INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JULY 31, 2003

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

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C O N T E N T S

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INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

THURSDAY, JULY 31, 2003

U.S. SENATE,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:45 p.m. in room SR–253, Russell Senate Office Building, Hon. Conrad Burns, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. We'll call the Committee to order. Are we on the air now? Can you hear me down there? I saw your ears fly out like that. I expect so. My voice kind of carries.

Today's hearing concerns the operation and development of the Internet Corporation of Assigned Names and Numbers, otherwise known as ICANN. I'm convinced that this issue of the proper role of ICANN is most critical. It's one of the real big issues that come before this Subcommittee. And, broadly speaking, the future of ICANN will define the future of the Internet.

In 1988, a decision was made to turn over the task of administering policy for Internet naming and addressing to not-for-profit, private sector Internet stakeholders. The idea was to create a management structure that would preserve the domain naming system but would also adopt practices that would support competition and consumer choice in all decisions. The bottom-up management structure would have the ability to include public input, both national and international, as a basic guiding principle.

Since its murky beginnings in 1998, however, ICANN has been an experiment which has lurched from crisis to crisis over issues ranging from its very legitimacy to the lack of transparency and due process, and whether it was engaging in mission creep.

As this experiment is now over 4 years old and the Internet now underpins the very foundation of our economy, issues of accountability become preeminent. Given that ICANN has eliminated its five elected at-large board seats under its new structure, proper oversight by the Department of Commerce remains more important than ever in making sure that ICANN remains a technical and administrative body rather than straying into areas of core policy.

I look forward to hearing from Mr. Twomey's testimony today about how the changes to ICANN board structure will result in a more responsive and responsible organization. I am particularly

concerned that the lack of accountability for the quasi-govern-
mental organization poses serious dangers for American national
security. While we have made great strides in combating terrorism,
our Nation is still very vulnerable to the threat of a massive cyber
attack. The denial-of-service attacks on nine of the 13 Internet root
servers last October highlights these concerns even more.

A particularly troubling area is the lack of uniform standards for
the 13 root servers. Security of these systems is critical to the func-
tion of the domain name system. And I look forward to hearing
what steps ICANN is taking to ensure that they gain the support
of the operators to be full ICANN members.

What must not be allowed to happen is for a dispute among the
principals dealing with the management of the Internet to make
this key instrument vulnerable to senseless acts of destruction. The
bottom line is that ICANN must be a part of the security solution
and not part of the problem.

I'd also like to touch on the failure, so far, of ICANN to integrate
other countries into the structure. As the chairman of the U.S./Asia
network, this particularly concerns me, given the explosive growth
of the Internet in Asia.

Just this week, the Associated Press reported that a number of
people in China who use the Internet increased by 15 percent in
the past 6 months. Currently, 70 million people use the Internet
in China, a number which will undoubtedly see continuing growth.
Over half a million websites in China use China's "dot cn" domain,
which has no agreement with ICANN. In fact, of the nearly 300
country-code top-level domains, ICANN has contractual agreements
with only ten. Clearly, to say that there has been a lack of progress
in this area is a massive understatement. I should add that Mr.
Twomey has recognized this issue as a top priority for action, given
the trillion dollars in trade across the Asian/Pacific region, and I
recommend him to focus on this.

ICANN certainly faces many difficult tasks. Its responsibilities
are many. Primary, among them are making sure that the Inter-
net's infrastructure is stable. It also must act to foster competition,
rather than act as a supernatural regulatory body which picks win-
ners and losers. To accomplish these goals, we must have greater
global support and coordination. When looking at options, we
should not impose strict governmental control, but look at an orga-
nization that allows for the greatest industry input and most effec-
tively coordinates the development and practices that govern the
operation and the conduct of the Internet industry.

Ultimately, ICANN must focus on three operational areas if it is
to be successful: improving the global support and coordination of
the Internet domain name systems, strengthening standards and
practices of these systems to ensure stability and security of the
critical infrastructure, and promoting the growth and innovation
for all users of the Internet.

Today, I'm calling on the Department of Commerce to come back
to the Committee by the end of August with its proposals of future
ICANN and how the organization can accomplish these operational
goals. With ICANN's memorandum of understanding up for re-
newal in September, it is imperative for the Department to lay out
its plans in a timely fashion.

I am considering offering legislation when we return from August recess to ensure ICANN is, indeed, becoming more accountable and that it is acting within its original memorandum of understanding with the Department of Commerce. In doing so, I'll be working closely with Senator Wyden and my colleagues on this Committee.

The issues before the Subcommittee today are complex, and the stakes are high. I look forward to hearing from our witnesses about the best track forward to make the Internet stronger, more secure, and more reliable.

Before we go to the testimony of you, Ms. Victory, I would like to apologize for being late. We're trying to get out of town. Everybody's got hay to cut at home. And it is time we be there. And so there's a conference today. We've made some progress on an energy bill. And so that's where I was.

And we look forward—Ms. Victory, who is Assistant Secretary for Communications and Information, National Telecommunications and Information Administration of the United States Department of Commerce. Thank you for coming this afternoon.

STATEMENT OF HON. NANCY J. VICTORY, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Ms. VICTORY. Thank you very much, Mr. Chairman. I'd like to thank you for inviting me here today to testify on this important issue.

As you may recall, last year I testified before you on developments related to the Internet domain name and addressing system, specifically the memorandum of understanding between the Department of Commerce and ICANN. While the Department serves as the steward of critical elements of the domain name system, ICANN is the private sector entity responsible for day-to-day management of this system.

The Department continues to believe that the stability and security of this important global resource can best be achieved through privatization and global participation in the technical management of the domain name system. The Department, accordingly, supports the ongoing work of ICANN and its efforts to engage all critical stakeholders in the decision-making processes. The Department desires to see ICANN evolve into a stable and sustainable organization that is well-equipped to weather a crisis. We are encouraged that ICANN has recently been making some progress toward this end.

Last year, when the Department of Commerce and ICANN chose to renew the MOU for a period of one year, both parties agreed that ICANN needed to focus its improvements in five major areas: clarifying its mission and responsibilities, ensuring transparency and accountability in its processes and decision-making, increasing its responsiveness to Internet stakeholders, developing an effective advisory role for governments, and ensuring adequate and stable financial and personnel resources to carry out its mission and responsibilities.

The Department believes that ICANN has made significant strides this year in these areas. ICANN has completed a com-

prehensive reform effort that has resulted in major structural adjustments and refinements in its decision-making processes. In addition, the organization has hired a new CEO with both management expertise and experience in dealing with this unique organization. ICANN has also implemented a new nominating process to ensure qualified, committed, and internationally representative board members. In short, ICANN has made progress in developing into a more stable, transparent, and responsive organization.

I'm also pleased to note that the ICANN Governmental Advisory Committee, of which the U.S. is a very active participant, has undergone an evolution of its own. Among other things, the GAC has appointed liaisons to each of the ICANN supporting organizations to improve communications on public policy issues. It has also established working groups on particular issues to facilitate analyses and the development of recommendations.

Now, while ICANN has made progress, both the Department of Commerce and ICANN recognize that much is still to be done for ICANN to evolve into the stable and sustainable DNS management organization that we would all like it to be.

First, ICANN needs to solidify relationships with the root server system operators. While ICANN has worked with the root servers to complete a report on the current status of root server system security and recommendations for infrastructure improvements to enhance security, ICANN needs to establish a more concrete ongoing relationship with this critical constituency. The formation of ICANN's Security and Stability Advisory Committee, of which many of the root server operators are members, is an important first step in the right direction.

Second, ICANN needs to formalize its relationship with the regional Internet registries. Securing agreements with the RIRs is essential, not only to ICANN's ability to perform its address-allocation responsibilities, but also to the overall stability of the Internet. I note the productive talks between ICANN and the RIRs are currently underway.

Third, ICANN needs to complete actions it has initiated to develop transparent mechanisms that ensure accountability to all stakeholders. ICANN is in the process of instituting an international arbitration procedure to provide a reconsideration process for disputed decisions. It is also in the process of hiring an ombudsman to investigate grievances against the company. These tasks need to be completed.

Fourth, ICANN needs to establish stable agreements with the country-code top-level domain operators. While we recognize the competing pressures surrounding this issue, it's imperative for ICANN to develop a framework agreement that would appeal to the majority of ccTLD operators and which takes into account the various national sovereignty issues. The establishment of a country-code-name supporting organization during the last year represents significant progress toward this end.

And, finally, ICANN needs to define a predictable process for selecting new top-level domains. This strategy should use straightforward, transparent, and objective procedures that preserve the stability of the Internet. The ICANN board has recently taken steps in this regard by charging its CEO with providing a detailed

policy-development plan and schedule for the introduction of new TLDs and preparing to issue a request for proposals for new sponsor TLDs.

Now, the current MOU between the Department of Commerce and ICANN expires at the end of September. The Department is currently in the process of reviewing ICANN's accomplishments and assessing what actions remain. This review will underlie any decision to extend the MOU, and, if so, how best to modify the agreement to focus ICANN's and the Department's efforts going forward. The Department remains committed to working diligently with ICANN and all critical Internet stakeholders to preserve and enhance this critical global resource.

Finally, I would like to thank you, Mr. Chairman and the Members of this Committee, for their support and cooperation during my tenure at NTIA. With your help, NTIA has been able to log a number of accomplishments, including helping to make the Internet more secure and accessible for a wide variety of users. And I particularly would like to commend Congress for its vision and leadership in passing legislation to establish the .kids.us space. I hope I can count on you and your colleagues to develop websites in this space, giving our Nation's children a better understanding of the workings of Congress and the issues before you.

Thank you, again, for this opportunity to testify, and I'd be happy to answer any questions that you might have.

[The prepared statement of Ms. Victory follows:]

PREPARED STATEMENT OF HON. NANCY J. VICTORY, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Thank you, Mr. Chairman. I would like to thank you and the members of the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation for inviting me here today to testify on this important issue. I am Nancy J. Victory, Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration.

The Internet and the variety of applications that it supports provide tremendous opportunities for economic and social development around the world. What started as a small-scale system of links among U.S. academic institutions is now a gigantic global network connecting individual users, companies and institutions from any access point, regardless of national or geographic borders. The Internet continues to expand in terms of size and scope and has become a significant and important means of doing research, communicating with each other, and conducting business. In fact, e-commerce sales by U.S. retail establishments reached $11.921 billion during the first quarter of 2003—a 25.9 percent increase over first quarter 2002. Given the Internet's importance in all of these facets of daily life and the country's general economic well-being, it is essential that the Internet—and its underlying domain name and addressing system (DNS)—remain stable and secure.

This is the primary concern of the Department of Commerce, which currently serves as the steward of critical elements of the DNS. The Department believes that the stability and security of this important global resource can best be achieved through privatization of the technical management of the DNS and continued global cooperation, via appropriate public-private partnerships that reflect the international nature of the Internet. Innovation, expanded services, broader participation, and lower prices will arise most easily in a market-driven arena, not in an environment that operates under substantial regulation.

The Internet Corporation for Assigned Names and Numbers (ICANN) is the private sector entity responsible for day-to-day management of the DNS. ICANN performs this function pursuant to a Memorandum of Understanding (MOU) with the Department of Commerce. The Department supports the ongoing work of ICANN and applauds its efforts to engage all critical stakeholders in its decision-making processes. We are particularly encouraged by the progress ICANN has made over

the past year towards implementing a number of structural and procedural reforms, as well as moving forward on several of the tasks set forth in the MOU. The Department desires to see ICANN evolve into a stable and sustainable organization that is well equipped to weather a crisis.

Last year, when the Department of Commerce and ICANN chose to renew the MOU for a period of one year, both parties agreed that continued progress toward stability and sustainability required ICANN to focus on improvements in 5 major areas:

- Clarifying ICANN's mission and responsibilities;
- Ensuring transparency and accountability in its processes and decision making;
- Increasing its responsiveness to Internet stakeholders;
- Developing an effective advisory role for governments; and,
- Ensuring adequate and stable financial and personnel resources to carry out its mission and responsibilities.

The Department believes that ICANN has made significant strides this year in developing into a more stable, transparent and responsive organization. ICANN has completed a comprehensive reform effort that has resulted in major structural adjustments and refinements to its decision-making processes that allow for greater transparency and responsiveness to all critical Internet stakeholders. Specifically:

- ICANN has refined its mission and restructured its supporting organizations and advisory committees, including the establishment of a new supporting organization for country-code Top Level Domain (ccTLD) managers;
- ICANN has implemented new, transparent, constituency-driven policy development processes;
- ICANN has established an at-large advisory committee and regional at-large organizations to encourage greater global public participation;
- ICANN has created liaisons between the Governmental Advisory Committee (GAC) and the other ICANN supporting organizations and advisory committees;
- ICANN has established a process for the ICANN board to solicit and receive GAC advice on public policy matters between meetings; and
- ICANN has restructured its staff to better respond to ICANN's technical policy, DNS management and financial responsibilities.

In addition, the organization has hired a new CEO with both management expertise and experience in dealing with this unique organization. It has also implemented a new nominating process to ensure qualified, committed and internationally representative board members. It recently appointed eight new board members with impressive credentials and very relevant experience.

I am also pleased to note that the ICANN GAC, of which the United States is an active participant, has undergone an evolution of its own. The establishment of GAC liaisons to each of the other ICANN supporting organizations is intended to encourage communications between the GAC and the relevant constituent groups with respect to public policy issues. In addition, the GAC has established internal working groups on relevant public policy issues to facilitate their analysis and to engage in dialogue with ICANN supporting organizations and committees as needed.

While ICANN has made a great deal of progress, both the Department of Commerce and ICANN recognize that much is still to be done for ICANN to evolve into the stable and sustainable DNS management organization we would all like it to be. These include:

- *Ensuring Root Server Security.* The root server system forms a critical component of the DNS by linking domain names to the corresponding numerical addresses. Ensuring the security of this function is therefore of the utmost importance. While the request for specific information set forth in the Cooperative Research and Development Agreement (CRADA) was met, ICANN needs to continue to exchange views and ideas with the root server system operators to solidify relationships that guarantee the security of this resource. The formation of ICANN's Security and Stability Advisory Committee, of which many of the root server operators are members, is a first step in the right direction.
- *Securing Agreements with Regional Internet Registries.* As the entity responsible for the allocation of numbering resources within their respective geographic region, the Regional Internet Registries (RIRs) play a crucial role. Although productive talks are underway, legal agreements between the RIRs and ICANN have not yet been completed. Finalizing these agreements to formalize the rela-

tionship between ICANN and the RIRs remains essential not only to ICANN's ability to perform its address allocation responsibilities, but also to the overall stability of the Internet.

- *Enhancing Accountability Mechanisms.* As the Internet continues to play a significant role in our daily lives, transparent mechanisms that provide accountably to all stakeholders are important. While ICANN has initiated a review of suitable international arbitration providers to constitute an Independent Review Panel and has called for the establishment of an Office of Ombudsman, these mechanisms must be finalized to ensure appropriate accountability to all ICANN stakeholders.

- *Developing Agreements with ccTLD Operators.* The fastest growing segment of the DNS is within the ccTLD community. While ICANN continues to make progress towards establishing stable agreements with ccTLD operators, forward movement has been slow. This is largely attributable to the complexities resulting from the convergence of national sovereignty assertions, international law considerations, and the general concerns of global and local Internet communities. Despite these competing pressures, ICANN must develop a framework agreement that would appeal to the majority of ccTLD operators, while recognizing the various national sovereignty issues involved. The establishment of a country-code Name Supporting Organization (ccNSO) during the last year represents significant progress towards this end.

- *Refining the Processes for Selecting New TLDs.* Determining the circumstances under which new top level domains (TLDs) would be added to the DNS was one of the key functions identified in the White Paper. While ICANN has approved the addition of seven new TLDs, much work remains to be done in this area with respect to developing an appropriate long-term strategy. This strategy should use predictable, transparent and objective procedures that preserve the stability of the Internet. While the ICANN Board has recently taken welcomed steps in this regard—charging its CEO with providing a detailed policy development plan and schedule for the introduction of new TLDs and preparing to issue a Request for Proposals for new sponsored TLDs—this remains one of ICANN's core yet-to-be-accomplished objectives.

The current MOU between the Department of Commerce and ICANN expires at the end of September. The Department is currently in the process of reviewing ICANN's accomplishments and assessing what actions remain under the MOU. This review will underlie any decision to extend the MOU and, if so, how best to modify the agreement to focus ICANN's and the Department's efforts going forward. The Department stands ready to continue its stewardship obligations of critical elements of the DNS during the transition period and to assist the global Internet community in maintaining a stable and secure Internet. To this end, the Department remains committed to working diligently with ICANN and all critical Internet stakeholders to assist ICANN in its evolution and to preserve and enhance this global resource.

Finally, I would like to thank the Members of this Committee for their support and cooperation during my tenure at NTIA. With your help, NTIA has been able to lob a number of accomplishments, including helping to make the Internet more secure and accessible for a wide variety of users. I particularly want to commend the Congress for its vision and leadership in establishing the .kids.us space. The Internet can be a wonderful resource for children, and soon we will be have a safe place for children under 13 where they can discover and explore educational, fun, and age appropriate content. I hope I can count on you and your colleagues to develop websites in the .kids.us space, giving our Nation's children a better understanding of the workings of Congress and the issues before you.

Thank you and I would be happy to answer any questions that you may have.

Senator BURNS. Thank you very much.

Madam Secretary, last year, I guess, about—or this year, I guess, last June, the GAO issued a report that was, sort of, critical of your Department not fulfilling the role of oversight with regard to ICANN. Since then, have you taken steps to help that situation? And cite a few for this Committee, if you could.

Ms. VICTORY. Yes, sir. I believe that report came out in June 2002, and we did take the recommendations to heart. One of the recommendations was to issue some sort of a status report as to what was guiding our thinking as we were entering into the MOU

every year. Last year, when we did extend the MOU for one year, the Department issued a separate statement that went through our rationale, that went through the progress that we had seen over the year, and that also laid out a road map for ICANN for the up-coming year, and had a number of things in that road map that were incorporated into the MOU.

I think one of the most important tools that we implemented was a quarterly reporting mechanism that we imposed on ICANN that was supposed to serve a number of purposes; one, to let the Department know and to give it status updates on what was happening, but it was also supposed to be an encouragement tool for ICANN to recognize that it needed to make progress every quarter, not just at the end of the year.

I believe that ICANN has been making those quarterly reports public. We've also asked ICANN to deliver an annual report to us that would inform our thinking as we're entering the end of this MOU term and considering whether to renew or modify or terminate the agreement, and we expect to receive that annual report next week.

Senator BURNS. Now, you've taken these actions. Based on what you know now and based on some of the progress that ICANN has made, would you recommend renewal of that MOU this year?

Ms. VICTORY. We have not reached a decision on that yet. I think one of the—we are—certainly been very close to monitoring what ICANN has been doing through these quarterly reports and also through our participation in the Government Advisory Committee. But one piece of evidence that I think is going to be very important to us to assess will be this annual report, which we hope to receive next week.

We've not reached a decision on what to do, but we have seen progress in each of the five areas that I outlined in my testimony, which were the five areas we told ICANN we would like to see improvement last year in the MOU.

Senator BURNS. You pointed out in your testimony developing agreements with country-code top-level domain operators such as *.cn* for China has been slow.

Ms. VICTORY. Uh-huh.

Senator BURNS. What seems to be the problem there? What do you think the problem is, as not getting more cooperation out of the international community?

Ms. VICTORY. I think there are a number of problems there. Actually underlying the difficulty with getting agreements with any of the constituencies is the fact that there were no agreements before, and the Internet was operating just fine. So for a lot of these entities, just the idea of entering into agreement is a new concept and a, sort of, a new philosophy to get used to.

But I think with the ccTLDs, one of the most difficult issues has been resolving all of the different approaches to ccTLDs that you're seeing in each country. Not every country has a tight relationship with its ccTLD. In the U.S., we do. And, in fact, the Department has a contract with NeuStar, the U.S. operator. But, in many countries, there is no formal relationship between the Government and the ccTLD. We have significant sovereignty issues that we want to make sure are not impacted by the ccTLD agreement. Other coun-

tries may not have that concern. And, frankly, just the fact that you have so many different permutations, I think, has made it very difficult to develop either a central agreement or a number of variations of an agreement.

