

Ms. Fiona Alexander

Office of International Affairs

National Telecommunications and Information Administration

1401 Constitution Avenue,N.W.

Washington, D.C. 20230

Dear Ms. Alexander

We are submitting the attached document in response to the Department of Commerce's call for public comments on the Continued Transition of the Technical Coordination and Management of the Internet Domain Name and Addressing System. After careful consideration, and in an effort to provide constructive, actionable input, we have outlined important steps that we believe the U.S. Government should take at this juncture to promote responsible, global, private sector management of the DNS.

Both of us were directly engaged, though in different roles, in the consultations, meetings, debates, and discussions surrounding the creation of ICANN, and the decision of the US Government to transition management and coordination of the domain name system to the private sector. We have each remained active participants in the ICANN process since that time, both on our own behalf, and on behalf of our respective and diverse clients. We remain fully committed to the concepts and principles articulated in 1998, and hope that this process will contribute to the continued maturing of ICANN into the focused, representative, transparent, and accountable organization envisioned in the White Paper.

Please note that this contribution reflects our personal views, and is not submitted on behalf of or as advocate for any other individual or entity. Having said that, we welcome the input and/or support of all for the proposal we outline. We are happy to respond to any questions you might have. We would also welcome an opportunity to discuss our proposal at the upcoming public meeting on July 26, 2006.

Best regards

J. Beckwith Burr

Marilyn S. Cade

Submitted 13 July 2006

STEPS THE U.S. GOVERNMENT CAN TAKE
TO PROMOTE RESPONSIBLE, GLOBAL, PRIVATE SECTOR MANAGEMENT OF THE DNS

This document is intended to outline a practical, concrete pathway for eliminating one of the most important sources of contention in the ICANN debate - the United States retained, exclusive, and unilateral authority over the Internet's authoritative root. We recognize that other issues related to ICANN's coordination of the DNS deserve attention, and this contribution is not offered as an alternative to other constructive ideas generated by the NOI. The authors believe, however, that for so long as this situation exists, ICANN will continue to be drawn into distracting debates about sovereignty and Internet "governance" and less able, as a result, to do its own job well.

The time has come for the United States to internationalize its retained authority over the Internet's authoritative root, and, in so doing, re-dedicate itself to private sector management of the DNS and the advisory role of governments in ICANN's technical coordination tasks. We believe that by taking these steps the U.S. government will greatly contribute to ICANN's evolution into the mature, stable, transparent, and accountable private sector body envisioned in the White Paper.

Accordingly, we urge the United States government to:

I. Clearly Articulate the Purpose of Residual Governmental Authority Over the Root

1. Commit not to use governmental authority for the purpose of directing, approving, or disapproving changes in the Internet's authoritative root (the "A" root, operated by Verisign under a contract with the Department of Commerce) except as, and to the extent necessary to preserve the technical stability and security of the Internet and/or the DNS; and
2. Direct Verisign to implement all ICANN/IANA recommendations for root changes 14 days after receipt unless otherwise directed in writing.

II. Take Immediate Steps to Internationalize Residual Governmental Authority Over the Root

1. Create an international working group to monitor changes to the authoritative root (the "Working Group"). *By way of example*, the Working Group might consist of:
 - i. Senior representatives¹ of the USG's original governmental partners in the decision to transition management of the DNS to the private sector;²
 - ii. Three senior representatives of governments from each of ICANN's Latin American and African regions, selected in a manner determined by the governments of each region;

¹ To ensure that the Working Group is able to take decisions in a timely manner, participants should be senior representatives of their governments, and fully authorized to act on a real time basis on matters within the Working Group's remit. While some may suggest that ICANN's Government Advisory Committee provide this function, it is not clear to the authors that this makes sense. Indeed, the GAC has many existing advisory functions to perform and the authority of GAC participants within their respective governments is too diverse to take on this task.

² Based on the recollections of the authors, the principal governmental contributors to the White Paper included Australia, Canada, the European Commission, Japan, New Zealand, and the UK.

- iii. One senior representative from ICANN's European region, selected in a manner determined by such governments;
 - iv. One senior representative from ICANN's Asia-Pacific region, selected in a manner determined by such governments; and
 - v. The Chairman of the ICANN Governmental Advisory Committee in an ex officio capacity.³
2. Direct ICANN/IANA to transmit all reports and recommendations regarding changes to the authoritative root to each member of the Working Group and permit any member of the Working Group to place a time-limited hold on implementation of a particular IANA recommendation regarding changes to the authoritative root solely on the grounds that such change creates an unreasonable risk to the technical stability or security of the DNS and/or the Internet.
 3. Convene the Working Group in response to a hold for the limited purpose of determining whether or not the proposed addition, deletion, or change creates an unreasonable risk to the stability or security of the DNS and/or the Internet.
 4. If, in the opinion of the Working Group, the proposed change creates such a risk, direct Verisign, on behalf of the Working Group, not to implement the ICANN/IANA recommendation until further notice. (Some appeal mechanism should be in place to prevent misuse of this authority.)

III. Lead by Example

Re-affirm and build support for the role of governments articulated in the White Paper, and re-commit to participate in, support, and inform the ICANN process as an advisor, respecting the concept of private sector leadership, the fundamental principles on which ICANN is based, and the limits of ICANN's role as a technical coordinator.

IV. Call Upon ICANN to Embrace Structures and Processes to Safeguard its Role as Trustee

Obligate ICANN to procure and publish for public comment an independent, expert evaluation of the efficiency and effectiveness of its transparency and accountability mechanisms (e.g., notice, comment, and other transparency procedures, reconsideration, independent review, office of ombudsman, and the availability of meaningful dispute resolution mechanisms) and, based on this evaluation and community input, develop and implement new and enhanced mechanisms to address any deficiencies identified in the evaluation.

J. Beckwith Burr
Marilyn S. Cade

Submitted 13 July 2006

³ In this example, the Working Group would consist of 15 members plus GAC Chair (ex officio):

3	Europe region - UK, EC plus one	2	N. America - US, Canada
4	Asia/Pacific - Australia, Japan, New Zealand, plus one	3	Africa region
3	Latin America region	1	GAC Chair - ex officio