



INTERNET SOCIETY COMMENTS SUBMITTED TO THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, NOTICE OF INQUIRY “ASSESSMENT OF THE TRANSITION OF THE TECHNICAL COORDINATION AND MANAGEMENT OF THE INTERNET'S DOMAIN NAME AND ADDRESSING SYSTEM [DOCKET NO. 090420688-9689-01]”

The Internet Society provides the following comments in response to the National Telecommunications and Information Administration Notice of Inquiry “Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System [Docket No. 090420688-9689-01].”

The NOI raises fundamental questions about the management of the Internet Domain Name System, and specifically about the Domain Name Project that has been ongoing since 1997. The NOI background material and questions go to the heart of how the Internet’s naming and numbering functions operate. In the context of the NOI, the Internet Society offers the following recommendations for consideration.

Overall recommendation:

Conclude the Joint Project Agreement

The Internet Society recommends that the Joint Project Agreement be concluded, and that we declare a successful end to the DNS Project. A thorough review of the 1998 Green Paper, White Paper, and the successive versions of the Memorandum of Understanding (MOU) between the United States Department of Commerce and ICANN concerning the DNS Project reaffirms the original US government goal “to privatize the management of the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.” Privatization is to take place “based on the principles of stability, competition, private, bottom-up coordination, and representation.” The government also clearly set out the reasons for the approach it took to the DNS Project: “A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing

needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.” The Internet Society believes that the continued success of the Internet depends on private leadership, and the bottom-up governance model, which has evolved into the multi-stakeholder model we see today.

There has been gradual and incremental progress towards meeting the goals in a way that is consistent with the original principles and with the care required when overseeing a shared global resource.

As progress was made the terms of the MOU were modified to recognize the achievements and to provide guidance in areas where more work was needed. This shows that the original model has worked. It is ISOC’s view that competition in the DNS space is continuing to grow, as is international participation in ICANN’s processes. The principles have largely been maintained, even as ICANN confronted new challenges as the organization evolved.

ISOC believes it is now time to ask whether continued government monitoring is needed to help ICANN to deal with the challenges that remain. Clearly the answer is “no.” Indeed, continued US government advice and monitoring may actually be a hindrance to ICANN’s maturation, as different constituents choose to appeal to the US government to help them, and ICANN, to find a solution rather than taking responsibility to develop solutions themselves within the organization.

The conclusion of the JPA and the full privatization of the technical coordination and management of the Internet’s domain name and addressing system will signal to all that the responsibility to craft good decisions through the bottom-up policy process is theirs alone. Internet organizations are driven by expertise and vigorous, sometimes fractious, debate: it would be no different for any organization fulfilling this role. The contending forces in ICANN are a sign of the vitality and involvement of its constituencies. It is never certain that all issues can be resolved in a satisfactory way; but it is certain that continuing US government advice and monitoring are not going to help in any significant way. In fact, its continuation often seems to be a distraction from broad engagement with the process.

ISOC has always supported the self-regulation model for the Internet, and strongly supports ICANN and the role it plays in coordinating certain aspects of the “collaborative” Internet management model.

We join with others around the world in thanking the United States for its commitment to the transition of the technical coordination and management of the Internet’s domain name and addressing system and the success that has

been achieved, and we call on the government to conclude the Joint Project Agreement on its expiry September 30, 2009.

Advice Recommended for Inclusion in the DNS Project Report:

A Stewardship Role is Required for the Technical Coordination and Management of the Internet's Domain Name and Addressing System

The Internet Society strongly recommends that the final report on the DNS Project should emphasize the responsibility for promoting the global public interest in the operational stability of the Internet by, *inter alia*, coordinating, at the overall level, the global Internet's systems of unique identifiers, and in particular by ensuring the stable and secure operation of the Internet's unique identifier systems, as set out in the Articles of Incorporation and Bylaws of ICANN. Through the DNS Project activities, ICANN acts as the steward of a vital and shared global resource. Effective stewardship is critical for the technical coordination and management of the Internet's domain name and addressing system, even though it may mean decisions and action plans will sometimes have to draw a balance between ICANN's responsibilities to do what is right for the Internet and Internet users, and the recommendations from Supporting Organizations' and Advisory Committees' policy development processes. It may also mean taking paths that are not the most direct route to the organization's financial growth. Further, the correct balance may not always be popular with some of the most powerful constituencies. Nonetheless, ISOC believes strongly this central obligation must drive the future direction and activities of the organization.