But I think we're hopeful that with this ccNSO, which has recently been formed in the bylaws adopted at the June Montreal meeting, that that will be an appropriate forum to be able to make recommendations as to what some of the basic principles or outline of this contract should be. So I think that's a step in the right direction, that that group is organizing and organizing formally within ICANN. And then, hopefully, through their assistance, some basic forms of the contract can be drafted, and we can move forward.

Senator BURNS. In your estimation, when you look at those reports and those negotiations with the international community, what is the main concern of countries affiliating themselves and joining this organization?

Ms. VICTORY. Well, I think that, in terms of the countries joining, the Government Advisory Committee has gone through its own evolution over the last year. We are seeing tremendously increased representation within the Government Advisory Committee, and a much more active group. And I mentioned in my testimony that we do have these working groups that have been formed under the leadership of the new Government Advisory Chair from Malaysia. That's enabled this to be a much more relevant organization. It's enabled a lot of concrete work to be done on particular issues.

So I think in terms of attracting new members to the Government Advisory Committee, that's certainly been a help. And also, there's a strong interest in outreach, particularly to some developing countries, to educate them about ICANN and to educate them about the benefits of participating in the Government Advisory Committee, even if their participation is electronic, as opposed to physically attending the meetings. And that seems to have moved things along quite nicely.

But, again, as far as the ccTLDs go, not all of them are affiliated with their country's government. We've been trying to educate some of the governments, and I think the Government Advisory Committee is very interested in taking up some of the issues of the ccTLDs to see if they can help advance the ball with respect to the contracts.

Senator BURNS. We've still got a lot of work to do.

Ms. VICTORY. Yes, we do.

Senator BURNS. And ICANN does, too. And I want to congratulate you on your service down at the Department of Commerce. We wish you well in your next endeavor——

Ms. VICTORY. Thank you.

Senator BURNS.—and in the work that you do. I would hope that you're leaving an office down there that understands what their duties are with regard to ICANN and our oversight responsibilities there. And, also, we look forward to that report coming out before the MOU is renewed.

Ms. VICTORY. Thank you very much, sir.

Senator BURNS. So we thank you for coming today and sharing your thoughts with us, and—happy trails.

Ms. VICTORY. Thank you very much, Senator.

Senator BURNS. Thank you very much.

Our next panel is Mr. Paul Twomey, President and Chief Executive Officer of the Internet Corporation; Ari Balogh, Senior Vice President, VeriSign, here in Virginia; Alan Davidson, Associate Director, Center for Democracy and Technology; and Paul Stahura, Chief Executive Officer of eNom, Incorporated, in Belleview, Washington. Gentlemen, we welcome you here today. We look forward to your testimony and also some conversation that we might have with regard to ICANN.

I want to call on Mr. Paul Twomey, and first of all I thank you for dropping by my office, we had a nice visit there, and we look forward to your report and some changes, and you said you were going to have good news today, and I believe you, and even though you may be from down under, I'll try a bit harder to understand you, and we welcome you here today.

STATEMENT OF DR. PAUL TWOMEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

Mr. TWOMEY. Good day.

Thank you, Senator, and I'm very pleased to be here today and to give testimony to this Committee. I will make just some opening remarks. It's my first appearance here in the role as President and Chief Executive of ICANN. I assumed this responsibility about 4 months ago. I have been spending much of my time since then listening to the many constituency interests that in aggregate make up the ICANN. In addition, I and many others have been working very hard to finally implement the ICANN reforms that had just begun when my predecessor last appeared before this Committee. There's a lot of work been done in that timeframe.

I've also published a comprehensive plan for the reorganization of the ICANN staff function, which is in the process of being implemented. I want to focus today on these reform and reorganization efforts.

Senator BURNS. You might want to pull that microphone a little closer to you.

Mr. TWOMEY. Is that better? That is much better. Thank you, Senator.

On specific accomplishments, it's hard to overstate the comprehensiveness of the ICANN reforms that have taken place over the last year. They include: restructuring the ICANN board, advisory committees, supporting organizations and other participatory bodies to build effective, transparent, responsive, and balanced participation by all stakeholders;

Second, forming a country-code name supporting organization to further participation in ICANN by the almost 250 country-code top-level domains around the world, and that's just a very recent event at our most recent meeting in Montreal;

Establishing more effective processes for ICANN to solicit and receive advice on public policy and consumer policy matters from the Governmental Advisory Committee, other multinational expert agencies and supporting organizations;

Creating new constituency driven policy development processes; monitoring and offering policy guidance on key upcoming technical issues facing the domain name system, such as implementation of internationalized domain names, and the transition to a new numbering protocol, IP v.6;

Establishing accountability mechanisms, such as the creation of an ombudsman program and independent review process for board decisions;

In response to consumer demand, adopting new policies relating to redemption grace period for at least deleted domain names, integrated Star transfers and Whois data protection and accuracy policies; and establishing an at-large advisory committee and organizing regional at-large organizations to encourage informed and productive public participation by individual Internet users.

Now, there is a lot of progress there but I don't want to overstate the case. ICANN 2.0, as we call it, is still a work in progress, but in completing this reform and reorganization, the ICANN community has demonstrated that it can develop consensus on important and controversial issues. The various ICANN constituencies have learned to work together to compromise, to take account of the points that are important to others, just as they want the points important to them accounted for. The success of the reform efforts, and the changes it has produced, leave me optimistic that ICANN will be a more productive entity in the years ahead.

I want to just address some consumer issues. Notwithstanding the fact that the participants in ICANN have been devoting significant time and attention to the reform effort over the past year, ICANN has also been able to respond to concerns and issues about the DNS that directly affect consumers and other users. Four examples of this are:

First, the redemption grace period service, which protects against unintentional loss of a registered domain name.

Second, our efforts to deal with the very complex Whois issues, where we need a balance of accurate information and privacy protection.

Third, new procedures to enter registrar transfers which increase the already vigorous competition between the more than 100 active registrars.

And finally, the Wait List Servers have the most controversial of these efforts, which would offer a guaranteed registration for a currently registered domain name when and if the registration ever was allowed to expire.

Other of our reforms has been staff reorganization. Given my business background, I came to office with some definite plans about how ICANN staff could be organized to enable more efficient and more effective performance, even working under what will always be significant financial constraints. These plans are now being implemented, and I believe will produce a more businesslike management structure, one that takes into account the increasing demand for and complexity of the work that ICANN undertakes to support the Internet community. My goal is to improve responsiveness and to streamline management processes.

Finally, on security and stability. Let me state the obvious. Security and stability are very important issues for ICANN, as they are

for everyone in the current environment. Two ICANN entities, the Security and Stability Advisory Committee, which is composed of operators of Internet infrastructure and other security specialists, and the Root Service System Advisory Committee, with members drawn from representatives of the organizations responsible for operating the world's 13 root name servers and other organizations focused on stable technical operation and the authority to root serve a system, concentrate on these issues.

As part of the ICANN reforms over the past year, the chair of the Security and Stability Advisory Committee, Dr. Stephen Crocker, holds a liaison seat on the ICANN board, thus ensuring that body's constant attention to its critical subjects.

In conclusion, I hope this brief overview of the immense changes that ICANN has been and is going through gives you a greater feel for the velocity of change, which is considerable, and a heightened sense of confidence that ICANN can, in fact, carry out its limited but important mission effectively. I believe that it can, or I would not have taken up this visible, and let me tell you not always popular, position as CEO.

I took the job because I believe that ICANN's mission is important, and because I want to help establish that a public-private partnership of the kind that ICANN has become is, in fact, a feasible and appropriate way to deal with the matters like the DNS, over which no single Government can claim sovereignty, but which all Governments and many private parties have important and legitimate interests in seeing function well.

I will be pleased to take any questions you may wish to pose.

[The prepared statement of Mr. Twomey follows:]

PREPARED STATEMENT OF DR. PAUL TWOMEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

Mr. Chairman and members of the Committee, thank you for the opportunity to make my first appearance before this Committee in my role as President and Chief Executive Officer of the Internet Corporation for Assigned Names and Numbers (ICANN).

I assumed this responsibility about four months ago, and have been spending most of my time since then listening to the many constituency interests that in the aggregate make up ICANN, which has kept me on the road a very large portion of the last four months. In addition, I and many others have been working very hard to finally implement the ICANN reforms that were kicked off by Stuart Lynn's report to the Board in February of 2002, and I have published a comprehensive plan for the reorganization of the ICANN staff function, which is in the process of being implemented. This testimony will focus on these two aspects of ICANN reform.

Reform and Change at ICANN

In the year since Stuart Lynn last appeared before you to discuss ICANN, the reform process that he described as underway has essentially been completed. Of course, we still have things to do; important parts of the reforms are still being implemented. But the basic and critical building blocks of the new ICANN—ICANN 2.0, if you will—are now in place. I would like to describe both the process and the results, since I think both are important signs of the continuing maturation of this still young entity.

ICANN is a complex body with a complicated mission—developing consensus policies related to the technical coordination, at the overall level, of the global Internet's systems of unique identifiers, and in particular ensuring the stable and secure operation of the Internet's unique identifier systems, including the Domain Name System. Because it is intended to be a private sector consensus development body, it necessarily must permit, and indeed encourage, participation from all who have legitimate interests in the subject matter, from individuals to governments. But if it is to be effective in overseeing the management of this critical global asset, it must

also be able to come to conclusions and to implement them efficiently when required. Finding the right balance of these two somewhat inconsistent objectives has been a constant learning experience for those involved in ICANN, none of whom had experience in such an entity, since no similar private sector entity has ever existed. ICANN is unique, for better or worse, and thus the learning curve has been steep.

The good news is that I believe that the various interests and constituencies that make up the ICANN community have now moved very far up that steep learning curve. We have more than four years of experience in learning how to make this concept work, and with the benefit of that experience, we have essentially completed a thorough reform of ICANN structures, processes, and indeed its very constitutional documents.

We have a new set of bylaws, a new mechanism for selecting the ICANN Board of Directors, a new mechanism for enabling and encouraging individual participation in a meaningful and productive way, and new procedures and structures for ensuring transparency, fairness and accountability. I don't want to overstate the case: ICANN 2.0 is still a work in progress. But I believe that, in completing this reform and reorganization, the ICANN community has demonstrated that it can develop consensus on important and controversial issues. The various ICANN constituencies have learned to work together, to compromise, to take account of the points that are important to others just as they want the points important to them accounted for. The success of the reform efforts, and the changes it has produced, leave me very optimistic that ICANN will be a more productive entity in the years ahead.

Specific Accomplishments

It is hard to overstate the comprehensiveness of the ICANN reforms that have taken place over the last year. They include:

- Restructuring the ICANN Board, advisory committees, supporting organizations and other participatory bodies to build effective, transparent, responsive and balanced participation by all stakeholders;
- Forming a Country-Code Names Supporting Organization to further participation in ICANN by the almost 250 ccTLDs around the world;
- Establishing more effective processes for ICANN to solicit and receive advice on public policy and consumer policy matters from the Governmental Advisory Committee, other multi-national expert agencies, and its own Supporting Organizations;
- Creating new constituency driven policy-development processes;
- Monitoring and offering policy guidance on key upcoming technical issues facing the domain name system, such as the implementation of Internationalized Domain Names and the transition to a new numbering protocol, IPv6;
- Establishing accountability mechanisms, such as creation of an Ombudsman program and an independent review process for Board decisions;
- In response to consumer demand, adopting new policies relating to a redemption grace period for deleted domain names, inter-registrar transfers and Whois data protection and accuracy policies; and
- Establishing an at-large advisory committee and organizing regional at-large organizations to encourage informed and productive public participation by individual Internet users.

New Structures and Policy Processes

The reforms of the past year have completely transformed ICANN. A majority of the ICANN Board is now selected by ICANN's Nominating Committee, with the remainder being selected by ICANN's policy-making bodies—the Address Supporting Organization, Generic Names Supporting Organization and Country-Code Names Supporting Organization. Nominating Committee members are delegated to act on behalf of the global Internet community, and are guided by very specific and detailed criteria set out in the bylaws for qualifications, international representation, diversity, experience and eligibility. There is a Nominating Committee Code of Ethics, and mandatory disclosure of any potential conflicts of interest. In its initial experience of selecting eight ICANN Board members earlier this year, the Nominating Committee solicited ideas and statements of interest from the Internet community as a whole, and made its eight selections from over one hundred persons considered.

In addition to the Board, the ICANN reforms of the past year created the Generic Names Supporting Organization and the Country-Code Names Supporting Organization as two new policy-making entities within ICANN. The GNSO replaced a similar body, but with a more balanced representation of those affected by generic domain names policies, and with a carefully crafted Policy Development Process de-

signed to ensure the opportunity for participation by all relevant parties, a transparent process and a decision within a reasonable timeframe. The ccNSO, the formation and structure of which was agreed to by all involved parties at the recent ICANN meeting in Montreal, is emblematic of the recent progress. It reflects a judgment by the country-code Top Level Domains that they must be a part of the ICANN policy development process, and follows more than a year of detailed discussions between ICANN, ccTLD administrators and other interested parties. The ccNSO also includes a detailed Policy Development Process designed to ensure a balance of input from country-code Top Level Domains from all geographic regions, and an established process by which to deal with policies of global concern affecting country-code Top Level Domains.

How to ensure informed and productive participation by individual Internet users has been a frustratingly difficult problem for ICANN since its creation. As part of the overall reforms adopted in the last year, we have established the At Large Advisory Committee, which will be the representative body of a supporting framework of local and regional entities made up of and representing individual Internet users. The At Large Advisory Committee will be responsible for generating and providing advice to ICANN policy bodies and the ICANN Board from the global user community. The At Large Advisory Committee also appoints delegates to ICANN's Nominating Committee, and liaisons to the managing Councils of the Generic Names Supporting Organization and the Country Code Names Supporting Organization, as well as other ICANN committees and participatory bodies.

Accountability and Transparency Mechanisms

ICANN is as much a process as it is an entity—a place where those with legitimate interests in DNS operation and policies can come together to discuss, and hopefully reach consensus on, matters of common interest. To be successful, it must be open and transparent, and there must be appropriate accountability mechanisms. like all things, these goals must be balanced against the practical realities of reaching and implementing decisions, but we believe we have now arrived at an appropriate balance of all these factors.

Potentially the most important innovation in this area is the Ombudsman Program. ICANN's new Bylaws provide for an Office of the Ombudsman to act as a neutral dispute resolution practitioner for matters not subject to reconsideration by the Board or eligible for the Independent Review Process (both described below). The Ombudsman's role is to serve as an objective advocate for fairness, tasked with evaluating and clarifying complaints from members of ICANN's various constituencies, and where possible, helping to resolve complaints about unfair or inappropriate treatment by ICANN staff, the ICANN Board, or ICANN constituent bodies, using the full range of conflict resolution tools. ICANN has recently retained an individual experienced in the establishment of Ombudsman Programs to provide assistance in developing and writing ICANN's Ombudsman program policies and operating practices, and in the identification of appropriate candidates to lead the Office of the Ombudsman.

ICANN's new Bylaws also include a procedure by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board, to the extent that he, she, or it have been adversely affected by: (a) a staff action or inaction contradicting established ICANN policy or policies; or (b) one or more actions or inactions of the ICANN Board taken or refused to be taken without consideration of material information. All reconsideration requests are publicly posted on ICANN's website, and must be responded to in some fashion by the Board's reconsideration committee within thirty days of receipt. To date, ICANN has received, evaluated, and acted on a number of such reconsideration requests.

ICANN's new Bylaws also mandate that ICANN establish a process for independent third-party review of Board actions alleged to be inconsistent with ICANN's Articles of Incorporation or Bylaws. Requests for review are to be referred to an independent review panel operated by an international arbitration provider with an appreciation for and understanding of applicable international laws, as well as California not-for-profit corporate law. Three arbitration providers have emerged as suitable candidates to operate the review panel, and the qualifications and attributes of each are being reviewed currently, with the intent for the organization to make a selection this Fall.

Finally, the new ICANN bylaws also incorporate a specific articulation of ICANN's mission—to coordinate the allocation of the global Internet's systems of unique identifiers, and to coordinate policy development reasonably and appropriately related to these technical functions. After considerable discussion and debate, the new bylaws set forth in some detail the core values that underlie that mis-

sion statement, and thus should inform the performance of that mission by ICANN. ICANN 's bylaws also adopt policies to ensure balanced input and participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision making.

Participation and a voice within ICANN is available to any interested participant. ICANN's Board and Board committees, Supporting Organizations, Advisory Committees, and other ICANN bodies all operate under principles which include striving for geographic and professional diversity. Each ICANN committee, Supporting Organization, and other constituent body is charged with adopting rules and procedures intended to ensure a balance of views within the entity.

Consumer Issues

Notwithstanding the fact that the participants in ICANN have been devoting significant time and attention to the reform effort over the past year, ICANN has also been able to respond to concerns and issues about the DNS that directly affect consumers and other users. Four examples of this are described below.

Redemption Grace Period Service

The Redemption Grace Period Service is a response to the increasing number of complaints made by holders of domain names that were unintentionally deleted (either because of unintentional failure to renew or for other reasons) and then registered by someone else, sometimes using the domain name to display content repugnant to the former registrant. Frequently the registrant experienced significant delays and costs in recovering the name and having the former services (web service, e-mail, etc.) restored.

To address these unfortunate situations, it was proposed to institute a grace period after expiration of a name, during which the domain name would no longer resolve but the former registrant (and only the former registrant) could have the name restored in return for payment of any fees required. After favorable public discussion, the Board concluded that the idea should be further explored. A technical steering group was formed (including knowledgeable registry and registrar personnel and in consultation with the relevant Supporting Organization) to develop a concrete proposal implementing the Redemption Grace Period Proposal. This resulted in amendments to ICANN's agreements with registry operators designed to require the implementation of a Redemption Grace Period Service.

To date, VeriSign has introduced a Redemption Grace Period Service in the .com and .net top-level domains, subject to completion of contractual documentation. Likewise, the Public Interest Registry has introduced a Redemption Grace Period Service in the .org top-level domain on a provisional basis. Neulevel has launched a Redemption Grace Period Service in the .biz top-level domain.· Other registry operators are expected to follow suit shortly. The decision of whether and how to implement a Redemption Grace Period Service in sponsored top-level domains has been left to the sponsors of those domains.

The implementations mentioned above have incorporated the first phase of the Redemption Grace Period Service. The next step in implementation of the Redemption Grace Period Service is expected to occur this Fall, and will allow a registrant to move the renewed registration to another registrar if so desired

Whois

ICANN is the leading global forum for discussion of Internet Whois issues. We are currently moving forward with implementation of four consensus policies related to Whois that were adopted at the ICANN Board of Directors meeting in March 2003 in Rio de Janeiro. One of the four recommended policies, the Whois Data Reminder Policy, was implemented in June 2003. The Whois Data Reminder Policy calls for ICANN accredited registrars to provide domain name registrants with an annual listing of their Whois data and to remind registrants of the need to correct inaccurate or out-of-date information. The other three policies, as to which the technical considerations of implementation are currently being considered, are expected to be implemented this Fall.

ICANN also recently posted a "Registrar Advisory Concerning the '15-day Period' in Whois Accuracy Requirements." The advisory was posted in order to promote a clearer understanding of registrar Whois data-accuracy requirements. As explained in detail in the advisory, registrars have the right to cancel a registration if a customer fails to respond within 15 days to an inquiry concerning Whois data accuracy, but registrars also have flexibility to decide when to use that right, depending on factors including whether the inaccuracy appears intentional and whether third parties are being harmed by maintaining the registration with inaccurate data. Registrars are obligated to take reasonable action to correct reported Whois inaccuracies, but are not bound to a fixed timetable or specific action.

A two-day Whois Workshop held during ICANN's meetings in Montreal initiated a new phase of discussion within the ICANN community on Whois and related privacy and other issues. The Whois Workshop was held in response to a request from the GNSO, and in cooperation with the GAC's Whois policies program. The two-day workshop consisted of one day of tutorial-style presentations (with public comment and question/answer sessions) dealing with current Whois policy and practice, and one day of public policy-focused panel discussions on "Balancing Public Policy Issues in the Current Whois System" and "New Approaches to Whois Policy and Practice."

