

July 17, 2018

Honorable David J. Redl
Assistant Secretary for Communications and Information and
Administrator, National Telecommunications and Information Administration
U.S. Department of Commerce
Washington, DC 20230

Via email to iipp2018@ntia.doc.gov

RE: International Internet Policy Priorities [Docket No. 180124068–8068–01]

Dear Assistant Secretary Redl:

planet.ECO LLC dba (“.ECO®”) appreciates the opportunity afforded by the NTIA to comment and provide a small glimpse of information previously sent to, and dismissed by, the previous administration.

The mismanagement of IANA Functions Contract SA1301-12-CN-0035 has resulted in the mis-delegation of “.eco” followed by the wrongful IANA Functions Stewardship Transition that must be unwound.

In response to NOI Section II. D¹ .ECO® presents its understanding of the SA1301-12-CN-0035, root zone management and accountability followed by its response.

¹ <https://www.ntia.doc.gov/files/ntia/publications/fr-rfc-international-internet-policy-priorities-06052018.pdf>



Introduction

.ECO® is a United States small business² and the exclusive trademark owner of “.eco”³. .ECO® is also an interested and affected party of IANA Functions Contract SA1301-12-CN-0035 /Applicant # 1-1710-92415⁴, all in accordance with Clause C.1.3.

Since 2008, .ECO® has been offering services under the “.ECO” mark in the nature of website promotion and affiliate programs for selling over the Internet, so that customers can create income from such sites. Amongst other things, .ECO® also offered services under the mark “.ECO” related to domain name registrations, which can be located at:
<http://www.ECODomainServices.com>.

.ECO® sought to naturally expand its business and trademark services⁵ by participating in this Federal Requirement, applying to be delegated the “.eco” gTLD and providing Domain name registry services, per Clause C.2.9.2d⁶. .ECO® paid the required \$185,000 application fee, all in accordance with Clause B.2.

IANA Functions Contract SA1301-12-CN-0035

On July 2, 2012, the U.S. Department of Commerce (DoC), National Telecommunications and Information Administration (NTIA) initiated a no-cost, non-appropriated Contract SA1301-12-CN-0035 to maintain the continuity and stability of IANA Functions, which included certain responsibilities associated with the Internet DNS and explicit approval authority over the root zone management⁷.

Contracting Officers⁸ overseeing Contract SA1301-12-CN-0035, as with all Federal Contracts, were responsible for ensuring performance of all necessary

² [SAM.GOV Registration for Planet.Eco LLC / 078467089 / 7CL99](https://sam.gov/registration/planet.eco-llc/078467089/7CL99)

³ <https://drive.google.com/file/d/1KbQkFiZWA7Q8Vzym0wxsWpzNI0kBgIbl/view?usp=sharing>

⁴ https://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf

⁵ See Trademark Manual of Examining Procedure (TMEP) §1207.01(a)(v).

⁶ See Clause C.2.9.2d Delegation and Redelegation of a Generic Top Level Domain (gTLD), Page 8

⁷ ICANN, VeriSign and the Department of Commerce have worked collaboratively to automate certain aspects of DNS root zone management. The new automated system, simplifies and expedites the process top-level domain name administrators must engage in to modify the information they maintain with ICANN.

<https://www.iana.org/help/rzm-system>

⁸ [Contracting Officers](#) Correspondence with .ECO®



actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships⁹. “The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract”, all in accordance with Clause G1.

The IANA Functions Contract consisted of three (3) root zone management partners¹⁰ who performed a series of checks and balances in the gTLD Delegation process to ensure Root Zone File Change Request, “*are reviewed several times by multiple parties, and ensured not to impact secure and stable Root Zone operation before implementation. The process also ensures accuracy for the changes by ensuring that TLD Managers review and positively confirm the correctness of the change, and confirming the accuracy of changes by using the DNS protocol to reconcile the proposed changes to the DNS Root Zone*”¹¹

The administration approved the following root zone management process, incorporated into the Contract Clause 1.2.9.2(1), which reads:

1.2.9.2(1) Facilitate and Coordinate Root Zone

ICANN will use its established process, described below, that are well understood by the various parties involved in Root Zone Management in order to continue to facilitate and coordinate the root zone’s contents.

