

Comments of Danny Younger  
on  
The Continued Transition of the Technical Coordination and  
Management of the Internet's Domain Name and Addressing System:  
Midterm Review of the Joint Project Agreement  
submitted to  
The National Telecommunications and Information Administration  
U.S. Department of Commerce  
February 9, 2008

I welcome the opportunity to offer these comments. I have been an active participant in ICANN processes for several years (having served as the Chair of the General Assembly of the DNSO and having been involved in numerous committees, working groups and other ICANN initiatives). Within ICANN I do my best to advocate on behalf of the still unrepresented community of domain name registrants.

More than a decade ago, the U.S. Secretary of Commerce was directed to privatize the domain name system (DNS). In heeding this directive, the Department of Commerce acted to insure the receipt of certain necessary assurances – namely, that the private sector had the capability and resources to assume the important responsibilities related to the technical management of the DNS.

A Joint Project was established whereby the parties to the Agreement (the DOC and ICANN), would jointly design, develop, and test the mechanisms, methods, and procedures that should be in place (as well as the steps necessary to ultimately transition the management responsibility for DNS functions). Upon completion of testing, it was contemplated that the management of the DNS would thereafter be transitioned.

ICANN's management has put forward the argument that the testing phase is now complete, that ICANN has met all of its responsibilities, and that the DOC should brook no delay in completing the anticipated transition.

The Department of Commerce, having held regular meetings with ICANN senior management and leadership to assess progress, must now (if it concurs with ICANN's assessment), decide how to best support the completion of the transition of DNS management to the private sector in light of whatever public comments may emerge during this midterm review consultation cycle.

Logically, the first question that all of us should be asking is “are the assumptions made over a decade ago regarding privatization still valid or has our experience with other privatizations perhaps made us aware of additional considerations that must now be factored into our decision making?”

In general terms, one can safely state that the public is usually reticent to accept the notion of privatization of public services if not accompanied by some modicum of oversight. By way of example, one can point to the Bill passed by the New York City Council on "Privatization Oversight"<sup>1</sup> that makes it clear that while the public accepts the notion of privatization, it still deems it necessary to safeguard "efficiencies" through the exercise of an oversight role.

The public rightfully worries about waste, about degradations in service quality, about contract mismanagement and about rising costs. For these reasons, among others, allowing for the oversight of those private sector bodies that deliver public services is nothing less than a prudent and responsible course of action.

While ICANN would have you believe that it "no longer requires regular operational scrutiny by the Department of Commerce" and that "the ongoing scrutiny of performance of the organization is the Board's responsibility",<sup>2</sup> the public cannot accept this proposition as ICANN is asking for the equivalent of sovereignty, seeking to function as an entity free from oversight, accountable to no one other than to its own unaccountable Board of Directors.

Consider the remarks made by Jon Nevett, Chair of the ICANN Registrars Constituency, on the topic of ICANN's lack of accountability:

"Who is the ICANN board accountable to?"

- A simple majority of eight ICANN board members can make decisions with huge impact, but the community, in my opinion, has no real recourse to challenge their actions in an effective way.
- What happens if a slim majority of the board goes off the proverbial reservation? We could file a reconsideration request. And who reviews that? It's an ICANN board Reconsideration Committee, which is a subcommittee of the same board that went off the proverbial reservation, and they report back to the same full board.
- We could file an independent review request, and what happens with an independent review request? First, you have to show that the board acted in violation of the ICANN bylaws. And if you hit that -- if you make that -- hit that hurdle and make that step, then the independent review panel advises the exact board that made the decision in the first place.

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<sup>1</sup> <http://query.nytimes.com/gst/fullpage.html?res=9C06E4DA1630F934A15757C0A962958260>

<sup>2</sup> [http://www.ntia.doc.gov/ntiahome/domainname/jpacomments2007/jpacomment\\_004.pdf](http://www.ntia.doc.gov/ntiahome/domainname/jpacomments2007/jpacomment_004.pdf)

- Removal of board members requires three-quarters vote of the same board that made the decision in the first place.”<sup>3</sup>

Another commentator <sup>4</sup> on this topic has recently stated:

“It is a simple political concept that only a political body with due legitimacy can be sovereign, that is, have no oversight over it... or to use the expression 'floating free from any political accountability'. To make it more comprehensible, to agree that ICANN only does tech function, and also to say it should be free floating without any policy oversight is similar to saying that the network and IT systems manager in my office should have no oversight and be free to do what he wants. Now, obviously that would not be proper.”

ICANN is asking the U.S. government to relinquish all oversight, but why should such a concession that runs counter to the “U.S. Principles on the Internet's Domain Name and Addressing System” be granted? These principles clearly state:

“The United States will continue to provide oversight so that ICANN maintains its focus and meets its core technical mission.”<sup>5</sup>

ICANN has not offered any compelling justification for our sovereign nation to abandon this well-articulated principle.