Whois-related discussions will be a continued focus of ICANN's Whois Steering Group and the ICANN President's Standing Committee on Privacy.

Inter-Registrar Transfers

ICANN is in the process of implementing another new set of consensus policies intended to improve inter-registrar transfers of domain names. Domain transfers (portability) allow consumers and business to freely select their domain registration service provider based on price and service levels.

When competition was introduced into the domain registration market in 1999, there were initially only five accredited registrars. There are now more than 168 accredited registrars, approximately 100 of whom are active. Competition has been extremely successful, with prices having fallen approximately 80 percent, and widespread innovation and creativity in the domain registration market. However, transfer issues continued to be troublesome, and in 2001, ICANN's Domain Name Supporting Organization convened a Transfers Task Force to study the inter-registrar transfer system and recommend improvements. The Transfers Task Force worked for over a year in crafting twenty-nine (29) consensus policy recommendations set forth in its final report. The Task Force's recommendations were accepted unanimously by the GNSO Council, and were forwarded to ICANN's Board early this year. In March 2003, ICANN referred the recommendations to its Governmental Advisory Committee (as is required for all proposed actions affecting public policy concerns.) The GAC's recommendation to ICANN was "to support and implement the GNSO Task Force's recommendations, without amendment."

In April 2003, ICANN's Board unanimously adopted the 29 consensus policy recommendations on transfers, and authorized staff to take steps to implement the policy recommendations. ICANN has convened a Transfers Assistance Group, including individuals from the Transfers Task Force, the GNSO Council, the Registries and Registrars Constituencies, and the At Large Advisory Committee. This Group will work with ICANN staff in the coming weeks and months to draft notices and amendments to ICANN's contracts with registries and registrars in order to put these recommendations into practice.

Wait List Service (WLS)

The WLS is a new registry service proposed by Verisign, the registry operator for the .com and .net. top-level domains. The service, if implemented, would allow potential registrants to subscribe to a "wait list' that would guarantee they would be next in line to register a name if the current registrant lets it expire.

Domain names ending in .com, .net, .info, etc. are registered through ICANN accredited registrars—of which about 100 are currently active. Generally, anybody can register any string of characters through any registrar on a first-come, first-served basis. Once somebody registers a particular name, no one else can register that same name until the current registrant lets the registration expire and the name is deleted from the registry. The WLS proposal is designed to offer consumers and businesses the opportunity to secure the next place in line to obtain the right to register a particular name should the current registrant decide not to renew it. (Approximately 800,000 names are deleted by the registry each year.)

The WLS proposal generated considerable controversy within the ICANN community. In the absence of a registry service such as that proposed by VeriSign, various ICANN registrars had created products that purported to take reservations for names that might be deleted in the future. Those registrars then regularly queried registries in an attempt to be the first to learn of a deletion, in which case they would then seek to register the name for their clients. Obviously, no registrar could guarantee that any particular registration would be successful, and since there were commonly a number of registrars seeking to register any given deleted name, most people who signed up for those services were destined to be disappointed.

The VeriSign proposal offered a significant improvement from a consumer perspective to the various services already offered by registrars. Because VeriSign operated two registries, it could guarantee that a reservation made in the WLS for names registered in those registries would always be successful IF the name was ever deleted. Obviously, such a guarantee can only be offered by the registry or its

agent, since only the registry can guarantee such performance. This fact lead some registrars to conclude that the availability of the WLS (with its guarantee of performance) to consumers would reduce the demand for their services (which were not able to offer a comparable guarantee), and thus they strongly opposed approval of the WLS. While reaction from other parts of the ICANN community that did not have a direct competitive interest was more mixed, it would be fair to characterize the majority view as opposed to approval of the WLS proposal.

After considering the full range of views expressed, the ICANN Board concluded that ICANN should act whenever possible in a way that promotes consumer choice and innovative services, and that its general goal to seek to increase competition when possible did not require it to prevent consumers from having the option of purchasing services they may decide are beneficial. It would be anomalous to "protect" competition between providers of non-guaranteed products by preventing the new competition of a guaranteed product that at least some consumers would likely prefer. Considering all these factors, the Board approved the WLS proposal with certain conditions that it felt appropriate under the circumstances to protect consumer interests. Among these were a limitation of the approval to a twelve month experimental period, after which time the Board would be required to review and make an independent decision on the continuation of the WLS. The Board authorized ICANN's CEO and its General Counsel to negotiate amendments to the registry agreements with VeriSign that were consistent with its approval.

The Board's approval did not end the controversy over WLS. In fact, this issue is now the subject of two lawsuits, one filed in Canada and one in California. In the California litigation, the plaintiff requested a Temporary Restraining Order, which request was denied by the Court. Further proceedings will likely take place. The WLS will not be implemented until the registry agreement amendments that the Board's approval requires are completed, and the new agreement is approved by the Department of Commerce, as required by the Memorandum of Understanding between ICANN and the DOC.

Security and Stability

Following the ICANN meeting at Marina del Rey in November of 2001, ICANN created a Security and Stability Advisory Committee focused on security and integrity of the Internet's naming and address allocation systems. The committee draws its membership from operators of Internet infrastructure and other security specialists, and presently continues work on several ongoing projects, including a recommendation regarding the layering of services on the DNS (for example, the Verisign ION Program and the domain name "auctions" of various registrars), an evaluation of the redundancy and resiliency of the major domain name servers to withstand distributed denial of service (DDoS) attacks, and an assessment of the status of DNSSEC, the forthcoming protocol to add cryptographically signatures to the domain name system and thereby prevent forgery and hijacking of domain names. The DNSSEC work includes building a road map outlining its deployment and identification of where further work is needed.

The Committee is also assessing most of the significant security issues affecting the Internet; and is beginning an assessment of the transition to the new Internet addressing system, IPv6.

Root Server Systems

ICANN's Root Server System Advisory Committee has a membership drawn from representatives of the organizations responsible for operating the world's thirteen root nameservers and other organizations focused on stable technical operation of the authoritative root server system. ICANN operates one of these thirteen root servers, which has given ICANN valuable insight into the issues involved in root server operations and enhancement.

The RSSAC has spent considerable time examining and monitoring the deployment of more robust DNS infrastructure for the Internet. The Committee has also closely followed the efforts of root server operators to successfully expand the capacity of the system and its geographical diversity through the use of "anycast" systems. At present, the Committee is examining the implications of new technologies on the root server system, such as implementation of IPv6 for the root.

Staff Reorganization

One of the first things that I focused on when I assumed this position was the internal organization of ICANN. Since I had been involved with ICANN, one way or another, since before its birth, and because of my personal background in business and business consulting, I had some very definite ideas about how ICANN staff could be organized to enable more efficient and more effective performance, even working under what will always be significant financial constraints. After some con-

sultation with various constituencies, I announced plans for evolving ICANN into a more business-like management structure—one that takes into account the increasing demand for and complexity of the work that ICANN undertakes to support the Internet community. My goal is to improve responsiveness and to streamline management processes.

The new structure contemplates two Vice President positions (a Vice President of Business Operations, focusing on the day-to-day operation of ICANN, and a Vice President of Supporting Organizations and Committee Support, focusing on the need to support ICANN's constituent bodies). It also includes the reorganization of the various ICANN staff functions into four general groups, each headed by a General Manager; these will be the lANA function, the Public Participation function, a Global Partnerships function that focuses on our relationships with governments and multi-national bodies, and Technical Operations, which is self-explanatory. Finally, there will be a General Counsel responsible for the legal activities of ICANN, principally the negotiation of agreements and advising the Board and the CEO on various legal requirements. Recruitment for these new positions is now well underway.

This new management structure is intended to clearly delineate internal and external operations; recognize important relationships that ICANN has with the community; and provide clear lines of accountability for key operational and strategic functions. While this will involve the addition of a small number of new positions, I am convinced that this structure will greatly assist in ICANN's efforts to enhance the responsiveness and transparency of its operations to the community.

Conclusion

1 hope this brief overview of the immense changes that ICANN has been and is going through gives you both a feel for the velocity of change—which is considerable—and a heightened sense of confidence that ICANN can in fact carry out its limited but important mission effectively. I believe that it can, or I would not have taken on this visible (but not always popular) position. I took the job because I believe that the ICANN mission is important, and because I want to help establish that a public-private partnership of the kind that ICANN has become is in fact a feasible and appropriate way to deal with matters like the DNS, over which no single government can claim sovereignty, but which all governments and many private parties have important and legitimate interests in seeing function well.

1 will be pleased to answer any questions you may have.

Senator BURNS. Thank you very much, Mr. Twomey. We appreciate your testimony here today, and we will have some questions. Mr. Aristotle—is that Balogh?

Mr. BALOGH. Balogh, yes.

Senator BURNS. Senior Vice President of VeriSign. Thank you for coming today.

STATEMENT OF ARISTOTLE BALOGH, SENIOR VICE PRESIDENT, VERISIGN, INC.

Mr. BALOGH. Good afternoon, Mr. Chairman. My name is Aristotle Balogh. I'm Senior Vice President for Infrastructure of VeriSign, Incorporated, based in Mountain View, California. I have a prepared statement, which I would request be inserted in the record.

VeriSign is pleased to have the opportunity to come before you to discuss the Internet and its coordination, its impact on our economic future, and the contribution ICANN might make going forward. Our role in providing the Internet's infrastructure gives us a unique perspective on the Internet. VeriSign operates two of the 13 authoritative root server operation centers that direct Internet traffic, including, at the request of the U.S. Department of Commerce, the A root server. In this server, we maintain the authoritative address list of all Internet top level domains. VeriSign also manages the .com and .net domain registries.

Today, I come with the simple message. Although the Internet may have started as an interesting place to send e-mails and check stock prices and sports scores, it is now part of the essential fabric of global economic activity. In a very short time, nearly every element of our global infrastructure and every key industry has come to depend on the Internet to function, to reach their customers and constituencies, to increase their efficiency, and to maintain their ability to operate, and that reliance will only grow.

By 2010, the Internet will have nearly 2 billion users, serve as a platform for over $1 trillion in economic activity, handle roughly 25 percent of all telephone traffic, and connect billions of computer devices. This global dependency and its associated enormous risks make it imperative that we, the entire Internet community, evolve our notion of the Internet from a technology spawned by academia and the Government for their own use to the present reality, a system that is a critical tool for a global economy.

VeriSign believes that any entity charged with assuring the stability, availability, and growth of the Internet requires the legitimacy, capacity, and authority necessary to accomplish those tasks. Before it can be a truly effective organization, ICANN has several steps to take. ICANN's legitimacy is hampered by the noninclusion and nonparticipation of key Internet constituencies. ICANN's capacity is questioned by those who see security and stability as essential for the Internet but find ICANN preoccupied with the minutiae of regulation. ICANN's authority is clouded by its ambiguous status as an international organization.

There are three key functions where we believe ICANN can play a constructive leadership role in the next phase of the Internet. The first, stability and security. The 13 root servers are the nerve center of the Internet's addressing system. Their failure would be highly disruptive to the smooth functioning of the Internet. Last October's attacks that paralyzed nine of those 13 root servers underscored how those networks are increasingly under sophisticated attacks. We believe ICANN can play a constructive role by fostering information-sharing and serving as a forum that promotes industry best practices and uniform operating standards.

The second, continued globalization of the Internet. The Internet's domain name system is no longer just about *.com, .net,* and *.org.* Besides other top level domains like *.biz* and *.info,* there are over 250 top level domains such as *.de* for Germany, *.jp* for Japan, and *.br* for Brazil. These country-specific domain names today represent nearly half of all registered names on the Internet. Soon, they will account for the majority of domain names in the world, yet only a handful of these 244 country-code domain-name operators have executed agreements with ICANN. It is imperative that ICANN be streamlined into an organization that country-code operators can benefit in joining, rather than a burden or a risk.

The third is innovation in services and processes. While the Internet has spawned many innovative services over the last decade, the blunt truth is that few new services have been added to benefit Internet users. For example, internationalized domain names provide a means for non-English users to type in domain names in their native language, but their introduction has been

slowed by, at least in part, an internal ICANN debate in micro-management.

ICANN should be streamlined to enable industry to develop and offer new services in a timely fashion to meet the ever-changing needs of the Internet. I've suggested a coordination body to be in a position to play a useful role in the important task of supporting effective growth of the global Internet. It needs a broader user community and Internet support. As I mentioned earlier, a good start in this regard would be for ICANN to recognize that Internet constituencies have the capacity for self-coordination, with ICANN serving as the umbrella organization for technical coordination. We believe, as do others in the community, that such a framework would strengthen standards of operation and conduct, improve the process for resolving critical issues, and promote information-sharing and adoption of best practices that would make the Internet stronger.

To summarize, for ICANN to be legitimate and effective, ICANN must bolster its legitimacy by ensuring that critical Internet constituencies that are responsible for the operation of the global networks and domain names are active and supportive members. ICANN must limit its attempts at micromanagement in a way that will invite the participation of key Internet constituencies as well as encourage innovation and new services. ICANN must abandon its aspirations to be the unchartered FCC of the Internet, and ICANN must sponsor the discussions regarding the Internet security and growth that will ratify a view among all constituencies that the institution is adding real value.

Thank you, Mr. Chairman, for allowing me this opportunity to testify today.

[The prepared statement of Mr. Balogh follows:]

PREPARED STATEMENT OF ARISTOTLE BALOGH, SENIOR VICE PRESIDENT, VERISIGN, INC.

Good afternoon Mr. Chairman and distinguished members of the Committee.

My name is Aristotle Balogh; I am Senior Vice President of Operations and Infrastructure for VeriSign, Incorporated, based in Mountain View, California. I have a prepared statement, which I would request be inserted in the record.

VeriSign is the leading provider of critical infrastructure services for the Internet and telecommunications networks. Every day we support 10 billion domain name lookups and e-mails, provide Internet security for thousands of corporations, process 25 percent of all North American a commerce and help facilitate billions of daily phone calls and millions of daily SMS messages.

VeriSign is pleased to have the opportunity to come before you to discuss the Internet and its coordination, its impact on our economic future, and the contribution the Internet Corporation for Assigned names and Numbers (ICANN) might make going forward.

We strongly support the concept of a central coordinator of the administration functions of the Internet's address system.

Our role in providing the Internet's infrastructure gives us a unique perspective on the Internet. VeriSign operates two of the 13 authoritative "root" server operation centers that direct Internet traffic, including, at the request of the U.S. Commerce Department, the "A" Root Server. In this server, we maintain the authoritative address list of all Internet top-level domains. VeriSign also manages the "dot COM" and "dot NET" domain registries. These are the central data bases that enable you as an Internet user to simply type in a domain name on your computer, such as "verisign.com," and connect it over the Internet to the machine that hosts the proper Website.

To support these functions, VeriSign has invested hundreds of millions of dollars into building a global network of computers that are a critical component of the Internet's infrastructure.

Today, I come with a simple message: although the Internet may have started as an interesting place to send e-mails, and check stock prices or sports scores, it is now part of the essential fabric of global economic activity.

Among other indicators of this growing, central, critical role for the Internet is the fact that in a little over two years, the daily traffic of domain name resolutions—"hits"—on our servers has increased tenfold (from 1 billion a day to over 10 billion a day).

In a very short time, nearly every key element of our global infrastructure and every key industry—financial services and markets, education, manufacturing, transportation, electric power, broadcasting, government services—has come to depend on the Internet to function, to reach their customers and constituencies, to increase their efficiency, and to maintain their ability to operate.

And that reliance will only grow. By 2010, the Internet will have nearly 2 billion users, serve as the platform for over $1 trillion in economic activity, handle roughly 25 percent of all telephone traffic and connect billions of computer devices. In short, the Internet no longer can be seen as just the means of adding e-commerce to the mix of retail activities, or providing a convenient set of e-government services. As much as coal and iron were the keystones of the Industrial Age, the Internet is the essential tool of the Information Age. That means an Internet failure—such as the one we came close to experiencing last October when nine of the thirteen root servers were disabled for several hours—will have a devastating effect on the global economy.

This growing global dependency, and its associated enormous risks tell me that we—the entire community of governments, infrastructure stewards and users—obligates us all to evolve our notion of the Internet as a technology spawned by academia and the government for their own use, to the present reality: a system that is a critical tool for a global economy, in a manner that is historically without precedent.

And so too, must evolve our institutions of Internet coordination into those which will have the legitimacy, capacity and authority necessary to assure the availability and growth of a reliable, secure Internet.

For the past five years, ICANN has been the entity charged by the U.S. Government and a community of Internet interests with coordinating certain technical functions of the Internet's naming and numbering system. As the ONLY institution serving in a multi-national capacity in the Internet space—other than the professional technical standards bodies—ICANN has "acquired" some roles, and "assumed" others that have little to do with "coordinating the administration of the naming and numbering system."

And this functional "ambiguity" for ICANN has led to significant debate around the nature of and proper scope of responsibility for any entity taking on responsibilities of Internet "coordination."

In our capacity as a leading provider of key Internet infrastructure services relied on by the rest of the Internet, and consequently, a half a billion users, VeriSign believes that any entity charged with ensuring the stability, availability and growth of the Internet requires the legitimacy, capacity and authority necessary to accomplish those tasks.

Today's ICANN cannot effectively do this. ICANN's *legitimacy* is hampered by the non inclusion/non-participation of regional numbering authorities, the collective community of root server operators or over 200 country-code Top Level Domain registries. ICANN's capacity is questioned by those who see security and stability as essential to the Internet, but find ICANN preoccupied with regulation of registrar business practices and the minutiae of delegation of new generic registries. ICANN's authority is clouded by its ambiguous status as a contractor with the U.S. Department of Commerce, but a PR message espousing its "international" character.

So, while a need clearly exists for a coordination body to take on the challenge of the 21st Century's Internet, a question exists as to how ICANN can evolve to be that body.

If ICANN is to be that body let me suggest areas where important work must be done. There are three key functions where we believe ICANN can play a constructive leadership role in the next phase of the Internet:

   (1) Stability and Security. The 13 root servers serve as the nerve center of the
       Internet's addressing system. Their failure would be highly disruptive to the
       smooth functioning of the Internet addressing system. Last October's attacks
       that paralyzed nine of the thirteen root servers underscored how these net-

works are under increasingly sophisticated attack. These attacks come from not only cyber terrorists with grand designs to disrupt the U.S. critical infrastructure but from IT professionals who might work in the cubicle next door. We believe ICANN can play a constructive role by fostering information sharing of information and serving as a forum that promotes industry best practices and uniform operating standards.

(2) Continued Globalization of the Internet. The Internet domain name system is no longer just about *.com, .net* and *.org.* Besides other top-level domains like *.biz* and *.info,* there are over 200 country-code top-level domains such as *.de* for Germany, *.jp* for Japan and *.br* for Brazil. These country specific domain names today represent nearly half of all registered names on the Internet; soon, they will account for the majority of domain names in the world. Yet only a handful of these 200+ country-code domain name operators have executed agreements with ICANN.

This lack of true global support for ICANN limits ICANN's legitimacy. It is imperative that ICANN be streamlined into an organization that the country-code operators see benefit in joining, rather than a burden or risk.

A good first step would be ICANN adopting an approach that respected sovereignty of the country-code operators and their ability to govern themselves. In short, to operate within an ICANN model without fear of ICANN dictates. Only then will the majority of this important constituency consider joining ICANN.

(3) Innovation in Services and Processes. While the Internet has spawned many innovative services over the last decade, the blunt truth is that few new services have been added to benefit Internet users. For example, Internationalized (sometimes called "multi-lingual") Domain Names ("ION") provide a means for non-English users to type in domain names in their native language. But the introduction of IONs has been slowed—at least in part—by an internal ICANN debate—framed as an almost FCC-like regulatory "review" process—with a current implementation that falls short of the stated goal of providing the end user the ability to navigate on the Web in his or her native language.

Far too often, new and innovative Internet technologies have been kept from the user community, bogged down and polarized in similar processes that are murky even to the most ardent ICANN watchers. ICANN should be streamlined to enable industry to develop and offer new services in a timely fashion to meet the ever-changing needs of the Internet.