Using the language of the Solicitation, and in accordance with the existing process workflow, a TLD manager will submit a change request to the IANA Functions Operator (ICANN), which will then be processed and evaluated according to the type of change being requested. Once the various checks are satisfactorily conducted, the request will be transmitted to the Administrator, NTIA, for authorization. Following successful authorization, the Root Zone Maintainer, Verisign, will execute changes to the root zone file. Finally, ICANN as the IANA Functions Operator will implement the authorized changes to the WHOIS database and the request will be completed.

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⁹ [FAR 1.602-2 Responsibilities.](#)

¹⁰ The process flow for root zone management involves three roles that are performed by three different entities through two separate legal agreements: the Contractor as the IANA Functions Operator, NTIA as the Administrator, and VeriSign (or any successor entity as designated by the U.S. Department of Commerce) as articulated in Cooperative Agreement Amendment 11, as the Root Zone Maintainer, [per the IANA functions contract, p15.](#)

¹¹ [Clause - 1.2.9.2.a Root Zone File Change Request Management](#) - (IANA functions contract), p120.

Simplified below are 3 (Step 1, Step 8 and Step 10) of the 12 steps¹² required for processing a gTLD delegation:

1. ICANN now the former Government Contractor¹³ (“Government Contractor”) acts as the IANA Functions Operator and accepts change request for those seeking gTLD delegation.

See Step 1 below:

1	SUBMIT CHANGE REQUEST
Description	A change request is submitted by requestor, typically through ICANN’s IANA Root Zone Management website.. ese requests will typically be lodged through ICANN’s IANA Root Zone Management website. The software used for processing standard root zone change requests is an existing system that was developed by ICANN and coordinates operations for updating the root zone with the Administrator and Root Zone Maintainer. Should a requestor not to use this

2. NTIA/Department of Commerce Contracting Officer makes authorization for gTLD delegation.

See Step 8 below:

8	AUTHORIZATION
Description	Changes to the DNS Root Zone File, as well as changes to the DNS Root Zone WHOIS Database, are transmitted to the Administrator for authorization. Such changes cannot be enacted without explicit positive authorization from the Administrator. Once a request has passed review and is ready for transmittal to the Administrator for authorization, the system will instantiate a Change Request in the Root Zone Maintainer’s system using the EPP protocol. At this stage of the process, the Root Zone Maintainer’s system will hold the request as pending until it receives proper authorization from the Administrator.

3. VeriSign acts as the Root Zone Maintainer (per the Cooperative Agreement with VeriSign) – makes update to the root zone file, inserting, deleting or modifying gTLDs.

See Step 10 below:

10	ROOT ZONE FILE CHANGE
Description	Root Zone File changes are implemented by the Root Zone Maintainer following authorization by the Administrator.

¹² Figure 1.2-39. Top-Level Root Zone Change **12 Step-by-Step Description** - (IANA functions contract) https://www.ntia.doc.gov/files/ntia/publications/icann_volume_i_elecsub_part_1_of_3.pdf, p113

¹³ Note: On October 21, 2016 the IANA Function Contract was officially Closed-Out. Making ICANN a former Government Contractor. <https://www.ntia.doc.gov/files/ntia/publications/sa1301-12-cn-0035001-10212016.pdf>

Multistakeholder Approach to Internet Governance - Question – II. D1:

Should the IANA Stewardship Transition be unwound?

YES. *“Without a correctly functioning Root Zone, the ongoing stability of the Domain Name System is compromised”*.¹⁴ Such compromises may lead to vulnerabilities, not limited to various Critical Infrastructures of the United States that may impact its security and safety.

If yes, WHY?

.ECO® strongly believes the IANA Transition should be unwound due to actions and/or inactions of the previous administration and previous DoC Contracting Officers¹⁵ and their mutual failure to properly oversee the performance of Contract SA1301-12-CN-0035 and allowing improper root zone management. The previous administration willfully allowed Government Contractor to perform the contract as if it were already transitioned and allowed Government Contractor to fail complying with its contract and US Laws. In its performance, Government Contractor has already shown that it will not follow United States federal procurement and trademark rules, laws, or regulations.

The rush for the transition of root zone management and other IANA Functions to Government Contractor is troublesome due to the previous administration ignoring reported accountability, mechanism and transparency issues. .ECO® has firsthand experience of disparate treatment received from Government Contractor, who was allowed to perform the IANA Functions Contract while creating unfair competitive advantages for the benefit of its former Government Contractor Board Members, Key Executives and multi-stakeholder members, applying for the “.eco” gTLD, hereinafter (“.eco conflicted contender companies”).

