

**Testimony of John M. R. Kneuer**  
**Acting Assistant Secretary for Communications and Information**  
**United States Department of Commerce**

**Before the**

**Subcommittee on Trade, Tourism and Economic Development**

**Committee on Commerce, Science and Transportation**  
**United States Senate**

**September 20, 2006**

Mr. Chairman,

Thank you and the members of the Committee for this opportunity to testify on the progress of the Internet Corporation for Assigned Names and Numbers (ICANN) under the Memorandum of Understanding (MOU) between ICANN and the Department.

The Administration recognizes the critical importance of the Internet to the economic and social well-being of the United States and the global community, and is committed to its future growth. The Department has been charged with preserving the stability and security of the Internet's underlying infrastructure - the domain name and addressing system. I am pleased to have this opportunity to share the results of our efforts to date, as well as our perspective for the future.

**The Department's Relationship with ICANN**

The Department continues to believe that the stability and security of the Internet domain name and addressing system (DNS) can best be achieved by transitioning the coordination of the technical functions related to the management of the DNS to the private sector. The vehicle for achieving this goal is the MOU between the Department and ICANN. As the Committee will recall, ICANN was formed in 1998 in response to the Department of Commerce's call for a partner to lead the transition to private sector management of the DNS.

In September, 2003, the Department and ICANN agreed to renew the MOU for a period of three years, with several date-specific milestones and broad tasks aimed at guiding ICANN to a stable, independent, and sustainable organization. The expectation of the Department was that the three-year time frame would allow ICANN sufficient opportunity to formalize appropriate relationships with the organizations that form the technical underpinnings of the Internet, secure the necessary resources to ensure its long-term independence, improve its mechanisms for broad participation by all Internet stakeholders, and continue to improve its decision-making processes. The Department plays no role in the internal governance or day-to-day operations of the organization. However, under the terms of the MOU, the Department monitors and ensures that ICANN performs the MOU tasks, and offers expertise and advice on certain discrete issues.

As you may recall, this relationship was the focus of much debate at last year's United Nations World Summit on the Information Society. To provide clarity to this debate, the Administration issued the *U.S. Principles on the Internet's Domain Name and Addressing System*. In this set of principles, the Administration reiterated its commitment to preserving the security and stability of the Internet domain name and addressing system; recognized that governments have legitimate public policy and sovereignty concerns with respect to the management of their country code top level domains; reaffirmed its support for ICANN; and encouraged continued dialogue on Internet governance issues. After much discussion and debate, and with your help and support, the international community arrived at a consensus on the importance of maintaining the stability and security of the Internet, the effectiveness of existing Internet governance arrangements, and the importance of the private sector in day-to-day operations of the Internet.

### **Measuring Progress**

The current MOU was deliberately crafted to permit the Department and ICANN to measure progress toward discrete goals and objectives. When this MOU was entered into in September, 2003, ICANN had just completed an internal review and reform effort, and was well into the process of implementing the structural and organizational changes called for through that process. In the course of the past three years, ICANN has successfully met many of the MOU's date-specific milestones, which included the following:

- developing a strategic plan addressing administrative, financial and operational objectives;
- developing a contingency plan to ensure continuity of operations in the event ICANN incurs a severe disruption of such operations, by reason of bankruptcy, corporate dissolution, natural disaster or other financial, physical or operational event;
- conducting a review of corporate administrative and personnel requirements and corporate responsibility mechanisms;
- developing a financial strategy to secure more predictable and sustainable sources of revenue;
- improving its processes and procedures for the timely development and adoption of policies related to the technical management of the DNS;
- implementing reconsideration and review processes, including an Ombudsman and commercial arbitration clauses in ICANN contracts;
- developing a strategy for the introduction of new generic top level domains, including internationalized domain names;
- enhancing broader participation in ICANN processes by the global community through improved outreach, regional liaisons, and multilingual communications;
- publishing annual reports on community experiences with the WHOIS Data Problem Reports System, used to report inaccuracies in the submission of WHOIS data by domain name registrants; and
- publishing annual reports on the implementation of the WHOIS Data Reminder Policy, which domain name registrars are required to send to domain name registrants.

ICANN has also made steady progress toward the MOU's broader tasks, including: entering into an agreement with the Regional Internet Registries to facilitate the development of global addressing policy, and developing and implementing new accountability framework agreements with many country code top level domain operators.

