

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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Transition of Technical Coordination and Management of the Internet Domain Name and Addressing System

Please accept these comments from NetChoice, a coalition of trade associations and e-commerce leaders such as AOL, eBay, VeriSign, the Electronic Retailing Association, and over 18,000 small businesses that rely on e-commerce.

At the state and federal levels and in organizations like ICANN, NetChoice works to promote the growth and viability of e-commerce. Within the Internet's domain name system, NetChoice members are concerned about growing security threats, intellectual property protection, and abusive practices in the domain name marketplace. Moreover, we are wary of United Nations and international government organizations who covet ICANN's role as manager of the Internet.

With those challenges and threats in mind, we offer these comments on the questions raised by NTIA regarding the transition of technical management of the Internet domain name system (DNS):

1. Principles for this transition include: stability; competition; private, bottom-up coordination; and representation. Should additional principles be considered?

The current list of principles is comprehensive and appropriate for an independently functioning ICANN. However, given the declared goals of the Internet Governance Forum and concerns expressed by the U.S. and other governments, ICANN needs to demonstrate that these principles can support and assist law enforcement.

While ICANN understands that its role is technical management of the DNS, it has the responsibility to maintain technical capabilities to enable governments and industry to protect consumers and enforce intellectual property rights. With this understanding, ICANN would have a guiding principle to inform policy decisions such as the use of Whois and approval of new top-level domains.

2. Has ICANN made enough progress for this transition to take place by September 30, 2006?

ICANN has definitely made progress towards independence, but more needs to be accomplished before a complete transition is appropriate. Below are five specific areas where ICANN needs to make further progress to merit a full transition:

First, ICANN needs to formally assure the reliability and stability of DNS Root Servers. Today these critical DNS components are operated without any formal agreement between ICANN and the Root Server Operators. Moreover, there are no enforceable provisions for minimum service levels to ensure reliability and stability.

ICANN needs to see that Root Server operating agreements are in place before the transition, whether or not ICANN is a party to those agreements. In any event, the U.S. Government should maintain a back-stop capability to assure root server operations, similar to the Cooperative Agreement for continuity of registry operations.

Second, ICANN needs to develop effective enforcement provisions for all of its contracts. For too long, ICANN has lacked an effective means to pressure contracted parties to comply with contract provisions and covered policies. It is inadequate and ineffective to apply pressure solely through contract cancellation or an implicit threat of non-renewal. ICANN should develop interim measures for contract compliance. A clearly defined set of progressive enforcement actions should be established and implemented in a nondiscriminatory manner for all contracted parties.

Third, ICANN needs to complete work begun with the Regional Internet Registries and eliminate the escrowing of RIR ICANN fees.

Fourth, ICANN must do a better job of obtaining Governmental Advisory Committee (GAC) input in a manner that does not delay policy development timelines. (We expand upon this particular point in item 4 below.)

Fifth, ICANN needs to develop ways of obtaining input from the international community that reduces the chances of policy development processes being captured by small groups of activists who do not actually represent the broader community. With regard to the Generic Name Supporting Organization (GNSO), we hope that the GNSO Review currently underway will contribute significantly to this objective.

3. *New tasks and time frame for continued transition?*

We recommend a two-year time frame for transition, targeting September 2008 for a formal review that evaluates progress on milestones described in item 2 above.

Apart from this transition, we encourage the U.S. Government to continue maintaining cooperative agreements to preserve operation of essential domains such as .com, .gov, .net, .edu, and .mil. This “back-stop” protection is justifiable given the degree to which U.S. interests rely upon a functioning DNS, and should continue even after a transition of the Internet’s technical management role.

4. *Are key stakeholders involved effectively in the ICANN process?*

Through our participation over the last year, NetChoice has first-hand experience with process and politics at work in ICANN. ICANN’s processes can, and should be changed to improve the reach, timeliness, and relevance of stakeholder involvement.

First, Governments are not as effective as they should be when participating in ICANN policy development. Government representatives often disregard target dates established in the policy development process by failing to provide timely and responsive comments when they are needed.

