

**COMMENTS OF THE
SOFTWARE & INFORMATION INDUSTRY ASSOCIATION
(SIIA)**

In response to the Notice of Inquiry:

**“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”**

By

**U.S. DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration (NTIA)**

Docket No. 071023616-7617-01

The Software & Information Industry Association (SIIA) appreciates this opportunity to submit comments in the above referenced Notice of Inquiry (NOI). We commend the NTIA for its outreach in seeking comments from stakeholders on this important question.

As the principal trade association of the software and digital information industry, the more than 750 members of SIIA develop and market software and electronic content for business, education, consumers and the Internet.¹ SIIA's members are software companies, ebusinesses, and information service companies, as well as many electronic commerce companies. Our membership consists of some of the largest and oldest technology enterprises in the world, as well as many smaller and newer companies.

Our members are leaders in building the global online marketplace, providing content and infrastructure that users around the world depend on want. They depend on a robust, secure and predictable environment, which includes a reliable Domain Name System (DNS) and associated tools that permit the DNS to operate with confidence.

SIIA, its member companies, and its staff have been involved in ICANN since its inception in 1998. SIIA has strongly supported the role of ICANN over those years,

¹ Our website can be found at www.sii.net.

and we have continuously worked to enhance the capacity of ICANN to carry out its responsibilities. Those responsibilities are outlined in the Joint Project Agreement (JPA) that is the subject of this NOI and, just as significantly, are identified in the "DNS White Paper"², the Statement of Policy on the privatization of the Internet Domain Name System (DNS) issued in June 1998.

SUMMARY

Any discussion of terminating the JPA is, at best, premature and, in our view, misguided. There is no doubt that ICANN has, since its inception, been taking continuous steps to implement its responsibilities. This is due, in large part, to the dedication of ICANN's staff, which works diligently in a complex environment.

But, that is not the question. Rather, taking into account its commitments in the JPA, the implementation of the principles of the DNS White Paper, and the emerging challenges to maintaining a predictable and secure DNS, the road ahead should examine, before the current JPA terminates in September 2009, how the partnership between ICANN and the US Government should continue so as to improve ICANN's governance and work and to meet the challenges ahead.

The JPA Commitments

The JPA established 10 responsibilities for ICANN, intended to make it a more stable organization with greater transparency and accountability in its procedures and decision making. The JPA establishes a partnership between ICANN and the US government that provides oversight of ICANN's procedures.³ We provide comments below on the major items.

Transparency and accountability. In its Annual Report,⁴ ICANN summarizes a number of steps it has taken in this regard, concluding with a summary comment from an "independent" report that "ICANN is a very transparent organization. It shares a large quantity of information through its website, probably more than any other global organization." The Report goes on to say that "ICANN has made major steps to clarify its accountability mechanisms in its ongoing commitment to serve and be accountable to global Internet stakeholders."

With all due respect, the evidence points to the need for a further enhanced partnership by the U.S. Government and ICANN, since this is an on-going effort, and ICANN's commitment to create an even more transparent and accountable organization with the highest standards of governance is critical to its stability and

² Statement of Policy: Management of Internet Names and Addresses (Docket Number: 980212036-8146-02), released, June 5, 1998, found at: http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm.

³ A second contract between ICANN and the U.S. government controls additions to the root zone file, which governs DNS hierarchy of tables and servers translating domain names into Internet addresses. We assume that this contract will continue, regardless of what happens with JPA.

⁴ ICANN Annual Report, 23-Dec-2007, <http://www.icann.org/announcements/announcement-23dec07.htm>.

growth. Based on our experience, we believe many roadblocks still exist to greater private sector participation, which is essential to ICANN fulfilling its role and building confidence. Moreover, a number of steps that are under consideration by ICANN, such as the proposed GNSO “reforms,” that will make the problem worse. In this regard, SIIA wants to emphasize that our members have a demonstrated record of participating (i.e., devote valuable staff time and other resources, as appropriate) into voluntary activities, such as standards development activities. The feedback we have received from our members is that there is concern that investment of time and resources in the ICANN process has been scaled back due to concerns about the predictability of the process and the ability to be heard.

Implementation of Multi-Stakeholder Model. ICANN asserts in its Annual Report that it “is maintaining and improving its multi-stakeholder model partly through scheduled reviews of its supporting organizations and advisory committees as mandated by Section 4 of the ICANN bylaws.”

Again, ICANN’s own report on this point highlights the need for a continued, enhanced partnership with the US Government. While scheduled reviews are planned and underway (in some cases), the stark reality is that our industry is participating actively, though constituencies and in the public comment processes, but have deep concerns about whether our voice is being heard, particularly on matters that directly affect the ability of members to combat bad actors in the online world.

Contract compliance/enforcement. ICANN states, with regard to question 5, that “The 4th annual report on the Whois Data Problem Reports System about complaints of inaccurate Whois data was produced. The 4th annual report on registrar compliance with the Whois Data Reminder Policy was also published. An audit to assess Whois accuracy and availability begin in 2007 and will conclude in 2008.” In response to question 10, ICANN reports that a Director of Compliance was appointed in 2006, and that last year, compliance function staffing added an audit manager and data analyst.

