

June 8, 2009

Mrs. Suzanne R. Sene
Office of the International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 4701
Washington, District of Columbia 20230

Dear Mrs. Sene:

Thank you for the opportunity to comment on the National Telecommunications and Information Administration Notice of Inquiry (NOI) on the assessment of the Transition of the Technical Management of the Internet's Domain Name Addressing System through the Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN).

As a trade association representing nearly 4,000 small- and medium-sized businesses from the around the world, we are hardly in the habit of encouraging government intervention into the private sector. The intention of the Clinton Administration to create a private sector-led ICANN is shared by each and every one of our members.

However, it is the very dichotomy between intentions and reality that leads us to argue for caution in any discussions about a "transition."

ACT has been heavily involved in Internet governance issues for a number of years, including attending a dozen ICANN meetings and taking part in several IGF and IGF-related discussions around the world. ACT's members took notice of these issues when it was suggested, as part of the World Summit on the Information Society (WSIS) process, that Internet governance should be placed in the hands of government. Since that time, there has been a crisis of confidence in ICANN; not in its intentions, but in its stability, accountability, and resistance to capture. It is in this light that the private sector generally, and the business community in particular, has come to view the role currently being played by the government of the United States.

This crisis in confidence, coupled with a desire for independence, has even led ICANN to launch an "Institutional Confidence" initiative with several requests for comments and programmatic initiatives outlined by the President's Advisory Committee. The most

recent of these recommendations is for the consideration of an “Independent Review Tribunal,” a suggestion which has circulated for some time. The consideration of such a measure is not a sign of readiness but instead a sign of understanding that they are *not* ready for a transition away from U.S. government oversight. The JPA mid-term review made it particularly clear that many in the Internet community are concerned about the risk of capture in the absence of such an independent review process.

At the heart of ICANN’s arguments is the notion that this period of nurturing and quasi-oversight has “gone on long enough” and, to some extent, those frustrations are justified. But ICANN must take primary responsibility for its current lack of readiness. For example, a teenager in most states can get her driver’s license at age 16 if she first takes driver’s education and then passes a driving test. She can get a license at age 18 by merely passing the driver’s test. In both cases, reaching a certain age is necessary but insufficient as it is not possible to get a license without passing the driver’s exam *at any age*.

Similarly, the extension of the Memorandum of Understanding (MOU) via the JPA must have felt like being told to wait an extra two years to get a without sufficient incentive to address, in a results-oriented fashion, the concerns that led to the extension.

Specific concerns have been raised time and time again regarding accountability, contract compliance and basic governance, and they have yet to be addressed in a substantive way that can be measured. The initiation of proposals and programs does not equate to a stable system, impervious to capture. It is the objective success of those proposals that will build the confidence from the business community that ICANN seeks and for which the Department of Commerce should wait for a complete transition away from oversight.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Zuck". The signature is written in a cursive, slightly slanted style.

Jonathan Zuck
President
Association for Competitive Technology