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To: JPAMIDTERMREVIEW JPAMIDTERMREVIEW
Date: Friday - February 15, 2008
Subject: Response to Notice of Inquiry, Docket No. 07102363-7617-01

VIA ELECTRONIC MAIL: JPAMidTermReview@ntia.doc.gov

TO: Ms. Suzanne R. Sene, Office of International Affairs, National
Telecommunications and Information Administration

FM: Time Warner Inc.

RE: Response to Notice of Inquiry, Docket No. 07102363-7617-01

DT: February 15, 2008

Time Warner Inc. appreciates this opportunity to comment on the midterm review of the Joint Project Agreement (JPA) between the Department of Commerce and the Internet Corporation for Assigned Names and Numbers (ICANN).

Time Warner Inc. is a leading media and entertainment company, whose businesses include interactive services, cable systems, filmed entertainment, television networks and publishing. Whether measured by quality, popularity or financial results, our divisions are at the top of their categories. AOL, Time Inc., Time Warner Cable, Home Box Office, New Line Cinema, Turner Broadcasting System and Warner Bros. Entertainment maintain unrivaled reputations for creativity and excellence as they keep people informed, entertained and connected.

Time Warner supports the innovative model that ICANN embodies for a private-sector-led means of technical management of the Internet's domain name and addressing systems. ICANN's role is of growing importance to the Time Warner companies as online activities continue to expand. Time Warner has participated consistently in ICANN activities, both directly and through trade associations and coalitions; and we have seen the organization make considerable progress in recent years on many fronts, including its transparency and accountability to key stakeholders. However, we do not agree with ICANN's assertion (made in its submission of January 9, 2008 in this proceeding) that it has now executed all the terms of the JPA and that the agreement is no longer necessary and should be terminated.

To offer just a few examples:

(1) ICANN is just beginning to put into place a credible program to enforce its contracts with registrars and registries. It is far from having an effective contract compliance program today. This is a particularly important gap, because, as a private sector organization, ICANN depends upon contracts to carry out its DNS management functions. From Time Warner's perspective, ICANN's failure to enforce compliance with its contracts has hampered the ability to protect intellectual property rights online, and has complicated efforts to prevent misuses of online assets. One instance - though not the only one - involves lax enforcement of contractual obligations to provide publicly accessible and accurate Whois data, an obligation that ICANN specifically pledged in the JPA to enforce.

(2) ICANN set as a goal for itself in the JPA "to increase engagement with the private sector by developing additional mechanisms for involvement of those affected by ICANN policies." We certainly do not think this goal has been achieved, and question what "additional mechanisms for involvement" have been developed since the JPA began in September 2006. While ICANN's submission lists a number of meetings and other outreach activities to the private sector, Time Warner's experience is that the various views of companies and trade associations are not consistently heard and heeded within ICANN's processes. In this regard, we are concerned that the ICANN board is now considering structural changes to the Generic Names Supporting Organization that would reduce considerably the voting representation of private sector entities that are "affected by ICANN policies," other than those registrars and registries that have contractual relations with ICANN. This would be a significant step away from the goal ICANN set for itself.

(3) Although ICANN's operations have become more transparent, its decision-making processes remain convoluted and difficult for private sector companies to participate in effectively. This is a key aspect of the "improved transparency, accessibility, efficiency and timeliness" that ICANN pledged in the JPA to achieve, and while there has been progress, we believe that much more needs to be done before ICANN can accurately lay claim to the label of being "private-sector-led."

We hope that NTIA will use this mid-term review to work out in more concrete terms what ICANN will do over the remaining 18 months of the JPA to achieve some of the goals that it has set for itself. Time Warner also believes it would be timely to use this 18-month period for a more specific discussion of what the next steps in the relationship between ICANN and the US government should be.

Thank you for holding this midterm review and for considering the views of Time Warner Inc.

Sincerely,

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