new gTLD program before his Board term expired, ICANN’s former Board chairman announced that he was joining “the only publicly traded company focused exclusively on acquiring and operating new generic top-level domains” as Executive Chairman. See <http://www.tldh.org/2011/07/peter-dengate-thrush-appointed-as-executive-chairman-of-tldh/> (quoting company CEO as hailing former ICANN board chairman as having “championed successfully the approval of the new gTLD programme at the highest levels and with Peter on board I have every confidence we will achieve the same success at TLDH,” and quoting former ICANN Board chairman that “New gTLDs represent a major opportunity for the Company and its investors.”) This development tends to confirm COA’s view that “the new gTLD process, like so much of ICANN’s agenda, has been ‘led’ by only a small slice of the private sector, chiefly the registrars and registries who stand to profit from the introduction of new gTLDs.” COA March 31 submission, at 2. If a “check and balance” on addition of these new gTLDs to the root was advisable prior to this announcement, it now appears to be indispensable.

It would be unjustified to assume, as ICANN appears to do, that the successful passage of a particular new gTLD application through the process established by ICANN necessarily equates to a finding that the global public interest test has been satisfied. Requiring documentation that each application meets this test is fully consistent with the U.S. government’s “historic role in authorizing changes or modifications to the authoritative root zone file.” See NTIA 2005 Statement of Principles, <http://www.ntia.doc.gov/other-publication/2005/us-principles-internets-domain-name-and-addressing-system>. The requirement of the draft SOW would not, as ICANN charges, “undermine the very principle of the multi-stakeholder model”; instead, it buttresses the goal set forth in the Affirmation of Commitments, and not yet fully implemented by ICANN, of a “multi-stakeholder, private sector-led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users,” Affirmation of Commitments, at

http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf, paragraph 4 (emphasis added). This requirement of the draft SOW should be retained.²

One other statement in the ICANN submission of July 22 calls for a brief comment. Astonishingly, ICANN attacks the draft SOW on the ground that under it, “the IANA functions operator would become accountable to the U.S. Government rather than to the relevant stakeholder communities.” ICANN submission, at 3. This statement seems to reflect a fundamental misunderstanding of the nature of a contractual relationship with the U.S. government. Indeed, it would be difficult for NTIA to justify entering into a contract, for the performance of functions vital to a secure and stable Internet, under which it would surrender the ability to hold its contracting partner accountable for performing those functions.

Thank you for considering the views of the Coalition for Online Accountability. If there are any questions or you need further information, please contact the undersigned.

Respectfully submitted,

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² We agree with ICANN that a different sentence in paragraph c.2.2.1.3.2 of the draft SOW should be phrased more precisely. The requirement for the IANA contractor to “act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves” would be very difficult to apply to gTLDs, which almost by definition could potentially serve inhabitants of every jurisdiction in which there are Internet users. The requirement may be more feasible for ccTLDs. See ICANN submission at 6.