The obligations of stewardship do not rest exclusively on ICANN's Board. The privatization of the technical coordination and management of the Internet's domain name and addressing system will impose a new, shared responsibility for all constituencies to collaborate as responsible parties working to find mutually acceptable solutions that contribute to the good of the shared global resource that is the Internet. Such an approach obviously has implications for ICANN's governance model.

Good Governance is Essential

The Internet Society believes in a bottom up, multi-stakeholder approach to governance of the technical coordination and management of the Internet's domain name and addressing system. This approach was part of the original model for ICANN, and we believe it will be valuable to reinforce the importance of this model in the report on the DNS Project. We believe that the governance model in ICANN works in the majority of cases. And we are confident the bottom

up, multi-stakeholder model has the necessary strength to address the challenges ICANN will face in the upcoming period of transition. At the same time, we recognize that the model cannot work well when ICANN faces tough issues that bring critical, powerful and fundamentally opposing interest groups up against one another in the current PDP process. Unfortunately, those tend to be high profile and important issues; whois and domain name tasting come to mind as examples. The current governance model fails in these cases because the Board has no option but to cycle around and around, referring decisions back to the originating body, where interests can and sometimes do remain deadlocked. This causes the system to freeze.

For effective governance of technical coordination and management of the Internet's domain name and addressing system, a better decision process is required, and that process needs to be based on facts and evidence, not on clashing opinions, economic or political interests or marketing considerations. For this to work within ICANN, its constituencies (along with others as needed) must work together to ensure staff and Board get the information they need to take decisions in line with their stewardship role over a shared global resource. While such decisions are almost certain to be unpopular with some in ICANN, we believe that a new approach is essential, given the specific mandate of technical coordination and management of the Internet's domain name and addressing system. And note as well that this is very consistent with other Internet organizations such as the RIRs, which also have a stewardship role. For this to work, the staff and Board must however be accountable to the community of those who care about the Internet, must take decisions with its' stewardship role firmly in mind and it must be governed in accordance with widely accepted principles.

ICANN has devoted significant resources to understanding its constituents' goals for its governance, and to developing policies and plans to improve its governance. While these efforts have led to new Management Operating Principles, these are not sufficient to deal with the very real challenges faced when one is steward over a limited, yet shared global resource and at the same time tries to satisfy powerful opposing players.

Going forward, some processes likely will need to be changed. ISOC proposes that the following elements of good governance should be emphasized in the final report of the DNS Project, and should set the foundation for building an improved governance structure:

- **transparency** – continue and improve provision of complete, timely and useful information about the organization's operations and current topics, as well as full disclosure in reporting on decisions and the rationale for decisions.

