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Comments regarding the progress of the transition of the technical coordination and management of the Internet DNS

Executive Summary

JPA amounts to a semblance of “Authority” for the US Government through the DoC over ICANN. This “Authority” does not translate to “Power” required for the US Government to do good, contribute to the evolution of the Institution and cause change. The US Government ought not to be eager to hold on to this formal agreement which arose from an unilaterally assumed Authority and it could in a sense be counter productive for the US to pursue that which lacks in international legitimacy. Any other Government in the world is opposed to the unilateral authority, spoken or unspoken. The Civil Society is concerned about the imbalance and several American and most non-American business interests would equally disagree. So America need not hold on to its formal oversight, which is opposed and possibly resented in some corners of the world even more than it is visible. The world would be even more receptive to US views, concerns and proposals if it ends the JPA, as such a graceful action would further exalt America's position.

House Energy and Commerce Communications Subcommittee members expressed concerns that ICANN remains "far from a model of effective and sustainable self-governance" and considered it unwise to shrink the federal government's role amid increased cyber attacks. From this it can be summed up that US Government concerns largely relate to a) Internet Security and concerns about b) Institutional Confidence. In this context, the US Government might consider it irresponsible to withdraw its oversight and perhaps be waiting for Institutional Confidence to build up further.

US Government's concerns are well founded and these are transcontinental concerns not merely American concerns. Internet is global but JPA happens to be American and it would be unacceptable to address these global concerns by choosing to extend the JPA.. The concerns are better addressed by paving way for a more independent and stronger ICANN.

ICANN needs to be seen as an International Organization with tasks ahead for the next centuries rather than as a private corporation where systems are typically put in place for the next quarter. The task is to build an institution that would attend to tasks related to the management of critical Internet Resources through this millennium and next. This can not happen overnight. UN's evolution is still underway after 60 years, United States of America is still not absolutely balanced between the branches of its Government after 230 years and Democracy hasn't evolved to absolute perfection after 2000 years.

At the ICANN, efforts taken so far point to the evolution of a unique, bottom-up, participative, public organization. In terms of transparency and participative governance, there is no other public corporation anywhere in the world that has established systems and practices as elaborate as ICANN has. For a 11-year-old institution, ICANN is on an impressive path of evolution. ICANN is indeed taking shape as an accountable, transparent organization with participatory budgetary processes, and demonstrated systems for stakeholder inclusion. Its accountability mechanism are carefully laid down in three spheres as ICANN's CEO Paul Twomey has recently testified. ICANN would evolve even more as a fully independent organization

Response to Review Questions

1. The DNS White Paper articulated four principles (i.e., stability; competition; private, bottom-up coordination; and representation) necessary for guiding the transition to private sector management of the DNS. Are these still the appropriate principles? If so, have these core principles been effectively integrated into ICANN's existing processes and structures?

Yes, these four principles are appropriate principles and ICANN is getting rooted in these principles. Practices and systems have been established for bottom up coordination and the process of improvement is continuing. In addition “balance”, which is already present within ICANN to a remarkable extent, could be articulated as a principle, as balance within the ICANN Board, balance between various constituencies, and balance within constituencies and perhaps even balance within the staff structure. (balance not as in geographic balance or gender balance, but rather as balance of conflicting interests)

2. The goal of the JPA process has been to transition the coordination of DNS responsibilities, previously performed by the U.S. Government or on behalf of the U.S. Government, to the private sector so as to enable industry leadership and bottom-up policy making. Is this still the most appropriate model to increase competition and facilitate international participation in the coordination and management of the DNS, bearing in mind the need to maintain the security and stability of the DNS? If yes, are the processes and structures currently in place at ICANN sufficient to enable industry leadership and bottom-up policy making? If not, what is the most appropriate model, keeping in mind the need to ensure the stability and security of the Internet DNS?

ICANN has emerged as an organization that qualifies to be defined more as an International Public Organization than merely as a corporation in the Private Sector. A more appropriate model than what was initially envisaged is already emerging in the form of ICANN's adoption of and commitment to the multi-stakeholder model of governance. As originally envisaged the JPA was to oversee transition to “private sector and industry leadership”. This principle could be further expanded to denote “multi-stakeholder” management as “private sector” and “industry leadership” could also be mistaken to imply management of critical resources by sectoral business unions whose approach may not be impartial.

3. The original agreement and the first six amendments to the JPA contained a series of core tasks, and in some cases, date-specific milestones. Have these tasks been accomplished and have these milestones been met? If not, what remains and what steps should be taken to successfully address them?

Considerable progress has been made on these core tasks..

4. In 2006, the focus on specific milestones was adjusted to a series of broad commitments endorsed by the ICANN Board as an annex to the JPA. Specifically, ICANN committed to take action on the responsibilities set out in the Affirmation of Responsibilities established in ICANN Board Resolution 06.71, dated September 25, 2006.¹² Those responsibilities included activities in the following categories: security and stability, transparency, accountability, root server security and relationships, TLD management, multi-stakeholder model, role of governments, IP addressing, corporate responsibility, and corporate administrative structure. What steps has ICANN taken to meet each of these responsibilities? Have these steps been successful? If not, what more could be done to meet the needs of the community served in these areas?