The fact that ICANN has taken the initial steps – producing and publishing a report -- is not evidence of enforcement, and certainly not an argument that this commitment has been met, much less that this is a justification for terminating the JPA. We are deeply aware of the need for effectively contract compliance, as the lack of action in this regard directly affects the ability of our members, and other leaders in global eCommerce, to operate with confidence. It is our view that no meaningful contract compliance program is in place, and contract provisions (including but not limited to Whois obligations) are not effectively enforced.

Security and stability. ICANN states in its Annual Report that “ensuring the stable and secure operation of the Internet’s unique identifier systems will continue to be ICANN’s central mission.”⁵ It noted that last year, ICANN brought online additional systems based in Florida that improve the resiliency and performance of the L-root servers.

⁵ Citing Article I, Section 1 of ICANN’s Bylaws at: <http://www.icann.org/general/bylaws.htm#I>.

As ICANN admits in its response to Question 4, "Overall security of the root server system will continue to be a topic of ongoing dialogue between ICANN and the USG," hardly a call for termination of the JPA. Rather, it is concrete manifestation of the need to look ahead to the future challenges that the DNS faces through an updated partnership arrangement. In this regard, it is essential that this be done through civilian US government agencies (like the Department of Commerce). Bringing additional systems on line to addresses one of the root servers, however, belies the lack of strategic assessment of future challenges in this area, which are critical to all stakeholders. As the US Government assesses how best to continue the partnership, an important question is whether ICANN is doing all it can to proactively adopt and enforce DNS policies that respond to and combat stability threats such as phishing and domain tasting?

Top Level Domain Management. In its Annual Report, ICANN provides a grocery list of actions it has taken in this regard, noting that 11 IDN TLDs were inserted for evaluation purposes into the root zone which were accompanied by a user test facility in the form of IDNwikis, as well as references to "significant progress was made on IDN policy implications."

With all due respect to the steps identified in ICANN's Annual Report, it is our view that the process of evaluating new TLD's and the resulting expansion has not promoted confidence, but rather confusion on the part of key stakeholders. We note, again, our industry's attempt to actively participate, but our experience does not convince us that ICANN has institutionalized its consideration of new TLD's in a manner that takes into account the stability/security and governance impacts of quickly adding dozens of new TLDs.

THE ROAD AHEAD

At this mid-course point, we urge the USG to initiate discussions with ICANN on what should be the elements and structure of its on-going partnership with ICANN, taking into account ICANN's implementation of its commitments in the JPA and the principles laid out in the "DNS White Paper."

To state the obvious, assessing a checklist of responsibilities should not be determinative of whether the JPA should be terminated. The current situation is one where the current operation of ICANN – as well as the threats it faces -- is far from ready to become "fully independent." While ICANN's recent Annual Report includes a variety of actions relevant to the responsibilities laid out in the JPA, it is the view of SIIA that it essential to remember why these responsibilities are included in the JPA in the first place: to promote and encourage "*private sector leadership in the innovation and investment that has characterized the development and expansion of the Internet around the globe*"⁶ This is also at the core of the "DNS

⁶ Joint Project Agreement, at: http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNJPA_09292006.htm

White Paper” Statement of Policy, which laid out the principles upon which ICANN was recognized as the entity to take on transition of the DNS from the National Science Foundation.

We believe that the following challenges face ICANN:

1. ICANN's current structure makes it dependent on revenue from precisely the entities that it seeks to oversee, the registrars and registries. Without the US Government as a partner, the risk that the “funders” of ICANN will dominate the “oversight” functions of ICANN mounts, and will ultimately make ICANN unable to achieve its responsibilities as outlined in the DNS White Paper.
2. We note that since ICANN's inception, various public authorities (including national and regional governments, as well as treaty-based organizations) have been unsupportive of ICANN, both as a model for carrying out the functions outlined in the DNS White Paper and its current organization. The JPA, and its predecessor arrangements, have been an essential stabilizing force in this regard.
3. Of deeper concern, these public authorities do not appear to be merely calling for the elimination of the U.S. government's partnership with ICANN. Rather, the statements also appear to call for greater control of ICANN through either international treaty or some other intergovernmental arrangement that would supersede the critical role of the private sector and substitute, instead, increased governmental direction. SIIA is concerned that this could result in a number of detrimental harms, including the confidence in the DNS, as well as an environment that promotes innovation and investment in online business.

It is this challenging environment, as well as implementation of the essential responsibilities of ICANN, that point to the need to begin working toward the next chapter in the partnership between the U.S. Government and ICANN.

On behalf of our member, SIIA looks forward to working with the US Government, ICANN and other stakeholders as those next steps are considered and formalized, so that after September 2009, we can build further confidence in the work of ICANN and the DNS.