I have suggested that for a coordination body to be in a position to play a useful role in the important task of supporting effective growth of the global Internet, it needs broad user community and industry support. And for ICANN to have broad support, industry must see a benefit to being a member. For many—such as root server operators and country-code domain name operators—the "pain" of joining ICANN (onerous contracts, lengthy review periods, and the unfortunate politicization of ICANN's administrative functions) has not made membership a viable option. ICANN—if it is to be the organization that sets the tone for the Internet addressing system's future growth—must be capable of instilling confidence in its actions among the global user community.

As mentioned earlier, a good start would be for ICANN to recognize that Internet constituencies have the capacity for self-coordination, with ICANN serving as the umbrella organization for technical coordination. We believe, as do others in the Internet community, that such a framework would strengthen standards of operation and conduct, improve the process for resolving critical issues and promote information sharing and adoption of best practices that would make the Internet stronger.

Invested with the support of these communities, an *effective* ICANN could educate the growing user community on shared obligations of security. An *empowered* ICANN could organize financial support for advanced research at leading universities on next-generation technologies to maintain the integrity of the Internet's assets, in the face of the hundreds of daily exploits directed against it. And, a *visionary* ICANN could serve as a forum that leads to innovative new services that enrich the user experience.

To state again our road-map: We need a body that is legitimate and effective. If it is to be ICANN, ICANN must:

- bolster its legitimacy by ensuring that critical Internet constituencies that are responsible for the operation of the global networks and domain names are active and supportive members;

- limit its attempts at business micro-management in a way that will invite the participation of ccTLD registries, IP numbering registries and root server operators and encourage innovation and new services;
- abandon its aspirations to be the unchartered FCC of the Internet; and
- sponsor the discussions and actions regarding the Internet's security and growth that will ratify a view among all constituencies that the institution is adding real value.

Mr. Chairman, we are entering the next phase of the Internet—not born in a bubble era of the Internet but driven by society's increasing reliance on these networks for commerce and communications. VeriSign is mindful of the enormity of this challenge; we stand ready to play our part in the evolution of the present ICANN, or a successor organization, into the leadership role necessary to ensure the Internet's continued growth and role in supporting our global economy.

Thank you, Mr. Chairman and members of the Committee, for allowing me this opportunity to testify today.

Senator BURNS. Thank you very much.

Mr. Alan Davidson, Associate Director, Center for Democracy and Technology here in Washington, D.C. Thanks for coming today, Alan.

STATEMENT OF ALAN B. DAVIDSON, ASSOCIATE DIRECTOR, CENTER FOR DEMOCRACY AND TECHNOLOGY

Mr. DAVIDSON. Thanks for having us. Chairman Burns and Members of the Subcommittee, on behalf of the Center for Democracy and Technology, I'd like to thank you for this opportunity to testify on what we believe are very important issues surrounding the management of the Internet's naming and numbering system.

I have to say that testifying in the late afternoon on July 31 in this Senate sort of makes us feel like we're standing between you and lunch, or at least between you and recess.

Senator BURNS. It's a very dangerous position to be in.

[Laughter.]

Mr. DAVIDSON. So we'll try and make it brief, but that's particularly why we commend the Subcommittee and the Chairman for holding this hearing, because our belief is that continuing Congressional oversight is important if we are to ensure that the Internet's critical technical resources are being managed in the public interest.

ICANN is important. I teach a course at Georgetown's graduate school in Internet technology and policy, and one of the things the students learn about is how this great decentralized network of networks has led to this incredible economic opportunity, civic discourse, free flow of information, and when we get to the part about ICANN, they always feel a little, I think, betrayed, because the fact is that there's a truth here which is that, in fact, this great, decentralized network of networks actually relies in a critical way on a few very centralized naming and numbering functions, and the way that those functions are managed actually could have a big difference in the life of Internet users if it's not done properly, and so we think it's extremely important that we're paying careful attention to how ICANN does what it does.

I have a couple of key points here. First, ICANN is still, in our belief, the right idea. We strongly believe in the vision that was first articulated years ago by the Commerce Department and that underlies ICANN: that of a nongovernmental body—a sort of more-

than nimble Government, bottom-up and consensus oriented body, taking into account all of the things that a broad community feels about this system, and narrowly focused. Not a big, broad government organization, but one focused on its mission, and globally representative, including diverse viewpoints from a lot of different Internet stakeholders. People have been working very hard to try to fulfill that vision, and we think that that vision is far superior to many of the alternatives.

We are particularly alarmed by new calls in some quarters for a more governmental approach to managing these systems through the ITU or some other organization, and we think that kind of approach is to be avoided, because we think that the private sector can do it better, and is a more appropriate place and a better place to get the voice of the diverse Internet community heard, so it is essential to strengthen ICANN, because it's the best model that we have right now.

Our second major point, though, is that ICANN faces serious risks if it does not make significant progress in meeting its public interest obligations. ICANN and its staff have worked hard, and there's a list of achievements now from the accreditation of new registrars, introduction of competition, completing a reform process, getting a new president who has been welcomed broadly by a lot of folks in the community, but at the same time, and I think the chairman alludes to this in his opening comments, there is a decidedly mixed record in meeting ICANN's public interest obligations.

ICANN has in many ways departed from its bottom-up policy processes, which are so critical to making sure that stakeholders feel like they have a voice. The user community and noncommercial interests in particular are poorly represented in ICANN. The chairman alluded to the fact that ICANN has abandoned the election of at-large directors, which were originally a significant proportion of its board.

That may be an OK decision for ICANN, but it is striking that so little has been done to replace that mechanism with other mechanisms to give the users a voice at ICANN. The accountability mechanisms are still lacking—the ombudsman, the independent review process that many people look to to provide accountability—and ICANN's leadership has acknowledged these challenges. The Department of Commerce has as well, but Congress should not be left with the impression that ICANN's reform effort has taken care of all of these concerns. The fact is that it has not. There's a tremendous amount of work to be done still.

That list of concerns is a road map for progress at ICANN. ICANN needs greater accountability mechanisms, it needs a clear meeting of the minds about what its mission is, it needs better participation mechanisms for users. We are issuing a report today about assessing ICANN, metrics for measuring ICANN's success, and with the permission of the Committee we will attach it to our testimony as part of the record, and it lays out a set of goals or a set of metrics for assessing ICANN over time. I think it will hopefully be something that the community and the Department of Commerce can look at as it thinks about renewing ICANN's MOU.

There are also several issues that are coming up in he next few months at ICANN that will tell us a lot about ICANN's responsive-

ness to the public and to the user community. The Whois privacy issue raises serious concerns for users. There are very legitimate reasons why we want to have data publicly available in this Whois database and there are awful serious privacy issues raised. We believe, CDT believes, that there's a great balance to be struck that lets legitimate users have access to information but also respects people's privacy. It will be very important for ICANN to help strike that balance.

The selection of new top level domains is an issue of great concern to the user community, and there have been some very good ideas put out about how ICANN could do that better, but our final point, and I think it's the point about what can Congress and the U.S. Government do, is that we need to have a continued measure of oversight over ICANN by the U.S. Government, and I think it's particularly important that the memorandum of understanding between ICANN and the Commerce Department, it should be renewed, but it should be renewed along the lines of its last renewal a year ago, which was for a one-year term with some periodic reporting.

There's a tremendous amount of change that's happened at ICANN, new leadership, massive internal reorganization, many checklist items that have not been completed. NTIA itself is undergoing major changes, and in that environment it is highly appropriate for the Department of Commerce to move forward with an MOU, but to move forward with one that asks ICANN to come back here and show us what's been done.

Congress should continue holding hearings like this, and we particularly hope that NTIA can play a role in improving transparency and participation at ICANN, perhaps through public reporting, perhaps through the creation of some sort of public input or commission into what ICANN is doing. There are lots of ideas out there.

In sum, we believe it is essential that ICANN succeed. If ICANN is able to show progress in its commitment to a limited mission, its commitment to public accountability, it will greatly strengthen its position among Internet users worldwide, and we look forward to working with ICANN and the Commerce Department and Congress and the broader community to help make this community-based vision of Internet coordination a success.

Thank you very much.

[The prepared statement of Mr. Davidson follows:]

PREPARED STATEMENT OF ALAN B. DAVIDSON, ASSOCIATE DIRECTOR, CENTER FOR DEMOCRACY AND TECHNOLOGY

Chairman Bums, members of the Subcommittee, on behalf of the Center for Democracy and Technology I would like to thank you for this opportunity to testify on the important issues surrounding the management of the Internet's naming and numbering systems. We commend the Subcommittee for holding this hearing, because continuing Congressional oversight is necessary if we to insure that the Internet's critical technical resources are managed in the public's interest.

The Internet's great promise to promote economic opportunity, civic discourse, and the free flow of information relies largely on its open, decentralized nature. Yet even such a decentralized network of networks relies heavily on a small set of centralized mechanisms to coordinate the unique assignment of domain names and addresses online. These centralized naming and numbering systems are important because the way they are managed can affect Internet users around the world.

The Internet Corporation for Assigned Names and Numbers (ICANN) is an unprecedented experiment in open management of these important global resources.

The idea behind it—of global non-governmental bottom-up coordination—is sound. The current alternatives to ICANN are not attractive. But serious questions persist about ICANN's public accountability and its ability to fulfill its role as a steward of an important public trust. While CDT remains a believer in the ideal behind ICANN, close oversight by Congress and the Department of Commerce are essential to provide accountability for ICANN.

1. The vision underlying ICANN—private sector, bottom-up, technical coordination—is still the right approach for administering key Internet functions

The vision of that a non-governmental body managing key coordination functions for the Internet—a vision first spelled out by the Commerce Department six years ago—remains a remains the approach most likely to reflect the needs of the Internet community. Key features of this original vision included:

- *Non-governmental*—to benefit from more nimble private sector capabilities to handle fast-paced, complex Internet technical decisions, and more likely to reflect the diversity of user interests.
- *Bottom-up and consensus oriented*—making decisions in the best traditions of Internet bottom-up processes designed to account for broad interests
- *Narrowly focused*—to create trust that it would not exercise undue power and to increase comfort in its non-governmental character
- *Globally representative*—to ensure both public accountability and to include the interests of stakeholders affected by its decisions.

CDT continues to believe that an institution with these characteristics—like the original conception of ICANN—is the best approach to managing the narrow set of functions necessary to coordinate the domain name and numbering systems. If it can do a better job of realizing these objectives, ICANN has the potential to provide flexible, representative coordination that will support the Internet's continued growth.

Most of the alternatives to this vision of ICANN remain unattractive. The Commerce Department alone is likely to be an unacceptable global coordinator in the long run. Some envision a form of multi-lateral government administration of the Internet's critical functions. The private sector remains the most likely venue to provide technical expertise and flexibility for a rapidly evolving Internet. A bottom-up and globally representative private body is actually more likely to provide opportunities for participation and accountability to the richly diverse Internet community than a government-only treaty organization. So long as ICANN remains focused narrowly on its technical coordination mission, it is likely to have sufficiently.

Despite serious shortcomings, interest in this multilateral approach appears to be increasing in some circles. For example, as part of its World Summit on the Information Society (WSIS), the International Telecommunication Union (ITU) has hosted several discussions of Internet management. But the case has not been made that a government takeover of ICANN functions is likely to better reflect diverse community interests, and such a takeover should be resisted at his time.

2. ICANN will fail unless it makes significant progress in meeting its public interest obligations

ICANN has had a number of significant accomplishments over the last few years. It has accredited nearly 200 domain name registrars, facilitating competition in the retail domain names market where none had previously existed. It has introduced seven new global Top-Level Domains (gTLDs), although many argue it should do more. It has introduced a procedure for resolving disputes over name registration. And it has recently established the framework for agreements with country-code Top-Level Domains (ccTLDs). Most importantly from a user perspective, ICANN has facilitated the assignment of names and IP address blocks with high degree of stability, and broadly enhanced competition.

At the same time, ICANN has a decidedly mixed record in meeting its public interest obligations, which stem from its delegated authority over globally critical Internet functions.[1]

- *ICANN has in many ways abandoned the "bottom-up" and "consensus-based" policy processes* that were so critical to giving stakeholders comfort that they

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[1] These obligations, and ICANN's record in meeting them, are discussed more fully in *ICANN, Legitimacy, and the Public Voice: Making Global Participation and Representation Work*, NGO and Academic ICANN Study, August 2001, Available at *<http://www.naisproject.org/report/fmall>*. CDT was a partner in the NAIS effort.

would have a meaningful role in policy at ICANN. Increasingly decisions are made top-down by ICANN's Board, sometimes clearly against the stated views of much of the affected community.

- *There are insufficient limits on ICANN's regulatory authority,* and no well-understood delineation of its powers. For example, ICANN's detailed and massive contracts with the gTLD registries lead many to be concerned about how far it can go in regulating the DNS. They are a striking contrast to the very limited ccTLD agreement framework, which may indicate how little is really needed to insure stable coordination of the domain name system.

- *The user community and non-commercial interests are poorly represented at ICANN.* Last year ICANN eliminated its nine "At-Large" board members, viewed as a central element to representing public interests. While the public election of At-Large directors was controversial, it is striking that ICANN has done so little to replace that representation. An at-large advisory council is still just forming, though welcome, and there are few chances for user influence at ICANN.

- *Accountability mechanisms are still lacking.* For example, ICANN's ombudsman—itself a pale shadow of the independent review process originally part of ICANN's bylaws—has yet to be appointed.

ICANN's leadership has acknowledged many of these concerns, which is much appreciated, but it remains to be seen what concrete steps will be taken. Congress should not be left with the mistaken impression that ICANN's recent reform effort has taken care of these public accountability concerns. It has not.

Unless ICANN does more to address those shortcomings, it risks failure. Without progress on these accountability issues, ICANN risks becoming little more than a sophisticated trade association—but one with substantial delegated powers. If ICANN continues to be viewed as unaccountable, non-representative, and without adequate limits on its powers, it will not be able to achieve the stability—political, financial, and otherwise—crucial to long-term success. If ICANN cannot earn the public trust, then users, companies, and organizations are more likely to undermine its activity than to embrace it.

Moreover, if ICANN is perceived as an unaccountable organization whose activities impinge the rights of users worldwide, then powerful entities such as foreign governments, the ITU, or even the United Nations will accelerate their search for alternatives. Such approaches would likely include a vastly expanded role for governments, and could fuel efforts at multilateral regulation of the Internet—a costly and user-unfriendly environment that could constrain innovation substantially.

If the goals of private, bottom-up coordination of key Internet functions are to be sustained, ICANN must do better at meeting its public interest obligations. Many at ICANN recognize this. We look forward to their efforts.

3. Benchmarks should be developed to assess ICANN's progress over time and to identify areas for improvement

How do we assess whether ICANN is succeeding? This question is especially relevant as the Commerce Department prepares to renew its Memorandum of Understanding with ICANN this September—and as people worldwide evaluate ICANN. Yet there is no widely agreed upon set of benchmarks for measuring how ICANN is doing—and it is unclear how ICANN itself measures success.

Today CDT is releasing a new study, "Assessing ICANN: Towards Civil Society Metrics for Measuring ICANN," designed to assist in this process. Our study is attached to this testimony and submitted for the record. In it, we review the literature and indicate key recurring themes or goals for ICANN. We then suggest ten "civil society metrics" for assessing ICANN from a public interest perspective:

1. Stable and secure coordination of key Internet functions.
2. Adherence to clearly defined scope of activities.
3. Accountability to affected stakeholders, including effective independent review procedures.
4. Transparency, including procedural and financial transparency.
5. Representation of key Interest groups, including the public's interests.
6. Acceptance by key stakeholders, ccTLDs, Regional Internet Registries, etc.
7. Minimized impact on user rights, such as privacy and free speech; consideration of impact on Less Developed Countries, etc.
8. Support for competition and, when possible, reliance on market mechanisms.
9. Increased security of the root server system.

10. Support for long-term evolution and innovation in information and computing technologies.

CDT believes that a set of commonly agreed metrics is critical to evaluating ICANN's strengths and shortcomings. Our hope is that other groups will use this list, or create their own, to develop a multi-sectoral approach to assessing ICANN. We look forward to feedback of others interested in ICANN's evolution.

4. ICANN faces crucial tests over the next year on key issues of public interest, including Whois reform and the selection of new gTLDs

In the next year, ICANN is expected to undertake several issues of broad interest to the Internet community—including Whois database privacy, the selection of new top-level domains, root server security, and international domain names. The way it handles these issues will be a measure of its accountability and responsiveness after its reform process.

Privacy and the "Whois" database—The Whois database—a public listing of contact information for millions of domain name registrants—has long raised significant privacy concerns. Currently, the registrant of a domain name in the public gTLDs and many ccTLDs must make certain technical and administrative contact information available in the "Whois" database accessible to the public online. Originally designed to allow contact in the case of a technical problem, the database is now also used by law enforcement, consumer protections agencies, and private groups including intellectual property holders.

When individual Internet users register domain names, however, they can be forced to make their names, home addresses, home phone numbers, and home e-mail addresses publicly available to the world. Such potentially sensitive personal information, released publicly, can be used for unrelated purposes ranging from unwelcome marketing to identity theft, fraud, stalking, or other criminal activities. This exposure violates worldwide privacy norms and had put Whois on a collision course with national privacy laws, particularly in Europe, where is appears to violate the law of some countries.

A move is underway at ICANN to reform Whois in ways that will address individuals' privacy concerns while maintaining legitimate uses for the data. Proposals include the creation of a "tiered access" system for viewing Whois data, providing notice to users when their data is viewed, and creating "audit trails" that could expose abuse or misuse of the database. CDT believes a balance can be struck that protects privacy and allows reasonable access to data for important public purposes. ICANN's ability to incorporate the privacy interests of the global user community in this debate will be closely watched.

CDT strongly believes that recently proposed U.S. legislation criminalizing false Whois information is inappropriate.[2] It is simply unfair to make an Internet user a potential felon for putting incomplete or inaccurate personal information into a public database where there is no guarantee that their privacy or security will be protected. If better accuracy is desired in the Whois database, the best way to achieve it will be to protect the privacy of registrants.

Selection of new gTLDs—Three years after selecting a first set of seven new global top level domains (such as .biz and .museum) ICANN is now launching a process for the selection of new gTLDs. Since gTLDs are a primary means of expression for millions of users, this process is of substantial public importance.

ICANN's process for selecting new gTLDs in 2000 raised procedural concerns that should be avoided in the future. Many observers questioned the "beauty contest" approach taken by ICANN, which relied heavily on relatively subjective and arbitrary criteria, and not enough on the technical merits of the applications. For many, this subjective approach was inappropriate, ripe for conflict and abuse, and corrosive to the technically-focused bottom-up vision of ICANN activity. ICANN is not a governmental body designed to make public choices about the allocation of property and wealth, nor should it want to become one.

Thoughtful proposals have been put forward for improving this process. They propose more objective criteria for new gTLDs—including the selection of a fixed number annually by lottery or auction from among technically-competent bidders.[3]

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[2] H.R. 2572, introduced in July 2003, would make it a Federal felony to submit false Whois information "with an intent to defraud"—a vague standard that could sweep in a great deal of relatively innocent behavior.

[3] *See, e.g.,* Mueller, Milton, and Lee McKnight, "The Post-.COM Internet: A Five-Step Process for Top Level Domain Additions," March 2003. Available at *<http://dcc.syr.edu/miscarticles/ NewTLDs-MM–LM.pdf>*. Another excellent resource is Crawford, Susan, and David Johnson. "Old Delusions and New TLDs." November 13, 2002. Available at *<http://forum.icann.org/gtld-plan-comments/general/msg00003.html>*.

ICANN has not yet announced what process it will use for the next major round of gTLD selections—though for an immediate, smaller round it has declared its intention to use criteria similar to those used in 2000. CDT strongly believes that ICANN should avoid any appearance of arbitrariness in its next selections of gTLDs, and should pursuer more objective systems consistent with its narrow technical coordination mission.

