

Department of Commerce

National Telecommunications and Information Administration

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Request for comments on the **Internet Assigned Numbers Authority (IANA) Functions**

Ms. Fiona M. Alexander

Associate Administrator

International Affairs

National Telecommunications and Information Administration (NTIA)

U.S. Department of Commerce

1401 Constitution Avenue, Room 4701

Washington, DC 20230

Ms. Alexander,

Please find the following comments regarding question #2 of the RFC

- 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? Please provide specific information as to why or why not. If yes, please provide language you believe accurately captures these relationships.**

The desire for the NTIA to craft a contract which fosters a broadly inclusive and multi-lateral governance model for the Internet is laudable. NTIA deserves high praise for its openness to entertain alternatives to the historical approaches. However, in Question #2 of the RFC, immediately above, the approach suggested might well result in exactly the opposite of the desired outcome unless several key elements, related to third party oversight and control, conflict of interest constraints, open and competitive market development requirements, and the like are added. Absent these constraints, which could easily be accommodated by including in the IANA functions contract requirements that the awardee of the IANA functions contract must enter into agreements with these IANA-servicing organizations, the potential for great harm to the collective interests of the Internet by parties acting in their own organizational self-interests are simply too great. The required subcontract approach would give appropriate oversight and controls to the IANA functions contract awardee so that any potential for misuse of authority could be averted. Those subcontracts, with the appropriate flow-down clauses, should obviously specify the appropriate service management interfaces, service levels and escalation processes, policy development approval and IANA function awardee adoption processes, policy appeal mechanisms, and so forth, so that there is a clear and unambiguous chain of authority, allocation of responsibilities and enforcement capability.

Absent the appropriate controls suggested above, two (2) enormously important core issues emerge when examining the question.

- 1) *FAR compliance - Perhaps the greatest concern is one of procurement practice as defined in the Federal Acquisition Regulations (FAR). Can a U.S. Government agency grant by contract policy authority over the entire*

U.S. Government to third parties not under contract? It seems unlikely if not illegal under the FAR. If NTIA contractually required the IANA contract holder to follow the policies of non-contracted unincorporated third parties, i.e. the IETF, NRO and ccTLD operators, then these non-contracted third parties will, by contract, dictate to the IANA contract holder the policies which control the Internet. Those policies, absent any oversight or control by either NTIA or its contractor, once adopted, will be backed by the full authority of the U.S. Government as delegated by NTIA to the contractor. Thus a “policy boomerang” is created whereby, pursuant to the contract, non-contracted third parties will dictate to the contract holder, the contract issuer (NTIA), and subsequently to the U.S. Government as a whole, the policies which underpin the operations and conduct of the entire Internet.

- 2) *Abdication of authority – To willfully abdicate policy power over the U.S. Government to non-contracted, perhaps foreign, third party organizations which presently have no oversight controls of any kind, and to which one is not even a member, is unprecedented. Setting aside the question of contract legality, as was raised previously, the wisdom of such an action seems limited at best. As an example of why this would not be wise, use the RIRs as an example. Today the five RIR’s are banded together into an unincorporated global cartel named the Number Resource Organization (NRO). This cartel has granted to itself regional monopolies which encompass the entire globe, has spurned any contractual relationship with*

ICANN since the IANA contract was awarded to ICANN, contractually reserve to themselves all rights to and control of the IPv4/IPv6 numbers they receive from the IANA function for free and “allocate” to petitioners for a fee, derive enormous profits from mandatory service contracts which any petitioner for number assignments must accept prior to receipt of a number block “allocation”, and have secured through the ICANN policy process 100% of the ICANN ASO seats, where any competitive model or potentially competing service providers must fruitlessly seek approval. In short, the present IANA contract holder (ICANN) has no direct control over the RIRs today and the RIRs have complete control over the IP number policies of ICANN. What is asked in the question above takes this a step further. If the IANA contract awardee was contractually required to follow the policies of the RIRs, then the RIRs will control everything they control today and any potential for establishing checks and balances control over them will be lost. To be even more blunt, any semblance of control over the most fundamental component of the global Internet, i.e. IP number blocks, which determines who has access to the Internet, will have been granted to an unincorporated global cartel which will continue to act in its own self-defined interests at the expense of any competing alternatives, potentially the interests of the U.S. Government, and the security and stability of the Internet.

For all of these reasons, absent appropriate controls not referenced nor referred to in the RFI, we submit that the IANA function contract should not include references to these entities, the policies they develop and instructions that the contractor follow the policies.

Sincerely,

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