At issue in this particular review is whether ICANN has maintained its focus. I would ask the following questions:

- Is there a plan in place to deal with registrar failures?
- Is there a contract in place that stipulates how root-server operations could be transferred from one to another or assigned if such becomes necessary?
- Does ICANN provide an annual “State of the DNS Report”?
- Have security recommendations (such as those within the SSAC report on Domain Hijackings<sup>6</sup>) been implemented?

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<sup>3</sup> <http://sanjuan2007.icann.org/files/sanjuan/SanJuan-WorkshopAccountabilityTransparency-27June07.txt>

<sup>4</sup> Parminder -- <http://lists.cpsr.org/lists/arc/governance/2008-02/msg00089.html>

<sup>5</sup> [http://www.ntia.doc.gov/ntiahome/domainname/usdnsprinciples\\_06302005.htm](http://www.ntia.doc.gov/ntiahome/domainname/usdnsprinciples_06302005.htm)

<sup>6</sup> <http://www.icann.org/announcements/hijacking-report-12jul05.pdf>

- With bylaws introduced in 2002 that called for a three-year cycle of structural and operational reviews, have all such reviews been completed in a timely fashion?
- Do domain name registrants yet have a constituency within the GNSO?
- As it took a calamity (the RegisterFly situation) to finally get ICANN to act on a vital security-stability matter – registrant data escrow provisioning – must we await other calamities to see meaningful action inaugurated, or are there plans in place to deal with (for example) anticipated registrar gaming of the new gTLD landrush cycles?
- Has a process been established that allows for the community to move to have Board members replaced?
- As the community was promised at ICANN's inception that at-large directors would populate fully half of ICANN's board, and as now there are no such at-large directors on the board, will ICANN be adopting the recommendation tendered during the Nominating Committee Review to finally seat two at-large directors<sup>7</sup>, or will ICANN again lose its focus?
- As negotiations on a new Registrar Accreditation Agreement commenced well over three years ago<sup>8</sup>, does the registrant community finally have the new set of protections that it was promised by ICANN CEO Paul Twomey<sup>9</sup>?
- Do advisory bodies within ICANN (for example, the GAC or the ALAC) receive regular briefings on pertinent issues? Where are these briefings posted?
- ICANN resolved to commission an independent study by a reputable economic consulting firm or organization to deliver findings on economic questions relating to the domain registration market<sup>10</sup>. Will this study ever be inaugurated, or has ICANN once more lost its focus?
- Prior Operating Plans cited certain initiatives that have never commenced (such as project 1K in the 2006-2007 ICANN Operating Plan: "Review the UDRP for effectiveness; Make report on findings<sup>11</sup>). How are we to have

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<sup>7</sup> Recommendation: "The ALAC appoints two policy board Directors using whatever mechanism it considers to be appropriate." -- <http://www.icann.org/reviews/nomcom-review-report-23oct07.pdf>

<sup>8</sup> <http://gnso.icann.org/mailling-lists/archives/registrars/msg02787.html>

<sup>9</sup> <http://www.icann.org/announcements/announcement-27jul07.htm>

<sup>10</sup> <http://www.icann.org/minutes/resolutions-18oct06.htm>

<sup>11</sup> <http://www.icann.org/announcements/operating-plan-status-30nov06.pdf>

confidence in ICANN's focus if scheduled activities aren't initiated?

- ICANN manages the L-root server; other server operators have launched numerous anycast instances. Under ICANN's management, how many instances does the L-root now offer?
- WHOIS accuracy is deemed to be important. According to ICANN, how accurate are WHOIS records at this point in time? Has accuracy improved at all? Does ICANN even know?
- How do you allow a problem to manifest over several years to the point that over 40,000,000 domain names are now being "tasted" monthly in .com alone<sup>12</sup> and still claim that your organizational focus is sufficient?
- Have any ICANN plans been put into place to allow for the expedited take-down of typosquatting registrations that have emerged in the wake of the domain tasting epidemic, or will this problem continue to fester and remain unresolved for years to come under ICANN's management?
- Finally, has the community or the DOC been advised of the characteristics of the post-MOU model that ICANN is contemplating? Have any proposals for a post-MOU model been solicited?

It is my assessment that at this point in time ICANN has not sufficiently matured as an organization nor demonstrated a focus sufficient to even warrant consideration of a request for full freedom from Departmental oversight. I look forward to the Department's articulation of the manner by which oversight and operational scrutiny of the ICANN organization will continue to be pursued henceforth.

Thank you for your consideration of these views.

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<sup>12</sup> <http://www.icann.org/tlds/monthly-reports/com-net/verisign-200710.pdf>