Internet New Zealand (Inc)

Submission to NTIA

on

IANA Functions Further Notice of Inquiry

29 July 2011
Public Version (there is no confidential version)

For further information, please contact:

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1 Introduction

1.1 This submission is from InternetNZ (Internet New Zealand Inc).

1.2 InternetNZ is a membership-based, non-partisan, not-for-profit charitable organisation responsible for the administration of the .nz top level domain.

1.3 Our mission is to protect and promote the Internet for New Zealand; we advocate the ongoing development of an open and uncaptureable Internet, available to all New Zealanders.

1.4 InternetNZ has two wholly-owned charitable subsidiaries who are assigned day-to-day management, operation and regulation of the .nz top level domain. These are:

    1.1.1 .nz Registry Services, the Registry
    1.1.2 Domain Name Commission Limited, the Regulator

2 General comments

2.1 We regard the overall structure proposed for the IANA contract to be sound, well thought out and sustainable. Our comments in response to the questions asked are more of the nature of tidying up than of disagreement.

2.2 We particularly note the commitment to the multi-stakeholder process, which InternetNZ regards as an essential principle for dealing with Internet policy issues. We strongly recommend against giving any stakeholder group, such as the technical community or governments, any priority over other stakeholders.

2.3 It is unclear whether C.1.3 reflects applicants for the IANA functions contract or applicants to the IANA functions operator for services. If it is the latter then we disagree with the presumption of confidentiality and recommend that this should be a matter for the policy that governs the operation of that service to determine and not the contractor nor the contract.

3 Question 1 - Sources of policies

3.1 The FNOI asks, "*Does the language in "Provision C.1.3" capture views on how the relevant stakeholders as sources of the policies should referenced in the next IANA functions contract. If not, please propose specific language to capture commenters' views.*"

3.2 Our response assumes that the question refers to provision C.1.4 not C.1.3.

3.3 We recommend that the contract be much clearer and unambiguous in identifying the relevant sources of policies. This could best be achieved by a table that sets out each registry function and the responsible policy body or bodies that represent the stakeholder community for that registry function and which the IANA functions operator must use as the source of policies for that registry function.

3.4   We also recommend that the contract should explicitly state that all stakeholders are equal and neither the technical community, nor the governmental community, nor any other that may assert primacy, should be afforded that status, and consensus based decision making in the multi-stakeholder community is highly desirable.

3.5   Further we note that C.1.3 does not include ICANN in the list of affected parties. We recommend that they should be added.

4   Question 2 - Role of IANA functions contractor in policy development

4.1   The FNOI asks, "*Does the new "Provision C.2.2.1.1" adequately address concerns that the IANA functions operator should refrain from developing policies related to the IANA functions? If not, please provide detailed comments and specific suggestions for improving the language.*"

4.2   We strongly support the proposal that the IANA functions operator should refrain from developing policies related to the IANA functions. At the same time we would not wish to see the IANA functions operator absent from policy development, where the skill and expertise of the staff are relevant.

4.3   Further, we note that there are some complex issues around the involvement of IANA functions operator staff in the development of policy that must be addressed in the contract to ensure that problems do not arise later. These are:

   4.3.1   Ownership of any policy development process.
   4.3.2   Status of staff involved in policy development processes within those processes.
   4.3.3   Obligation and/or expectation of involvement in policy development processes.

4.4   Finally, while we accept that full structural separation between the IANA functions operator and a policy development body may not be possible, we recommend that the separation as detailed in the contract is strengthened in three specific regards, which should all be independent of the management of any policy body such as ICANN:

   4.4.1   Control over pay and working conditions for the staff who deliver the IANA functions.
   4.4.2   Financial accounting.
   4.4.3   Legal advice.