Throughout the performance of Contract SA1301-12-CN-0035, .ECO® filed repeated complaints with the previous administration via the DoC/NTIA¹⁶

¹⁴ Clause - 1.2.9.2.a Root Zone File Change Request Management - (IANA functions contract) https://www.ntia.doc.gov/files/ntia/publications/icann_volume_i_elecsub_part_1_of_3.pdf, p120

¹⁵ 1352.201-70 Contracting Officer's Authority - The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

¹⁶ [.ECO Agency Communications](#)

and other agencies, including complaints of conflicts of interest and trademark infringement. Instead of receiving assistance, .ECO® was misguided and given non-responsive answers, leaving the complaints unresolved. The actions and/or inactions of the agencies under the previous administration led to the interference of .ECO®'s freedom to operate, advertise, expand its business and trademark, which continues to cause irreparable harm to .ECO®.

The Contracting Officers failed to safeguard the interests of the United States, failed to investigate repeated complaints filed by .ECO®, and failed to ensure the Government Contractor would comply with all contractual terms.

The allowed mismanagement of the Contract by the Government Contractor allowed a contract closeout which appears to be contrary to federal procurement law. The IANA Functions Transition, based upon our experience, brings increased threats to economic growth, innovation and Critical Infrastructure.

As it pertains to improper root zone management, Conflicts of Interest played a role in the issuance of more than 20% of all gTLD awards were collectively designated to the three (3) .eco conflicted contender companies, all competing for “.eco”. These conflicted companies and members created gTLD policies and procedures and thus had advance, “inside” knowledge of the application processes their gTLD competitors did not possess. Moreover, it has been reported that all Community Priority gTLD awards¹⁷ were made only to conflicted contender companies.

This is in contradiction to the following Code of Federal Regulation which should have applied:

“Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.” - 48 CFR 3.101-1¹⁸

¹⁷ [Dot Registry CEO vs ICANN](#)

¹⁸ 1.602-2 -- Responsibilities. - <http://farsite.hill.af.mil/reghtml/regsfar2afmcfars/fardfars/far/01.htm>



The IANA Functions Contract page¹⁹ reveals that only one Contracting Officer, during the performance of Contract SA1301-12-CN-0035, attempted to correct one error to safeguard the public by replacing three (3) Key Personnel, which included the "Conflict of Interest Officer"²⁰, all in accordance with Clause H.B, KEY PERSONNEL (CAR 1352.237-75). This action alone, however, did nothing to mitigate existing conflicts .ECO® reported to the Contractor Officer.

The term "allowed", used in this document, should not be misconstrued to equate with "authorized", particularly when Critical Infrastructures of the US are involved and the IANA Functions Contract Page does not show any amendments supporting such allowances.

The Government Contractor was allowed to violate repeated clauses incorporated into Contract SA1301-12-CN-0035.

After the IANA Functions Transition was announced in 2014, the allowed improprieties increased. More complaints to the previous administration were filed. The administration knew or should have known that Government Contractor was:

- *known, and repeatedly reported by .ECO® for having conflicts of interest and accountability issues²¹, yet was still allowed the transition of IANA Functions Stewardship.*
- *allowed but not contractually "authorized" to perform outside of its contractual scope.*
- *allowed to breach Contract SA1301-12-CN-0035.*
- *allowed to improperly award delegation of ".eco" to Former Government Contractor Key Executive Jacob Malthouse, co-founder of Big Room Inc, without the proper warrant of a Contracting Officer.*
- *allowed to usurp United States Trademark Law by inappropriately designating TLD Manager applicant.*
- *allowed, via 2014 TMEP trademark rule 1215.02(d)(iii)²² to be considered in the issuances of trademarks. Government Contractor, a non-governmental entity did not have the warranted authority to delegate gTLD applicants and was unable to determine final gTLD delegation.*

¹⁹ <https://www.ntia.doc.gov/page/iana-functions-purchase-order>

²⁰ https://www.ntia.doc.gov/files/ntia/publications/iana_mod_m0005_key_pers_change_corrected.pdf

²¹ 15 U.S. Code § 657 - Oversight of Regulatory Enforcement assistance request - SBA [ONO](#)

²² [1215.02\(d\)\(iii\) Registry Agreement/ICANN Contract](#)

.ECO® has sought assistance from the SBA regarding Conflict of Interest involving the 3 conflicted contender companies, created to capitalize from their unfair competitive advantages, that submitted competing gTLD applications for .ECO®'s application for the “.eco” TLD.²³ No action was taken.