Yes, ICANN is guided by the ten responsibilities enumerated in its resolution dated Sep 25, 2006 and has acted upon the commitments. ICANN needs to be seen as an International Organization with tasks ahead for the next centuries rather than as a private corporation where systems are put in place for the next quarter. The task is to build an institution that would attend to tasks related to the management of critical Internet Resources through this millennium and next. This can not happen overnight. UN has not still evolved to perfection after 60 years, United States of America is still not absolutely balanced between the branches of its Government after 230 years and Democracy hasn't evolved to absolute perfection after 2000 years.

For a 11-year-old institution, ICANN is on an impressive path of evolution. There are indications enough to merit confidence in the Institution.

5. The current JPA called for NTIA to conduct a mid-term review. That review revealed that ICANN needed to take further steps to increase institutional confidence related to long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. What steps has ICANN taken to address the concerns expressed in the mid-term review process? Have these steps been successful? If not, what more could be done to meet the needs of the community served in these areas?

ICANN is indeed taking shape as an accountable, transparent organization with participatory budgetary processes, and demonstrated systems for stakeholder inclusion. Its accountability mechanism are carefully laid down in three spheres as ICANN's CEO Paul Twomey testified. ICANN would evolve even more as a fully independent organization. The ICANN at-Large structures that represent the users are becoming stronger, better supported and its inputs given serious consideration by ICANN. ICANN is also receptive without prejudice to the ideas of forming new constituencies for participation by non-commercial users. There are several such measures underway to strengthen bottom up processes.

In terms of transparency and participative governance, there is no other public corporation anywhere in the world that has established systems and practices as elaborate as ICANN has done. But one of the measures to increase Institutional Confidence is for ICANN to go international. There would be greater confidence instilled in ICANN as an institution if it operates globally, if it is governed by International laws and if the oversight of balancing mechanism, if any, is international as a body governed by the multi-stakeholder principle. In other words, Institutional Confidence is bound to further improve post-JPA.

6. The JPA between the Department of Commerce and ICANN is an agreement by mutual consent to effectuate the transition of the technical coordination and management of the Internet DNS in a manner that ensures the continued stability and security of the Internet DNS. Has sufficient progress been achieved for the transition to take place by September 30, 2009? If not, what should be done? What criteria should be used to make that determination?

It can be argued eternally that sufficient progress has not been made. NTIA has periodically considered public comments in all its reviews, before reaching its decision, yet there is a feeling that the decisions are influenced more by the lobbying efforts of US intellectual property and domain name business interests than by public opinion. One required improvement in the criteria for evaluation is that the lobbyist's viewpoints and the negative arguments need to be seen through and sufficiently factored down for balance.

7. Given the upcoming expiration of the JPA, are there sufficient safeguards in place to ensure the continued security and stability of the Internet DNS, private sector leadership, and that all stakeholder interests are adequately taken into account? If yes, what are they? Are these safeguards mature and robust enough to ensure protection of stakeholder interests and the model itself in the future? If no, what additional safeguards should be put in place?

In the interest of improving the world's confidence about the management of not only the DNS, but of the Internet as a whole, and in the interest of ensuring that the Internet does not get fragmented, the JPA may have to come to a conclusive end. At the same time, to attend to concerns over Security and to ensure that further evolution of ICANN happens along the right path, the founding fathers of ICANN and the core participants could be consulted to ask if an altogether new INTERIM arrangement could be considered for oversight. The inspiration for such an interim oversight organization could come from the US Constitution's profound essence – balance. The oversight organization could also be an international multi-stakeholder organization, perhaps a G 12 for Internet Governance as proposed by the European Commissioner Viviane Reding, supported and balanced by a group of International Organizations led by a responsible Internet Community Organization, further balanced by an International adjudicating panel for oversight arbitration. Such an organization for oversight could indeed give an independent ICANN the required supplementary strength and make it easier for ICANN to preserve its independence on the face of the possibility of select interests within emerging as overbearing interests if unbalanced (– This particular comment is a general pre-cautionary suggestion in the context of a pertinent and important concern of the threat of capture. ICANN could be asked if it needs help in ensuring that these concerns are addressed. On its own ICANN is paying attention to the challenges, but supportive attention during the immediate post JPA period could help make the task of meeting the remnant challenges easier)

8. The JPA provides that before its termination, NTIA and ICANN are to collaborate on a DNS Project Report that will document ICANN's policies and procedures designed and developed pursuant to the agreement. What should be included in this report?

The concluding DNS Project Report needs to be drafted as a blueprint to guide ICANN in evolving a Governance structure fit for its global responsibilities in the management of critical Internet resources. Such a document has to be drafted as a document with the foresight characteristic of the process of drafting an International Constitution.

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(Comments posted are entirely based on independent views and drafted without consultation.)