4.5   We recommend the following language as a replacement:

   4.5.1   *The Contractor may not develop policy relating to the IANA functions in either the role of IANA functions operator or in the name of IANA.*
   4.5.2   *Staff of the Contractor who have any role in executing the IANA functions may participate with relevant stakeholders in the development of policy*

> *relating to the IANA functions but they must not be afforded any special role or rights in that process.*
>
> 4.5.3 *The Contractor is required to be involved in policy development relating to the IANA functions when invited to by a relevant policy body [as set out in the table recommended in 3.3 above] but should not have any expectation of being invited to participate in any such policy development.*
>
> 4.5.4 *If the Contractor is also a multi-stakeholder development policy body then it must ensure that the following elements of the IANA functions operation are managed entirely independently of the rest of the organisation:*
>
>> 4.5.4.1 *The pay and working conditions of the staff who deliver the IANA functions.*
>>
>> 4.5.4.2 *The financial accounting of the IANA functions.*
>>
>> 4.5.4.3 *Access to and sources of legal advice.*

4.6 It is our view that our proposed requirement as specified in 4.5.4 above could best be achieved by the IANA functions operator being a separate legal entity, such as a subsidiary company, if the parent is to be a policy development body.

4.7 We further recommend that any fee charged for the IANA functions should solely relate to the actual costs of the IANA functions as determined through its independent financial accounting and should not be bundled with any other service or expectation.

4.8 Finally, we note that while that while IANA functions staff are experts in certain areas they are not unique experts and would caution that policy development bodies should not treat them as such.

5 Question 3 and Question 5 - Provision of services

5.1 The FNOI asks, "*Does the language in "Provisions C2.2.1.2, C.2.2.1.3, C.2.2.1.4 and C.2.2.1.5" adequately address concerns that the IANA functions contractor should perform these services in a manner that best serves the relevant stakeholders? If not, please propose detailed alternative language.*"

5.2 The FNOI also asks, "*Does the new "Provision C.2.2.1.3.2 Responsibility and Respect for Stakeholders" adequately address concerns related to the root zone management process in particular how the IANA functions contractor should document its decision making with respect to relevant national laws of the jurisdiction which the TLD registry serves, how the TLD reflects community consensus among relevant stakeholders and/or is supported by the global public interest. If not, please provide detailed suggestions for capturing concerns. Are the timeframes for implementation reasonable?*"

5.3 Given the experience of the current IANA functions contractor we believe it is important that a specific clause is included to the effect that all the registry functions are equal. Our suggested language is:

> 5.3.1 *The Contractor must treat each of the registry functions with equal priority and must not allow the development of the service for any function to fall behind that of the others.*

5.4   With regard to C.2.2.1.3 we note that the current process for TLD delegation and re-delegation requests is for IANA functions staff to investigate policy compliance using the current policy framework and then make a recommendation to the ICANN board, which may or may not accept that recommendation based on their understanding of stakeholder views. The proposal as drafted will now see that investigation and subsequent decision carried out entirely by IANA function staff.

5.5   As the current TLD delegation/re-delegation policy framework is so poor due to the unclear status of key documents, inconsistencies between those documents and a history of misapplication by ICANN, it is difficult to see any alternative for the time being. However the end goal must be that the IANA functions operator does not receive delegation/re-delegation requests, the relevant policy body receives those instead. The policy body would then decide whether or not to accept the request based on its policy framework and would then request the IANA functions operator to delegate or re-delegate while providing the IANA functions operator with a full statement of policy compliance. The role of the IANA functions operator would be to ensure that due process has been followed rather than to decide on the merits of the request.

5.6   We would therefore recommend that the contract states that the IANA functions operator should only continue to receive and process delegation and re-delegation requests from all comers until such time as a community agreed policy framework is in place within an appropriate policy body. Following which the role of IANA would be to process delegation/re-delegation requests solely from the nominated policy bodies, not all comers.

5.7   The one area of the TLD delegation/re-delegation policy framework that is well developed is that for the delegation of new generic TLDs as set out by ICANN. We therefore recommend that from the outset the IANA functions operator should no longer accept gTLD delegation requests from any body other than ICANN. This means removing the wording from C.2.2.1.3.2 on the requirement for the contractor to demonstrate consensus support and public interest, as that responsibility will fall to ICANN.

5.8   For this interim phase where the IANA functions operator is to continue to judge the merits of a delegation/re-delegation request then C.2.2.1.3.2 should be amended to promote the multi-stakeholder principle as overarching and the relevant national government as one stakeholder among many.