.ECO® repeatedly raised significant concerns, including those related to improper root zone management to the administration. Letters were sent to former Madam Secretary Penny Pritzker, former Assistant Secretary Lawrence Strickling and Director of Acquisitions Barry Berkowitz.^{24 25 26 27 28 29}

Via the Clause I.35, FAR 52.233-1 DISPUTES a dispute was also filed.^{30 31} .ECO® never received a Contracting Officer's Final Decision.

Rather than further investigating .ECO®'s complaints about the Contracting Officer's administration or lack thereof, pertaining to Contract SA1301-12-CN-0035, Assistant Secretary Strickling dismissed .ECO®'s complaints and referred .ECO® back to the improperly performing Government Contractor, stating, *“None of your claims has merit ... I suggest, as my staff has previously advised you, that .ECO® contract ICANN's (the Government Contractor) Ombudsman”*.³²

In August 2016 Contracting Officer authorized award delegation of the “.eco” gTLD, based off an Environmental Community Priority Mechanism. This mechanism is unknown in FAR and was not created by the Federal Government. Rather, this mechanism is a rule Big Room co-created with Government Contractor and began applying for since 2007.³³ Government Contractor or other stakeholders which confers preferential treatment to only insider applicants and conflicted contender companies, in the case of “.eco”, usurped US trademark law. In 2007 Big Room Inc.'s co-founder was an Executive working for the Government Contractor, while concurrently applying for its so-called Priority – 5 (five) years ahead of the Contract SA1301-12-CN-0035 and the gTLD application

²³ [DoC/ONO](#)

²⁴ [Request for Assistance with Personnel Compliance in IANA Contract # SA1301-12-CN-0035...](#)

²⁵ [Re: Request for Response to letter sent August 31, 2015](#)

²⁶ [Can you please assist and direct us to the proper Contracting Officer, as it relates to SA1301-12-CN-0035?](#)

²⁷ [Re: Error in New gTLD Program String Delegation Readiness Report.docx Contract # SA1301-12-CN-0035](#)

²⁸ [Where is the CO Madam Secretary?](#)

²⁹ [From Director of Acquisition – Your new CO is Ajayi Akinsola](#)

³⁰ [Dispute Email](#)

³¹ [Dispute Letter to Agency](#)

³² [Response from NTIA/DoC](#)

³³ [2007-11-01 Big Room & The Environmental Community Priority](#)

window opening.³⁴ Moreover, the Community Priority Mechanism was not officially completed by Government contractor until September 27, 2013³⁵ and the EIU did not complete its corresponding policy and procedures until August 7, 2014.³⁶

On December 7, 2016 after the administration allowed the mis-delegation and root zone file change of “.eco”, on October 1, 2016 Assistant Secretary Strickling announced the Completion of the IANA Functions Contract and its transition to Government Contractor³⁷.

And HOW?

.ECO®, suggests this administration investigate and review the correspondences and claims it has made to the previous administration and NTIA, since January 2014, and hopes to contribute to its decision on how and what proper measures to take to unwind the transition, as full contractual compliance from Government Contractor was not met. Thereafter, US Government may decide if it should retender and compete a new procurement to prospective entities that will comply with all US laws and Federal Procurement regulations.

