



8 June 2009

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 Go Daddy Group, Inc. respectfully submits the following response to the National Telecommunications and Information Administration's (NTIA) Notice of Inquiry (NOI) seeking public comment regarding the upcoming expiration of the Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN).

Background

The role the Internet plays in national and international security and in the world economy cannot be understated. It must have high priority among the core functions of the NTIA which include the DNS authoritative root and oversight of the relationship between the NTIA, ICANN, and VeriSign, in which the JPA plays an integral role. The importance of these functions was made clear recently by President Obama in his speech on cybersecurity. Without the JPA or something similar, it will be difficult to fully realize his vision of cyber and national security in an environment where ICANN is open to capture and stretching its authority with no credible mechanisms to prevent it.

The original statement of policy issued by the Department of Commerce in June 1998 [1] (the DNS White Paper) articulated four principles necessary for guiding the transition to private sector management of the DNS: stability; competition; private, bottom-up coordination; and representation. We believe these principles are still appropriate and it is critical they are effectively integrated into ICANN's processes and structures before transition of management of the DNS to ICANN can be completed. The primary mechanism for setting objectives and milestones, for holding ICANN accountable for its promises, and for protecting ICANN from institutional capture has been the Memorandum of Understanding between the Department of Commerce and ICANN, which has now evolved into the current JPA set to expire 30 September 2009.

The NOI made note that a midpoint review of ICANN's progress under the JPA took place November 2007 through February 2008. The review revealed that "while some progress had been made, there remained key areas where further work was required to increase institutional confidence in ICANN." We agree. We believe work remains to be done in all of the areas identified by the midterm review including assuring long-term stability, protection from capture, continued private sector leadership, and stakeholder participation. But the foundation upon which all these areas rely is accountability.

Accountability for ICANN Decisions and Policy

ICANN does not rely on voluntary donations; it is able to mandate fees to contracted parties (Registrars and Registries) which in turn are eventually passed on to consumers. ICANN, by means of policy making procedures, is able to establish regulations for a major medium of international communications, information, and commerce. These regulations

become binding on contracted parties who in turn enforce them with consumers, and these regulations also mandate the processes through which stakeholders participate in ICANN.

As a result, ICANN is analogous to a private-sector version of an administrative agency with judicial, legislative, and executive powers that levies taxes on and regulates a major international industry. Those whose affairs are regulated or controlled by such an entity should have a process through which such policies or regulations can be appealed and/or reviewed. The United States Government itself recognizes this fact through the Administrative Procedures Act (APA). The APA establishes: 1) rules and procedures for agency rulemaking and for development of regulations; 2) rules for formal and informal agency adjudication (reconsideration) of agency decisions; and 3) provides the opportunity for judicial review outside of the agency itself.

However, although ICANN's decisions and policies are as binding as any regulation and can have potentially devastating effects on those it applies to, there is no appropriate provision for an outside judicial review-like process of those decisions and policies.

Accountability for Private Sector Leadership and Protection from Capture

Since the formation of ICANN, governments have expressed an interest in controlling and overseeing it. This threat to the Department's vision of private sector leadership is as real today as it was in 1998. This is evident in a recent public message from Viviane Reding [2], the EU Commissioner for Information Society and Media. The commissioner calls for a fully privatized, fully independent ICANN, but for what purpose? This is made clear as she calls for a judicial review process through an "international tribunal" and for a "G-12 for Internet Governance" made up of government representatives that would make recommendations to ICANN.

We agree with certain concepts of Commissioner Reding's proposal, but as presented we are concerned that the ultimate goal of an independent ICANN is to simply open it up to capture by international organizations, other governments, or businesses, and to make its decisions subject to international courts. In fact, those who have the most concerns about extending the JPA often seem to be those who explicitly want ICANN under some multi-national, intergovernmental control mechanism.

ICANN recently published a draft Implementation Plan for Improving Institutional Confidence [3] (Plan). The Plan presents recommendations to safeguard against capture beginning on page 19.

The Plan states: "The PSC (ICANN President's Strategy Committee) notes ICANN's existing Accountability Frameworks and Management Operating Principles and considers these a strong protection against capture." The Plan also refers to broadening participation (including active participation by governments), improving GAC working methods, ICANN's bylaws [4] and other documents, consensus requirements, more diverse funding sources, anti-trust laws, transparency, Staff conduct, and best corporate practices – all as safeguards against capture.

Those are all excellent goals, but none of them either individually or as a group can serve as a guarantee against capture. All of the aspects mentioned, except anti-trust laws, are part of structures that undergo periodic review and are subject to change, and/or the participants themselves change.

In addition, ICANN bylaws [4] in Article IV, Section 4 make it clear that periodic review of ICANN structures is the responsibility of the Board and states that once complete, "The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all members of the Board."

Since there is currently no provision for binding review of Board actions, we fail to see where any of the proposed recommendations provide reasonable assurance of protection from capture.

Accountability for the Scope of ICANN's Mission and Function

The DNS White Paper envisioned that the entity to which private-sector leadership of the DNS would be transitioned would operate as a private entity for the benefit of the Internet community as a whole, and that the development of sound, fair, and widely accepted policies for the management of DNS would depend on input from the broad and growing community of Internet users. To that end, it laid out a specific set of functions that this entity would manage and perform including the authority necessary to:

1. set policy for and direct allocation of IP number blocks to regional Internet number registries;
2. oversee operation of the authoritative Internet root server system;
3. oversee policy for determining the circumstances under which new TLDs are added to the root system; and,
4. coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

Clearly, ICANN's authority was meant to have constraints, and the functions for which it would be responsible would be primarily functions of coordination. This is recognized in ICANN's bylaws [4] in Article I, Section 1 which sets out ICANN's limited mission and its role as a coordinator.

However, there is constant pressure on ICANN, both internally and externally, to expand its mission and reach beyond its intended role as a coordinator. Recent events demonstrate that ICANN is neither willing nor prepared to fend off attempts to expand its mission and role.

ICANN is already involved in hands on operations currently serving as the Registry and Registrar for both the .INT and .ARPA gTLDs through the IANA contract [5]. However, it is unclear by what authority ICANN has chosen to operate the Root L server. And, ICANN is now proposing to expand its operational role by being directly involved in signing the root, including changes to the long-standing relationship between itself, VeriSign, and the Department of Commerce [6]. ICANN's hands-on operation of these resources is wholly inconsistent with its intended role as a coordinating body.

