

GERMAN POSITION PAPER

GUIDELINES AND RECOMMENDATIONS FOR ACTION FOR THE IANA STEWARDSHIP TRANSITION

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The U.S. administration announced in March last year its intention to relinquish its exclusive control of core internet functions exercised by the Internet Assigned Numbers Authority (IANA), an organizational unit of the Internet Corporation for Assigned Names and Numbers (ICANN), if certain parameters are complied with. ICANN is one of the global self-regulating organisations of the internet and is chiefly responsible for coordinating and awarding key internet resources. It is a private, not-for profit organisation based in California (USA). ICANN takes its decisions in a multistakeholder process involving governments, private sector, the technical community, academia and civil society.

The U.S. administration's announcement concerns the supervision of the "IANA functions", which ICANN exercises on the basis of a contract with the U.S. administration. ICANN was tasked with elaborating a proposal for the future design of stewardship of the IANA functions. The U.S. administration has laid down principles for this. The proposal must

- have been developed in a multistakeholder model involving all the stakeholders and enjoy the support of all groups,
- replace the role of the U.S. administration via the global multistakeholder community, and thus preclude a proposal that replaces the U.S. government's role with a government-led or an inter-governmental organisation solution,
- maintain the openness of the internet,
- meet the needs and expectation of the global customers and partners of the IANA services.

In this respect various working groups were set up to contribute to such a proposal aiming to draft a consensus-based solution for replacing the contract between the U.S. administration and ICANN, which is currently limited until 30 September 2015.

I. Background

To define a position it is necessary to identify the functions exercised by IANA and the corresponding supervisory function of the U.S. administration.

The IANA functions are basically technical and clerical in nature:

- management of IP addresses,
- protocol parameter management and
- administration of the root zone.

The supervisory role exercised by the U.S. administration primarily cover delegation and redelegation of Top-Level Domains to the root zone. Here, a distinction is made between country-code Top-Level Domains (ccTLDs e.g. ".de" or ".fr"), which are administered in line with rules and regulations of the relevant country, and generic Top-Level Domains (gTLDs like ".com" or ".club"). ICANN has wide-ranging responsibilities regarding the generic Top-Level Domains. Not least, rules for assigning such Top-Level Domains and the policies for Second-Level Domains are formulated by the ICANN Board following the involvement of all stakeholders (governments, private sector, the technical community, academia and civil society).

At present, the debate on the “ICANN reform” is focusing simultaneously on two different aspects: Firstly, the IANA stewardship transition. Here, proposals are being drawn up to transition stewardship of the IANA functions to the global multistakeholder community. In a second field, accountability, proposals are being drawn up to ensure that ICANN will continue to act responsibly outside the IANA functions as well. The latter should help to ensure that the tasks of ICANN which are not directly affected by the stewardship transition continue to be executed in the interest of the global public.

We would like to participate in the discussion on the basis of the following guidelines and premises, and provide specific recommendations for action. At an overarching level, we recommend that methods like business excellence, for example, be used to optimise processes. The following guidelines, premises and recommendations for action primarily refer to improvements in accountability.

II. Guidelines and premises

1) Helping to shape ICANN’s future

We support the U.S. administration’s initiative for a transfer of stewardship of the IANA functions. This creates the opportunity for all stakeholders to play an active part in shaping the processes governing the management of key internet resources. This opportunity should be seized. ICANN is called on to engage in more information and communication so that there can be a facts-based discussion about the IANA stewardship transition and all stakeholders can be included in this.

2) Advocacy of the multistakeholder model

Past experience has shown the value of the multistakeholder model in the global management of key internet resources. The resources and standards of the internet are governed jointly by the internet community. By reflecting the core stakeholders, the organisational structure of ICANN takes account of this. However, the success of this model also depends on close and regular communication with all stakeholders. In addition to ICANN, there are other self-regulating organisations like the Internet Engineering Task Force (IETF), which works on the development of internet protocols. The successful internet self-regulation, which basically functions without any structural supervision by governmental or intergovernmental institutions, is one of the key factors driving the success of the internet. We are in favour of enhancing the multistakeholder approach and are convinced that this approach is the best option for the development of a broadly accepted, sustainable model for the IANA-stewardship transition.