What’s more, some government comments have reflected more rhetoric than reality when characterizing the potential impact of proposed ICANN policies. ICANN processes should not be held hostage when governments cannot reach consensus. GAC input can be helpful, and should be given even where it does not represent a consensus position.

Second, there is one constituency that is not represented at ICANN today: e-commerce businesses that do not have their own domain names. When a small business enters the online marketplace, they often begin by hosting their storefronts on large e-commerce platforms such as eBay, Yahoo, AOL, Google, MSN, and Amazon. While small e-retailers don’t initially register their own domains and maintain websites, they still have a vital interest in a reliable DNS that enables secure transactions, protects against attacks, and curbs abuses like cybersquatting.

We believe ICANN should recognize online businesses as stakeholders, whether or not they have a domain name currently under registration. The charter of the Commercial and Business User Constituency could be expanded to include non-registrants who rely upon the domain name system to do business online. Alternatively, ICANN could create a new constituency for non-registrants engaged in e-commerce.

In general, small business lacks sufficient representation at ICANN today. Even among constituencies and advisory committees that invite small business participation, the voice of small business is overwhelmed by

interests of large businesses and organized groups. Apart from anything ICANN does to improve its small business outreach, the U.S. Small Business Administration (SBA) should more actively advocate for U.S. small business interests at ICANN. The SBA's Office of Advocacy is well-suited to be a small business advocate, and should be directed to re-engage in the ICANN process.

5. *Ways to improve or expand participation?*

Many participants in ICANN's recent policy debates have come away disappointed with the process. Fortunately, there are readily implementable improvements that can make ICANN policy development processes more representative and effective:

The theme of these process improvements is **transparency**, executed in three specific measures:

- **Transparency about who's speaking for whom.** Commenters participating in ICANN processes should identify the members and clients whose interests they represent. Such disclosures may not be news to ICANN regulars, but they will answer complaints about lack of transparency as to the interests of participants.
- **Transparency about the depth of representation.** Commenters in the ICANN process should indicate the depth of representation among those in their stakeholder group. Position statements should describe how many stakeholders actually participated in forming the position. This disclosure should help ICANN's Board give appropriate weight to comments presented. And this kind of transparency would motivate stakeholder groups to educate and involve more of their constituents in order to show more depth of representation.

These first two measures are relatively simple matters of disclosure. Our third measure requires more effort and would contribute to better policy decisions at ICANN.

- **Transparency about dissenting and alternative positions.** Whenever ICANN supporting organizations and advisory committees present their official positions to the ICANN Board and community, they should reveal the degree of consensus achieved and the range of views. ICANN should encourage constituencies and advisory committees to report voting results, if any votes were taken. More important, ICANN's Board should request fuller disclosure of dissenting opinions and alternatives considered.

A recent example where this form of transparency worked well is the GNSO Council report on alternative formulations for the purpose of Whois. As this report showed, a bottom-up process can attempt to forge consensus, but should not suppress dissenting views.

Moreover, ICANN outsiders would more readily participate when they see that dissenting views and alternatives are presented alongside majority views when constituencies pass advice along to ICANN's Board.

The transparency principles described above should go a long way to improve and expand participation in ICANN.

6. How to more efficiently respond to governments and ccTLD managers?

ICANN's responses to governments will surely become more effective and efficient if governments become more responsive to the specific issues and target timelines of ICANN's policy development process. As noted in our response to item 4 above, governments are not an effective participant in ICANN's processes today.

To the extent that fulfillment of IANA requests can be effectively automated, ICANN should continue to work with the ccTLD community to make this happen. Care should be taken though to avoid using automated processes to deal with TLD delegation decisions that involve national sovereignty.

7. How to increase cooperation among public and private organizations, as called for by WSIS?

We believe that the most effective response to WSIS is to implement our suggestions regarding stakeholder involvement and transparency as described in items 4 and 5 above.

We are grateful to NTIA for inviting commentary on the transition of DNS oversight. The technical management of the DNS is growing in importance with the growth of the Internet, the fight against fraud and abuse, and the essential requirement of security and stability.

ICANN is warming to those challenges, but is not yet ready for a full transition. Our recommendations are intended to help ICANN improve its structure and decision-making processes in anticipation of a transition to independent management of the DNS.

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