



Comments on the Termination of the JPA between NTIA and ICANN

The Coalition Against Domain Name Abuse (CADNA) is pleased to have the opportunity to offer comments regarding the termination of the joint project agreement (JPA) between NTIA and ICANN.

When US policy was developed in the late 1990s, the United States government thought that by September of 2009 ICANN would exist as a transparent and reliable organization for sensible and practical Internet policymaking. Unfortunately, this has not proven to be the case and therefore the government must thoughtfully reevaluate its stance towards ICANN.

CADNA would like to begin by discussing three principles: stability; private, bottom-up coordination; and representation. These principles were articulated in the *DNS White Paper* as a guide to the development of the organization that would become ICANN, but CADNA wishes to point out specific examples that illustrate how ICANN has fallen short in each of these areas.

Stability

Cybersquatting, phishing, and other domain name abuses are rampant in the current space. Despite this, ICANN is proceeding with the introduction of new gTLDs without developing adequate safeguards to ensure the stability of the Internet for users. Furthermore, by allowing a potential avalanche of applications, ICANN is not allotting enough time for adaptation to and resolution of the inevitable and unforeseen problems that will result from the launch. Opening the domain name space to such an extent will render brands and trademarks substantially more vulnerable to infringement by cybersquatters and other malicious parties. Historically, ICANN has also had difficulty ensuring the accuracy of Whois data across various registries, a problem that will only be exacerbated once new gTLDs flood the domain name space. CADNA respectfully points out that ICANN should work to improve the overall stability of the domain name space before it introduces a program designed to expand it exponentially.

Private, Bottom-Up Coordination

CADNA is of the opinion that ICANN generally does not engage in sufficient due diligence before introducing new policies. For example, it has continued to move forward with the launch of new gTLDs under the assumption that new gTLDs are an inevitable step for the domain name space. CADNA believes that this is not necessarily the case and has provided various comments expressing our opposition to the introduction of new gTLDs. This is another instance in which ICANN has overlooked the interests of the business community in developing policy. CADNA, its members, and the consumers they serve are among the constituents most affected by ICANN's various policies. In order to truly achieve bottom-up coordination, CADNA recommends that ICANN take the needs and opinions of these constituents into greater account when crafting and implementing policies.

Representation

When ICANN restructured the Generic Names Supporting Organization (GNSO), it left that significant policy making entity stacked in favor of two constituencies: domain registrars and registries. The two constituencies, along with a member of the nominating committee, control 50 percent of the vote on policy issues. All other constituents, including commercial and non-commercial stakeholders who represent ISPs, and the general business and intellectual property communities, make up the other 50 percent. The problem with this bicameral system is that the interests of registrars and registries often coincide, while the other half of the voting block represents a variety of interests and needs. This structure grants an unfair portion of representation to registrars and registries at the expense of almost all other constituents.

Given that ICANN has struggled to comply with these central guiding principles set forth in the *DNS White Paper*, CADNA contends that termination of the JPA with NTIA should be delayed until ICANN demonstrates its ability to operate in accordance with these principles.

CADNA would also like to take this opportunity to comment on ICANN's Affirmation of Responsibilities, as outlined in Board Resolution 06.71. Some of the responsibilities enumerated in that resolution coincide with the guiding principles, including security and stability, TLD management and the multi-stakeholder model. As such, CADNA will refrain from reiterating its stance on how ICANN has fared in successfully upholding those responsibilities. However, CADNA wishes to express its opinion on the remaining responsibilities, namely transparency, accountability and the role of governments in ICANN governance.

Transparency

While CADNA appreciates the chance to issue comments on this and other ICANN initiatives and policies, the Coalition wishes to point out that ICANN consistently waits until after policies are proposed to pursue the due diligence of public comments. There is little to no transparency during the development and proposal of policies. CADNA urges ICANN to make these processes more accessible to the general public. Greater transparency will help resolve certain problems in areas such as equitable representation within the multi-stakeholder model.

Accountability

In a similar vein, CADNA also recognizes that ICANN needs a greater degree of accountability. At present, ICANN is not accountable to any supervising body or to its stakeholders. Once the JPA is terminated, ICANN will not even have the light oversight of NTIA to govern its actions. A complete lack of accountability is dangerous for any organization but especially for an organization that regulates a global resource. CADNA is extremely concerned about what could result from the existence of an entirely unaccountable ICANN.



In addition to ICANN being unaccountable as an organization, it also does not promote accountability with the domain name space as it should. When a domain is registered with false information, it becomes extremely difficult, if not impossible, for individuals and companies with legitimate rights to that domain, as in the case of trademarks, to recover it.

Despite rampant false Whois data and unhelpful registrars that act as gatekeepers between deceptive registrants, ICANN has done little to eliminate practices such as private registration services that inhibit unrestricted public access to accurate and complete Whois information. By concealing a registrant's identity, such practices impede the efforts of law enforcement and brand owners to protect the public from fraud and deception.

Role of Governments

CADNA agrees with Viviane Reding, the EU Commissioner for Information Society and Media, in her assertion that there needs to be a review of how ICANN handles governance. While CADNA does not agree with the idea of a "G12 for Internet Governance," it does believe that ICANN must reassess its relationship with both the United States government and international governments.

CADNA would also like to express its concerns over the September 30 date for the termination of the JPA. This is an arbitrary date that marks the end of an arbitrary time period. Instead of pinpointing a specific day, ICANN's transition from the JPA to independence should take place once all of the criteria and standards have been met. By imposing an artificial deadline, ICANN creates unrealistic expectations for itself, which leads to hasty and irresponsible decisions.

ICANN has been unable to provide satisfactory regulation of the domain name space or conduct proper policy development. CADNA firmly believes that the termination of the JPA with NTIA should be delayed; furthermore, the JPA must be reviewed and if it is found to be an inadequate provision for oversight, a more robust agreement must be put in place. If nothing is done, problems of accountability and transparency will continue and the state of the domain name space will deteriorate.

Finally, to answer the question regarding privatization, CADNA recognizes the need for national and international cybersecurity enforcement and believes that governments should maintain a certain degree of involvement in Internet regulation.