3) No substitution by governmental or intergovernmental organisations

We share the view taken by the U.S. administration that an assumption or the substitution of the existing supervisory function of the U.S. administration over IANA by other governments or by an intergovernmental organisation is not viable and must therefore be precluded.

Governments have an important role to play, particularly on global public policy issues. Therefore it is necessary that they continue to participate in decision-making processes via the multistakeholder model. When assessing the activities of governments, it is necessary to ensure that governments also feed into the discussion process the interests of groups which are not themselves represented in the ICANN environment.

4) No dominance of individual stakeholders

A prerequisite for a multistakeholder approach is the participation of all stakeholders on an equal footing. We are therefore advocating that it be ensured that ICANN will neither be captured by governments nor by the interest groups dependent on ICANN.

5) Focusing ICANN's mandate

It must be ensured that the proposals to be drafted do not provide for any expansion of ICANN's current mandate. In particular, it should be clarified in the context of these proposals that ICANN does not have any legislative functions, now or in the future. ICANN must recognise that court rulings issued on the basis of national laws can be binding on ICANN. In particular, ICANN must continue to allow its contracting partners to be able to comply with applicable laws (e.g. on data privacy, trade marks or the protection of geographic indications).

6) Maintaining the security, stability and resilience of the domain name system

The security, stability and resilience of the internet is of essential importance. These characteristics of the domain name system must therefore be maintained. Here, the continued use of quality control can be of particular benefit.

7) Upholding openness, decentralisation and interoperability

An open, decentralised and interoperable internet structure is a prerequisite for the success of the internet and for its ability to function in technical and organisational terms. It ensures inclusive participation. This structure must therefore be retained.

III. Recommendations for action

1) Review procedure for decisions on individual cases

Transparent, affordable and effective procedures should be put in place which permit a redress of key decisions, with possible correction or revocation. To this end, it must be possible to revise decisions by the ICANN Board in a procedure which is independent of ICANN. These procedures should be developed for each specific aspect, and made available to the concerned group of addressees. Quite apart from this, ICANN must recognise that court rulings issued on the basis of national laws (e.g. on data privacy, trade marks or the protection of geographic indications) can be binding on ICANN.

2) Regular review of ICANN's modus operandi

In addition to the possibility to review individual decisions, there should be binding procedures for a critical review of ICANN's modus operandi. The outcome of these reviews should be opened up to public debate, and recommendations should be implemented quickly. This can ensure that the organisation will continue to work effectively and efficiently and that any bias towards individual stakeholders in decision-making processes is avoided.

3) No expansion of the mandate

It is crucial that the ICANN mandate remains restricted to the tasks laid down in the bylaws. These are primarily the coordination of the global management of three types of key internet resources: IP addresses, domain names, and protocols and parameters.

4) Ensuring the accountability of the ICANN Board

The creation of an appropriate mechanism must enable ICANN stakeholders to remove ICANN board members from office as a last resort in narrowly defined exceptional cases.

5) Drafting of contingency measures

In the case of risks which can imperil the existence of ICANN, e.g. insolvency, it is necessary to put binding rules in place prior to the IANA stewardship transition to safeguard ICANN and the IANA functions.

6) Rules on country-code Top-Level Domains

Unlike in the case of generic Top Level domains, ICANN only plays a very limited role with regard to country-code Top-Level Domains, and this role is basically restricted to delegating Top-Level Domains in the root zone. It is necessary to ensure that further rules on country-code Top-Level Domains continue to be made solely within the respective country in accordance with national provisions and legislation in force there.

7) Separation of IANA functions

It should remain possible to separate the technical execution of the IANA functions from ICANN.

IV. This position paper is backed by:

- Federal Ministry for Economic Affairs and Energy (for the German government)
- eco - Association of the German Internet Industry
- Denic e.G.
- ISOC .DE (Internet Society German Chapter e.V.)
- DotBerlin
- KRBE GmbH.