



# Comment on Proposed IANA Naming Function Agreement

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**Business Constituency Submission**

**GNSO//CSG//BC**

## Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

## General Comment

The BC welcomes the opportunity to review and comment on the proposed IANA Naming Functions Agreement, posted for public comment on 10-Aug-2016 at <https://www.icann.org/public-comments/iana-naming-function-agreement-2016-08-10-en>

This follows up our recent comments concerning the PTI governance documents and PTI bylaws. Echoing the positive theme of those comments, the draft IANA Naming Functions Agreement generally matches the community proposal, which the BC helped to shape and ultimately supported as included in the March 2016 package of CWG-stewardship and CCWG-Accountability proposals.

Below, however, we offer several targeted comments. In some cases, we reiterate key points we have raised throughout the development of the CWG-Stewardship proposal and more recently in our comments on the draft PTI Bylaws aimed at ensuring the strongest possible framework for the PTI. We also offer comments concerning proposed implementation elements.

### Section 4.5: Separation of Policy Development and Operational Roles

We support the specific language in Section 4.5, which states that the Contractor (PTI) “shall ensure that its staff performing the IANA Naming Function do not publicly initiate, advance or advocate any policy development related to the IANA Naming Function.”

As we emphasized in our comments on the PTI bylaws, we remain concerned that without clear and unequivocal language that limits the PTI to the operational aspects of the IANA functions, there is a risk that the PTI will become a venue to re-litigate upstream policy decisions.

For this reason, we are concerned that three caveats in Section 4.5 to ease the “operations only” requirement might be exploited by interested parties who are dissatisfied by a prior policy decision:

- (i) *respond to requests for information requested by Interested and Affected Parties, subject to Section 12.3, and, at Contractor’s volition, provide objective information to such customers, in each case, to inform ongoing policy discussions,*
- (ii) *request guidance or clarification as necessary for the performance of the IANA Naming Function, and*

- (iii) *publish, contribute to or comment on any document related to ongoing policy discussions, provided that, in the case of clause (iii), the primary purpose of such publication, contribution or commentary is to supply relevant IANA Naming Function experience and insight.*

**At the very minimum, we urge deletion of (iii). But we feel it would be more prudent for Section 4.5 to simply state that PTI staff performing the IANA Naming Functions “do not publicly initiate, advance, or advocate any policy development related to the IANA Naming Function” and not include any of the caveats in the draft.**

### Section 5.3: Performance Exclusions

Related to our view of text in Section 4.5, the BC appreciates the simplicity and clarity of language in Section 5.3 concerning performance exclusions:

- a) *Unless specifically authorized by ICANN in writing, Contractor shall not make modifications, additions or deletions to the root zone file or associated information.*
- b) *Contractor shall not make changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA Naming Function.*
- c) *The performance of the IANA Naming Function shall not be, in any manner, predicated upon or conditioned by Contractor on the existence or entry into any contract, agreement or negotiation between Contractor and any TLD registry operator or any other third party.*

We urge that the clarity of point b), in particular, also be reflected in Section 4.5’s separation of policy and operational roles.

### Section 6.1: Transparency of Decision-Making

The BC agrees that transparency in decision-making is essential to enhance consistency, predictability and integrity in the PTI’s decision-making related to the IANA function:

Concerning potential redactions of PTI Board minutes, the BC urges that such exceptions be carefully circumscribed and agrees that language in draft agreement appropriately limits redactions.

*Agree not to redact any PTI Board minutes related to decisions concerning the IANA Naming Function, provided that the PTI Board may redact such minutes on the determination that such redacted information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that Contractor maintain its confidentiality or otherwise would result in the disclosure of confidential information of Contractor’s customers, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the IANA Naming Function or the Internet.*

## Article VIII: Escalation Mechanisms

The BC notes the Escalation Mechanisms detailed in Article VIII generally match the community's proposal.

But we note an important omission. The community's proposal outlines *three* escalation mechanisms:

- (1) the Customer Service Complaint Resolution Process;
- (2) IANA Problem Resolution Process; and
- (3) Root Zone Emergency Process. The draft agreement *does not* include language detailing the Root Zone Emergency Process.

If the recently concluded agreement between ICANN and VeriSign to perform the root zone management functions outlines that process, then for the sake of consistency and respect for the community's proposal, at minimum, the ICANN-VeriSign Root Zone Maintainer Agreement and relevant excerpts should be referenced in Article VIII of the Naming Functions Agreement.

In addition, Section 8.2 is overly brief in describing the process for addressing a performance issue, which may be a serious matter with broader implications for the safety, security, and resilience of the DNS.

*If the CSC determines that a Performance Issue exists, the CSC may seek resolution of the Performance Issue with Contractor, in which case Contractor shall comply with such Remedial Action Procedures if and to the extent the CSC also complies with such procedures.*

Given the importance of this phase of the Escalation process, at minimum the agreement should be footnoted to elaborate on what would constitute Remedial Action Procedures.

## Article IX: Term, Renewal, Transition and Termination

Sections 9.1 through 9.3 of the draft Agreement general describe requirements for a "Framework for Transition to Successor IANA Functions Operator" as outlined in the community proposal.

However, Article IX and the overall draft Agreement would be greatly improved by including language describing the Separation Process. While such explanatory text is included in ICANN's bylaws, the coherence of the draft Agreement warrants an expansion of Article IX or the inclusion of an additional Annex that describes the Separation process as it appears in the community's final proposal. Such language would define and clarify the meaning and significance of an IFR Recommendation, Special IGF Recommendation, and SCWG Recommendation. These terms are inserted in Section 9.2 without any explanation or context for what they refer to.

Such clarity is critical to address one of the BC's ongoing concerns that any potential separation of the PTI be recognized as an absolute last resort that is not pursued hastily or without numerous opportunities for resolution. In this regard, we reiterate our earlier call for more details on the Separation Process, including clear, substantive standards for determining if and when separation of the naming functions is appropriate. More specifically, the IFRT should find that keeping the IANA functions with the current Contractor raises significant concerns about the security, stability, and resiliency of the functions and the security, stability, and resiliency of the domain name system overall. Furthermore, these concerns should be substantiated by the parties approving the initiation of separation procedures. Allowing separation for reasons unrelated to security, stability and resiliency of the IANA functions risks

destabilizing the broader DNS in an attempt to solve unrelated problems. This should be included in any explanation of the Separation Process.

ANNEX A: Statement of Work for Management of the DNS Root Zone and Service Levels

The BC endorses use of industry best practices and NIST guidelines to maintain and continually improve the stability and security and reliability of operations. We see feedback and reporting as essential to the process and support continual review of these aspects of operations, for improvement and for transparency ongoing. And we support the frequent review of compliance thresholds to maintain appropriate measures as standards and technologies evolve.

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This comment was drafted by Barbara Wanner, with assistance from Angie Graves and Hibah Hussain. It was approved in accord with our charter.