

9 September 2016

The APTLD Board's Comments on the draft IANA Naming Function Agreement

The Asia Pacific Top Level Domain Association Board welcomes an opportunity to comment on the draft IANA NAMING FUNCTION AGREEMENT.

Incorporated in 1998 as a membership based non-for-profit nongovernmental organization, APTLD has served as the forum on technological and operational issues for domain name registries in the Asia Pacific region. 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 interests of APTLD members in global Internet policy making process.

The APTLD Board commends ICANN for putting forward the draft IANA NAMING FUNCTION AGREEMENT for public consultation and notes with satisfaction the high quality of the draft document which meets the community's expectations.

That said, the APTLD Boards would like to offer certain comments and suggestions in regard of some individual clauses thereof.

Whilst Section 4.2 of the draft document explicitly holds that the Contractor shall domicile in the state of California, USA, and Section 14.7 holds that this Agreement, and any and all disputes arising out of or related to this Agreement, shall be governed by, construed, and enforced in all respects in accordance with the Laws of the State of California, United States of America, the Agreement, including Article IX thereof in particular, falls short of addressing the fundamental question raised by many as to whether, under unfavorable circumstances, the PTI may in principle opt for a jurisdiction other than the USA. Some clarification on this will be helpful.

Section 5.3(a) that effectively prohibits the Contractor to "...make modifications, additions or deletions to the root zone file or associated information." The powers in question are justifiably assigned to registry managers. An attempt to centralize this function would prove counterproductive to the well-established practice. There should be explanations as to why it should not be revised to ensure a proper balance of duties and rights of Significantly Interested Parties.

We also note that Art. 10.1(c) suggests that, "Any fees approved by ICANN and charged by Contractor relating to the IANA Naming Function will be based on the actual costs incurred, and value of the resources utilized, by Contractor to perform the IANA Naming Function." In this regard we are of opinion that fees for ccTLD registries should be defined in consultation with ccTLDs (or ccNSO) with a due reference to, and in full consideration of, the outcomes of the discussions held in the course of development of the 2013 Guideline for Voluntary Contributions of ccTLDs to ICANN.

Lastly, Section 4.7 makes reference to the 2005 Governmental Advisory Committee Principles And Guidelines For The Delegation And Administration Of Country Code Top Level Domains (“GAC 2005 ccTLD Principles”). This may elevate the GAC Principles, which have not gone through the policy development process (PDP) as an ICANN policy, to the level of ICANN policy by listing the Principles alongside the Framework of Interpretation (FoI), as well as policies that have or may be developed by the GNSO and/or ccNSO in accordance with the ICANN’s PDP. It has been understood by the ICANN Community that the GAC’s role within ICANN is to provide “Advice”, and not make “Policy”; the wording of Section 4.7 may blur that distinction. Some explanation by ICANN will be helpful to allay the concerns.