Recent restructuring of the Generic Names Supporting Organization of ICANN has resulted in additional requests to form new constituencies. Two of the requests involve constituencies whose primary interests involve content and public policy issues outside of ICANN's purview [7]. It is not clear what the expectations of such groups are within ICANN's policy making context given the constraints of ICANN's mission and the intended limitations set forth in the original DNS White Paper, but the implications are very clear.

The pressure on ICANN to expand its mission and role is recognized and apparently accepted by ICANN CEO Paul Twomey who was recently reported as saying, "The body's mandate hasn't changed, but far more participants are now involved, and they're moving discussion to the 'application layer' of content..." [8]

Deviation from its mission and coordination role will only serve to further increase the interest of governments in exercising control and oversight of ICANN. An appropriate accountability mechanism would prevent such deviation.

Accountability for Transparency

Article III, Section 1 of ICANN's bylaws [4] states: "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." The fact is that there is no mechanism to ensure that this mandate is carried out.

Numerous stakeholders, including Go Daddy, have repeatedly complained about the lack of transparency in various aspects of ICANN's processes. So we welcomed the creation and publication of ICANN's Documentary Information Disclosure Policy (DIDP) [9]. However, in our opinion, it has become apparent that the purpose of this policy is not to provide greater transparency but to provide a broad range of excuses for which ICANN may deny requests for information that is not otherwise publicly disclosed.

For example, Go Daddy recently requested information regarding: ICANN's lobbying activities (\$240,000 for FY 2007 and FY 2008); the purpose of incentives paid to the CEO (an Ex Officio voting member of the Board); the contributions received by ICANN (in 2008 these exceeded ccTLD contributions by over \$241,000); identification of major contractors and the process under which they were selected. In our request we explained the reasons we believed this information should be provided, primarily to ensure that ICANN's processes and procedures are transparent and ensure fairness. In its response ICANN denied providing the information requested by broadly applying various conditions for non-disclosure from the DIDP [9]. Our original request and ICANN's response are attached for the record.

Unfortunately, there is no real opportunity for appeal of ICANN's decision to deny our request for information. The DIDP [9] simply states: "To the extent a requestor chooses to appeal a denial of information from ICANN, the requestor may follow the Reconsideration Request procedures or Independent Review procedures, to the extent either is applicable, as set forth in Article IV, Sections 2 and 3 of the ICANN Bylaws." Neither of those procedures provides an opportunity for appeal, nor any true accountability for transparency as we explain further below.

Addressing Accountability

There are two primary, so-called accountability mechanisms currently provided for in ICANN's bylaws [4] Article IV.

Section 2 provides for a Reconsideration process whereby any person or entity materially affected by an action or inaction of ICANN may request review or reconsideration by a committee of the Board. However, the Reconsideration process is simply the Board

reviewing itself and the Board is not obligated to follow any recommendations made by the committee.

The second accountability mechanism, the Independent Review of Board Actions, is described in Section 3. The ICANN Board selected the body that operates the Independent Review process, and the Board wrote the rules under which such reviews are administered. The recommendations of an Independent Review panel are not binding on the Board. Those recommendations are treated by the Board as merely advisory in nature. The first Independent Review was not initiated until June 2008 and is still ongoing. It is interesting to note ICANN's recent response to that ongoing Independent Review [10]. At the outset, ICANN makes it a point to explicitly state that the "Panel's declaration will not be legally binding on ICANN" and that "decisions of the Board are entitled to significant deference."

ICANN has proposed two additional accountability mechanisms in the Plan [3]. The first, on page 26 of the Plan, is to allow the community to require the Board to re-examine a Board decision. This is much like the existing Reconsideration process (the Board reviewing itself) but must be invoked by a two-thirds majority vote of two-thirds of all the Councils and two-thirds of members of all the Advisory Committees. Such an onerous threshold is not likely to ever be met. In any event, the Board proposes to once again reserve the right to any final decision.

The second proposed mechanism is the "no confidence" vote roughly described on page 27 of the Plan [3]. It isn't clear what threshold would be required for this vote, and it isn't clear if the pre-designated resignations of the Directors would be voluntary or required. If pre-designated resignations are voluntary, the mechanism actually holds no real value. If pre-designated resignations are required it does provide a so-called nuclear option that would result in replacing or reconfirming the entire Board. Again, a scenario that is highly unlikely to find wide support within either the Supporting Organizations or the Advisory Committees.

It is possible that both of these proposed mechanisms could be useful if properly defined and implemented, but none of the existing or proposed mechanisms provide for the true accountability that the community is looking for prior to the Department of Commerce severing its ties with ICANN.

However, there have been recent discussions among various stakeholders, and even ICANN Staff [11], on the concept of an oversight or supervisory panel. The make-up of such a panel varies from one proposal or discussion to another, but in general we believe that the concept has merit and should be carefully explored. Such a panel would provide for review of ICANN decisions and policies to preserve the founding principles of stability; competition; private, bottom-up coordination; and representation.

Recommendation

We recommend that the JPA or similar instrument (such as the DNS Project Report) be extended for a minimum of 12 months with the primary goal of providing for exploration and establishment of a permanent supervisory panel documented in a new agreement. This instrument would establish metrics that could be executed and monitored during the extension period to ensure that accountability mechanisms would:

- Preserve private sector leadership;
- Ensure long-term stability and protection from capture;
- Preserve bottom-up consensus policy making and transparency; and
- Provide sufficient recourse for stakeholders affected by ICANN policies and decisions.

Conclusion

One thing we all agree on is that the security of the Internet is a high priority. President Obama is keenly aware of the extraordinary dangers a compromised Internet would cause to national defense and the world's economy. Those concerns led to his recent announcement of a "cyber-security czar" to help protect the nation's crucial telecom infrastructure and information systems. Go Daddy believes the JPA between the U.S. Department of Commerce and ICANN is a critical ingredient and essential for both international commerce and the security and stability of the Internet.

The House Energy & Commerce Subcommittee on Communications, Technology and the Internet, which has direct oversight over the Department of Commerce NTIA, held a hearing titled, "Oversight of the Internet Corporation for Assigned Names and Numbers (ICANN)" on Thursday 4 June 2009. Go Daddy General Counsel Christine Jones, as well as representatives from NTIA, ICANN, VeriSign, Verizon and the Technology Policy Institute testified. Go Daddy's testimony is attached for the record.

