



June 8, 2009

Mrs. Suzanne R. Sene
Office of the International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 4701
Washington, DC 20230

Dear Mrs. Sene:

Thank you for giving us the opportunity to comment on the National Telecommunications and Information Administration Notice of Inquiry on the assessment of the Transition of the Technical Management of the Internet's Domain Name Addressing System through the Joint Project Agreement with the Internet Corporation for Assigned Names and Numbers.

VeriSign believes that the Department of Commerce ("DOC") should continue its role in providing oversight for the domain name system ("DNS") by extending the Joint Project Agreement ("JPA"). VeriSign believes a one year extension is necessary to ensure a successful migration to a private sector solution by allowing time for the development of a workable oversight mechanism that involves stakeholders with a vested interest in the sustainability of the Internet infrastructure. In extending the JPA as suggested here, we would encourage and support community dialogue based on constructive conversation of what *could* work. VeriSign would welcome the opportunity to take a leadership role in those discussions.

The JPA mid-term review revealed that many are worried about capture of ICANN in the absence of a substitute oversight body as well as in the absence of a set of permanent governance documents. The global community has not yet reached an agreement on a long term private sector arrangement that in the absence of the JPA yields the appropriate oversight and appeals process within the ICANN community. While the imminent expiration of the JPA has been productive in getting people to seriously consider possible alternatives, these proposals vary greatly and are merely theoretical at this stage --there does not yet appear to be a leading solution, much less one that is agreed upon or ready for implementation. Given that ICANN is unique in

its international role, as well as its constituency processes, the only general consensus on this subject seems to be that time and community involvement are needed to find the appropriate next set of oversight mechanisms and governance tools.

Additionally, there are many comments on record advocating that additional time is necessary for ICANN to satisfy the list of objectives set forth in the MOU. In reaction to the mid-term comments, ICANN launched the initiative on “Improving Institutional Confidence” to address concerns about, among other things, capture and financial and operational accountability. Comments on this process closed only one month ago and the community has just received the draft implementation plans from the President’s Strategy Committee this week. The initiative is still in the conceptual phase, and the ICANN Board has not finished its review of the proposal. Thus, ICANN’s own proposed solution for improving its institutional confidence has not been settled nor had time to prove itself out within the community. VeriSign is concerned that the expiration of the JPA before such initiatives have been implemented, tested and proved will further undermine institutional confidence in ICANN and in turn adversely impact ICANN’s ability to maintain security and stability of the Internet.

For these reasons, VeriSign believes that the JPA should be extended by at least a term of one year with a commitment to demonstrate further progress in the areas of: (i) transparency of process, (ii) accountability of the Board and Staff of ICANN to vested stakeholders, and (iii) creation of a set of constituency-based governance documents and procedures. This is necessary to ensure that ICANN can prosper within a private sector solution and avoid capture by entities which do not have, as a priority, the security and stability of the Internet, and to ensure that the use of a multi-party stakeholder system does not fall prey to influence from groups which have no invested interest in the sustainability of the Internet infrastructure.

Specifically, vetted documents and procedures must outline ICANN’s permanent commitment to a meaningful appeals process for its vested participants, a permanent representational schema for the creation, approval and implementation of policies and procedures, and a prohibition on conversion to a for-profit status as a corporation. Furthermore, ICANN must seek and commit to a set of standards for operation which include service level agreements to its stakeholders as well as a defined legal framework and jurisdictional oversight in which these stakeholders can operate.

As the NOI recognizes, broad-based community support recently has been expressed for an extension of DOC oversight for ICANN, including in separate public proceedings in each of the last two years in response to earlier NOIs by NTIA. While ICANN has continued to make progress in certain areas since these recent public

proceedings, the basic circumstances giving rise to widespread community concerns over an expiration of the JPA remain largely unchanged and further progress is critical prior to an expiration of the agreement, an end to oversight of ICANN and migration to a private sector solution.

Furthermore, in only the last few months, ICANN has announced a major transition in its governing officers, which has yet to be completed, and ICANN has entered relatively uncharted territory in an attempt to undertake a major expansion in the number and operation, as well as legal rights and obligations, of gTLDs. While ICANN has achieved initial success in moving towards the launch of this process in 2010, the process has not yet had the opportunity to be completed or evaluated in terms of its transparency or commercial viability as previous new gTLD launches have met with mixed success.