Conclusion

It is worthy to note that Domain name registry services are identical and/or highly related to the services expressly covered by (.eco®; Registration No. 3,716,170) for “Domain Name Related Services.”³⁸

Every year since the issuance of the trademark, .ECO® has been allowed to be interfered³⁹ with and attacked by .eco conflicted contender companies, seeking rights to “.eco” for Domain name registry services. 2 (two) of the conflicted contender companies failed 3 (three) applications for U.S. “.ECO”

³⁴ <http://www.bigroom.ca/team/index.htm> and [Big Room Index page May 7, 2008](#)

³⁵ [Community Priority Evaluation \(CPE\) Guidelines – by The Economist Intelligence Unit](#)

³⁶ [COMMUNITY PRIORITY EVALUATION PANEL AND ITS PROCESSES](#)

³⁷ [2016-12-07 Asst. Sec. Strickling and the IANA Functions Contract](#)

³⁸ See U.S. Trademark Application Serial No. 77,523,015 doc.10 (filed July 15, 2008) (stating that Registrant’s ‘.eco’ mark encompasses “domain name related services”). Registrant’s ‘.eco’ mark also comprises “any goods or services in the registrant’s normal fields of expansion.” See *id.*; see Trademark Manual of Examining Procedure (TMEP) §1207.01(a)(v).

³⁹ <http://tsdr.uspto.gov/documentviewer?caseld=sn87423036&docId=SUL20180207165754#docIndex=2&page=1>



trademark rights^{40 41 42} and subjected .ECO® to 6 (six) frivolous trademark attempts for litigation that have been allowed to be filed in TTAB by .eco conflicted contender companies. All attempts to cancel or oppose .ECO® registration and subsequent applications, have failed. All cases have resulting in withdrawals^{43 44 45}, .ECO® being granted Motion to Dismiss⁴⁶, or Dismiss with Prejudice⁴⁷. The most recent pending opposition filing is the only exception, in which the tribunal struck four out of five claims asserted by Big Room Inc and a motion to dismiss awaits final judgement⁴⁸.

Government Contractor was allowed to abuse its authority and did so by designating hundreds of gTLD award delegations to 3 .eco conflicted contender companies despite the determinations made by the United States Patent and Trademark Office. Preferred insiders that assisted in co-creating gTLD policies and procedures, ignoring the interests of .ECO® and ignored laws rules and regulations pertaining to Federal Procurement and Trademarks were rewarded for their participation.

Arbitrarily being allowed to exclude .ECO® from having its equal opportunity to participate in Internet activity is simply not a multi-stakeholder approach that can be sustainable and serves as a strong indicator of what to expect in the future.

Can the United States Government trust that long-term accountability and transparency issues involving root zone management and Internet Governance can and will simply auto-correct?

Root zone management impacts: Critical Infrastructures, The Internet of Things and Industrially Significant Technologies; all of which our county has and will continue to become more reliant upon.

The previous administration was well aware of unresolved accountability structures and mechanisms issues prior to the Contract Closeout. Therefore, the

⁴⁰ [Dead .ECO TM 1 Application](#)

⁴¹ [Dead .ECO TM 2 Application](#)

⁴² [Dead .ECO TM 3 Application](#)

⁴³ Withdrawn TTAB Proceeding1 92055197 <http://ttabvue.uspto.gov/ttabvue/v?pno=92055197&pty=CAN&eno=10>

⁴⁴ Withdrawn TTAB Proceeding2 92055469 <http://ttabvue.uspto.gov/ttabvue/v?pno=92055469&pty=CAN&eno=12>

⁴⁵ Withdrawn TTAB Proceeding3 92060403 <http://ttabvue.uspto.gov/ttabvue/v?pno=92060403&pty=CAN&eno=17>

⁴⁶ Motion to Dismiss Granted 92060403 <http://ttabvue.uspto.gov/ttabvue/v?pno=92060403&pty=CAN&eno=17>

⁴⁷ [.ECO® Motion to Dismiss with Prejudice Granted 92051924](#)

⁴⁸ [Motion to Dismiss with prejudice for Failure to State a Claim Pending TTAB Proceeding 91231750](#)

actions and/or inactions of the previous administration, allowing the IANA Functions Stewardship Transition to proceed is, disturbing. This action is tantamount to the Government Contractor wrongfully being entrusted with the *unbridled discretion* to perform more improper root zone management, in its own interest and the interest of conflicted cohorts, indefinitely.

In light of the foregoing .ECO® reaffirms, in the interests of the United States Government, the performance of the IANA Functions, accountability, transparency and stewardship must remain above reproach.⁴⁹ Accordingly, the premature IANA Functions Stewardship Transition must be unwound from Government Contractor.

Sincerely,

/Jean D. William/

Jean D. William
CEO/Co-Founder

/Willie Moses Boone/

Willie Moses Boone
President/Co-Founder

⁴⁹ "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none..." - 48 CFR 3.101-1