Seventeen Members of the Subcommittee attended. All the Members who had the opportunity to make Opening Statements or ask questions of the panelists made it clear that they had concerns about the JPA expiring resulting in no United States government oversight and each one recommended that the JPA either be renewed or at a minimum extended. Members in attendance were: Chairman Boucher (D-VA), Congressmen Doyle (D-PA), Christensen (D-VI), Castor (D-FL), Matsui (D-CA), Inslee (D-WA), McNerney (D-CA), Eshoo (D-CA), Dingell (D-MI), Weiner (D-NY), Space (D-OH), Ranking Member Stearns (R-FL), Shimkus (R-IL), Terry (R-NE), Blackburn (R-TN), Upton (R-MI), and Shadegg (R-AZ).

ICANN has repeatedly tried to make the case that the longer the U.S. Government maintains its role, the less support it has internationally. We believe that ending that role before ICANN has the full faith and backing of the private sector will accelerate efforts to capture ICANN into an intergovernmental body. While some countries may not like the U.S. Government role, we believe it is broadly recognized by the international community as the "least sub-optimal" solution. It is better to take our time and create a lasting private sector model than rush and have ICANN captured by another government, international organization, or business that does not have a secure and stable Internet as its top priority.

Respectfully,
Tim Ruiz, Vice President
Corporate Development & Policy
The Go Daddy Group, Inc.

References

1. Management of Internet Names and Addresses, 63 Fed. Reg. 31,741 (10 June 1998).
2. Message from EU Commissioner for Information Society and Media, 4 May 2009:
http://ec.europa.eu/commission_barroso/reading/video/text/message_20090504.pdf
3. Draft Implementation Plan for Improving Institutional Confidence, 26 February 2009:
<http://www.icann.org/en/jpa/iic/draft-iic-implementation-26feb09-en.pdf>
4. ICANN bylaws: <http://www.icann.org/en/general/bylaws.htm>
5. ICANN's response to IANA Contract solicitation SA-13-01-6R-P0-016, Section 2.4:
http://www.ntia.doc.gov/ntiahome/domainname/iana/ianacontract_icannresponse_080206.pdf
6. ICANN proposal to sign the root zone:
<http://www.icann.org/en/announcements/announcement-2-09oct08-en.htm>
7. Consumers Constituency Petition and Charter:
<http://gnso.icann.org/en/improvements/consumers-constituency-intro-letter-10apr09.pdf>
Cyber Safety Constituency Petition and Charter:
<http://gnso.icann.org/en/improvements/cyber-safety-charter-redacted-23feb09.pdf>
8. Greg Piper, Washington Internet Daily, 27 April 2009.
9. ICANN Documentary Information Disclosure Policy:
<http://www.icann.org/en/transparency/didp-en.htm>
10. ICANN's Response to ICM's Memorial on the Merits, 8 May 2009:
<http://www.icann.org/en/irp/icm-v-icann.htm>
11. ICANN Staff has recognized the community's desire for an independent review panel and has recently posted a proposal for an Independent Review Tribunal (IRT) (<http://www.icann.org/en/jpa/iic/iic-the-way-forward-31may09-en.pdf>, Appendix C, page 21, section 5). However, once again, it falls short by stating that its decisions would not be binding on the Board. The Staff quotes California law to explain why the IRT's decisions could not be binding. We question that analysis in light of the fact that, as mentioned earlier in this paper, ICANN is analogous to an administrative agency that levies taxes and enacts regulations. Perhaps there is no precedent in California or US law for ICANN's unique situation, but before accepting the Staff's assumptions we would ask for an expert analysis. If such analysis comes to the same conclusion, then we question whether the current organizational model for ICANN is the right one as it precludes appropriate accountability.



8 May 2009

Internet Corporation of Assigned Names and Numbers (ICANN)
 Board of Directors
 4676 Admiralty Way, Suite 330
 Marina del Rey, CA 90292-6601

Dear Members of the ICANN Board,

ICANN, a nonprofit public benefit corporation, is currently seeking to improve institutional confidence among its stakeholders. Among the issues raised by stakeholders is the need to improve transparency and accountability. That is difficult to do if there are questions about how ICANN may or may not be using contributed funds to directly or indirectly influence the results of the very bottom-up, consensus based process and coordination that it has committed to support. It is also difficult if ICANN demonstrates a lack of accountability by choosing not to provide the information necessary to build that confidence. For those reasons, GoDaddy.com makes the following Request for Information.

References

Code: Internal Revenue Code of 1986: <http://www.irs.gov/taxpros/article/0,,id=98137,00.html>
 AOI: ICANN's Articles of Incorporation: <http://www.icann.org/en/general/articles.htm>
 Bylaws: ICANN's Bylaws: <http://www.icann.org/en/general/bylaws.htm>

Request for Information

- 1) Please post Form 990 for Fiscal Year ending 30 June 2008.
- 2) Please provide details regarding the \$240,000 expenditure for Lobbying Activities as reported on Schedule A Part VI-B of form 990 for Fiscal Year ending 30 June 2007. The Statement for this expenditure on Schedule A says: "The organization hired a Government Affairs firm during the year ended June 30, 2007. As part of the services provided, the Government Affairs firm incurred \$240,000 of lobbying expenditures relating to direct lobbying with Federal legislators." Details would include the substance of the decision, legislation, campaign, or candidate that was being influenced and identification of the parties that were lobbied.
 - a) Our request for this information is consistent with: (i) Article 4 of the AOI which states in part (emphasis ours) , "The Corporation shall operate for the benefit of the Internet community as a whole, ...and, to the extent appropriate and consistent with these Articles and its Bylaws, through **open and transparent processes** that enable competition and open entry in Internet-related markets;" (ii) Article 5 of the AOI sub-articles b and c; (iii) Article III Section 1 of the Bylaws; and (iv) the right to confirm that lobbying activities undertaken have not violated Article II Section 3 of the Bylaws.

