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June 8, 2009

Ms. Fiona Alexander
Associate Administrator, Office of International Affairs
National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Room 4701
Washington, DC 20230

Re: NTIA Notice of Inquiry, Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name System

Dear Ms. Alexander,

Afilias welcomes the opportunity to provide comments in response to the United States Department of Commerce (DoC) concerning the assessment of the transition of the Technical Coordination and Management of the Internet's Domain Name System (DNS). Given the pending termination of the Joint Project Agreement (JPA) between ICANN and the DoC on September 30, 2009, a full and broad based assessment of the transition process for the technical coordination and management of the Internet's DNS is appropriate.

Afilias is the ICANN-contracted registry operator for the .info Top Level Domain (TLD). Afilias also provides "backend" registry services for numerous TLDs including, .ORG, .mobi, .asia, .aero as well as a number of country code TLDs. Overall, Afilias supports over 14 million TLDs on the Internet and is the second largest registry services provider in the Internet namespace. Afilias has been an active participant in ICANN since its inception in 1999 and remains a strong supporter of the ICANN model for technical coordination of the Internet DNS.

Afilias believes that additional safeguards are necessary to preserve the private sector led, bottom-up policy making process as ICANN ultimately transitions to a fully privatized state as envisioned in the White Paper. Questions concerning ICANN's readiness to operate in a post JPA setting and calls by certain governments and intergovernmental organizations for oversight approaches that would change the fundamental nature of the ICANN model underscore the importance and the implications of the questions raised in the DoC Notice of Inquiry (NOI).

The U.S. government's decision in the 1997 White Paper to privatize the DNS and to leave the day-to-day management in the hands of a not-for-profit, private sector led, bottom-up policy making body was an enlightened policy decision that provided the basis for the subsequent explosive growth of the Internet as a transformational global communications platform. In the coming weeks and months, NTIA will hear calls for an extension of the JPA between ICANN and the Department of Commerce as well as proposed plans for the adoption of accountability mechanisms by ICANN from both the Internet community as well as ICANN itself. ICANN's staff own self-assessment in its Improving Institutional Confidence consultation and calls from a number of Internet community members focus on the need for additional safeguards in three specific areas that all fundamentally relate to the issue of accountability: 1) an Independent Review Board; 2) financial safeguards to reorient ICANN's fiscal management in line with its not-for-profit character and its public interest mission; and 3) transparency of process measures that are consistent with the requirements of the Administrative Procedures Act.

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We suggest that any proposals for accountability safeguards should be analyzed using the following criteria:

1. Do the proposed processes and structures improve, strengthen and perpetuate the private sector led, bottom up, consensus policy making model?
2. Do the proposed processes and structures ensure long-term, transparent and predictable accountability?
3. Do the proposed processes and structures ensure the continuation of ICANN's character as a not-for-profit, U.S. based entity?
4. Do the proposed processes and structures provide sufficient avenues of recourse for stakeholders who are affected by ICANN policy and decision making?

ICANN staff recently recommended the establishment of an "Independent Review Tribunal", which underscores that ICANN itself recognizes the importance of accountability. While this recommendation may be consistent with the above suggested establishment of an Independent Review Board, such a mechanism must be carefully defined and structured. The Board members must be selected in a neutral and balanced manner and questions such as the locus of the Board, the juridical or non juridical nature of the Board and the scope of its review authority are all critical questions that must be properly addressed to ensure the intended accountability function. This task and the implementation of other accountability mechanisms will require careful consideration and consensus. The execution of these accountability mechanisms may require the participation of neutral third parties to ensure proper implementation.

The important nature of the proposed accountability safeguards, and ICANN's own call for an Independent Review Tribunal signal the need for an additional "transition" process by ICANN. These points should be given due consideration as the end of the JPA draws near and calls for the continued attention of the United States government as the ICANN model evolves.

Sincerely,

Brian Cute
Afilias