5.9   We note that moving the work of assessing the merits of the many TLD delegation/re-delegation requests that the IANA functions operator receives to appropriate policy bodies will reduce the operational cost of the IANA functions operator and the fees charged to users of the service.

5.10   Putting this together, we recommend the following wording for provision C.2.2.1.3.2:

         5.10.1 The Contractor shall, for the delegation of new generic TLDs only receive requests from ICANN and shall limit its role to ensuring that ICANN has followed its own published policy for the delegation of new gTLDs

> *correctly. If so determined then the contractor shall process the*
> *delegation request.*
>
> *5.10.2 For the delegation/re-delegation of all other TLDs the Contractor shall, in*
> *collaboration with all relevant stakeholders for this function, develop an*
> *interim process for deciding whether to accept these requests that*
> *documents the source of the policies and procedures that it will use and*
> *when processing the requests will document how it has applied these*
> *policies and procedures.*
>
> *5.10.3 At such time as an appropriate multi-stakeholder policy body agrees a*
> *consensus policy for the delegation/re-delegation of TLDs (or a subset of*
> *TLDs) then the Contractor shall cease this interim process for TLDs (or*
> *that subset of TLDs) and only accept delegation/re-delegation requests*
> *from that body. The role of the Contractor will then be to ensure that the*
> *policy body has followed its own published policy correctly.*

5.11   We agree with the proposed timeframes.

6   Question 4 – Root zone management

6.1   The FNOI asks, "*Does the language in "Provision C.2.2.1.3" adequately address*
concerns related to root zone management? If not, please suggest detailed alternative
language. Are the timeframes for implementation reasonable?"

6.2   Yes and yes.

7   Question 6 – Security requirements

7.1   The FNOI asks, "*Does the new "Section C.3 Security Requirements" adequately*
address concerns that the IANA functions contractor has a secure communications
system for communicating with service recipients? If not, how can the language be
improved? Is the timeframe for implementation reasonable?"

7.2   Yes and yes.

8   Question 7 - Service complaints

8.1   The FNOI asks, "*Does the new "Provision C.2.2.1.3.5 Customer Service Complaint*
Resolution Process" provide an adequate means of addressing customer complaints?
Does the new language provide adequate guidance to the IANA functions contractor
on how to develop a customer complaint resolution? If not, please provide detailed
comments and suggestions for improving the language."

8.2   Companies across the world have developed considerable expertise in handling
complaints and developed sophisticated processes to ensure an optimum
resolution. Rather than detail this level of sophistication we would recommend
that provision C.2.2.1.3.5 be slightly amended as follows:

> *8.2.1   The Contractor shall establish a process for IANA function customers to*
> *submit complaints that follows industry best practice and leads to a*
> *timely resolution.*

9   Question 8 - Continuity of operations

9.1   The FNOI asks, "*Does the new "Provision C.3.6 Contingency and Continuity of Operations Plan" adequately address concerns regarding contingency planning and emergency recovery? If not, please provide detailed comments and suggestions for improving the language. Are the timeframes for implementation reasonable?*"

9.2   Yes and yes.

10   Question 9 - Performance measurement

10.1   The FNOI asks, "*Does the new "Provision C.4 Performance Standards Metric Requirements" adequately address concerns regarding transparency in root zone management processes, and performances standards and metrics? Should the contractor be required to gather and report on statistics regarding global IPv6 and DNSSEC deployment. If so, how should this requirement be reflected in the SOW? What statistics should be gathered and made public?*"

10.2   We would recommend ensuring that all statistics and reports required in C.4 are publicly available and easily accessible.

10.3   We recommend that the reports required by C.4.1 and C.4.3 and the dashboard in C.4.2 are to be developed in consultation with relevant stakeholders.

11   Question 10 - Audit

11.1   The FNOI asks, "*Does the new "Section C.5 Audit Requirements" adequately address concerns regarding audits? If not, please provide alternative language. Are the timeframes for implementation reasonable? *"

11.2   Yes and yes.

With many thanks for your consideration,

Yours sincerely,

InternetNZ