- b) In addition, the response to this request should clearly demonstrate: (i) whether the purpose of the expenditure qualifies as "influencing legislation" under section 4911(d)(1) of the Code; (ii) whether the expenditure was in excess of the lobbying ceiling amount of section 4911(c)(2) of the Code; (iii) whether the money was used to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office as prohibited in 501(c)(3); or (iv) why one or more of (i), (ii), or (iii) does not apply.
- 3) Please provide the same information and details as described in 2) for Lobbying Activities and expenditures for Fiscal Years ending 30 June 2008 and 30 June 2009.
- 4) Please provide identification of the contributors redacted on Schedule B of Form 990 for Fiscal Year ending 30 June 2007. ICANN states that names and addresses were redacted for confidentiality.
 - a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2)a) above; (ii) Article 5 of the AOI sub-article e; and (iii) Article III Section 2(iv) of the Bylaws.
 - b) In addition, the response should indicate: (i) which, if any, of these contributions was deemed Charitable as defined in section 170(c) of the Code. And if one or more contributions were deemed Charitable, whether ICANN provided any form of assurance to the contributor(s) that such contributions would be used within the United States or its possessions, as is required for deductible contributions under section 170(c) of the Code; (ii) whether any contributor was a Disqualified Person, Foundation Manager, or Government Official as defined in section 4946(a), (b), or (c) of the Code; (iii) whether any of the contributions made were for the purpose of funding lobbying activities, and if so, a description of those activities; and (iv) whether any of the contributions made were for the purpose of funding participation in, or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office, and if so, identification of such campaign and candidate.
- 5) Please provide the same information and details as described in 4) for Contributions for Fiscal Years ending 30 June 2008 and 30 June 2009.
- 6) Statement 1-B of Form 990 for the Fiscal Year ending 30 June 2007 states that Dr. Paul Twomey was paid three bonuses totaling \$209,719 for service during 2004, 2005, and 2006. Please provide details on the criteria and/or goals that these bonuses were based on where, those criteria and/or goals involved policy related or other initiatives that were subject to bottom-up processes and/or community input or comment ("Applicable Criteria").
 - a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2)a) above; and (ii) the fact that as CEO Dr. Twomey is a voting Ex-Officio member of the Board of Directors. As such, Dr. Twomey's vote may influence the outcome of Board decisions regarding matters that were the basis of criteria and/or goals upon which his bonuses were based and may violate the last sentence of Article VI Section 6 of the Bylaws. For example, during the calendar year 2006 alone Dr. Twomey participated in votes on the following registry agreements: .com (28 Feb); .tel and .xxx (10 May); .asia (16 Oct); .biz, .info, and .org (8 Dec).

- b) In addition, for any bonuses paid based on Applicable Criteria that involved a Board decision in which Dr. Twomey participated please explain how such participation does not violate the last sentence of Article VI Section 6 of the Bylaws.
- 7) Please provide the same information and details as described in 6) for the \$148,000 in bonuses paid to Dr. Paul Twomey for Fiscal Year ending 30 June 2008. In addition, we request that any CEO bonuses based on Applicable Criteria be published publicly with, or as part of, the draft and final versions of the Operating Plan and Budget each Fiscal Year.
- 8) For Fiscal Year ending 2007 \$6.7MM was spent for Professional and Technical Services. For those vendors who provided such services to Board and/or Staff that could possibly have affected either Board or Community decisions on policy issues, or issues related to strategic initiatives that directly involved or affected ICANN stakeholders please provide: (i) the Identity of the vendor and the services provided; (ii) any known relationship between the vendor and any one of ICANN Staff; and (iii) any known relationship between the vendor and any member of the ICANN Board.
- a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2)a) above; and (ii) the fact that a growing share of this expense is for outsourced research, studies, and consulting to inform Board and Staff on policy and strategic initiatives that directly involve or affect ICANN stakeholders. Visibility into the selection and vetting process for vendors providing these services is necessary to fully garner institutional confidence in ICANN. The Board should also consider other steps to ensure ongoing transparency into these costs. For example, the Board should require and the Staff should post a Statement of Interest from any such vendor to ensure that there are no pre-existing commercial or personal relationships with key individuals on ICANN's Staff or Board that are involved in the selection process.
- b) In addition, for any such relationships identified in either (ii) or (iii) of 8) please explain the involvement, if any, of the identified Staff and/or Board members in the selection process for the identified vendor.
- 9) Please provide the same information and details as described in 8) for Professional and Technical Services for Fiscal Years ending 30 June 2008 and 30 June 2009

Thank you and we look forward to your response.

Sincerely,
GoDaddy.com, Inc.

Tim Ruiz
Vice President
Corporate Development & Policy

cc: Paul Twomey, President and CEO, ICANN
Doug Brent, COO, ICANN
Kevin Wilson, CFO, ICANN
John Jeffrey, General Counsel, ICANN

Response to Documentary Information Disclosure Policy Request

To: Mr. Tim Ruiz, GoDaddy.com

Date: 5 June 2009

Re: Request No. 20090508-1

Thank you for your Request for Information dated 8 May 2009 (the "Request"), which has been re-directed and submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

As your Request seeks multiple items of information, this response addresses your Request in the order within which it was presented. For ease of reference and tracking, the responses will correspond to the same reference numbers used in the Request.

As a preliminary matter, ICANN's DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/transparency/acct-trans-frameworks-principles-10jan08.pdf>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

Items Requested

1) Please post Form 990 for Fiscal Year Ending 30 June 2008.

- **Response to 1:**

ICANN's Form 990 for the Fiscal Year Ending 30 June 2008 was filed with the IRS on 14 May 2009 and is now posted on the ICANN website at <http://www.icann.org/en/financials/tax/us/fy-2008-form-990.pdf>.

2) Please provide details regarding the \$240,000 expenditure for Lobbying Activities as reported on Schedule A Part VI-B of Form 990 for Fiscal Year ending 30 June 2007. The Statement for expenditure on Schedule A says: "The organization hired a Government Affairs firm during the year ended June 30, 2007. As part of the services provided, the Government Affairs firm incurred \$240,000 of lobbying expenditures relating to direct lobbying with Federal legislators." Details would include the substance of the decision, legislation, campaign, or candidate that was being influenced and identification of the parties that were lobbied.

- **Response to 2:**

The publicly available information provided in ICANN's Form 990 already notes that that ICANN did not participate or intervene in any political campaign or on behalf of any elective public office candidate, and did not support or oppose any individual candidate for public office. The detailed information that is sought in this Request is

otherwise protected from disclosure under the following Defined Conditions of Nondisclosure:

- Trade secrets and commercial and financial information not publicly disclosed by ICANN.
- Confidential business information and/or internal policies and procedures.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN deliberative and decision-making process by inhibiting the candid exchange of ideas and communications.

In addition, the potential harm in adopting a practice of disclosing ICANN's lobbying strategies greatly outweighs the public's interest in reviewing ICANN's lobbying efforts. Allowing public disclosure beyond that which is required under ICANN's obligations to the Internal Revenue Service will inhibit and impair ICANN's ability to undertake actions it deems necessary in fulfilling its mission and servicing the global Internet community. This harm/benefit analysis is also a sufficient justification for nondisclosure under the DIDP.

As a result, ICANN does not have further information to provide in response to this Request.

