

June 8, 2009

Ms. Fiona Alexander
Associate Administrator
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
Washington, DC 20230

RE: Assessment of the Transition of the Technical Coordination and Management of the Internet's
Domain Name and Addressing System
[Docket Number: 090420688-9689-01]

Dear Ms. Alexander,

NeuStar is pleased to submit the attached response to the National Telecommunications and Information Administration's Notice of Inquiry on Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System.

As a leading provider of services that rely on a secure and stable Domain Name System (DNS) including Internet domains, infrastructure DNS, managed enterprise DNS, ENUM, and other IP-related services, NeuStar has a strong interest in the success of the coordination and management role currently held by the Internet Corporation for Assigned Names and Numbers.

NeuStar currently operates the authoritative registries for the .biz gTLD and .us ccTLD, and provides back-end technical registry services for several other TLDs including .travel, and .tel. NeuStar operates a world-class global DNS network that supports several TLDs and thousands of enterprise customers, including many of the Fortune 500 companies – all customers that demand security and trust in the DNS.

We look forward to further assisting the U.S. Department of Commerce in its deliberations on this important issue impacting the security and stability of the Domain Name System. If there are any questions regarding NeuStar's response, please contact Keith Drazek at 202-533-2914 or via email at keith.drazek@neustar.biz

Our response to the questions posed in the Notice of Inquiry is provided below.

Sincerely,



Gerald J. Kovach
Senior Vice President, External Affairs
NeuStar, Inc.

NeuStar Response to NTIA's Notice of Inquiry on ICANN and the Joint Project Agreement

- *The DNS White Paper articulated four principles (stability; competition; private, bottom-up coordination; and representation) necessary for guiding the transition to private sector management of the DNS. Are these still the appropriate principles? If so, have these core principles been effectively integrated into ICANN's existing processes and structures?*

NeuStar considers the four principles articulated in the DNS White Paper to be appropriate and requiring continued integration into ICANN's processes and structures. NeuStar acknowledges that some progress has been made during the term of the Joint Project Agreement (JPA), but absent (i) additional accountability mechanisms, (ii) appropriate oversight mechanisms, and (iii) a greater commitment to contract enforcement, ICANN remains at risk of failing to maintain the core principles of stability, competition, private-sector coordination and representation. Specifically, in order to be truly committed to and supporting these key principles, ICANN must provide greater transparency and accountability surrounding recommendations made by staff and decisions made by its Board of Directors. In addition, there needs to be independent oversight over the activities of the ICANN Board of Directors which are not just advisory in nature, but are binding on the organization.

- *The goal of the JPA process has been to transition the coordination of DNS responsibilities, previously performed by the U.S. Government or on behalf of the U.S. Government, to the private sector so as to enable industry leadership and bottom-up policy making. Is this still the most appropriate model to increase competition and facilitate international participation in the coordination and management of the DNS, bearing in mind the need to maintain the security and stability of the DNS? If yes, are the processes and structures currently in place at ICANN sufficient to enable industry leadership and bottom-up policy making? If not, what is the most appropriate model, keeping in mind the need to ensure the stability and security of the Internet DNS?*

NeuStar believes the current model represents the most appropriate structure for the coordination of certain DNS responsibilities. While many varied opinions exist on the future of ICANN, its current role, and on its performance to date, we believe that with effective oversight there are no better alternatives available at this time. Further, we believe an erosion of support for the current model could ultimately interfere with the private-sector's necessary leadership on DNS-related policy development and international coordination. At this time, NeuStar believes ICANN must further adapt its processes and structures to better secure industry leadership and bottom-up policy making. However, we believe that only with appropriate oversight will this actually occur.

Today, ICANN has structures in place for participation and input from industry, governments, and Internet users, but its decision-making process lacks adequate accountability and transparency safeguards. This is increasingly true as ICANN's revenues and annual budgets continue to grow and the organization gains greater financial independence and insulation from its key constituencies. In order to ensure the stability and security of the DNS, ICANN must act in the

interest of the community over its own organizational self-interest. Without necessary transparency regarding ICANN's decision-making processes, the community is frequently left with uncertainty on this critical issue.