5. Congress and the Department of Commerce should continue their active oversight, and should only renew ICANN's MOU for a limited period

The U.S. Government explicitly—and other nations implicitly—have delegated administration of critical public interests to ICANN. Many outstanding questions remain about how that delegated responsibility is being met. There are few ways to hold ICANN accountable for its actions. Continued government oversight of ICANN is badly needed. We urge that:

- *ICANN's Memorandum of Understanding with the Department of Commerce should* be renewed for no more than one year. The MOU is one of ICANN's few remaining tether to traditional notions of public accountability. Today, ICANN has a new and untested leadership and is undergoing massive internal reorganization. Major checklist items from previous MOUs—on topics from security to accountability to public representation—are largely incomplete. NTIA itself is undergoing major changes. In such an uncertain environment, it would be inappropriate to renew ICANN's MOU for more than a year. The one year term adopted last year, with interim reports to DOC, has worked well and should be continued.

- *Congress should continue its active oversight of ICANN.* While Congress should not be directing ICANN's activity—no national government can if ICANN is to work—.., the U.S. Government had a special relationship with the root server system and ICANN. Congressional oversight has been an essential force for improving ICANN's' transparency and raising public awareness about domain name policy issues. We hope that Congress will continue to monitor ICANN's work closely, either on its own or through an appointed commission to explore ICANN in depth.

- *The National Telecommunications and Information Administration should publicly report on ICANN's progress in meeting the MOU and its other public responsibilities.* A public assessment of ICANN would greatly help to focus discussion on improving ICANN for the future.

If ICANN is able to show progress in its commitment to a limited mission, public accountability, and other goals, it will greatly strengthen its position among Internet users worldwide. If it is not, it risks rejection by the Internet community and the community of nations. We look forward to working with ICANN, the Commerce Department, and the broader Internet community to help make community-based Internet coordination a success.

Senator BURNS. You bet, and thank you.

Now we welcome Mr. Paul Stahura. Is that it?

Mr. STAHURA. Stahura.

Senator BURNS. OK. I'm not sure I'm pronouncing it right. Chief Executive of eNom, and we thank you for coming today, from Bellevue, Washington. Thank you.

STATEMENT OF PAUL STAHURA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ENOM, INC.

Mr. STAHURA. My name is Paul Stahura. I'm the President and CEO of eNom, a company I started in my garage in 1997, and that has grown into one of the largest domain name registrars in the world. I appreciate the opportunity to appear before the Committee today to discuss ICANN. I want to spend my time talking about an issue that I think clearly highlights the problems domain name registrars like myself have with ICANN, its lack of transparency and accountability.

As you Senators may know, domain names are the central part of the addressing system for the Internet. Prior to 1999, one com-

pany had a Government-granted monopoly to register domain names. Then, the Department of Commerce and ICANN wisely introduced competition to the name space. Today, there is vigorous competition among hundreds of companies to register domain names for consumers. The Wait List Service, or WLS, was proposed by VeriSign over 2 years ago. I have described this service in more detail in my written testimony, and I am happy to answer your specific questions regarding WLS, but for the purpose of my oral testimony I'm going to try to keep it simple.

WLS would replace today's fully competitive marketplace for domain name reregistration services with another Government-granted monopoly, and, as currently passed by the ICANN board, it will tilt the level playing field among registrars that ICANN itself has painstakingly set up. A troubling aspect is that Verisign's own registrar, Network Solutions, would have the greatest advantage.

My preference would be to stop WLS from going into effect. I think it is bad policy, and will result in higher prices for domain names, reduce consumer choice, and it will not solve the so-called problems it was designed to address.

Despite opposition from consumers and registrars, 18 months of studying, meetings around the globe, and consensus-building that opposed WLS, ICANN has decided to go forward with WLS without consensus. For that reason, but especially because it will advantage larger registrars, I have joined with several other domain name registrars to oppose ICANN in going forward with the service, which was difficult for me, because I believe ICANN is the right organization to oversee the Internet's domain name system, though I believe it needs improvement.

If WLS can't be stopped, then at a minimum it should be fair. This is not the case as WLS is currently drafted. The current WLS gives registrars with the most domain names an unfair advantage by allowing them to utilize their foreknowledge about which names are going to be deleted.

This problem can be solved. Indeed, ICANN has recognized that the original name for WLS that Verisign proposed was not fair. ICANN attempted to correct the problem when the board approved the current form of WLS, but despite their intent, they failed to correct the flaw. Fortunately, because VeriSign asked ICANN to reconsider the current version of WLS, there's still a chance to get it right, because the ICANN board has authorized staff to, quote, tailor this particular provision of WLS.

However, because there's no way within ICANN procedures for registrars like myself to participate in this, "tailoring," I have no idea whether this problem is going to get fixed, ignored, or worse, tilt the playing field even more dramatically toward the largest registrar. The best way to describe my frustration over this process is to compare it to something with which you Senators are familiar.

Imagine that you are considering a huge legislative issue like national energy policy. Instead of going through the regular order, bill introduction, hearings, Committee consideration, full debate in the Senate, and amendments before it becomes law, that instead the issue was generally debated without addressing specifics. Then, the President introduces a complicated bill that never goes through

Committee but goes straight to the floor for a vote. It passes and becomes law.

Later, you realize there's a major problem. There's no way to fix this problem easily. That's where we are with WLS. The issue was debated generally for a year and a half. Then a specific proposal, written without consulting companies like mine, was adopted by ICANN's board. It is law, even though registrars like me had no opportunity to amend that proposal or participate in a debate over any of its specific provisions.

Now we have discovered a major problem, but there appears to be no way to have input over the solution. I call on Paul Twomey to sit down with registrars to work out this problem. If WLS is going to be become law, it is in everybody's interest to make sure we get it right, that it is fair, and does not give any registrar an unfair competitive advantage.

I ask the Committee's help in solving this matter. Today's oversight hearing is a step in the right direction, and the Commerce Department must step in to ensure that justice is done in this case.

Again, thanks for allowing me to testify before the Committee today. I'd be happy to hear any questions you have.

[The prepared statement of Mr. Stahura follows:]

PREPARED STATEMENT OF PAUL STAHURA, PRESIDENT
AND CHIEF EXECUTIVE OFFICER, eNOM, INC.

Good afternoon. My name is Paul Stahura. I am CEO and President of eNom. eNom is a domain name registrar. I started eNom in 1997 in my garage in Redmond, Washington with one small computer on an ISDN line, and now the company is one of the largest domain name registrars in the world with loads of servers in five locations and millions of domain names.

eNom is part of the Domain Justice Coalition. The Domain Justice Coalition is comprised of domain name registrars and resellers who oppose the proposed Wait List Service (WLS) that has been approved by ICANN. Formed in March 2003, the Coalition shares the belief that the proposed WLS will: harm competition in the secondary market for domain names; increase the cost of acquiring domain names for consumers; and add an unnecessary layer of bureaucracy to the process of acquiring expiring domain names without adding measurable benefits to consumers.

I want to thank the Committee for inviting me to testify today before the Communications Subcommittee and giving me an opportunity to share my views on ICANN.

I want to state at the outset that I am a supporter of ICANN. While I may not agree with all of their decisions, many of which have been adverse to me—I do believe that ICANN is the correct organization to oversee the Domain Name System and that, for the most part, the organization has been doing a good job.

The success of my company, and the hundreds of other competitive domain name registrars in existence today, is the result of ICANN policies that promoted competition in the registration of domain names. There is no question that competition has been tremendously beneficial for consumers and businesses. The cost of registering a domain name has dropped from a high of $70 for a minimum 2-year registration contract to as little as $7 per name per year today. Consumers today have choices that were simply not available to them when only one company registered domain names. Competition has brought a variety of business models, and improvements such as better customer service, more distribution channels, and complementary products bundled with the low-cost registration. All of these choices and other advances in the DNS system are the result of competition.

I was involved in the early stages with the formation of ICANN. What I want to communicate to the Committee today is that while ICANN is the correct model, there should be changes to increase ICANN's accountability to, and foster trust from, those they regulate:

(1) There must be assurances that those affected by ICANN's decisions have some commitment or measure of comfort that they are able to participate in the decision-making process. Moreover, there should be some safeguards in place to ensure that, ICANN's decisions are based on the facts and to remove even the

perception that the decisions are not the product of behind the scenes, back room secret negotiations or funny business.

(2) There must also be a way to challenge ICANN decisions and have those decisions reviewed by an independent or objective decision-making body.

(3) The way ICANN selects new TLDs and who will offer new services should change from a "beauty contest" which is vulnerable to decision-making based on favoritism to an objective standard that would be free of potential bias.

(4) Finally, ICANN must have a higher degree of accountability. The Department of Commerce must do a better job of overseeing ICANN to ensure that the goals of the MOU, especially the goal of increasing fair competition, are being fulfilled.

There are two issues that illustrate my concerns with ICANN and not coincidentally also affect competition in the domain name space:

(1) Verisign's proposed wait-list-system (WLS)

(2) New top-level domains

WLS

No issue better illustrates the problems with ICANN in my mind than WLS—the proposed Wait List Service. The WLS was proposed by VeriSign as a way to supposedly make the process of registering expiring domain names simpler for the consumer. Unfortunately, VeriSign's attempts at simplification come at the expense of competition and consumer choice. Since WLS is a monopoly service, to be only offered by Verisign, it completely destroys today's competitive marketplace. WLS replaces good old-fashioned free enterprise with a government-sanctioned monopoly.

But, whatever your opinion of WLS, I think virtually everyone can agree that this issue has been badly handled by ICANN.

Initially ICANN declared that WLS was a policy change and therefore a final decision would be handled through ICANN's consensus processes. ICANN established a Task Force to study the WLS proposal and report back to the ICAANN Board. For more than 18 months, many hundreds of people from all types of companies—domestic and international—participated in the consensus process debating Verisign's controversial WLS proposal. Meetings were held around the globe . . . papers submitted, conference calls conducted and task forces organized. This effort took months to build what appeared to be a consensus—that ICANN should not go forward with WLS—and was surprisingly rejected by ICANN six months after a decision by the board on the grounds that a consensus was not necessary on this issue. To those opposed to WLS, this reversal appears, at best, extremely suspicious.

When the consensus process resulted in consensus that was adverse to VeriSign, ICANN reversed its position and declared consensus was not necessary with little justification for the complete about face.

This WLS situation highlights one of my principle concerns with ICANN: the lack of transparency in its decision-making processes. ICANN is a black box. You have what goes in, and you have what comes out, with no idea of how or why. Even now, only a very few insiders are privy to what the final WLS will be. This is significant because, in the details, the WLS is a very conceptually complicated proposal. A small change to the proposed WLS can make a big difference. Since I am not one of these insiders, I can only go by what has come out of the black box, I can only go by what the ICANN board has already approved, and that decision, unfortunately, takes a step backwards, competition-wise.

Besides that fact that WLS would replace today's competitive re-registration system with a monopoly system and higher fees for Verisign, the problem is that WLS, as approved by the ICANN board, would tilt the competitive playing field among registrars, a, so-far, even playing field that has been setup by ICANN and the rest of the Internet community. Coincidently, the registrar that would gain the largest advantage is Network Solutions, which is owned by Verisign, the company proposing the WLS. The funny thing is that ICANN knew that a certain aspect of Verisign's proposed WLS would have this effect, so ICANN prudently modified Verisign's proposal in an attempt to remove the advantage. ICANN's board subsequently approved the WLS with the modification.

Unfortunately, ICANN's modification does not remove the advantage. Again, as I am not inside the black box, I do not know why the form of WLS approved by ICANN still had the flaw. Thinking the best of ICANN as I usually do, I assume it was an oversight, or possibly ICANN needs more resources to fully understand the repercussions of their decisions, but since as far as outsiders can tell, these problems are not being corrected, I'm reluctantly beginning to think baser thoughts. So we are in a situation where it seems that the form of WLS that will come out

of ICANN and will be implemented by Verisign is *anti*-competitive, a flaw that can be removed with only a few words changed in the ICANN board's resolution on WLS.

I have appended my testimony with a letter I sent to the ICANN Board outlining my concerns with WLS "condition (c)" and recommending a small, but important change. This change could be made as part of the ongoing, ICANN board authorized, WLS "tailoring" that, as far as outsiders can tell, is happening between ICANN and Verisign.

As WLS is a controversial issue to many people, and there have been few recent decisions that affect competition in the name space, a competitively-neutral WLS output by ICANN is not just my test to determine if the reformed ICANN is advancing competition or taking a step backward, but many other people's as well.

It doesn't matter that the initial WLS as originally proposed by Verisign or the final WLS that emerges out of the ICANN black box is a better product or worse product than the competitive re-registration system that exists today. At the end of the day, it doesn't matter what previous process was used to come to the output, though if a fair process was not followed, then that needs to be corrected. I know, as you Senators do, that as they say, making sausage isn't pretty. But what matters is the output. What matters is that whatever the final WLS, it not tilt the exactly fair, competitive, playing field that ICANN and the Department of Commerce have painstakingly put in place.

Another concern with ICANN that is relevant to the WLS issue is the lack of independent review of ICANN decisions. Under the current process there appears to be no way to appeal ICANN's decision to an independent, objective third party, a process which is outlined and guaranteed in ICANN's own bylaws, but has yet to be enacted even once. In fact, one of the Domain Justice Coalition members requested such an independent review board but this request, was denied. ICANN's grounds for the denial is that only decisions made through the consensus process are entitled to be reviewed by an independent review board. Regrettably, the Domain Justice Coalition has had to resort to a lawsuit in an effort to resolve this issue. Even if ICANN were to have appointed an independent review panel, the so-called independence of this review panel must be seriously questioned since the ICANN Board determines who serves on the panel. The inability of complainants to get an objective, impartial review of ICANN decisions seriously undermines ICANN's credibility with the companies it regulates.

Time does not permit me to go into greater detail on WLS. I have taken the liberty of including as part of my testimony a letter submitted to the NTIA which outlines my concerns with the proposal in greater detail. I have also included frequently asked questions, or "FAQ" page, on WLS for the Committee's review..

New Top-Level Domains (TLDs)

My company has had some experience with ICANN regarding TLDs. In 2001, eNom participated in the ".one" TLD proposal. ENom did not win that beauty contest. That process resulted in many TLDs, if not all, that have not met their projections. I know its impossible to get every decision right, especially on the first time out, but many of the 7 TLDs selected back then have fewer than 10,000 names, and one is not even live though it has been two years since its selection. The vast majority of Internet users have not even heard of some of the TLDs selected, TLDs such as ".areo", ".coop", and ".museum". Have you ever seen a domain with these TLDs in use, let alone the others? The proof of a successful test bed is in usage. The TLD round in 2000 was not only a test bed for each of the new TLDs but also a test of the selection process itself. Proof of a successful TLD distribution scheme is in whether or not it results in TLDs that are utilized. Why repeat a process that resulted in an allocation and expansion of the name-space resource if the resulting "expansion" is not utilized?

In 2002, eNom participated in another proposal for ".org". Another group, as well, won that contest. Though the winners have successfully transitioned *.org,* which is good, I know that registrars are paying the exact same price for the same services as before the transition, while there were many others who had proposed the same service for substantially less, and that were equally qualified to perform the transition.

Without clear, quantifiable criteria, it is really difficult for outsiders to tell if ICANN acted arbitrarily or with favoritism in its approval processes, let alone for those who submitted proposals. I do hope that there will be many more opportunities for ICANN to delegate many new TLDs in the near future. And that the knowledge gained in the past will be applied to make the selection incontrovertible.

To that end, I support the following two-step process: (1) the ongoing accreditation of registry operators with objective technical criteria, and (2) an auction to deter-

mine who is delegated which TLD. Meanwhile; the issue of the remaining applicants from 2000 has to be addressed.

First, accredit registry operators based on specific technical operational criteria. This would focus this part of the debate on what are the "must have" objective technical operational criteria, but at least after the debate had ended; everyone would know what they are. With a registry accreditation step, even if step 2 were a beauty contest, instead of an auction, the prospective registries would know with certainty that their selection of an accredited registry operator will not bias the decision. Without this step, most new TLD proposers will choose an incumbent operator to reduce the risk of ICANN having some issue about an unknown operator and denying their application, even if Step 2 was a more objective and impartial process, such as an auction. Adding a registry operators' accreditation step to the process will create more competition at the registry level and make for a more indisputable outcome

Second, auction them, within limits. A suitable auction could be designed to distribute a small number of TLDs. Safeguards could be built-in to prevent the auction itself from weakening the proposers. The winning bidders would advance to the registry agreement negotiation stage with ICANN, with ICANN publicizing non-technical "must have" terms before the auction (such as adherence to the DRP and data escrow or whatever), Payment to ICANN would occur after actual agreement. Other terms that would be negotiated leave room for the prospective registry to innovate. This will constrain this part of the debate to what the "must have" terms should be. The who-gets-what-TLD machinations would then be removed entirely. The proceeds of the auctions would help fund ICANN. ICANN can use some of the funds to support less objectively chosen TLDs that may be proposed for specific interests, such as for public interest, or for non-profit groups. An auction will help insure that proposers put their money where their mouth is, and therefore that the TLDs delegated would actually be used. And if it turns out that the TLD is not utilized, at least ICANN has funding to make corrective action.

The incumbent registries would rather not have competitors, so they will fight this 2-step process becoming policy. If I were a for profit registry, I'd advocate more ".museums" or ".nonprofits" to occupy ICANN's time. Its as if, in the early days of Television, CBS, NBC and ABC, seeing an expansion in television channels, advocate for all new channels to be PBS.

With that said, there remains the single issue of the existing applications from the first beauty-contest round in 2000. These remaining applications, each of which paid a $50,000 application fee to ICANN, were specifically told by ICANN that their applications were not denied, but are, instead, "still pending" the results of the initial test bed. Clearly, these applications need to be addressed before moving forward to Step 2 of the process.

With a beauty contest:

(1) There is incentive for the proposers to make wild projections to get the TLD, while they are at no risk to losing the TLD if those projections do not turn out. This has already happened.

(2) Much too much effort is spent in proposers lobbying the ICANN board and other ICANN decision makers

(3) Insiders have an advantage

(4) With broad, subjective criteria, the proposers are forced to attempt to read ICANN's mind, which results in "hobbled" TLDs, or TLDs that are constrained by imagined criteria. As if, in granting spectrum in the early days of radio, the FCC had such subjective criteria that it could be interpreted that you'd have a better chance to be granted spectrum if you wanted to use the space to broadcast music, so the proposers attempt to guess the director's favorite kind.

(5) Even if all intentions were honorable, due to subjective criteria such as "The prospects for the continued and unimpaired operation of the TLD", it is very difficult to know with certainty that the output of the process was arrived at without shenanigans.

Finally, I urge the Department of Commerce to step up its level of oversight over ICANN. The Memorandum of Understanding (MOU) that ICANN signed with the Department of Commerce clearly envisions some oversight role. Department of Commerce oversight is particularly important in the WLS issue. Paragraph One of Amendment Three to the MOU, which was entered on May 25, 2001 (*http://www.icann.org/general/amend3-spamou-25may01.htm*) requires prior Department of Commerce approval for any material amendments to ICANN's Registry Agreement with VeriSign. The Domain Justice Coalition believes WLS falls under this re-

quirement. Yet, VeriSign began rolling out the WLS service on July 28th by releasing its WLS software development kit despite the fact that the Department of Commerce has yet to review, let alone approve, a single word of the agreement between VeriSign and ICANN making the necessary changes to the Registry Agreement for WLS to go forward.

Moreover, because ICANN's procedures offer no real opportunity for review or reconsideration of ICANN Board decisions, the burden of ensuring that ICANN is adhering to the MOU and of preserving a competitive domain name registration system must fall to the Department of Commerce. The Department of Commerce should make it clear that WLS cannot go forward without the Department's review and approval.

The extension of ICANN's MOU provides the Department of Commerce with a unique opportunity to make sure that ICANN is functioning as the government and the Internet community intended. It is also a chance for Commerce to review whether the reforms ICANN has recently adopted are having the desired effect.

Congress must also continue to exercise its oversight jurisdiction by holding the Department of Commerce accountable for its activities regarding ICANN. Chairman Burns is to be commended for holding these hearings. There is no dispute of the importance of the Internet to the U.S. and global economy. Proper management of the Domain Name System (DNS) is one of the most important aspects of ensuring the Internet is a stable environment for business to operate.