2a) Our request for this information is consistent with (i) Article 4 of the AOI which states in part (emphasis ours), "the Corporation shall operate for the benefit of the Internet community as a whole, ...and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets;" (ii) Article 5 of the AOI sub-articles b and c; (iii) Article III section 1 of the Bylaws; and (iv) the right to confirm that lobbying activities undertaken have not violated Article II Section 3 of the Bylaws.

- **Response to 2a:**

This section does not request any items of information. ICANN notes that it is committed to operating in conformity with its Articles of Incorporation, its Bylaws, and with all applicable laws and regulations. If you are aware of anything to suggest that ICANN has not acted accordingly, please provide ICANN with documentation to that effect.

2b) In addition, the response to this request should clearly demonstrate:

- (i) whether the purpose of the expenditure qualifies as "influencing legislation" under section 4911(d)(1) of the Code;
- (ii) whether the expenditure was in excess of the lobbying ceiling amount of section 491(c)(2) of the Code;
- (iii) whether the money was used to participate in , or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office as prohibited in 501(c)(3); or
- (iv) why one or more of (i), (ii), or (iii) does not apply.

- **Response to 2b:**

Please see ICANN's response to Requests 2 and 2a. ICANN notes that it reports all amounts on its Form 990 in accordance with the requirements imposed by the Internal Revenue Code. Further, ICANN follows all applicable codes and practices in conducting its business as a not-for-profit, public benefit tax-exempt organization.

3) Please provide the same information and details as described in 2) for Lobbying Activities and expenditures for Fiscal Years ending 30 June 2008 and 30 June 2009.

- **Response to 3:**

As this Request seeks information identical to that requested under 2), please see ICANN's response to Requests 2, 2a and 2b. In addition, as ICANN's Fiscal Year ending 30 June 2009 is not yet completed, ICANN is further relieved from an obligation to respond to this Request pursuant to the following Defined Condition for Nondisclosure:

- Information requests: (i) which are not reasonable; . . . [or] (iii) complying with which is not feasible.

4) Please provide identification of the contributors redacted on Schedule B of Form 990 for Fiscal Year ending 30 June 2007. ICANN states that names and addresses were redacted for confidentiality.

- **Response to 4:**

ICANN can confirm that the contributions are from Country Code Top-Level Domain (ccTLD) operators. Following industry practice and IRS guidelines on publicly available versions of a Form 990, ICANN elects to redact confidential information regarding its contributors from the public versions of its Form 990 posted on ICANN's website or as available in the Guidestar system. The Internal Revenue Code creates a Nondisclosure of Contributors exception to the disclosure rules governing Form 990s. For more information about voluntary contributions from ccTLD managers, please see the documents available at the ccTLD Agreement page, available at <http://www.icann.org/en/ctlds/agreements.html>, identifying commitments made through the Accountability Frameworks Program.

4a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2a above, (ii) Article 5 of the AOI sub-article e; and (iii) Article III section 2(iv) of the Bylaws.

- **Response to 4a:**

This section does not request any items of information. ICANN notes that it is committed to operating in conformity with its Articles of Incorporation, its Bylaws, and all applicable laws and regulations.

4b) In addition, the response should indicate:

- (i) which, if any, of these contributions was deemed Charitable as defined in section 170(c) of the Code. And if one or more contributions were deemed Charitable, whether ICANN provided any form of assurance to the contributor(s) that such contributions would be used with the United States

or its possessions, as is required for deductible contributions under section 170(c) of the Code;

- (ii) whether any contributor was a Disqualified Person, Foundation Manager, or Government Official as defined in section 4946(a), (b), or (c) of the Code;
- (iii) whether any of the contributions made were for the purpose of funding lobbying activities, and if so, a description of those activities; and
- (iv) whether any of the contributions made were for the purpose of funding participation in, or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office, and if so, identification of such campaign and candidate.

- **Response to 4b:**

Please see ICANN's response to Requests 4 and 4a. ICANN notes that it reports all amounts on its Form 990 in accordance with the requirements imposed by the Internal Revenue Code. Further, ICANN follows all applicable codes and practices in conducting its business as a not-for-profit, public benefit tax-exempt organization.

5) Please provide the same information and details as described in 4) for contributions for fiscal years ending 30 June 2008 and 30 June 2009.

- **Response to 5:**

As this Request seeks information identical to that requested under 4), please see ICANN's response to Requests 4, 4a and 4b. In addition, as ICANN's Fiscal Year ending 30 June 2009 is not yet completed, ICANN is further relieved from an obligation to respond to this Request pursuant to the following Defined Condition for Nondisclosure:

- Information requests: (i) which are not reasonable; . . . [or] (iii) complying with which is not feasible.

6) Statement 1-B of Form 990 for the Fiscal Year ending 30 June 2007 states that Dr. Paul Twomey was paid three bonuses totaling \$209,719 for service during 2004, 2005, and 2006. Please provide details on the criteria and/or goals that these bonuses were based on where, those criteria and/or goals involved policy related or other initiatives that were subject to bottom-up processes and/or community input or comment ("Applicable criteria")

- **Response to 6:**

The detailed information related specifically to Dr. Twomey's compensation that is sought in this Request is otherwise protected from disclosure under the following Defined Conditions of Nondisclosure:

- Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy.
- Confidential business information and/or internal policies and procedures.

Dr. Twomey's performance-related bonuses are tied directly to goals arising out of the corporation's operating and strategic plans, which are posted on ICANN's website. The ICANN Board of Directors evaluates Dr. Twomey's annual performance in meeting the goals set out for each period. Each director, including Dr. Twomey, is bound to comply with by ICANN's Conflicts of Interest Policy. The current version of ICANN's conflict of interest policy is available at <http://www.icann.org/en/committees/coi/coi-policy-04mar99.htm>. A revised version, which has been posted for public comment since 6 May 2009, can be found at <http://www.icann.org/en/committees/coi/coi-policy-06may09-en.pdf>.

6a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2a above; and (ii) the fact that as CEO Dr. Twomey is a voting Ex-Officio member of the Board of Directors. As such, Dr. Twomey's vote may influence the outcome for Board decisions regarding matters that were the basis of criteria and/or goals upon which his bonuses were based and may violate the last sentence of Article VI Section 6 of the Bylaws. For example, during the calendar year 2006 alone Dr. Twomey participated in votes on the following registry agreements: .com (28 Feb); .tel and .xxx (10 May); .asia (16 Oct); .biz, .info, and .org (8 Dec).

- **Response to 6a:**

This section does not request any items of information. Please see ICANN's response to Request 6 for more information regarding adherence to ICANN's Conflicts of Interest Policy.

