
From: "Robin Gross" <robin@ipjustice.org>
To: JPAMIDTERMREVIEW JPAMIDTERMREVIEW
Date: Friday - February 15, 2008
Subject: Midterm Review of the Joint Project Agreement - Docket No. 071023616-7617-01

15 February 2008

Office of International Affairs,
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W., Room 4701, Washington, DC 20230
Sent via email to: JPAMidTermReview@ntia.doc.gov

RE: Docket No. 071023616-7617-01
The Continued Transition of the Technical Coordination and Management of
the Internet's Domain Name and Addressing System: Midterm Review of the
Joint Project Agreement

Dear Ms. Suzanne Sene:

I welcome and appreciate this opportunity to provide comments regarding
the Joint Project Agreement and the US Government's oversight of ICANN.

I have served as a member of ICANN's Generic Names Supporting Organization
(GNSO) Policy Council representing the Non-Commercial User Constituency
(NCUC) from North America since 2005. In 2006 I was appointed to the
Advisory Group of United Nations Internet Governance Forum (IGF) as a
representative of civil society. I am also an attorney and Executive
Director of IP Justice, an international civil liberties organization
based in San Francisco that works to protect human rights in cyberspace
and international information policy forums.

In my view, given the international nature of the Internet, it is
imperative that ICANN work toward moving away from oversight by a single
nation and toward responding to the needs of the global Internet
community. However, ICANN has yet to demonstrate that it has sufficiently
evolved to the point that it should be left without any oversight and
accountability, although it has made some progress in recent years.

There remain significant problems with the existing structure and
management of ICANN that must be resolved before ICANN can be left to
itself to manage this crucial and shared public resource. In particular,
"Internet users" (or the public-at-large) still remain outside of the
ICANN decision-making process, such that the concerns of individuals, who
have no "business" stake in ICANN policy are not adequately taken into
account. ICANN continues to be dominated by large business interests and
by specific commercial interests involved in providing Internet services.

Non-commercial interests, while technically included in the GNSO

structure, are not given the resources necessary to meet the legitimate needs of non-commercial users of the Internet, who account for the majority of users of the Internet. Nor are the views of non-commercial users of the Internet given serious attention in the policy-making processes at ICANN. Given ICANN's claim for "multi-stake-holderism" and a "bottom-up" decision-making process, much more work needs to be done before those claims can be taken seriously.

The lack of transparency in ICANN policy-making also remains a serious concern and undermines ICANN's legitimacy to govern. The current system leads to arbitrary decision-making by ICANN staff that is usually determined more by lobbying strength than by the strength of argument.

ICANN needs to commit to the protection of civil liberties, in particular, respect and adherence to internationally recognized principles of freedom of expression and privacy rights. Given its unique function, ICANN must be required to provide at least the same level of protection to citizen's fundamental rights that are enshrined in the Universal Declaration of Human Rights and numerous national laws. Therefore, a mechanism to ensure accountability for violations of citizens' basic human rights to communicate freely and privately on the Internet must be put into ICANN's governance structure before it can be cut-lose.

For example ICANN has consistently bowed to the wishes of the intellectual property industry lobby and enacted policies that expand intellectual property rights in Cyberspace and curtail free expression and innovation. Another example can be found in ICANN's "whois" database policy, which publishes personal information about Internet users for worldwide publication, in violation of many international and national privacy laws. A current policy in development at ICANN to introduce new top-level domains threatens to severely curtail freedom of expression on the Internet since it will not allow domain names considered "immoral", or "subversive propaganda", or critical of religion in any part of the world. ICANN's proposed policy to institute a "one-size-fits-all" (extra-restrictive) for domain names makes no logical sense and violates internationally recognized principles of freedom of expression.

Furthermore, ICANN must also do more to meet the needs of the international community, remembering that there are significant language and cultural differences in the world. Indeed ICANN has taken significant steps in this regard in the last year and should be commended for its recognition of this need and these efforts. But ICANN is not quite there yet.

The US Government currently exercises too much "over-sight" of ICANN, and in particular regarding issues that the US Government perceives as in its own national interest. While the US Government is currently overly-involved in meddling in ICANN policies and should refrain from using its dominant position to influence ICANN policies, moving to a frame-work of no oversight and no accountability would be even worse.

A transition mechanism should be developed to a new over-sight model that is not dependent upon a single government and that does address the

concerns of all global stakeholders.

While some progress has been made, ICANN is not ready yet to be cut-lose from the only existing accountability mechanism that exists in place today: US Government oversight (as undesirable as that is as a long term solution).

Removing US Government oversight of ICANN is the right goal, however it cannot be achieved until ICANN can demonstrate that it is capable of respecting human rights and adequately responding to the needs of the entire global Internet community.

Respectfully submitted,

Robin D. Gross
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