ICANN is a small organization facing enormous challenges from a rapidly changing Internet while at the same time preparing for key leadership changes and planning for implementation of critical organizational improvements. Expiration of DOC oversight during such a period of change would be premature and poses risks to the security, stability and independence of the Internet in addition to making it more vulnerable to pressures to expand its mission beyond its current limited technical coordination charter. The extension of the JPA will provide a period of time for installation of new ICANN leadership and for development and implementation of oversight and improved governance structures and processes.

Our remarks recognize that transitioning to a private sector solution is a matter of significant complexity and magnitude. Progress takes time and we must get it right.

Specific Comments in Response to the NOI

VeriSign offers the following additional comments in response to specific questions posed in the NOI.

1. Achievement Of The Principles Set Forth In The White Paper. VeriSign believes that stability, competition, private, bottom-up coordination, and representation should continue to guide the transition to private sector management. These principles are implemented to varying degrees in many of ICANN's recently drafted processes.

Work remains, however, for ICANN to develop the resources and achieve the institutional maturity to ensure stability and competition, as well as a consistent and

proper balance in the role of moderator among interest groups vying for influence over ICANN policy.

When the Memorandum of Understanding (“MOU”) was executed a little over ten years ago, the Internet was small and no one projected the growth that would follow. Since that time, of course, the Internet has grown exponentially, today processing billions of transactions a day and serving as a critical platform for the world’s economy and communications. As a result, the requirements on ICANN to fulfill the goals established in the MOU and carried forward through its amendments, including the JPA, have grown tremendously.

As the Chairman of the Board of Directors of ICANN has acknowledged: “Security and stability is a never-ending pursuit; ... transparency and accountability is a never-ending pursuit.”

2. The Appropriate Model For DNS Security And Stability. The model envisioned by the MOU remains the appropriate model for DNS governance. ICANN has made many strides toward accomplishing the goals of the MOU while faced with a rapidly changing Internet. Significant improvements to ICANN processes and structures are planned but not yet implemented so some time is needed to allow them to be put in place and tested. Similarly, ICANN's role in ensuring stability and security is currently being reviewed; it would be useful to allow that process to be completed and the results evaluated.

3. Core Task Completion. As specifically measured against the standards of the JPA, many commentators, while ultimately supporting an independent ICANN at a later point in its history, have firmly concluded that it would be premature to transition ICANN from DOC oversight in 2009. For example, such assessments, made only last year in the mid-term review, included such basic concerns as:

- “The JPA serves as a valuable check on ICANN and an important guarantor that ICANN will continue to maintain and improve its transparency, accountability and adherence to the bottom-up, multi-stakeholder model.”
(Center for Democracy & Technology)

- ICANN does not have a governance structure or other mechanisms adequate to protect the DNS against foreign governmental interference once the JPA is ended. China, Russia, Iran and Syria, for example, all want control or influence over Internet governance. Id.

The basic facts underlying community concerns over an end to DOC oversight have not disappeared in the intervening months.

To date, the successes of ICANN in pursuit of completion of its Board commitments following the mid-term review have been accomplished with the current JPA as a back drop. This leads one to ask what efforts has ICANN endeavored to pursue which may have been hampered by the JPA? Additionally, we find no outlined statement of benefits which have been enumerated in terms of how the termination of the JPA will better enable ICANN to complete the Board commitments surrounding stability, competition, private, bottom-up coordination, and representation.

4. Progress on 2006 Commitments Endorsed by the ICANN Board. There have been no material breakdowns in the security or stability of the DNS since ICANN was formed for those commercial parties with contractual relationships to ICANN, despite many challenges and growing threats. However, private working groups such as the Internet Security Alliance and various Chief Security Offices and peer working groups have provided the most effective communication of pertinent issues.

Within the limits of ICANN's charter, more work on timely creation of paths for working on detection, prevention and co-ordination of information flow between operators who are vested in the area of cyber security is needed. Concentration over the past two years has been largely in the area of DNSSEC working groups and a fast flux working group. Informal working groups such as a community-based group centered on the conficker worm have created loose affiliations of members. There is much that can be done to facilitate relevant and immediate sharing of critical information and best practices within the industry. The focus areas of the SSAC team could be more formalized in terms of topic and calendar year focus to provide for a better exchange of information and more timely review of information pertinent to the commercial operators of key infrastructure.

To this extent, ICANN should embark upon a multi-stakeholder forum for the prioritization of security-related items to its key participating stakeholders. This should be done with a clear establishment of the security practices that are best practices for the majority of its stakeholders.