6b) In addition, for bonuses paid based on Applicable Criteria that involved a Board decision in which Dr. Twomey participated please explain how such participation does not violate the last sentence of Article VI Section 6 of the Bylaws.

- **Response to 6b:**

Please see ICANN's response to Requests 6 and 6a. ICANN has not been made aware of any reason to believe that its Conflicts of Interest Policy has been violated by any member of ICANN's Board.

7) Please provide the same information and details as described in 6) for the \$148,000 in bonuses paid to Dr. Paul Twomey for Fiscal Year ending 30 June 2008. In addition, we request that any CEO bonuses based on Applicable Criteria be published publicly with, or as part of, the draft and final versions of the Operating Plan and Budget each Fiscal Year.

- **Response to 7**

As this Request seeks information identical to that requested under 6), please see ICANN's response to Requests 6, 6a and 6b.

Further, any comment on what should be included in the Operating Plan and Budget each Fiscal should be submitted in the applicable public comment forum. The public comment forum for FY10 Operating Plan and Budget can be found at <http://www.icann.org/en/public-comment/#draft-opplan-budget>.

8) For Fiscal Year ending 2007 \$6.7MM was spent for Professional and Technical Services. For those vendors who provided such services to Board and/or Staff that could possibly have affected either Board or Community decisions on policy issues, or issues related to strategic initiatives that directly involved or affected ICANN stakeholders please provide:

- (i) the identity of the vendor and the services provided;
- (ii) any known relationship between the vendor and any one of ICANN staff;
and
- (iii) any known relationship between the vendor and any member of the ICANN Board.

- **Response to 8:**

The detailed information that is sought in this Request is otherwise protected from disclosure under the following Defined Conditions of Nondisclosure:

- [C]ontractual . . . and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute and invasion of personal privacy.
- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interest, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Confidential business information and/or internal policies and procedures.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

In addition, the subjective nature of the request "services . . . that could possibly have affected either Board or Community decisions . . . or affected ICANN stakeholders" renders this Request as excessive and overly burdensome, and complying with this request is not feasible, which is a separate grounds for nondisclosure.

ICANN's officers and employees are bound by operating within the mandates of ICANN's Bylaws and employment policies prohibiting self-dealing and ICANN's officers are further bound by the Conflicts of Interest Policy. Further, ICANN recently posted a revised Conflicts of Interest Policy for public comment, at <http://www.icann.org/en/committees/coi/coi-policy-06may09-en.pdf>, which encompasses additional ICANN employees. ICANN is not aware of any instances of undisclosed or improper relationships between a vendor and an ICANN staff and/or Board member.

8a) Our request for this information is consistent with: (i) the section so of the AOI and Bylaws as noted in 2a above; and (ii) the fact that a growing share of this expenses is for outsourced research, studies, and consulting to inform Board and Staff on policy and strategic initiatives that directly involve or affect ICANN stakeholders. Visibility in to the selection and vetting process for vendors providing these services is necessary to fully garner institutional confidence in ICANN.

The Board should also consider other steps to ensure ongoing transparency into these costs. For example, the Board should require and the Staff should post a Statement of Interest from any such vendor to ensure that there are no pre-existing commercial or personal relationships with key individuals on ICANN's Staff or Board that are involved in the selection process.

- **Response to 8a:**

This section does not request any items of information. ICANN takes note of the concerns expressed herein, and acknowledges that GoDaddy.com raised a similar suggestion within the public comment period on the Operating Plan/Budget, which is a more appropriate venue for the concerns stated herein.

8b) In addition, for any such relationships identified in either (ii) or (iii) of 8 please explain the involvement, if any, of the identified Staff and/or Board members in the selection process for the identified vendor.

- **Response to 8b:**

Please see ICANN's response to Request 8. Further, information publicly available through ICANN's Bylaws, Committee Charters, and Financial Information website page provide additional information on ICANN Staff and Board involvement in ICANN's vendor selection and contracting processes.

9) Please provide the same information and details as described in 8 for Professional and Technical Services for the Fiscal Years ending 30 June 2008 and 30 June 2009.

- **Response to 9:**

As this Request seeks information identical to that requested under 8), please see ICANN's response to Requests 8, 8a and 8b. In addition, as ICANN's Fiscal Year ending 30 June 2009 is not yet completed, ICANN is further relieved from an obligation to respond to this Request pursuant to the following Defined Condition for Nondisclosure:

- Information requests: (i) which are not reasonable; ... [or] (iii) complying with which is not feasible.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

**Before the House Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet
United States House of Representatives**

**Hearing on “Oversight Of The Internet Corporation
For Assigned Names And Numbers”**

**Statement of Christine N. Jones
General Counsel and Corporate Secretary
The Go Daddy Group, Inc.**

June 4, 2009

Introduction

As the world's largest registrar, Go Daddy works daily with ICANN, the coordinating body for the Internet. We believe it is essential for world commerce, as well as the security and stability of the Internet, that the relationship between the United States Government, specifically the Department of Commerce via the National Telecommunications and Information Administration, and ICANN, be continued, along with appropriate improvements in accountability, transparency and democracy in governing principles. Continuing the Joint Project Agreement between ICANN and the NTIA will not only provide the framework for ensuring a continued focus on Internet security and stability issues, but will prevent ICANN from vulnerability to capture by another government, international organization, or business that does not have a secure and stable Internet as its top priority.

Background

The Go Daddy Group, Inc. is an Arizona company which consists of eight ICANN Accredited registrars, including GoDaddy.com. Today, we have over thirty-four million domain names under management, and are the number one registrar in the world. We register a domain name once every second or less. Go Daddy is also a large hosting provider. We currently employ over 2100 people and do not utilize offshore outsourcing of any kind.

A domain name registrar serves as the point of entry to the Internet. If you wanted to register the domain name www.ChairmanBoucher.com, you could go to www.GoDaddy.com to register that domain name. A domain name registrar is different from a traditional Internet Service Provider (ISP), such as AOL, MSN, or EarthLink, in that the ISP provides access to the Internet whereas the registrar provides the registration service for .com names and the like.

Once www.ChairmanBoucher.com is registered, you would need to build a website and find a place to store, or "host," that website. Again, you could go to www.GoDaddy.com for storage, or hosting, services. A hosting provider differs from a traditional ISP in that

the hosting provider supplies space on a computer that is accessible from the Internet rather than access to that computer which is provided by the ISP.