In addition, ICANN's review and accountability processes must be truly independent and meaningful. The current ICANN processes are neither. Both the Ombudsman and the Reconsideration Committee are appointed by the ICANN staff or Board. In addition, the Ombudsman function, Reconsideration processes and the Independent Review Panel's decisions are only advisory in nature and not binding on the Board. Thus, the ultimate arbiter of any dispute is the very body which is alleged to have made the incorrect or inappropriate decision in the first place. Truly independent accountability measures must be binding.

Although ICANN claims that its Independent Review Process demonstrates that it is accountable to the Internet community, the reality is that mechanism is not an effective tool to ensure accountability. In fact, ICANN's litigation briefs filed in the only Independent Review Process brought to date (ICM Registry v. ICANN), demonstrate how the process is inadequate. On May 8, 2009, ICANN filed its latest brief in support of its decision to reject the application by ICM of the .xxx top-level domain. <http://www.icann.org/en/irp/icm-v-icann/icann-response-for-icm-memorial-on-merits-08may09-en.pdf>. In that document, ICANN argues, inter alia, that the Independent Review Process is (i) not binding on ICANN, (ii) is not intended for a de novo review of its decisions, and (iii) so long as the Board acts in good faith, it should be given deference. This might be a rational argument for a corporation to make, but if this is indeed how the Independent Review Process is interpreted, then under the existing accountability measures, there is no available review to any aggrieved third party when the ICANN Board makes an incorrect or inappropriate decision. If the Independent Review Process is not a de novo review of the issue or binding on ICANN, or is used as an exercise to simply affirm that the Board acted in good faith, then there is in fact no appeal or review process. Without any additional oversight, ICANN would then be accountable to no one.

- *The current JPA called for NTIA to conduct a mid-term review. That review revealed that ICANN needed to take further steps to increase institutional confidence related to long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. What steps has ICANN taken to address the concerns expressed in the mid-term review process? Have these steps been successful? If not, what more could be done to meet the needs of the community served in these areas?*

NeuStar believes ICANN has continued its progress since the JPA's mid-term review, but still suffers from a structural weakness in that the ICANN Board is only truly accountable to itself. An entity accountable to only itself is in reality accountable to no one. ICANN has expended significant energy and resources during the current JPA term to improve its communications and community outreach, but those efforts continue to be undermined by the structural issues with Board accountability. ICANN must make significant further improvements to its accountability

structure, including greater transparency with Staff briefing reports to Board members, the ability for Board members to be recalled, a smaller and more reasonable budget to accomplish only its limited mandate, and possibly introduction of a mechanism to ensure ICANN puts the needs of the community and the private sector over its own organizational self-interest. For years ICANN was under-funded, but that's no longer the case, and while technically a non-profit corporation, ICANN has increasingly expanded its activities and mission to justify its growing budgets rather than reduce its revenues to meet its narrow role as envisioned in the DNS White Paper and Memorandum of Understanding.

- *The JPA between the Department of Commerce and ICANN is an agreement by mutual consent to effectuate the transition of the technical coordination and management of the Internet DNS in a manner that ensures the continued stability and security of the Internet DNS. Has sufficient progress been achieved for the transition to take place by September 30, 2009? If not, what should be done? What criteria should be used to make that determination?*

NeuStar believes that it is in the best interests of the Internet community that the relationship between the Department of Commerce and ICANN should continue to exist until such time that the concerns raised in our response are fully addressed and resolved. Therefore, NeuStar would like to see the JPA extended for at least an additional year to provide needed structure to ICANN's ongoing efforts to improve its accountability and transparency.