- **participation** – emphasizing that all stakeholders, including governments, have a right and a responsibility to contribute to an open process for arriving at decisions that affect them.
- **evidence-based decision making processes** – through the use of sound and valid methods for the collection and analysis of high-quality and pertinent evidence, preferably organized by topic/subject matter. There should be greater use of impact assessment tools and responsible public consultations, including careful consideration of community requests for factual research and a bias toward accepting such requests.
- **inclusive dialogue** – encourage more cross-constituency dialogue about issues. Many issues the Internet faces have implications for more than one Supporting Organization or Advisory Committee, yet the existing processes do not sufficiently promote real discussion among the constituencies nor do they drive those involved to agree on the basis of what is best for the Internet or best for end users. Instead, they often seem to be used to support expedient decision-making. To fully execute on ICANN’s stewardship responsibilities, steps must be taken to bring all the necessary experts and interests together to try to reach mutually acceptable recommendations to the Board – topic by topic and freed from their individual silos. It is vital to remember that the multistakeholder model means having all stakeholders talking and working together, at the same time, on the same issues, and toward a common purpose, not having all stakeholders dealing with the issues in their respective silos.
- **accountability** – the board of any organization must perform its fiduciary responsibilities as required by the Articles of Incorporation. But, consistent with the Internet’s collaborative model, decision makers responsible for the activities outlined in the DNS Project are also accountable to the constituencies and direct participants, as well as to the global community of Internet users, for their decisions and their responsibility to preserve the stability and security of the Internet’s unique system of identifiers. ICANN must improve its efforts to demonstrate and communicate accountability beyond the Board’s fiduciary responsibilities.
- **evaluation** – it is important to have a feedback mechanism to check on the effectiveness of the technical coordination and management of the Internet’s domain name and addressing system, in the service of Internet users, and how the affected communities are responding. This feedback should be sought regularly and proactively.
- **complaint/response/dispute resolution** – no decision making process or authority will ever be able to please all of the organization’s stakeholders, and

so it is important to continue to ensure that graduated, responsive and effective mechanisms are in place to deal with complaints and disputes as they arise.

Finally, consistent with the Internet Society's contributions to previous consultations, we do not believe that the end of the Joint Project Agreement calls for a change in the role of governments in the technical coordination and management of the Internet's domain name and addressing system. Obviously, governments have a responsibility to bring public policy interests to the table, and must play an important role in any multi-stakeholder process; however, the Internet Society believes ICANN's Governmental Advisory Committee should remain advisory. At the same time we urge currently active GAC members and ICANN itself to continue to encourage more governments, particularly from developing countries, to participate actively in the GAC and in other ICANN processes. The GAC must be seen to provide advice to the Board and constituencies that genuinely reflects their citizens' interests and desires regarding the shared global resource that is the DNS. Any discussion of the appropriate role of the GAC in future should benefit from multistakeholder dialogue in the ICANN community.

Conclusion/Summary

In conclusion, the Internet Society believes that the United States government has now fulfilled its responsibilities to the global Internet community as set out in its landmark 1998 Policy on the Management of Internet Names and Addresses. Again, we join with others around the world in thanking the United States for its commitment to the transition of the technical coordination and management of the Internet's domain name and addressing system and the success that has been achieved, and we call on the government to conclude the Joint Project Agreement on its expiry September 30, 2009.

Finally, ISOC is committed to playing its part in the continuing operation of the Project's approach in full confidence that the open, transparent, bottom-up model is strong enough to make a successful transition to private, multistakeholder leadership. The Internet Society recognizes that the present Notice of Inquiry seeks views about the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System, and we have framed our remarks within the confines of the NOI. However we would like to note that in past Inquiries, ISOC has supported the Internet Architecture Board's insistence that the rightful role of the IETF with regard to the assignment of technical protocol parameters within the IANA function must be clearly articulated and addressed in any agreements about the conclusion of the DNS Project and ICANN's transition to private leadership, and we continue to support the views of the IAB expressed in this current Inquiry. Therefore we wish to take this

occasion to state our organization's interest and willingness to participate fully in any further consideration of any adjustments of the IANA function to accommodate the new environment following the successful completion of the DNS Project.

The Internet Society is committed to playing its part and calls on the United States government to join with other stakeholders in support of the evolution of this approach after the end of the Joint Project Agreement.

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About the Internet Society

Founded in 1992, the Internet Society (ISOC) is a professional membership society with more than 80 organizations and over 28,000 individual members in over 90 chapters around the world. It provides leadership in addressing issues that confront the future of the Internet, and is the organization home for the groups responsible for Internet infrastructure standards, including the Internet Engineering Task Force (IETF) and the Internet Architecture Board (IAB). In 2002, ISOC was given the privilege of operating the .ORG domain name as a result of a competitive open bid process conducted by ICANN; and a subsidiary organization, called Public Interest Registry (PIR), was established for this purpose.