To improve both the Department of Commerce and the Congress' understanding of ICANN's operations, the Domain Justice Coalition has endorsed legislation that would place a moratorium on further ICANN activity until the GAO can conduct a review and report back to Congress. H.R. 2521, "The Fair, Transparent, and Competitive Internet Naming Act", introduced by Representatives Baird and Inslee, would provide a much-needed objective and independent evaluation of ICANN. The information contained in a GAO study could prove invaluable to Congress and the Department of Commerce during the MOU extension process and I urge the introduction of similar legislation in the Senate.

ICANN has had many accomplishments in bringing competition to this industry. I hope the reformed ICANN will continue to promote fair and even competition and to bring more of it, not less.

I thank the Committee for giving me the opportunity to testify. I am happy to now answer any questions that you may have.

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ENOM
July 14, 2003

ICANN Board of Directors
Internet Corporation for Assigned Names and Numbers (ICANN)
Marina del Rey, CA

Dear ICANN Board,

I've already sent this letter [1] to Esme Smith and to Dan Halloran, but on Friday they said it probably wouldn't get posted on the ICANN site, so I thought I'd just send it to you directly to make sure you at least have an opportunity to read it. The purpose of this letter is: a) to elaborate on a competition concern regarding WLS b) to show why the introduction of WLS, as currently approved by the ICANN board, does not maintain fair and even competition among registrars in registering domain names and c) to propose a modification to the WLS conditions [2] already approved by the ICANN board to insure no preference is given to any registrar or group of registrars.

I will show that:

(1) ICANN must not advantage one registrar over another.

(2) WLS as originally proposed by Verisign would advantage some registrars over others. Besides violating ICANN's bylaws, it would be counter to the goals of the DOC since it would create an un-level playing field among competitive registrars.

(3) ICANN attempted to fix this problem, which resulted in a WLS as currently proposed and passed by the ICANN board of directors.

(4) The fix did not remove the benefit to some registrars over others, thus the WLS as currently approved by the ICANN board advantages some registrars

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[1] Essentially this same letter was sent July 8th
[2] Specifically, condition "c" which, under the board's authorization, is currently being "tailored"

more than others in the WLS market, and therefore in the domain name market.

(5) The final WLS must have certain restrictions in order to provide fair competition in selling WLS, and hence registering names. I will explain what this restriction must be and why another restriction may not be preferable to ICANN.

Then I will make some comments regarding tailoring condition "c" of the board resolution [02.100].

(1) ICANN must not advantage one registrar over another.

Introducing and promoting exquisitely fair competition in the domain name space, to which ICANN and the Department of Commerce have, in my opinion, so far been largely successful, is a major goal of both ICANN and the Department.

"ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment, unless justified by substantial and reasonable cause, such as the promotion of effective competition." From ICANN's bylaws see: *http://www.icann.org/general/bylaws.htm#II*

From ICANN's agreement with DOC *http://www.ntia.doc.gov/ntiahome/domain name/icann-memorandum.htm* "This Agreement promotes the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction."

(2) WLS as originally proposed by Verisign would advantage some registrars over others.

As originally proposed by Verisign, wait-list-service customers (via registrars) pay $24 [3] per year to purchase a WLS subscription on a domain name. If the domain name is then deleted within the next year, the customer (again via a registrar) pays an additional $6 to actually register the name. If the name is not deleted within the year, the customer loses the $24. The word "ripen" is used to describe a name that has a WLS on it and the name actually becomes deleted and is assigned to the WLS holder.

Any registrar who has knowledge that a name is to be deleted [4] can offer a WLS on those names for lower risk than another registrar can. A registrar who does not have that knowledge must offer the WLS with the full $24 risk. In other words, a registrar who is about to delete a name can say "if you buy the WLS on this name from me, I will immediately delete that name, and your $24 will not be wasted, and none of my competitors can make this no-risk offer to you". Or the registrar can say "buy the WLS for $0, and when it ripens pay $30".[5] No other registrar could make this offer since that registrar does not know that the name will be deleted or not deleted until the registrar-of-record deletes it or renews it.

This advantage is proportional to the number of names for which each registrar is the registrar-of-record and also proportional to the number of names that are deleted by that registrar. Since most registrars renew about 60 percent of their names nowadays, this means that 40 percent of all names are deleted each year; therefore, any registrar with foreknowledge of those deletes would have an advantage in 40 percent of the market, if all those names were re-registered. About 20 percent of them get re-registered, so that means the advantage would exist in about 8 percent of the total name registration market.

The registrar-of-record can also exploit the renewal and deletion foreknowledge by not renewing names until very far into the 45-day auto renew period. If the registry does not automatically advance the renewal date [6] upon expiration (this information

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[3] This was not the originally proposed price, but for consistency in this paper, is, I believe, the currently proposed price

[4] For example, each registrar, and only that registrar, has this knowledge of its own names that are in the 45-day auto-renew period *and* knows which of those names have not been renewed by registrants. Some names in the 45-day period (and before) are renewed and some are not. Only the registrar-of-record has foreknowledge of which registrants have renewed which names, and therefore only the registrar-of-record has certain foreknowledge of which names will be deleted.

[5] The prices leave the registrar's profit margin out, for simplicity.

[6] If it is advanced the registrar-of-record is at an advantage because no other registrar will know for which names it was advanced due to renewal or advanced due to the registry automating the date advancement, and if it is not automatically advanced by the registry, then the registrar of record can withhold renewals to the last day of the 45 day period in order to gain the same advantage or to fool the competition into selling worthless wait list subscriptions (worthless because they will definitely not "ripen"). Some registries advance the date and some

is available to the public via the registry's public Whois database), the public will think that the name was not renewed and therefore has a high likelihood of deleting, therefore registrars will attempt to sell the WLS at low risk, only to be find out on the 44th day of the auto-renew period that the name actually renews. Thusly the registrar of record tricked its competition into selling WLS on names that it knows will not be deleted.

With the re-registration of deleted names system that exists today, there is are no advantages conferred based on the number of names the registrar has, what information they have, or for that matter, any other advantage. The competition is fair and equal with the current system.

In the fiercely competitive domain name registration market, even a small advantage will sway most of the market toward the registrar with the advantage. Why would any rational customer pay registrar X $24 with the risk that it would be for naught, when they could buy the same thing from registrar Y, for the same $24, with a guarantee that the $24 would pay-off and not be wasted? Or why would any rational customer pay $24, then $6 if the name is assigned to them, when they could pay $0 and $30 after assignment? The registrar who knows for certain that the name will be deleted can offer the latter with no risk to the registrar, while other registrars cannot.

NSI is the largest registrar and it deletes the most names (even more than its pro-rata share of the market represents, based on number of names under management), and it has foreknowledge of all those deletes and therefore would have the largest advantage, and, coincidentally, is also owned by Verisign, the company that is proposing WLS.

If a registrar has an advantage in attracting WLS subscriptions, it will therefore have an advantage in performing domain name registrations when those WLS subscriptions fulfill (since the registration for each name that has a WLS subscription goes to the registrar that sold the WLS). Since a large part of the domain name registration market is in re-registering deleted names (due to the fact that 40 percent of all names become deleted), the registrar that has even a small advantage in WLS has a large advantage in a big part of the domain name registration market.

It is true that, as proposed, with WLS all registrars would have the same price, and equal access to make wait list subscriptions on a first-come-first-served basis, and subscribers can move the WLS to another name up to 5 times, but, as originally proposed by Verisign, registrars cannot all offer them with the same fulfillment risk.

(3) ICANN attempted to fix this problem, which resulted in a WLS as currently proposed and passed by the ICANN board of directors.

See *http://www.icann.org/minutes/minutes-23aug02.htm#02.100*

ICANN passed resolution [02.100]. Part (c) of that resolution says "No registrar sponsoring the registration of a domain name in the .com and .net top-level domains shall be permitted to obtain (in its own name or for another, directly or indirectly) a WLS subscription on *that* [emphasis added] name at any time after a date sixty days before the registration of the name is deleted;"

ICANN passed this resolution to fix the unfair advantage problem, confirming that ICANN understands that there was a problem with WLS as originally proposed by VeriSign.[7]

As written, the resolution [02.100] would prevent a registrar, for example, NSI, from selling WLS on their own names that are about to be deleted. This would presumably prevent NSI from using its foreknowledge on names it is about to delete to its advantage, *but does not do* so (for reasons explained in #4 below). Not only that, but prohibiting the registrar-of-record from selling WLS on some of its own names under management, while allowing the other registrars that ability, in-and-of-itself, skews the competitive landscape among registrars, this time away from the larger registrars.

Since registrars do not have foreknowledge of deletions for *all* of their names, presumably, if a registrar were to sell a WLS on its name[8] that is subsequently deleted, the name would not be awarded to the WLS holder, but it would be deleted instead. In this case, presumably, the registry would still collect the $24, and the

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do not. Currently the Verisign registry automatically advances the renewal date even if the registrant has not renewed the name at the registrar of record.

[7] See: *http://www.icann.org/committees/reconsideration/rc02-6.htm*
"As noted in the 22 August 2002 *General Counsel's Second Analysis of VeriSign Global Registry Services' Request for Amendment to Registry Agreement,* the purpose of this condition is to avoid an incumbent registrar acquiring a preference through advance knowledge of the deletion of a domain name registration."

[8] A name for which the registrar is the registrar of record

WLS holder would *not* be awarded the name. The name would become available for re-registration even though it had a WLS on it. The WLS holder could then move the WLS to another name (up to 5 times). The fact that a consumer can have the WLS, but the name can still be deleted and it can wind up with another registrant *means WLS will have less than 100 percent efficacy,* so WLS is not "better stuff", but that's another issue. I do agree that this effect will lead to a bad customer experience as Verisign asserts in their request for reconsideration, and as ICANN also agrees with as shown in its response to that reconsideration request. More on this later.

(4) The fix did not remove the benefit to some registrars over others, thus the WLS as currently proposed advantages some registrars more than others in the WLS market, and therefore in the domain name market.

ICANN mandates that a single entity cannot have more than one accreditation. This is to maintain fair competition among registrars when accessing the registry. Many registrars and most large registrars (or the shareholders of registrars) own, control, or have very friendly relationships with more than one other accredited registrar entity. Maybe ICANN thought this rule (resolution [02.100], part (c)) was sufficient to create fair competition, but it isn't, because the rule applies only to names for which a registrar is the registrar-of-record, and a registrar can simply give (or sell) the information (the knowledge of which names it will be deleting) to another "friendly" registrar and *that* registrar can sell the WLS for those names at less risk. For example, NSI can have another of its registrars (I believe Verisign controls more than five ICANN accredited registrars) sell WLS at lower risk on names for which NSI is the registrar of record. Either NSI benefits because it is paid for the information, or the other registrar benefits because it gets an advantage in selling the WLS subscriptions, or both.

(5) The final WLS must have certain restrictions in order provide fair competition in selling WLS, and hence registering names.

There are three solutions to this fair competition problem, two of which require an additional restriction to be placed on registrars.
Either:

Option A
No registrar can sell WLS subscriptions for names that are about to be deleted. Basically a one-word change to the resolution passed by the ICANN board for it to read as follows: "No registrar sponsoring the registration of a domain name in the .com and .net top-level domains shall be permitted to obtain (in its own name or for another, directly or indirectly) a WLS subscription on *any* [changed from the word "that"] name at any time after a date sixty days before the registration of the name is deleted;" By changing the word "that" to "any" it prevents all registrars from selling WLS subscriptions within the 60-day timeframe. Though this will still give the advantage to registrars who do not sponsor names in .com and .net top-level domains, therefore it must read:

"No registrar shall be permitted to obtain (in its own name or for another, directly or indirectly) a WLS subscription on any name at any time after a date sixty days before the registration of the name is deleted;

Or

Option B
Require registrars to keep the information confidential.

Or

Option C
Disallow WLS altogether

Option A is preferable because it does not require a change to all registrars' ICANN accreditation agreements (since any registrar who wishes to sell WLS subscriptions will need to enter into an agreement with the Verisign registry, and the restriction would be part of that agreement) whereas Option B requires all registrars ICANN accreditation agreements to change (because a registrar can disclose the information even though it is not selling WLS subscriptions, so therefore there is no mechanism to bind them except their accreditation agreement). Not to mention that it would be difficult to enforce Option B.

I advocated the more restrictive version of the condition during the ICANN process, and I do not know why it was modified to be less restrictive, but maybe because ICANN thought that the less restrictive version was sufficient, maybe it was just an oversight. I do know that if the less restrictive one became policy, that Verisign

would benefit more than if the more restrictive one became policy. If WLS is allowed to happen, I at least wish it to be offered fairly across registrars. I am not asking ICANN to promote "competitors", just "competition". Obviously, as eNom is one of the largest registrars, eNom would have more of an advantage than most other registrars, if condition c stands as-is. I am hoping that ICANN and/or the Department of Commerce will be an advocate for exactly fair and exactly equal competition in WLS, not just one that is still not fair, but yet slightly more fair than a really unfair earlier version.

"Tailoring" Condition C

Regarding the ongoing tailoring of condition c:

". . . the reconsideration committee recommends that the Board give the staff flexibility to negotiate with VeriSign to tailor Condition c to result in a better customer experience, while still substantially achieving the goal of that condition. This should be accomplished by the Board's adoption of a new resolution restating resolution 02.100, with an appropriate revision of Condition c."[9] The goal of condition c, is "is to avoid an incumbent registrar acquiring a preference through advance knowledge of the deletion of a domain name registration"[10]

The sixty-day period results in poor customer experience because registrars, and for that matter, registries, do not know whether or not some names will be deleted within 60 days. What is required is a blackout time period that is based on a date certain of which registries and registrars all have an equal knowledge. That date is the renewal date. The renewal date is known in advance of any deletion or renewal knowledge, and known at the same time, to all registrars and the public.

Please refer to the following graph showing eNom's renewals vs. time relative to the expiration date.
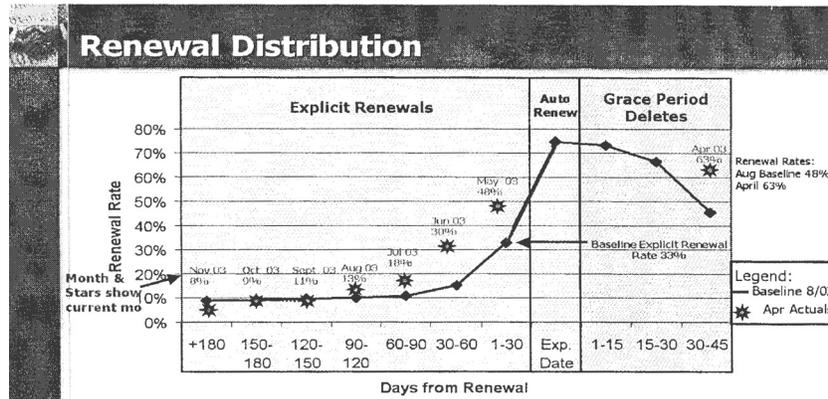
The VeriSign registry produced this graph for eNom and I believe eNom is a typical registrar in this regard. The graph shows eNom performs many renewals *before* expiration, therefore registrars know before expiration, (with a high likelihood, though not certain as we would after expiration) which of their names under management are *not* renewed, and therefore which ones will likely be deleted in about 45 days hence.

If a name is not renewed just before expiration, then the registrar knows that likely it will be deleted; therefore the period must include a period before expiration.

Obviously the RPG period must be included in the blackout period as well, otherwise the registrar that deleted the name knows before anyone else that the name will not appear in the zone, therefore will have a time advantage in getting the WLS on it quickly (if allowed to do so at the very instant RGP begins, or any period beginning after RGP begins but before the name is available for re-registration). This WLS blackout period, which I propose be 30 days before the name expires through to actual deletion[11] is easily calculated by the registry (and registrars) and

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[9] From *http://www.icann.org/committees/reconsideration/rc02-6.htm*
[10] Also from *http://www.icann.org/committees/reconsideration/rc02-6.htm*
[11] 30 days before expiration + 45 days during auto-renew + the 30 RGP period + the 5 day pending delete period

so a registry could then easily implement the condition.[12] Since the period is deterministic, the WLS customers would have a better customer experience because they would not be able to obtain a wait list subscription during the period, therefore the wait list subscriptions they did obtain would have a 100 percent efficacy rate.

Therefore to maintain the intent of condition c, and to tailor it to result in a better customer experience, it must be changed as follows:

> "No registrar shall be permitted to obtain (in its own name or for another, directly or indirectly) a WLS subscription on any name at any time during a period that starts 30 days before the registration of the name expires and ends 80 days after the registration of the name expires"

There are other flaws in the WLS system, some of which also involve the competition issue, and most of which came out in the ICANN process, and for which the GNSO Council voted for Option C above (to not allow WLS). Why the ICANN board subsequently passed it, I do not know. Since the ICANN board ignored the consensus, I can only assume there was some legal, or other reason, for the board's decision. I do not know what this reasoning is. Since, in response to Dotster's reconsideration request, ICANN said that consensus was not required [13], I've concluded that building a consensus is not the answer, and therefore the only targeted recourse is an appeal to you, or the Department of Commerce or the courts.

Please feel free to contact me if you have any questions or need clarification on any of the points I've made in this letter.

> Best regards,

PAUL STAHURA,
President and CEO,
eNom, Inc.

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ENOM
May 18, 2003

Robin Layton,
Associate Administrator
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce

Dear Robin,

Verisign has made WLS and re-registration of deleted names a complex issue. Their spin and the complexity they created works to their advantage. This letter answers some questions surrounding this issue and expresses eNom's support of those in opposition to WLS.

Current situation

All registrars currently register names at the registry on a first-come-first-severed basis. This includes never before registered names, very recently available names and name that were once registered then were deleted and have been available for re-registration for long periods of time. The wait list service, or WLS, is a proposal that will change the way recently available names are re-registered. Currently, each registrar registers these names on a first-come-first-served basis. Without WLS, as soon as the name becomes available, the first registrar that attempts to register the name will actually register it.

Many of the names that will become available are in demand, but are unavailable because they are currently already registered. To service this pent-up demand, registrars employ different models to register the names on behalf of consumers. The following are three examples of currently existing models:

1. One registrar employs an auction model, whereby the registrar will devote its resources to registering a particular domain to whichever customer pays the most money. If and only if the registrar is successful at registering the name does the registrant pay the registration fee, which in this case is the top auction price.

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[12] Since most if not all registrars also renew names before 30 days before expiration (again, see graph), the larger registrar will retain an advantage on those names that are not renewed, which is why I'm still against WLS, because even with the black-out period modifications to rule c that I propose, the playing field that we have painstakingly setup will still be tilted, though only slightly.

[13] See *http://www.icann.org/committees/reconsideration/rc02-5.htm*

2. Another registrar employs a "club" model whereby the registrar will devote its resources to customers who pay a monthly subscription fee ($100 per month) to be in the "club". If and only if the registrar is successful at registering the name does the registrant pay the registration fee, which in this case is $6.95, or $.95 over the registry fee of $6.00

3. Another model is similar to the WLS model whereby customers "backorder" a name. Once a name is backordered, no other customer can back order it. The fee to backorder a name is $69 per year. There is no additional fee once the name is actually registered. If the name is not registered on behalf of the customer during the year, the customer loses the $69.

Q and A

Q: What is the proposed pricing of the WLS, and will it be more than now?

A: It is proposed that it will cost $24 for a WLS subscription, then an additional $6 to the registrar that purchased the subscription, but only when the name is registered. Additionally, the registrar will likely charge at least $1 for profit, for a total of $31 per name if the name is registered. At least $31 (with WLS) is more than $7-$10 on average (now, without WLS), so yes, it will cost more than now. The proponents of WLS spin the price by saying, "hey, $24 less than the $40 we originally proposed, so its cheaper". For a WLS to be the *same* price as today, it should cost $0, because 0+6=6, which is today's price to re-register a deleted name.

Q: What if the name is *not* registered?

A: If the name is not registered after a year, the customer loses all their money, or alternatively, they can change the WLS to another name for up to 3 times over the year. If none of those names are registered, the customer definitely lost their money. For example, if a WLS is sold for "yahoo.com", since that name will most likely not be deleted, that person "lost" their money, and the registry gained $24.

Q: Will a WLS be sold for "yahoo.com"?

A: Most definitely yes, but not to a person who thinks they will actually one day be the registrant for yahoo.com. It will be sold to someone who wants to extract big money from the current registrant of yahoo.com, because whoever buys it, though knowing that it is likely never to be deleted, but would get it on the off-chance that it was deleted, and therefore could offer the WLS to Yahoo, Inc. at a price greater than $24, and in this case, much greater.

