

Naming Function Agreement Review – Paul Kane’s Comments and ICANN’s Response

Section #	Paul Kane’s Comment	ICANN’s Response	Status
n/a	<p>I was given an action item the call before last to review the proposed Naming Agreement. As mentioned during the call I would need the assistance of the ccTLD community as I was not up to speed on the work of the Framework of Interpretation.</p> <p>I am advised that the headline concern is the need for PTI to be a service provider accepting instructions from the ccTLD Registry community and not a point of Registry control. Registry Policy occurs in other forums, founded on applicable law, culture and operating environment of the existing ccTLD Registry Manager.</p>	<p>We are not clear on what is being recommended through this statement. The key purpose of the Naming Function Contract should be to require the naming function operator (PTI) with the obligation to adhere to established policy. It is important that the Naming Function Contract not be, in and of itself, the place where any policies are defined, or a document that authorizes PTI to alter or avoid those established policies and/or established documentation on how those policies and processes are to be implemented. To that end, we agree that any statements of registry control are not appropriate in this Contract. We have instead incorporated broader references (as refined below) to the sources of such policies and processes.</p>	
1.1(oo)	<p>*Section 1.1(oo).* In the definition of “Significantly Interested Parties,” the phrase “these parties include, without limitation” Should be modified to read “these parties include, but are not limited to” In order to be consistent with the phrasing used in the final FOI report.</p>	<p>This update is acceptable.</p>	<p>Update is being made to the agreement.</p>
4.2	<p>*Section 4.2* requires the Contractor to perform the IANA Naming Function in the US and to demonstrate that all primary operations and systems will remain within the US. Is additional flexibility needed for</p>	<p>The language of “primary operations” does not preclude the possibility of remote employees or support. The flexibility is already present, and no further modifications are needed.</p>	<p>There has been no further discussion on the CWG list regarding this item. Need confirmation from the CWG that item can be considered closed with no edits.</p>

	remote personnel with operational responsibilities outside the US?		
4.5	*Section 4.5* has an internal reference to Section 12.3, but that section has been deleted.	The reference should be updated to Article XII. Final confirmation of cross references will be completed prior to execution of agreement.	All internal references will be confirmed for the final draft of the agreement.
4.7	*Section 4.7*. For the avoidance of doubt, we propose two modest changes: 1. The reference to the FOI should read: RFC 1591: /Domain Name System Structure and Delegation/ (“RFC 1591”) as interpreted by the Framework of Interpretation of Current Policies and Guidelines Pertaining to 7 the Delegation and Redefinition of Country-Code Top Level Domain Names, dated October 2014 (“FOI”).	This update is acceptable.	Update is being made to the agreement.
n/a	Any subsequent references should read “RFC 1591 as interpreted by the FOI.”	This update is acceptable.	Update is being made to the agreement.
4.7	2. The reference to the GAC Principles should read: “Where applicable in accordance with Section 1.3 thereof, the 2005 Governmental Advisory Committee Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (“GAC 2005 ccTLD Principles”).	We’d like to understand more about the need for specific reference to Section 1.3. We are interested in accommodating this request, but need a bit more information.	ICANN would like more information regarding the need for specific reference to Section 1.3.
n/a	Any subsequent reference to the GAC Principles should read, “where applicable in accordance with Section 1.3 thereof, the GAC 2005 ccTLD Principles.”	See above.	ICANN would like more information regarding the need for specific reference to Section 1.3.
4.10(a)	*Section 4.10(a).* Is the prohibition on publication of posting of reports and other deliverables practical? As a minimum, PTI should be permitted to post ordinary,	PTI will be under contract with ICANN to perform to all required specifications. Failures of PTI in delivering the proper reports or deliverables are imputed to ICANN and could	There has been no further discussion on the CWG list regarding this item. Need confirmation from the CWG that item can be considered closed with no edits.

	scheduled reports in pre-approved formats without ICANN review.	serve as the basis for challenging the existence of PTI or ICANN's continued role in contracting with an IFO. This prohibition is practical and easily workable, for example, through the agreement upon templates for reporting, just as recommended.	
5.3(a)	*Section 5.3(a)* prohibits the Contractor from modifying the zone file or associated information without written authorization from ICANN. While that may make sense for some things (adding/deleting gTLDs, e.g.,) it can be - and in the past has been - interpreted to prevent routine changes such as the addition of a new name server by an existing TLD operator. This would obviously be very problematic	<p>The intent of this provision is to prevent PTI from performing the Root Zone Maintainer role.</p> <p>Upon review, ICANN is considering replacing this clause with language stating "PTI is not authorized to perform the root zone maintainer services as defined in the RZMA unless authorized by ICANN." This would also require defining the RZMA within the Naming Functions Agreement.</p>	There has been no further discussion on the CWG list regarding this item. Need confirmation from the CWG that item can be considered closed with suggested edits.
6.1(c)	*Section 6.1(c)* permits the PTI to redact Board minutes containing material that "is subject to a legal obligation that the Contractor maintains its confidentiality." There have been recent examples where these kind of confidentiality provisions in ICANN's contracts with its vendors and consultant prevented community access to information about consultant payments, etc. Is there a way to minimize these kind of redactions?	The language that is included here is to address circumstances such as sensitive delegation-related items that customers have the current expectations to maintain as confidential, sensitive employment matters, items that would impair PTI's negotiating stance (such as maximum financial authorizations for leases or high dollar value contracts requiring PTI Board approval). This is similar to how ICANN maintains its Board minutes. The general transparency concerns raised in this comment are separate issues. There is nothing in the CWG-Stewardship proposal that requires information that is currently understood by customers of the IANA functions as confidential to be treated in a different fashion by virtue of the transition.	ICANN discussed with Sidley and proposed adding language that PTI commits to the same level of transparency and confidentiality that ICANN is bound to per the ICANN Bylaws.
7.1	*Section 7.1* refers to "delegation,	The reference to "redelegation" can be	Update is being made to the agreement.

