

Ms. Anna Gomez
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

RE: Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System, Docket No. 090420688-9689-01 - Notice of Ex Parte Comment

Dear Ms. Gomez

On July 20, 2009, Milton Mueller and I met with Fiona Alexander and yourself to discuss matters related to the Department's proceeding concerning the upcoming expiration of its Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN).

Under the JPA, the Department has committed itself to the "policy goal of transitioning the technical coordination of the DNS to the private sector in a manner that promotes...bottom-up coordination, and representation." In accordance with this, the Department agrees to "provide expertise and advice on methods and administrative procedures to encourage greater transparency, accountability, and openness in the consideration and adoption of policies related to the technical coordination of the Internet DNS."

Regarding this, the Internet Governance Project (IGP) sought to raise the Department's attention to the institutional reform occurring in ICANN's policy making organ, the Generic Names Supporting Organ (GNSO). It is the position of the IGP, a position which has been supported by the public comments of other civil society groups made to ICANN, that the reform process, and in particular the process of approving the Noncommercial stakeholder group charter, clearly illustrates ICANN's failure to achieve the above policy goal stated by the Department.

ICANN held two public comment periods regarding GNSO stakeholder group charters. The first, conducted during March and April 2009, sought to collect public opinion on the draft charters submitted by the GNSO stakeholder groups. Civil society organizations expressed overwhelming support for the charter developed by the Noncommercial Users Constituency. The second comment period, conducted in July 2009, sought responses to revisions made to the draft charters by ICANN staff. Civil society expressed overwhelming disapproval of what it saw as fundamentally crippling revisions to its own, bottom-up developed charter. Furthermore, civil society organizations asked that its draft charter be reinstated in its entirety.

Unfortunately, at a special meeting on July 30, 2009 the ICANN Board chose to ignore the product of bottom up coordination and public comment processes, and instead 10 of 14 ICANN Board members voted to approve a Noncommercial stakeholder group charter that had been substantially revised by the ICANN staff.¹ This was despite ICANN's own comment summary

¹ See Preliminary Report of Special Board Meeting,

that admits the vast majority of comment in its proceeding did not approve of its actions.² We are of the opinion that ICANN's disregard for bottom-up coordination by Noncommercial users to formulate their preferred representational structures within the GNSO and for public comment processes constitute a fundamental inability of ICANN to satisfy the conditions enumerated in the JPA.

This ex parte notice is being submitted in accordance with the Federal Register Notice of April 24, 2009 regarding the proceeding referenced above. Should you have any questions or require further information, please contact me by telephone at (303) 912-2368 or by email at bkuerbis@internetgovernance.org.

Sincerely,

Brenden Kuerbis
Internet Governance Project
<http://internetgovernance.org>

<http://www.icann.org/en/minutes/prelim-report-30jul09.htm>

² See Summary and Analysis of Comments,

<http://forum.icann.org/lists/gnso-stakeholder-charters/pdf40XMfseT9g.pdf>