Renewal of the Memorandum of Understanding

The *DNS White Paper*, first published in 1998, articulated that principles of accountability, competition, private, bottom-up coordination, and representation are necessary for guiding the transition to private sector management of the Internet DNS. We believe those principles remain relevant. The Internet Corporation for Assigned Names and Numbers (ICANN) has made progress toward achieving some, but not all, of these goals. Specifically, ICANN has not yet achieved competition, nor the private, bottom-up coordination and representation called for in the ICANN bylaws.

The Joint Project Agreement (JPA) between ICANN and the Department of Commerce should be extended and modified, or renewed and modified, to stress the need to correct these deficiencies and require a clear roadmap from ICANN as to how it will regain the confidence of the community upon which its existence relies. This Committee's commitment to ensuring ICANN appropriately administers that system is vital.

Private, bottom-up coordination, and representation should be a guiding principle in the ICANN policy making process. While we have repeatedly urged ICANN to abide by this principle, they have chosen instead to conduct business behind closed doors and without input from the ICANN community

Unfortunately, ICANN has yet to commit to or is unable to commit to openness, transparency, and accountability. ICANN is responsible for an important public trust. To preserve this public trust, it is vital that all stakeholders have access to and recognized input in these types of discussions. The entire Internet community should be made to fully understand the reasons for ICANN's decisions, and to have effective and unbiased recourse if they have reason to question those processes and decisions. In fact, it is bigger than the Internet community; these decisions impact the overall economy in a significant way. President Obama has repeatedly emphasized the significance of the

Internet to overall economic and security success in the United States. Indeed, the president has established two new roles in his administration: a chief technology officer *and* a cyber advisor. Importantly, President Obama said last July, “[a]s president, I’ll make cyber security the top priority that it should be in the 21st century.” ICANN should be held to that same standard.

ICANN’s bylaws state: “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness,” and “In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws.”ⁱ

Despite those provisions of the bylaws, there are no appropriate accountability mechanisms in place to impartially review ICANN Board actions. There are currently three accountability and review mechanisms defined in ICANN’s bylaws:

- Reconsideration – This is basically the Board reviewing itself.
- Independent Review – This mechanism is entirely untested and has never been used.
- Ombudsman – The Board has ultimate review here, not providing any accountability at all.

We believe there needs to be an independent evaluation of how these accountability mechanisms have worked, or will work, and the implementation of any adjustments recommended as a result of that evaluation should be undertaken before any final transition can be contemplated. (*See also*, “Ensuring ICANN is Accountable” below.)

We believe the JPA must be revised to include openness and transparency as overall guiding principles if we are to ever see an effective transition of the Internet DNS management to the private sector through ICANN. We would be happy to be involved in

the process of determining appropriate revisions to the JPA, if such assistance would help move the ball forward.

Security and Stability

Go Daddy believes that the security and stability of the Internet is vital. Indeed, Go Daddy devotes considerable time and resources to working with law enforcement on preserving the integrity and safety of the Internet by quickly closing down websites and domain names engaged in illegal activities. We work with law enforcement agencies at all levels and routinely assist in a wide variety of criminal and civil investigations. We are also quick to respond to complaints of spam, phishing, pharming, and online fraud and work closely with anti-fraud and security groups such as the Anti-Phishing Working Group, Digital Phish Net, the National Center for Missing and Exploited Children, and CyberTipLine. We have made it a high priority to use our position as a registrar to make the Internet a better and safer place.

According to its website, “ICANN ... is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet’s unique identifiers.”ⁱⁱ We agree that ICANN can and should play an active role in keeping the Internet secure and stable. In fact, this fits well into the president’s focus on cyber security. We cannot understand, however, why ICANN has not insisted on basic steps that will lead to enhanced security and stability, such as an infrastructure investment requirement in the recently renewed registry operator agreements. This Committee should insist that the JPA require ICANN to ensure continued investment in Internet security infrastructure in the future.

Safeguarding ICANN Against Capture

In February of 2009, ICANN issued a draft Implementation Plan for Improving Institutional Confidence (Plan).ⁱⁱⁱ That such a Plan was necessary is telling in itself. The Plan recommended, inter alia, that ICANN must 1) Be safeguarded against capture; 2) Be accountable and responsive; 3) Meet the needs of the global community of the future; 4)

Be financially and operationally secure; and, 5) Maintain its focus on securing safe and stable operations relating to unique identifiers. We generally agree with these findings and recommendations. However, we do not believe that the recommendations in the Plan go far enough. Items 1 and 2 above, in particular, should form the foundation upon which the other areas will rest and so underpin any successful effort to improve confidence in ICANN and its processes.

The Plan states: “The PSC [President’s Strategy Committee] notes ICANN’s existing Accountability Frameworks and Management Operating Principles and considers these a strong protection against capture.” The Plan also refers to broadening participation, including active participation by governments, improving GAC [Governmental Advisory Committee] working methods, ICANN’s bylaws and other documents, consensus requirements, more diverse funding sources, anti-trust laws, transparency, Staff conduct, and best corporate practices – all as safeguards against capture.

Those are all excellent goals, but none of them, either individually or as a group, can serve as a guarantee against capture. All of the aspects mentioned are part of structures that undergo periodic review and are subject to change, and/or the participants themselves change. This is unavoidable as the Internet is an ever evolving structure and tool.

We believe that an adequate protection from capture, or takeover, of ICANN by a government, international organization, or business, would be a structure or tool designed for and dedicated to that specific purpose. In addition, it would provide the accountability that is currently lacking.

Ensuring ICANN is Accountable

The Plan first mentions the three accountability mechanisms already in place – Reconsideration, Independent Review, and the Ombudsman. However, these mechanisms simply illustrate the need for true accountability since all three leave any final decision

with the Board itself, ultimately leaving the Board accountable only to itself. The Plan proposes two new mechanisms.

The first is to allow the community to require the Board to re-examine a Board decision. This seems to be much like the existing Reconsideration process but can be invoked by either two-thirds majority vote of two-thirds of all the Councils or two-thirds of all the Advisory Committees. Such an onerous threshold is not likely to ever be met. In addition, the Board proposes to once again reserve the right to any final decision - it cannot be forced to change its mind.

The second proposed mechanism is the “no confidence” vote. It isn’t clear what threshold would be required for this vote, and it isn’t clear if the pre-designated resignations of the Directors would be voluntary or required. If pre-designated resignations are voluntary, the mechanism actually holds no real value. If pre-designated resignations are required it does provide a so-called nuclear option that would result in replacing or reconfirming the entire Board. Again, this is a scenario that is highly unlikely to find wide support within either the Supporting Organizations or the Advisory Committees.