	redelegation, and transfer of a TLD. The term “redelegation” should not be used in the context of ccTLDs. Under the FOI, the terms “Delegation,” “Revocation,” and “Transfer” are defined and used to refer to changes of this sort.	modified to “revocation” to align with the FOI.	
7.3(c)	*Section 7.3(c)* refers to “SCWG” which is not defined.	We can incorporate a definition of SCWG, as used in the ICANN Bylaws.	Update is being made to the agreement.
8.2	*Section 8.1* has an internal reference to Section 8.2(a), which does not exist.	Reference should be to 8.2. Final confirmation of cross references will be completed prior to execution of agreement.	All internal references will be confirmed for the final draft of the agreement.
9.4	*Section 9.4* contains an internal reference to Section 14.16, which does not exist.	Reference should be to 14.15. Final confirmation of cross references will be completed prior to execution of agreement.	All internal references will be confirmed for the final draft of the agreement.
10.1(c)	*Section 10.1(c)* appears to introduce the concept of user fees for IANA Naming Function Services. How would this work, and are there adequate constraints on ICANN’s ability to approve and PTI’s ability to impose such fees?	Section 10.1 continues the longstanding limitation that, in the event there is a determination that fees will be charged for the performance of the IANA functions, those fees must be based on the actual costs incurred. This limitation on fees is also included in the ICANN Bylaws at 16.3(a)(vi), identifying that this is a material provision in the naming function agreement that cannot be modified if a majority of the ccNSO council and GNSO council reject such a modification. This concept is carried over from B.2 of the current IANA Functions Contract, and was contemplated in Annex S of the CWG Proposal.	There has been no further discussion on the CWG list regarding this item. Need confirmation from the CWG that item can be considered closed with no edits. Sidley separately has suggested one clarifying edit, which ICANN agrees to and will incorporate into the next version of the agreement.
12.1	*Section 12.1* Confidentiality. This provision is extremely broad, covering everything ICANN gives Contractor and all data acquired or developed by Contractor in performing the agreement. Why is this necessary and how can that be reconciled with ICANN’s obligations relating to	This provision is included to identify that there are parts of work that PTI will undertake that are highly confidential and sensitive, as they directly impact the operations and management of the root zone. It is appropriate for a strict confidentiality clause to be in place for the technical nature of PTI’s work.	There has been no further discussion on the CWG list regarding 12.1. Need confirmation from the CWG that item can be considered closed with no edits. For 12.3, ICANN discussed with Sidley and proposed adding language that PTI

	<p>transparency. For example, it is not even clear that members of the PTI Board, members of the IFR teams, etc. will have access to PTI information. In addition, the current draft deletes the previous Section 12.3 (Request for Information).</p>	<p>Nothing within the Naming Functions Contract limits a PTI Board member's ability to access documentation.</p> <p>The ability for IFR teams to access information is governed through the ICANN Bylaws at Section 18.4, which specifies that these types of review teams would have access to information subject to disclosure requirements (such as through non-disclosure agreements, etc.) that are being developed to govern review team access to information in general. IFR Team access is not limited through this Naming Functions Contract.</p> <p>If PTI's operations would be enhanced through the applicability of processes such as the DIDP, we encourage the CSC to consider this issue, including the confidentiality concerns that the customers of the IANA functions currently expect.</p> <p>The prior section 12.3 was added by external counsel to the CWG. There was no discussion by the CWG Counsel as to how this requirement was related to the CWG Proposal. As discussed within the CCWG-Accountability process, there is no inherent right to inspection that goes beyond directors or the member. Within the CCWG-Accountability process, there was agreement to give to the Empowered Community the ability to inspect ICANN books and records in specified circumstances. The CWG-Stewardship's contingencies did not</p>	<p>commits to the same level of transparency and confidentiality that ICANN is bound to per the ICANN Bylaws.</p>
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		<p>include this right of inspection for PTI or any contingency on ICANN's DIDP process. Given the specific and unique operational role of PTI, language as proposed by external counsel should not be dropped in as an afterthought. Access to the limited, technically related records that will exist within PTI should be carefully considered and constructed, including with the affirmative participation of the customers and impacted parties.</p>	
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