- *Given the upcoming expiration of the JPA, are there sufficient safeguards in place to ensure the continued security and stability of the Internet DNS, private sector leadership, and that all stakeholder interests are adequately taken into account? If yes, what are they? Are these safeguards mature and robust enough to ensure protection of stakeholder interests and the model itself in the future? If no, what additional safeguards should be put in place?*

There are not currently sufficient safeguards in place to secure recent progress and guarantee future accountability and protection of stakeholder interests. ICANN should adopt an accountability reform program that ensures genuine long-term accountability and transparency for ICANN and strengthens the industry-led, bottom-up consensus policy charter of ICANN. The three necessary components of such a program include (1) establishment of an Independent Supervisory Panel to replace the Independent Review Process; (2) a comprehensive financial audit and reform; and (3) adoption of transparency and accountability of process measures.

An independent supervisory panel would have the authority to review decisions of the ICANN Board of Directors free from influence of ICANN staff and Directors. The Supervisory Panel should have appellate-like review authority that possibly includes the ability to overturn a Board decision on the basis of procedural and substantive criteria. The supervisory panel should be populated by industry representatives with an emphasis on global business representation. Unlike ICANN's most recent proposal on Improving Institutional Confidence, <http://www.icann.org/en/announcements/announcement-2-01jun09-en.htm>, the panel should not

be appointed by the ICANN staff, but rather an independent nominating committee and all decisions should be binding. Either side of course should be free to appeal that decision to a court of competent jurisdiction, but it should not be reviewable by the ICANN Board itself.

Today the possibility remains that a simple majority, eight out of fifteen Board members, could vote in a way that is inconsistent with ICANN's mission, ideals, goals, and the will of the community. Presently, there are no effective mechanisms to counter or overturn such an outcome. Issues of importance should not be decided by a mere simple majority of the Board (only eight Board members), but by a super majority of 2/3 votes thereby protecting ICANN from capture by a slim majority of the Board.

ICANN should commission a comprehensive audit and review of its finances by an independent auditing firm including budget processes, expenditures and fees. The audit should include a review of ICANN's current fiscal practice of accumulating significant reserves in excess of its supposed "cost-recovery" fee model. It should assume a zero-based budget approach and include a review of the consistency of ICANN expenditures with its mission and operational requirements. The review should also address ICANN compensation practices in light of ICANN's non-profit charter and make recommendations for future compensation practices consistent with that charter. This review must address the fiscal practices and means by which ICANN can avoid the accrual of excess revenues. The review should propose enhancements to the Ombudsman's authority, or establishment of a financial Inspector General, whose activities would include the self-initiated detection and prevention of fraud, waste, abuse, and mismanagement of ICANN programs and operations. Upon conclusion of the audit and review, ICANN should undertake actions necessary to implement the recommendations and should be subject to annual audit and review by an independent auditing firm to determine compliance with the recommendations.

ICANN should implement Administrative Procedure Act-like "notice and comment" process for its policy making processes. ICANN must post policy-making processes in a timely fashion to afford the community an opportunity to review the proposed policy and to provide informed input to ICANN. ICANN staff must present briefs and policy making documents to the ICANN Board with sufficient time for the Directors to make an informed judgment. These documents should also be made available to the community and the public. The APA judicial review process for agency policy-making decisions also plays a role in encouraging agencies to be transparent and to articulate the basis for their decisions. It is critical that ICANN not only identify and summarize comments that are received in its policy-making process, but ICANN should also identify comments that were not adopted and articulate rationale for pursuing a different policy result. Additionally, ICANN decisions should reflect only those matters that are "in the record." This requires that ICANN be explicit in proposed policy making processes and not adopt policies or make decisions that are beyond the public record.

- *The JPA provides that before its termination, NTIA and ICANN are to collaborate on a DNS Project Report that will document ICANN's policies and procedures designed and developed pursuant to the agreement. What should be included in this report?*

The DNS Project Report should include ICANN's commitment to undertake the reforms recommended above and a project plan with dates and milestones for doing so.