## **WHOIS Policy Development**

I would like to focus briefly on the WHOIS database issue. First, the U.S. government believes that ICANN should enforce the existing contractual obligations of domain name registrars and registries for the collection and maintenance of accurate registrant contact data. The Department and other U.S. agencies<sup>1</sup> strongly support continued, timely access to accurate and publicly available WHOIS data contained in the databases of information identifying registrants of domain names. We believe WHOIS data is critical to meeting a variety of public policy objectives and have been proactively advocating this position at ICANN meetings. At the most recent meeting in June, 2006, the United States formally tabled a statement clarifying our perspective that a public WHOIS database is essential to:

- assist civil and criminal law enforcement in resolving cases that involve the use of the Internet, combat intellectual property infringement and theft;
- support Internet network operators responsible for the operation, security and stability of the Internet;
- protect the rights of consumers by facilitating, for example, their identification of legitimate online businesses; and
- assist business in investigating fraud, phishing, and other violations of laws.

We are continuing to advance our perspective within ICANN, including working with other governments to develop more formal public policy advice on the purpose and use of WHOIS data.

## **Future Relationship**

The current MOU expires on September 30, 2006. Over the course of the past year, the Department has conducted an internal review of its relationship with ICANN. To complement the Department's internal review of ICANN's progress under the MOU, the National Telecommunications and Information Administration (NTIA) initiated a public consultation process to obtain the views of all interested stakeholders. In May, 2006, NTIA issued a *Notice of Inquiry on the Continued Transition of the Technical Coordination and Management of the Internet Domain Name and Addressing System* to solicit views on such issues as:

---

<sup>1</sup> NTIA chairs an interagency ICANN Working Group composed of representatives from the Department of Commerce, the Justice Department, the Federal Trade Commission, the State Department, the Patent and Trademark Office, the Federal Bureau of Investigation, the Internal Revenue Service, and the Department of Homeland Security that develops and coordinates U.S. positions on issues pending before the ICANN Governmental Advisory Committee.

- ICANN’s progress in completing the core tasks and milestones contained in the current MOU, and whether these activities are sufficient for transition to private sector DNS management by the scheduled expiration date of the MOU, of September 30, 2006;
- Whether the principles underlying ICANN’s core mission (i.e., stability, competition, representation, bottom-up coordination and transparency) remain relevant and whether additional principles should be considered;
- Determining whether the tasks and milestones contained in the current MOU remain relevant, and/or whether new tasks would be necessary;
- Assessing whether all key stakeholders are effectively represented and involved in ICANN’s activities, and if not, how that could be accomplished; and
- Whether new methods or processes should be considered to encourage greater efficiency and responsiveness.

NTIA received and analyzed over 700 responses from individuals, private corporations, trade associations, non-governmental entities, and foreign governments. NTIA invited a representative sample of these interested stakeholders to participate in a public meeting on July 26, 2006. Representatives from the Regional Internet Registries, the root server operators, registrars, registries, country code top level domain operators, the Internet Society, the Internet research and development community, trademark interests, the user community, the business community, and a representative from the Canadian government shared their perspectives on the questions NTIA posed to the global Internet community. Well over one hundred interested stakeholders participated in the public meeting.

This public consultation process revealed broad support for continuing the transition the coordination of the technical functions related to the management of the DNS to the private sector through the continued partnership between the Department and ICANN. A majority of interested stakeholders continue to endorse the original principles put forward to guide the DNS transition – stability and security; competition; bottom-up policy coordination; and broad representation. Equally importantly, the consultation process revealed strong support for a more specific focus on transparency and accountability in ICANN’s internal procedures and decision-making processes, and the continued involvement of the Department of Commerce in this transition.

As we approach the end of this term of the MOU, we are working with ICANN to negotiate the next phase of our continued partnership.

## **Conclusion**

In conclusion, the Department continues to be supportive of private sector leadership in the coordination of the technical functions related to the management of the DNS as envisioned in the ICANN model. Furthermore, the Department continues to support the work of ICANN as the coordinator for the technical functions related to the management of the Internet DNS. Both

ICANN and the Department agree that preserving the security and stability of the Internet DNS is a critical priority that will guide/govern the next stage in the transition process.

Thank you and I would be happy to answer any questions that you may have.