Much like as if the real estate deed to Rockefeller Center in NYC transferred to someone if ever the current owners of Rockefeller Center were late in filing their property tax return, so some other relatively trivial event. The current owners of Rockefeller Center would not want to take such huge risk in losing their property, so they will therefore buy that right from the person for a substantial sum over the $24 the person paid.

How would you feel if you were yahoo.com, or msn.com or apple.com, or aol.com, and some, heaven forbid, pornographer, out there definitely (100 percent remember?) gets the official rights to your name, if some, albeit low probability, event happened? You'd have to disclose this risk to your shareholders.

There will be many, many companies, you name them, not just yahoo, which will not be at all happy about that situation once they find out about it.

Q: Isn't WLS much like selling an option, for example, on shares of stock?

A: No. Normally when you sell an option on shares, the shareowner gets the proceeds and has the choice to not sell that option. In this case the registry will get the proceeds and the registrant does not have the choice to not sell the option. The situation is as if the registered names are not the registrant's, but still the registry's to do with as it pleases.

Q: Will people be duped to buying a WLS on their own names?

A: Yes. In the currently proposed WLS, you cannot opt-out your name from having a WLS sold on it. Therefore every registrant:

(1) Is opened to the unscrupulous WLS holder saying (though not exactly true, they'll say it anyway) "I will get your name if it is ever accidentally or maliciously deleted, so pay me $X now"

(2) Will be fooled into "buy the WLS for your name before someone else does"

(3) Or will be fooled into the FUD (fear, uncertainty, and doubt) pitch: "buy the WLS as insurance incase your name is ever accidentally deleted", even though there are a number of measures currently in place to already insure this does not happen, including a) registrar-lock, b) 10-year registration periods, and most importantly, c) the redemption grace period

Q: Will the introduction of WLS limit the choice of consumers?

A: Yes. Currently there are more than four competitive models to re-register recently available names from which consumers can choose. Due to this competition, prices to re-register deleted names have been dropping. If WLS is implemented there will be only one model (WLS) and the single monopoly registry will run it.

Q: Will implementation of WLS preclude the other registrars from re-registering names that have been deleted?

A: Yes and No. Any name that has a WLS subscription on it will not be available to be re-registered except to the registrar (on behalf of the registrant) that placed the WLS subscription. Other registrars will be able to re-register recently available names that do not have a WLS subscription using the first-come-first-served system in use today. Only names that are worth less than $31 will be able to be re-registered in this manner, since ones that are worth more will already have a WLS on them.

Q: Will WLS reduce the technical load on the registry?

A: No. Since it costs nothing to submit a registration request, registrars will administer as many requests for low-value names as they do today for high-value names.

Q: If WLS is implemented, who makes money?

A: The registry will make $24 on names that are worth more than $31, even if the name is never actually registered. If the name is actually registered, the registry will make $30 on names that are worth more than $31. Currently the registry makes $6 on names, and then, only when they are actually registered. In both cases, and depending on the model, the registrar makes as little as $1, therefore the higher fees come directly from consumers.

Q: So currently, where does the $25 go?

A: In one model, $1 goes to the registrar and the consumer saves $24. In other models currently in use, the registrar makes more, but in most if not all models, the registrant currently saves at least $24 when compared to the future WLS.

Q: Of the registrars that are currently participating in this market, what will happen to them?

A: Many will go out of business. About 15 are being paid by SnapNames to use their registry credentials, and for many of these, the SnapNames revenue is their only income. If WLS is implemented, Snapnames will not need those credentials and therefore those registrars will not receive any more revenue. The registry will make the money that these registrars were making, plus more that is extracted from registrants (consumers) due to the registry's monopoly position and the resulting higher overall fees paid by the public. The registry will then pay some of this revenue to its SnapName partner. The registry and SnapNames make more money, while the other registrars make zero, and most importantly, the public spends more for the same thing.

Q: Will WLS be a new offering?

A: Not really, SnapNames offers a similar model, albeit with less efficacy (note that its less than 100 percent efficacy proves that there is existing competition, and that there isn't already a monopoly currently in place).

Q: Is WLS "better stuff"?

A: No, because:

(1) Once a WLS is taken, no other customer can have the rights to that name if it becomes available.

(2) If a name never becomes available, the consumer (WLS subscriber) will most probably lose their money and end up with no names.

(3) It un-levels the registrar playing field because the registrars who delete the most names (the larger registrars) can offer WLS subscription at lower risk for the names they know they will be deleting. This is a subtle but important point since competition at the registrar level is important to maintain. Larger registrars can say "if you buy a WLS for this particular name *from me,* I will *guarantee* that I will delete it, and you will therefore be *guaranteed* not to lose $24". Other registrars cannot make the same guarantee for the WLS for that name and *must* then offer the WLS with a higher risk. Since 50 percent of names are deleted (on average) and become available each year, WLS removes the fair competition that has been painstakingly established for 50 percent of the registration market. As an added aspect, it may be no coincidence that the registry that wants to implement WLS owns the largest registrar; in who's favor the competitive landscape will tilt. The current implementation proposal, while it may attempt to, does not eliminate this.

Q: Is WLS less expensive?

A: No. Recently deleted names are currently available for $6 from the registry and for as little as $7 to consumers. WLS will increase this to at least $24 (for WLS to registry) + $6 (for registration to registry) + $1 (to registrar) = $31. Just because WLS is priced at $31, which is less than SnapNames retail price of $69 does not mean it is less expensive than what already exists today. It is actually more expensive because it must be compared to the average price of $7-$10 (and closer to $7) that, due to competition in the re-registration market, the price has been driven down to.

Q: Doesn't WLS provide a better means to distribute re-registered names to consumers?

A: No. The very first minute that WLS goes live, nearly all the WLS subscriptions for valuable names (such as those valued at more than $24) will be taken, and not by the average Joe consumer. The next minute, those registrants will be solicited to buy the WLS on their own names for more than $24. By the time the consumer knows what happened, it will be too late, all the WLS subscriptions for valuable names will be gone and more importantly (and ironically when comparing the current status quo to WLS) any name that does not already have a WLS subscription would have been available for re-registration anyway (and at a lower cost) if WLS was never implemented. At least in the current system, the average Joe consumer has as much chance at re-registering a deleted name as anyone else. With WLS, after the WLS is taken (which will happen very quickly after WLS go-live), Joe consumer has no chance at all.

Q: Isn't WLS better than what exists now since the customer will definitely get the name?

A: Not really. It is true that *if* there is a WLS on a name and *if* the name becomes available, then the WLS-holder will definitely get the name, but these two "ifs" do not always happen. If the name does not become available, then the customer lost at least $25, whereas now (if the consumer chooses one of the competitive models that is *not* WLS-like such as SnapNames' model) if the name does not become available the customer loses nothing. Additionally, if Yahoo, Inc. does not have the WLS on yahoo.com, and someone else does, there is no chance that Yahoo, Inc. will get the name if it ever becomes available, whereas with the current system, there is.

It is true that 100 percent efficacy is more than 70 percent efficacy, but in this case, more is not better, since 100 percent of a bad (more expensive, monopoly, unfair competitive) model is worse than 70 percent of the same bad thing.

WLS:

(1) Brings a monopoly to 50 percent of the name registration market, where there isn't one currently

(2) Increases prices to consumers

(3) Is not better, overall, for consumers, than what is available today

(4) Makes for unfair competition, in favor of larger registrars.

(5) Removes choice by forcing the market to one model instead of the diverse models available today.

Q: If WLS is not a monopoly service, why not let the registry set any price it wishes, and let competition reign?

If it is a monopoly service, why then introduce it, and eliminate the current competitive situation?

A: Because it is a monopoly service. What better mechanism to set the price than true competition?

Q: Why should my government or another authority choose one model over the others, especially when fair competition is in place now and working to bring choice and drive down prices? Why should it take the risk that WLS will make thousand, if not more, companies very unhappy with the risk in losing their names if someone else gets the WLS?

A: It shouldn't

WLS is not new stuff, better stuff, or cheaper stuff.

WLS is a gussied-up, higher cost, monopoly service without even much of a disguise to those that follow this complex issue. This registry level service is not more attractive or convenient to consumers, unless you think that a monopoly is more attractive and convenient because there is only one place for consumers to go to pay more.

eNom, one of the top-five largest registrars worldwide, supports Dotster, GoDaddy and the numerous other registrars, resellers, and the general public participants, and others who form a consensus and oppose WLS.

Best regards,

PAUL STAHURA,
CEO,
eNom, Inc.

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WLS Frequently Asked Questions

Q: Isn't WLS a better product offering because it has 100 percent efficacy?

A: The WLS system will effectively replace the current system used to re-register deleted names that all registrars use today. There are many registrars who have innovated various business models to re-register deleted names. Some offer a fair chance at the name for a low price, whereas others offer an exclusive chance at the name in an auction system, for example. In all cases the consumer has the choice of which competitive model to select. In the case of WLS, this choice is eliminated. The situation would be as if there were competition in the beef market, for example in selling t-bone, New York, and top sirloin. WLS may be the filet mignon in this case but it will be the only type of beef you can by, and at six times the price.

Q: Does Verisign have the right to sell an option on someone else's property?

A: Recently the 9th Circuit Court of Appeals affirmed that domain names are in fact property. I'm sure each of you Senators owns your own domain name. Does it surprise you to know that under the WLS system, Verisign may sell the option to purchase your domain name to someone else, should it be deleted? Or heaven forbid, should you accidentally forget to renew it. This applies to every domain holder from my Uncle's domain name to yours to your constituents' and to each and every corporation in your state. In short Verisign is selling options on other people's property. Is it a good idea to allow someone to sell an option to buy the Brooklyn Bridge, in the case that NCY decides it does not want it anymore, even if the chance of that is slim? Verisign is not the city; it is only the county hall of records.

Q: Why doesn't ICANN's WLS "rule c", as it stands (with the registrar of record blocking condition), already prevent a tilting of the playing field?

A: Because the registrar of record blocking does not prevent the registrar of record from disclosing the information to another registrar who is not the registrar of record, therefore it must extend to the other registrar, and since that registrar could be any registrar, it therefore must extend to all registrars.

Q: So why not, instead of prohibiting WLS during the blackout period, simply forbid the registrar of record from marketing during the blackout period?

A: Because:

(1) How would the registry or ICANN bind the registrar who has not signed up for WLS (for example, eNom won't sign up, but one of the little registrars we are friendly with will). This is why any type of prohibition (marketing blackout or WLS no-sell blackout) must extend to all registrars, not just the registrar-of-record.

(2) Even if you could bind them, how would you enforce it?

(3) Or even know that they violated it?

(4) Though registrars would definitely care that a marketing blackout was violated (since it gives an advantage to one over the others), why would the registry (assuming they somehow bound the registrars) care that the marketing prohibition was violated?

(5) A registrar does not have to do any marketing to exploit the advantage, it only needs to offer a zero subscription price (no risk to the registrar), and delete names immediately after a WLS is placed on them for the market to get the message.

Q: Is WLS a new product offering?

A: Not Really, because 1) there is already a system in place to re-register deleted names, and 2) one of the existing competitors is currently offering a WLS-like service. What would be new would be the fact that all the current competitors would not be able to offer their current service to re-register a name if there were a WLS subscription on it. Since WLS is a monopoly offering that pre-empts all other current offerings, the registrars have no choice but to either sell WLS or not play in that game.

Q: Isn't it true that if the underlying domain does not become available, you can switch the WLS to another name, so your money is not wasted?

A: Lets say someone had a leased Lexus, and you go to the leasing company and say that you want that Lexus when the current owner turns it in. In the WLS model, the leasing company would sell you an expensive option to do just that: release the Lexus if it were turned in. If it were not turned in, however, the leasing company keeps your money and offers you an option on a different car on their lot: perhaps that nice '79 Pinto hatchback. This is, in effect, part of the proposed WLS system.

Q: Wouldn't WLS be a great insurance policy for your name?

A: Within the first few minutes of WLS being offered, speculators will purchase the WLS for valuable names. For example, in my home state of Washington, companies such as Boeing, Microsoft and Amazon.com will see the WLS subscription for their domain names taken by speculators before those companies even have the chance to get them. So, in the unlikely event that you get the WLS on your own name, we recall the fact that WLS subscriptions only last one year. You will be forced to compete with the speculators for that subscription year after year.

Q: Then why not allow the domain holder the first option on the WLS on their name?

A: Protection racket. You mean to say that if I don't pay Verisign for the WLS on my own name, Verisign will sell it to Rocko down the street? Why don't I just renew my name every year, or register it for 10 years, and why am I not able to "opt-out" my name from a WLS being sold on it?

Q: The system is gamed by registrars now, and people will always attempt to game the system, so why try to prevent gaming of the system?

A: The re-registration system of today is a fair competitive system. Of course competitors try to gain an advantage by innovating new technology, if you call that "gaming", fine. I call it innovating. All registrars are free to innovate. The crux is that today one registrar does not have an inherent advantage over the others as they would if WLS is implemented as the ICANN board has approved it. If WLS is implemented, no amount of innovations by a small registrar will overcome the advantage that a large, non-innovating registrar would gain.

Q: Doesn't a large registrar already have an advantage over a small registrar, so that if WLS gives a large registrar an advantage it is no different than today? A: No, today a large registrar has the same advantages as a small registrar and does not have more of an advantage because of the registration system or any ICANN policy.

Senator BURNS. Thank you for coming today, and thank you for your testimony.

There's one way to really get this dialogue heated up and going pretty good. I'd just ask Mr. Twomey if he would address the criticism that was just offered by Mr. Stahura. Is this a legitimate complaint?

Mr. TWOMEY. Mr. Chairman, as Mr. Stahura pointed out, this is actually a matter which is before the courts at the moment, so my comments will be a little constrained, but let me just make some responses.

First of all, I think as other people at the table have put to you, ICANN should not be in the business of trying to determine offerings in the marketplace. I don't think that's an appropriate role for the organization.

VeriSign came to ICANN under its existing contract and put forward proposals for a new innovation, to put forward a new product offering to the consumer. That product offering may compete with product offerings put to the consumers by registrars, but I'm not certain it's the organization's role to say to one player in the market, you're not allowed to innovate for the benefits of consumers because other people already have a product in the marketplace, and that's—you know, we are an organization especially about competition.

There is an issue here about people bringing a new product to the market, new innovations to the market. Should we be in the role of stopping that because other people have already got products in the market? That's a difficult thing for us to do.

The question about process, this was before my time, obviously, but one thing I would make observation on is, this is not a question of ICANN policy in which we're very clear about the processes that followup. This is a proposition where one player under an existing contract comes into the discussion and says, we wish to implement something that we think we have the right to do anyway, you know. We wish to implement a new product, and so this is not the same thing as the usual policy process that we have internally.

I mean, I do welcome Mr. Stahura's call for discussion, but perhaps I should leave it at that, considering issues are before the courts.

Senator BURNS. Would VeriSign like to make a comment on that, being as they were mentioned here?

Mr. BALOGH. Yes, Mr. Chairman. I'd like to begin by describing a little bit about the Wait List Service and its origins. Starting from the consumer's perspective, if a consumer is interested in getting a domain name that is already taken, and knows that that domain name will be deleted soon—for instance, *SenatorBurns-ForPresident.com,* for example, and assuming that domain name is going to be deleted in about a month, what a consumer needs to do is figure out how to get the domain name.

There are a couple of different methods. One of those methods is going with the backlist service that exists today from several registrars. What a consumer will generally do is pay somewhere from $9 up to hundreds of dollars for that kind of a backlist service, hoping for a chance to get that name.

Now, what actually happens underneath, and how this actually works is, the various registrars, when those names get to be deleted—and by the way, those names are available via report. The registry provides those reports of which names are being deleted, and that is public record. You can look up the information.

When those names are being deleted, registrars pound the registry system as hard as they can to get the name within a few milliseconds of when the actual delete occurs, so how some registrars have found that they can get more advantage, get more of their names over other registrars is by literally consuming as much of the system resources of the registry as possible with their ad stream, so you can imagine, if the capacity of the system is, let's say, 100, if a registrar can get 95 of their ads in while all the other registrars get only five, then there's a much better chance for that particular registrar to get more of those names.

As it turns out, a very, very small number of the 800,000-some domain names that are deleted per month fall into this category, and we did a study of about 2 weeks looking at all the ad activity. We averaged almost 1/2 million adds per single domain name that was actually acquired, just to give you a idea, so the way the system is set up now, the consumer has a very confusing experience.

They may go with the particular registrar, not realizing, which the speculators, by the way, do, that you will want to go with several different registrars backlists, or wait, backlist-type service,

hoping that you might get the name, never knowing. The purpose of the Wait List Service is to take this system which encourages abuse—we literally get attacks of these ad storms. We had to shut down deletes for over a week several years ago, about a year and a half ago to try and deal with it, to take the chance out of it.

The Wait List Service provides a registration for a domain name that may be deleted. That's deterministic. It's first-come, first-served, and only one registration is allowed. What this service does is allow the consumer to know exactly what will happen, and by the way, this service is offered to all registrars. A registrar can choose to offer this service or not, and can continue to offer their Wait List Service as well.

Senator BURNS. Mr. Davidson.

Mr. DAVIDSON. I was afraid you'd say that.

[Laughter.]

Senator BURNS. You know about this. You're aware of it.

Mr. DAVIDSON. We are, and I have to say, this is tough, because I think there are merits on both sides of this argument. We've been fortunate enough to spend some time discussing this with both sides of the folks who are working on this. I think the process issues that are raised by eNom and others have merit, and they resonate with a lot of people in the public interest community about how some things happen at ICANN.

At the same time, I think there are some benefits for consumers from having a new service like this available. Clearly some people believe that that's true, and there is a certain nuttiness to a system where every time a domain name becomes available 300,000 hits are registered by the registry as people pound the registry servers to try and get it. I understand why people would want to change that system.

Now, let me just add, you know, I think the bigger issue here is, I honestly don't think we would be here if we were talking about coming up with a WLS system for .museum, or .coop, or a different registry, and that sort of underscores the point that if there was a lot of competition among registries and TLDs, this wouldn't be as big an issue, because some of them would offer Wait List Service.

And if it was really popular, then they would succeed, and consumers would go there, and if it was really stupid, then people wouldn't go there and it would fail, and I think part of what this underscores is that we do want registries to be able to innovate, but to do that you've got to make sure you've got a diversity of registries, and right now *.com* does have a very special place in people's hearts.

Let me just say, as far as what Congress ought to do about this, I think it is kind of tough to say that Congress ought to be legislating about something like WLS, because if you believe in the ICANN idea, which is that you know, they're supposed to be doing this, it's very hard to have Congress going in there and micromanaging it, and we would have a hard time supporting a bill like that, but I feel the pain of those who are concerned about the process.

Senator BURNS. Yes, sir.

Mr. STAHURA. Can I say something, too?

Senator BURNS. You bet.

Mr. STAHURA. First off——

Senator BURNS. We may settle this whole thing right here. Who knows?

Mr. STAHURA. I doubt it. We've been talking about it for 2 years. I doubt if this will settle it.

I don't think Paul addressed the competitive part that I was—that's my main point, you know. We are tilting the playing field amongst registrars, which ICANN agreed with, the original WLS did tilt the playing field, so they decided to modify it to make it more even, but unfortunately that modification didn't work, so I'd like to talk to Paul about making that modification work.

The second thing said was about slamming the registry. Well, that was debated a long time, too, and there were a number of other proposals that came up that would actually eliminate the slamming problem. Unfortunately, WLS is not one of them, because if you go to WLS, with the WLS system in place a name could still be deleted, so I and one of the registrars that pounds the registry to get dropped names along with 30 other registrars, that's the system that they have in place.

First of all, they limited our capacity to slam it maybe a year and a half ago, so that their systems don't take so much of a burden, but the most important thing is, even with WLS in place, some names will still be deleted, and so I will still have an incentive to pound the registry for those deleted names, and it's not like I'm going to pound it any less for one name versus 100 names. I'm still going to pound it just as hard, so their argument about WLS as a solution, so-called solution to the slamming problem does not hold water.