It is possible that both of these proposed mechanisms could be useful if properly defined. However, we believe an adequate mechanism that ensures accountability would be encapsulated within one that also guarantees against capture.

A Single Solution for Avoiding Capture and Ensuring Accountability

Recently, variations on the concept of a supervisory panel have been proposed. The make-up of such a panel varies from one proposal to another, but in general we believe that this is a concept that has merit and should be carefully explored. If properly constituted, such a panel would serve both as a protection against capture and a mechanism for true accountability on the part of the ICANN Board. The composition of the panel should reflect the goal of private sector leadership, and its functions should be to: 1) preserve bottom-up consensus policy making; 2) ensure long-term stability by

protecting against capture; and, 3) provide sufficient recourse for stakeholders affected by ICANN policies and decisions.

ICANN's Mission and Core Values

As stated in Article I of the ICANN bylaws (Rev. Mar 2009)^{iv}, “the mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.”

We have concerns about whether ICANN can or will achieve its stated mission, without oversight from the National Telecommunications and Information Administration (NTIA), and without accountability to adhere to said mission without overstepping its purpose. To fulfill its stated mission, ICANN must resist calls from interest groups within the community to unilaterally expand its mission. ICANN must not venture into areas of content regulation, determination of intellectual property rights, or unnecessarily interfere with market forces. Each of these is a possibility in the absence of a relationship with the NTIA to provide boundaries and accountability to the mission.

Furthermore, ICANN has a set of Core Values^v (CV). These values are not mere suggestions; they are the second item in the ICANN bylaws. The CV can be paraphrased in short, as follows:

1. Stability, Reliability, Security and Global Interoperability,
2. Limited activities to those matters requiring or benefiting from global coordination,
3. Delegating coordination functions to responsible entities that reflect the interest of affected parties,
4. Seek and support broad, informed participation,
5. Depend upon market mechanisms to sustain a competitive environment,
6. Introduce and promote competition in the domain registration industry,
7. Open and transparent policy development, with the assistance of those most affected,

8. Apply policies neutrally and objectively,
9. Act with speed to be responsive to the needs of the Internet,
10. Remain accountable to the Internet community,
11. Remain rooted in the private sector, while taking in to account the recommendations of governments.

We have serious concerns about ICANN's need to act in accordance with its CV in at least the following specific examples. These examples show at least that ICANN is not prepared to operate as an independent organization, free of all governmental involvement.

- ICANN must not expand its mission, in accordance with CV2. As a global coordinator, it should explore responses to out-of-scope issues by encouraging participation in industry / technical groups (CV3), rather than addressing them directly. This is particularly true in cases involving abuse, non-technical security, and Internet content.
- ICANN must do more to ensure that policy development, policy implementation, contractual compliance and investment decisions are open (CV7) and accountable to the community (CV10). As an example, the implementation of policy authorizing the expansion of gTLD space recalls many incidents of closed-door decision making with regard to application fees, hiring outside consultants, developing Staff incentive programs, and the Implementation Recommendations Team.
- ICANN should require stakeholder and constituency representatives to appropriately demonstrate that they do in fact speak for the community that they claim to represent (CV4). This process should be supported by quantified data / research, and possibly demonstrable outreach activities within the stakeholder group.
- Other issues raise concerns regarding accountability (CV10) and transparency (CV7), particularly with respect to individual members of the ICANN Board. We continue to call for the development of a mechanism to remove a single board member

from office, for cause. And ICANN should disclose any interests, including staff compensation plans that could impact decisions made in policy development or implementation activities.

- When implementing policy or auditing compliance, ICANN does not consistently consult with affected parties (CV7). A specific example would be the Whois Problem Reporting System, in which several registrars offered guidance and recommendations, but much of which was disregarded. Additionally, this systems places the burden of proof on the registrar to show that Whois data is indeed accurate (CV8). ICANN should consider issuing any necessary clarification to ensure that registrars and complainants understand their rights and obligations under this system.
- Similarly, ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) is inconsistently applied by the panelists engaged by the various dispute resolution service providers, who in some cases consider the privacy / proxy service provider to be the respondent in UDRP proceedings. This is contrary to the Supplemental Rules, and the spirit of the UDRP itself. ICANN should issue any necessary clarifications to ensure that all UDRP panelists understand these conventions, and apply them consistently (CV8).
- ICANN introduced a transfer dispute resolution policy (TDRP), which has been perceived by many in the community as a new obligation for registrars to protect registrants from unauthorized transfers (CV8). Yet it is not clear that registrars have the ability to act in this capacity, and that registrars were willing to assume the added costs and liability potential associated with this policy (CV7).
- There is frequent and ongoing debate within the ICANN community on striking the appropriate balance between registrant privacy, and the need for an authoritative Whois directory. ICANN must recognize that the popularity of privacy / proxy services is an innovative market solution to this issue (CV5), and the popularity of these services indicates broad support on the part of registrants (CV4). Vocal minorities within the community must not be allowed to dictate policy development in this area (CV8)

- ICANN must refrain from any undue interference in market-driven processes (CV5), which includes adopting measures that would either curtail innovation, or would subsidize services demanded only by a vocal minority. Uncompetitive entities must not be artificially protected (CV6) from entities offering equivalent services more efficiently (CV8).
- ICANN must continue to respect and consider the positions and recommendations of local governments (CV11), but at the same time recognize that the country code top level domain (ccTLD) space is the appropriate arena for them to set and enforce policy. Local control cannot be allowed to extend into the shared gTLD space.

Conclusion

It is essential for both international commerce and the security and stability of the Internet that the relationship between the NTIA and ICANN continue. Whether that comes in the form of an extension or renewal of the JPA, Go Daddy urges a continuation of the relationship. Continuing the JPA will not only provide the framework for ensuring a continued focus on Internet security and stability issues, but will prevent ICANN from vulnerability to capture by another government, international organization, or business that does not have a secure and stable Internet as its top priority.

We sincerely appreciate the opportunity to present this written testimony and the Committee's attention to this important issue. Go Daddy is committed to working together with others in the Internet community, including ICANN, to continue to make the Internet more secure, stable, and safe for all those who choose to use it.

ⁱ <http://www.icann.org/en/general/bylaws.htm#l>

ⁱⁱ <http://www.icann.org/en/about/>

ⁱⁱⁱ <http://icann.org/en/announcements/announcement-12mar09-en.htm>

^{iv} <http://www.icann.org/en/general/bylaws.htm#l>

^v <http://www.icann.org/en/general/bylaws.htm#l>