5. Concerns Expressed In Prior Mid-Term Review Processes. ICANN has created programs to facilitate private sector leadership and stakeholder participation. As mentioned above, the participation of these various interested parties needs to be more

formalized and ICANN needs more time to work through the balancing of interest from all established stakeholders such that the substance of decisions are formulated by those parties with vested interests and not used as hooks for those who want a voice without accountability.

Moreover, as noted above, one of the primary concerns expressed in the mid-term review was the lack of institutional confidence. It is too early to tell whether the steps taken by ICANN to address these concerns will be successful, since the initiative prompted by the President's Strategy Committee has not yet been implemented or tested.

6. Criteria To Be Used For Determination For Transition In September 2009.

Currently, VeriSign does not believe that a transition in September, 2009 is advisable.

VeriSign suggests that the following criteria could serve as a basis for transition determination at the conclusion of an extended term:

- a. Security and Stability – (i) the establishment and demonstration of a coordinated technical function with a set of published operational guidelines, procedures and set areas of focus, (ii) demonstrated success in assisting vested stakeholders with areas of security and stability, and (iii) demonstrated board and staff expertise and work with multiple parties to ensure that ICANN is capable of providing thought leadership in the areas of security and stability (measured using a score privately provided by key stakeholders including contracted parties at the end of an extended term).
- b. Increased Competition – (i) successful launch of the new gTLD round in which a high percentage of participants in the application process provide high scoring feedback related to the role of ICANN in the process; (ii) the gTLDs are brought to market within 1 year of application and have demonstrated end user and registrant as defined by some established set of success factors appropriate for the purposes of the TLDs; and (iii) achievement of a yearly target number of registrars recruited in all ICANN regions and a yearly target growth rate of the number of distributors within underserved markets.
- c. Governance – (i) creation of by-laws that give appropriate voting weight and representation to vested stakeholders and establish a system of appeals; (ii) a scoring of high marks from contracted parties on the adherence to the terms and conditions as well as processes outlined in their contracts with

ICANN; and (iii) a finalized round of gTLD awards with limited litigation and ensuing high scores from participants.

7. Sufficient Safeguards.

There are not sufficient safeguards in place to ensure i) continued security and stability of the DNS, ii) private sector leadership, and iii) all stakeholder interests are adequately taken into account. Adequate oversight and appeals mechanisms are necessary for accountability, and such safeguards are not even extant, much less mature and robust.

We mentioned several safeguards that could be put in place earlier in these comments:

- a. Improved transparency of process
- b. Constituency-vetted creation of a set of governance documents and procedures
- c. An appeals process for its vested participants
- d. A prohibition to privatize as a for-profit corporation
- e. A set of standards for operation which include service level agreements to its stakeholders as well as a defined legal framework and jurisdictional oversight in which these stakeholders can operate
- f. A process for facilitation of relevant and immediate sharing of critical security information and best practices within the industry
- g. A multi-stakeholder forum for the prioritization of security-related items to its key participating stakeholders
- h. Establishment and demonstration of a coordinated technical security and stability function with a set of published operational guidelines, procedures and set areas of focus

8. Report. The report issued by NTIA and ICANN regarding ICANN's policies and procedures should outline ICANN's success in meeting the criteria as outlined in Section 6 (above) as well as written governance documents which outline the following:

- a. ICANN's permanent commitment to an appeals process that is representative of its vested stakeholders
- b. A representational schema for the creation and implementation of policies and procedures

- c. A binding commitment prohibiting conversion by ICANN to for-profit status.
- d. A commitment to adhere to standards of operation which model the best practices for working across multiple stakeholders. These should ensure that the ICANN Board and Staff will commit to practices that are consistent with general standards for integrity of process, such as the FCPA standards in the United States.
- e. Commitment to a set of standards for operation across all contracted parties which include:
 - i. service level agreements to its stakeholders
 - ii. a defined legal framework and jurisdictional oversight

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These suggestions are provided as a framework to enable a broader dialog among the stakeholders of the community who, like VeriSign, believe that while ICANN has made progress under the current JPA, there are still areas of concern which should be addressed. The suggestions outlined in this document should be seen not as a criticism of ICANN but rather as a set of concrete points for reference in attempting to help ICANN continue upon its current trajectory towards the goals envisioned by the White Paper and further detailed in the original MOU and the JPA. Most of the previous discussions related to the JPA have centered on criticism of models that would *not* work with the community as opposed to constructive conversation of what *could* work. VeriSign would welcome the opportunity to take a leadership role in those discussions.

Sincerely,

Raynor Dahlquist
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VeriSign, Inc.