

NAMIBIAN NETWORK INFORMATION CENTRE (CC)

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Ms Fiona M Alexander,
Office of International Affairs,
National Telecommunications and Information
Administration,
1401 Constitution Avenue, NW., Room 4701,
Washington, DC 20230
United States of America

Your ref.: Federal Register/Vol 76, No 114

Your letter: 2011-06-14

Date: 2011-07-28

Docket No. 110207099-1319-02

Dear Ms Alexander

On behalf of the Namibian Network Information Centre (NA-NiC), the manager of the ccTLD .NA, of which I am the principal, I herewith respectfully submit our response to your Further Notice of Inquiry ("FNOI"), as per your instructions in PDF format.

Our previous letter dated 2011-03-30 ("Request for Comments on the *IANA Functions*") refers.

I take note that you have now corrected the spelling error that I pointed out to you and are now referring to the *Tera-node Network Technology* project.

I do take note, however, and with great concern, that the Draft Statement of Work does not address the issue of rights, interests and/or legitimate expectations, in particular property rights, under US (eg California) law of ccTLD Managers, if any, due process issues, nor the issues surrounding TLDs established prior to awarding of DABT63-09-C-0095 ("rights").

Let me now turn to the questions you ask in the FNOI, which I have *emphasized* for ease of reference:

Question 1 *Does the language in "Provision C.1.3" capture views on how the relevant stakeholders as sources of the policies and procedures should be referenced in the next IANA functions contract?*

I can not find any such language in provision C.1.3, whatsoever. The provision deals with confidentiality, and in a manner that is not conducive to accountability and/or transparency.

Should you, however, be referring to provision C.1.4, there is no mention of "*source of policies and procedures*", there is a number of parties listed as affected without defining their areas of inputs, ie how they would be *sources*.

Question 2 *Does the new "Provision C.2.2.1.1" adequately address concerns that the IANA functions contractor should refrain from developing policies related to the IANA functions?*

No.

It is impractical to assume that a contractor who has been subject to significant addresses of concern about accountability and transparency by Secretary Strickland, for example, will be able and/or willing to separate the IANA staff from policy making. The current contractor has in its response¹ to this FNOI indicated² that it opposes such a separation.

As a member of both the Delegation & Redelegation Working Group and the Framework of Interpretation Working Group, the very establishment of both indicating the need for such a separation, I have formed the opinion that such a separation must be put into place.

Question 3 *Does the language in “Provisions C.2.2.1.2, 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?*

No.

It is of course clear that an entity operating in a certain country is subject to the laws of that country.

However, it does not address the issue of the rights of the TLD Manager.

Not being a lawyer myself, I have very serious doubts whether the contractor can be mandated by the NTIA to “act in accordance with the relevant national laws of the jurisdiction” or whether acting like such would even be lawful under US and/or Californian law, for example if it forced the contractor to recognize laws which the US government itself does not recognize.

I actually doubt seriously that such a mandate would have any force and effect on a third party.

But even if that were the case, there are enormous practical implications, since the contractor would have to assist courts in some 240 jurisdictions to enforce judgements against itself, as it would become party.

The implications for the stability of the Internet of this very concept are simply staggering.

Question 4 *Does the language in “Provision C.2.2.1.3” adequately address concerns related to root zone management? Are the timeframes for implementation reasonable?*

No.

Predictability of performance is more important than the measuring and reporting of it.

¹http://www.ntia.doc.gov/files/ntia/icann_fnoi_comments_20110722.pdf

²I do note factual inaccuracies, such as describing the Delegation & Redelegation Working Group as Delegation and Redelegation Draft Working Group” (emphasis is mine) and stating that it is active, when in fact its work has been completed and conflicting statements with regards to IANA staff and policy development.

Question 5 *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?*

No.

I do not think the contractor, or anyone for that matter, will be able to “document” the “relevant national laws” of more than 240 jurisdictions. Never mind the issues surrounding outlined above in the answer to question 3.

Question 6 *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? Is the timeframe for implementation reasonable?*

Yes.

Question 7 *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?*

No.

This is very vague and past experience with the contractor’s existing review structures are not promising. It also does not take into account existing rights.

Question 8 *Does the new “Provision C.3.6 Contingency and Continuity of Operations Plan (CCOP)” adequately address concerns regarding contingency planning and emergency recovery?*

Yes.

Question 9 *Does the new “Section C.4 Performance Standards Metric Requirements” adequately address concerns regarding transparency in root zone management process, and performance 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?*

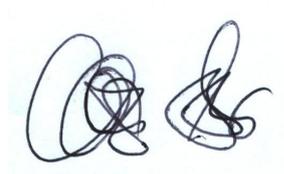
As stated in our previous letter, predictability of performance is more important than the measuring and reporting of it.

Question 10 *Does the new “Section C.5 Audit Requirements” adequately address concerns regarding audits?*

I do not have concerns regarding audits, I have concerns regarding the predictability of the IANA function.

I reiterate my concerns with regards the rights of ccTLD Managers and in summary it is my opinion that the Draft Statement of Work would benefit from substantial revision.

With Kind Regards

A handwritten signature in black ink, appearing to be 'Eberhard W. Lisse', written in a cursive style. The signature is contained within a light blue rectangular box.

Dr Eberhard W Lisse