I could go on, too.

Senator BURNS. All right. When you brought that up, I was going to say, Mr. Twomey, what changes to ICANN structure in your opinion now—you've been there for a while, where do we need to change the structure to reach these agreements with the international community?

Mr. TWOMEY. Senator I was actually really interested in your list of three things, because it was actually very close to my list of three things, and I only wrote it down this morning, so I can't have sent this to you, because I actually do think the issue is around globalization, security, competition and innovation, as you have heard, and the other one I would add is putting in place a business-like structure. That is my mission. That is what I see I need to achieve.

On the globalization issues, I think there are two important things that have happened just very recently showing progress there. One was the increasing attendance in the Governmental Advisory Committee, more and more Governments being involved, particularly from the developing world, and I think the other one, very importantly, was the formation of the country-code Name Supporting Organization.

Mr. Chairman, that has a 4-year history. There's a 4-year debate that went on with country-code managers, as to whether they actually wanted to be part of a world forum, to come together with the world or not, and that actually came to a conclusion only a month, 6 weeks ago where they decided to do that, and that was a decision

of some 65 country-code managers, the main country-code managers. The vast majority of them agreed to set this organization up.

I think the consequence of that in terms of agreements changes the field a little bit. Here we have them agreeing that ICANN is a forum in which they want to participate, in which they want to be involved. We do need to talk to people more about how we actually put together some sort of accountability framework around their participation, but I think our approach might be a little different than it was previously, as we try to put that in place. I think that's very important.

If I can make a further observation to yours, coming from the Asia Pacific, I fully appreciate the issues you raised in terms of growth and participation, and where it's taking place. I do foresee that as an organization we will need to be more engaged in those parts of the world, and supportive of the issues that those people have, and that will give us more value, and I think that's just a natural progression of the globalization of the Internet.

The particular communities you referred to are communities that have a high target, if you like, in terms of my attention. I am very concerned about that.

Senator BURNS. I'm interested in your efforts to address interoperability between languages in the domain name system, particularly given what you have identified, and I have, too, is a surge of the Internet access in the Asian countries. Can you tell us about such interoperability and how it can be ensured?

Mr. TWOMEY. Senator, I think it's incredibly important that we do have that interoperability, and we maintain it, and one of the key tests of the maintenance of a single Internet is the introduction of internationalized domain names, and the key test of that is severalfold. One is that we result in the main names that appear in the characters, or the on-ASCII characters for other languages around the world, but it's done in a way which does not harm several things, it strikes me.

One is a single interoperable Internet, two, that we don't end up with a flood of cyber-squatting, and three, that we don't end up with quite a degree of linguistic confusion as to what equals a particular phrase, and if I can give you an example of the latter, the People's Republic of China uses simplified Chinese character sets. Taiwan uses traditional Chinese character sets.

One of the two character sets of Korea is a derivative of the Chinese character set, and the Japanese character set is a derivative of the Chinese character set, so here we have at least 1.5 billion people accessing character sets that could potentially be confusing, and that's the reason why it's important in the way we move forward with internationalized domain names, that we don't just have a technical standard, but as the guidelines that were developed up in consultation with key registries addressed that there is a process for ensuring linguistic rules, and that there are guidelines.

Now, we're very conscious at ICANN that that's a process that needs to be driven by those communities and by those people with linguistic issues. We're not trying to set a prescriptive language to do that. More, we're concerned about how to ensure that the registries involved actually develop up guidelines, and they themselves say, here's how we will address implementation in a way which

does not result in those potentially bad things I said at the beginning, noninteroperability, cyber squatting, et cetera.

Senator BURNS. Well, are you geared up to deal with what could be a huge upsurge in Internet use in that area, to deal with that?

Mr. TWOMEY. A key part of our—well, I think we are actually increasing resources this year, and part of it is to address both that and, importantly, the increased accountability and transparency mechanisms that we're putting in place. A key part of that succeeding is actually the engagement with the registries that actually deal with those communities.

In other words, those registries are some of the generic registries, but also the country-code registries, so this is not an arena where an ICANN should be setting prescriptive—you know, go to 1.5 billion people and say, here's what you must do. Rather, it's about how we are an effective forum for those specific registries to do two things: (1) to engage amongst themselves to find a solution that works for their communities, but (2) to be held to some sort of accountability that they are accountable to the rest of the Internet so that it all works well.

It is one Internet, Mr. Chairman. It's not several, it's one, and we have an accountability to each other to ensure it remains like that and operates like that, in an engineering sense as well as some of the more business aspects of it. Our true role is to be informed and help them come together and solve that, but also to be a voice of conscience, if you like, about responsibility to others on the Internet, and to ensure that we maintain just one single Internet.

Senator BURNS. Have you had dialogue with the Chinese, as an example?

Mr. TWOMEY. The people who have been involved in—we have actually two committees of our board, one committee of our board and a working committee, plus some staff members, and they have active involvement in our board.

I should make the point on China that one of our new board members is actually a senior member of the Chinese CCTLD, and so we actually do have strong linkages back into the Chinese NIC.

Senator BURNS. While we're along that, I would like to note submitted testimony of Carl Auerbach, who has been an incredibly thoughtful critic and participant in the ICANN process. Mr. Auerbach began his statement with a very simple and stark sentence: "I am the only person in North America who will ever be elected by the public to the ICANN's board of directors." His term ran out last November, and after ICANN decided to eliminate the five at-large elected board members.

If there's no electoral process involved, then it seems to me that the role of ICANN should be strictly limited to technical administrative functions. Can you please comment on this, on how you view the elimination of those at-large positions?

Mr. TWOMEY. Mr. Chairman, originally, and the continuing motivation is that ICANN needs to be a balance, and at the heart of that balance must be the interests of the consumers. There are balances between country codes and generic codes, there are balances between registries and registrars, but I think very importantly there's a balance between the supply side and the demand side.

The demand side is represented partly by intellectual property interests, partly by noncommercial interests, but a very important part of that demand side is the consumer.

Now, in the first, if you like, ICANN 1.0 attempts to try to give voice to the consumer there was a process of elections, online e-mail elections, Internet elections. I think an objective analysis of that process—there were particularly some potential flaws about how that could be implemented. There were great difficulties, and you'd be very conscious, Senator, in the political process of the difficulties of capture, and how all those things worked.

Probably much less so in an obvious place here, but in other parts of the world, I would say to you that you've got to be a little careful about how those things can work, but our commitment to giving a voice to the consumer, our commitment to giving a voice and representation to the users of the Internet, is undiminished, and our implementation of an at-large advisory committee, and then developing regional at-large committees, our response to that, to really put in place mechanisms for drawing attention of the consumer's interests and trying to put in place—we've identified some 325, I think it is, consumer and other organizations, indirect, and who deal with consumer interests and IT and Internet around the world.

We've started a process of engaging with those, and we are also putting in place a general manager of public outreach and communications. Part of that person's role is going to be to continue to have engagement for the individual consumer.

It's a very difficult process. We are not the Government of the Internet. We should not be put up as some sort of mechanism for global voting, or experiences or experiments in global Internet voting. I don't think that's our real role. Our role is to focus on how to really get that effective voice for consumers in this process.

Mr. DAVIDSON. Can I make a——

Mr. TWOMEY. Shall I just make one——

Senator BURNS. I'd like to hear other comments with regard to that.

Mr. TWOMEY. Absolutely. I'll just make a final comment.

Mr. Auerbach has been a very active and vocal member of the board and critic, and I actually really value the critiques he offers, and he's had a very effective and positive input into the process.

Senator BURNS. Anyone else want to comment on that?

Mr. DAVIDSON. I'd like to, and I was going to say, I think the sentiment is welcome, but I think the problem is how do we implement this question of providing for a real voice for the user community at ICANN.

I just want to read a quick quote: "As the ICANN process develops, if it were simply to evolve into a series of groups and committees representing the supply side, it would lose legitimacy in the eyes of the Government in the sense it would simply become an international trade association and not have balance around end-users and public interests that governments think of as important."

I couldn't agree with that statement more, and it was made by Paul Twomey a year ago when he was spokesman for the GAC, and I think it's still a sentiment that a lot of people at ICANN have, but the problem is, it's not enough to talk the talk. We have to fig-

ure out how to walk the walk, and the original part of the bargain when ICANN was created was that half of the board was going to be selected at large from among the user community.

There has been a great deal of debate at ICANN about how that ought to happen, and I understand why many people in the community did not feel comfortable going with some sort of election process, but it's not sufficient to simply abandon that idea and not put something that's powerful in its place.

The jury is still out right now about the processes that have been place. The at-large advisory committee is a very welcome idea, but it has not fully materialized, there are a lot of questions, and I think the big problem is that for groups like my own or the other public interest groups that pay attention, it's very hard to get the resources to participate in something like ICANN, and it's extra hard when you don't feel like you have a voice.

And simply saying, well, you're part of a little group that advises another group that advises the board is a big difference from saying, you've got half the board seats, or you've got a voice on this board, and I think that is the thing that ICANN has still got to struggle with. We've really got to find a way to get the user's voice in there and make it feel like we're accountable.

A big piece of that is also going to be making sure that ICANN is this more narrow technical body that has a narrowly focused mission, as Mr. Auerbach has said. I don't think people on the ICANN board disagree with that, but we haven't come to a meeting of the minds about what that means.

Thanks.

Senator BURNS. Ari, do you want to comment on that?

Mr. BALOGH. The comment I would make is that that issue is central to the relevance of ICANN. ICANN's mission needs to pull all the various constituencies of the Internet together, the root operators' groups, all the CCTLD's, the numbering registries, and the other industry and other organizations that can add benefit.

The Internet is becoming more and more critical for just about everything, and as October 21 showed, an attack, a relatively straightforward attack, can have some critical implications about the availability of the Net and all services depending on it. That focus on the salability and security of the Internet, as well as creating an environment that fosters innovation around the basic services is absolutely critical, and it requires all those constituents to come together, and that is the challenge.

Senator BURNS. You'll have to beg my pardon for using this term, but it just sounds like to me, though, there's a real struggle here, or a tug of war on what ICANN wants to do, and does it have the wherewithal to do it? It's kind of like, showing up at a cowboy convention. There's nobody in charge. You've just got a lot of cowboys.

[Laughter.]

Senator BURNS. And everybody is an individual, and everybody kind of wants to do it.

Now, before they can get some things done they have to be empowered to set some rules, or standards, or a mechanism of which to—if it takes—to rule is to guide, and to guide is to rule, and I can see the internal struggle that would be, as the Internet grows,

could be a humongous job. It would be almost—it would be the most difficult one could think.

How should they change? What would you recommend they change to bring all this together and to bring some order to it where they can write rules and regulations and then step back and everybody would say, well, these are high-handed, hard-headed, rules we don't like, and so we're not going to join.

What power has to be done and what power has to be delegated in order to ensure legitimacy, international acceptability, to ensure security, and all of these. How strong does it have to be written? Does anybody want to comment on that?

I mean, it looks like they're charged with a mission here that says, OK, you go do that, but you don't have powers to organize. Is that a wrong assumption? I may have the wrong assumption.

Mr. BALOGH. I think it is a tremendous challenge. The constituencies are all over the place with their own needs and interests and desires. I think the key insight into this is, there are other models that actually do blend the interests of many varying constituencies. The insight is that we need to encourage the industry to regulate itself.

Effectively, the industry can work itself to deal with a lot of these issues, with ICANN providing that umbrella coordination. It gets very tricky to write regulations and create regulatory processes on a medium that is so diverse, and so fosters innovation, so I think that the key issue here is, will ICANN be writing rules and regulations, or will it be coordinating an industry that has that capacity to coordinate itself in the first place, and fostering that coordination.

Mr. DAVIDSON. I'll just add, I think, I mean, you've hit the nail on the head in terms of, this is really where the central question is. I think there are a bunch of things, and some of them are the kinds of things that are on Paul Twomey's to-do list in his testimony, or they are things that, you know, amount to accountability methods.

We've got to get a good independent review process in ICANN so people can trust that there's some recourse if the board does the wrong thing, an ombudsman within ICANN to provide an avenue for compliant, making sure that ICANN sticks to the bottom-up processes, that it's not a board that just rules imperiously from on high.

Coming up in all of this with a really clear sense that there are times when ICANN is going to say no to things that people will want it to do, like the fact that ICANN's got to stick to a very narrow mission. The way that this works is, this isn't a Government for the Internet. It's not capable of it because we just don't have the legitimacy mechanisms to make people feel comfortable, with it being a Government from the Internet.

ICANN's board has said, we don't want to be it, and we want to make sure that in the future it doesn't get pushed into that role, and so there has to be a clear understanding that there are some things that we just don't do, and there has to be a way of communicating that, a prime directive that says, we don't do this if it's not clearly in the scope of our mission, and that we're not going to be overly regulatory.

I think a lot of people have had concerns because these detailed contracts that have been set up between different entities at ICANN worry people. They say, well, gosh, if you're supposed to be the guy that's keeping the trains running on time, why do I have to have a 4-inch thick contract to have a registry.

And there are reasons why a lot of the things are in there, but I think we've got to find ways to send a signal that says, we are just as narrow a body as we possibly can be, the minimal that needs to get done to make sure that these major, these coordination functions happen, and we're going to stick to our knitting and we're going to come up with these accountability mechanisms, and I think it can be done. There's a path to doing that at ICANN.

Senator BURNS. Just as an outsider looking in, it looks like we've got to have very high—the lines have to be defined, and then we have to narrow our definitions, and that is a terrifically big job.

I have no further questions. If any of you have a question for each other, I'd entertain those.

[Laughter.]

Senator BURNS. Usually that's when we get the best dialogue here. We settle a lot of fights. We've started a couple that we couldn't end.

But we look forward to working with each and every one of you, and especially with the new president of ICANN, and I'm very much supportive of their choice in you and what you're trying to do, and we're going to try to set up some private meetings, maybe one of your meetings one of these days. If we can possibly attend we'd like to do that.

I think oversight is going to have to be a part of this, transparency of the organization, but we have tremendous challenges ahead, and I brought the one about the U.S.-Asia network. It was pretty obvious to me that even the parliaments of the countries involved in the Pacific Rim have not really grasped how large this can be in that particular part of the world. In fact, some cases, the Governments themselves are way behind the curve on the importance and the role that the Internet plays in their national life and their international life.

So I look forward to working with you. I appreciate all of your testimony. There will be some Senators probably that will ask some questions later. They will do that in writing, and if you would respond to them and to the Committee on the same basis we would appreciate that, and the record will be left open for another 2 weeks, or when we get back in September.

Thank you for coming today, and these hearings are closed.

[Whereupon, at 4:05 p.m., the Subcommittee adjourned.]

A P P E N D I X

Competition, Antitrust and Trade Concerns Arising out of ICANN-VeriSign Plans to Create a New Wait Listing Service (WLS)

This statement has been prepared by Pool.com. (*www.pool.com*), a member the Momentous (*www.Momentous.corn*) group of companies that serves consumers—including those in the United States—who want to purchase expired and deleted domain names.

Summary

While it has been a divisive issue within the realm of the Internet community, ICANN's proposed Wait Listing Service (WLS) has not been thoroughly studied nor evaluated by those charged with monitoring ICANN's transition into a private administrator of the Domain Name System. Indeed, the issue at stake is one of competition and anti-consumerism: Should ICANN allow a proposal that ensures that every name be routed through a company that was the original DNS monopoly, or should it maintain the system as it currently is—allowing consumers, through a system made more consumer-friendly by the innovations forged in a competitive marketplace, to purchase domain names on the backorder market for a price cheaper than what WLS would promote? Moreover, the WLS proposal would reverse the anti-monopolistic movement established by ICANN in 1999, when it forced the domain name market itself to introduce competition. The WLS proposal needs to be brought to a permanent halt or at least delayed for six to twelve months pending a thorough and independent review of the issues involved.

Background

Based on its knowledge of consumers in the domain name marketplace, earlier this year Momentous.ca launched new venture Pool.com. Pool.com is achieving a high level of success in what is known as the "backordering" market, where people compete for access to the roughly 22,000 .com and .net names which are "deleted" (the industry term for non-renewals of registered names) each day. Unlike competitors, Pool.com features a unique consumer offering, allowing consumers the opportunity to backorder and register desired names on a risk-free basis in which no charge is levied unless and until a deleted name is successfully acquired for the customer. Pool.com is not a Registrar and operates through a Network of accredited Registrars.

Currently, domain name registrars register names on behalf of customers on a first-come, first-serve basis. This includes customers seeking (i) previously-unregistered names, (ii) previously-registered names that become freshly available through imminent or just-occurred deletion, and (iii) previously registered names which have been deleted and available for re-registration for longer periods.

With the maturing of the domain registration business, a thriving "backorder" market has evolved to serve customers seeking access to the tens of thousands of previously-registered names which become freshly available through ongoing deletions of over 22,000 names daily. The re-entry of some of these names into the open marketplace meets pent-up demand, and over the last 18 months, a number of service providers have emerged to rapidly develop a highly competitive, innovative and efficient marketplace. At least half a dozen major firms participate as principals in this backorder marketplace, offering services directly and through networks of dozens of resellers.

Prior to March 1, 2003, there were high barriers to entry for the domain backorder business. Registrars had difficulty competing, due to the lack of information available as to when a domain would delete.

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On March 1, 2003, a Redemption Grace Period ("RGP") was implemented by theRegistry. As part of the RGP, the Registry was required to publish the deletion date of a domain name.

As a result of this publication, the high barrier to entry into the backorder space was removed for all Registrars. Immediately, over 60 Registrars began to enter this market and offer a wide variety of services and models, where few existed before.

Competitive backorder service providers have developed at least four basic business models to serve backorder customers:

- The original—and until recently, dominant—business model allows customers to backorder a name and pay an upfront fixed fee, typically $69 per year ("normal" brand new registrations are typically retail at about $15 to $25 per year). Once a name is backordered, no other customer can backorder it, at least not from that vendor. There is no additional fee if and when the name is actually registered. However, if the name is not actually successfully registered on behalf of the customer during the year, the customer loses the $69. Acquisition can fail to occur, for instance, if the original name registrant renews their registration, which approximately 60 percent of name registrants do each year.
- Another offering is a "club" model, whereby the vendor devotes its resources to customers who pay a monthly subscription fee (*e.g.,* $100 per month) to be in the . . . [Editor's note: missing the remainder of the document.]

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO HON. NANCY J. VICTORY

Question 1. It seems that this hearing revisits some of the same issues brought up at the hearing last year—the scope of ICANN's mission, the transparency, of its processes, and so forth. So there appears to be some agreement on what some of ICANN's chief challenges are. Mr. Davidson of CDT has offered testimony recommending the establishment of a set of metrics for measuring ICANN's progress in addressing these challenges. Has NTIA given any thought to what sort of concrete measurements could be used to follow ICANN's progress?

Question 2. In the last MOU extension it was stated that ICANN would collaborate with the Department to complete development of a proposal for enhanced root server security. Has such a proposal in fact been developed? Is there any concrete evidence as to whether the root servers are more secure, less secure, or about the same as compared to a year ago? Going forward, what specifically do you see as the Department's role in improving root server security, and what specifically do you see as ICANN's? What do you think could be accomplished, and how long might it take?

Answer. The Department believes that ICANN has made significant strides this past year in developing into a more stable, transparent, and responsive organization. We remain committed to working diligently with ICANN and all Internet stakeholders to assist ICANN in its evolution and to preserve and enhance the Internet/DNS. In reviewing the Department's decision to extend and, if necessary, to modify the MOU to better focus joint efforts going forward, ICANN and the Department have discussed incorporating measurable objectives and time-specific milestones as markers of progress over the next term.

Amendment 5 to the MOU provided that ICANN and the Department would collaborate to complete development of a proposal for enhanced root server security. The enhanced architecture proposal on root server security was developed by ICANN and submitted to the Department in December 2002. The Department reviewed and accepted the proposal, which was followed by implementation of its recommendations. A public summary of the proposal is available on the ICANN website at *www.icann.org/general/crada-report-summary-14mar03.htm.*

While the root server operators have not developed specific metrics to measure the security of their systems, they continue to deploy state of the art software and hardware to ensure the highest levels of protection. For example, the root server operators have all agreed to employ a shared-secret Transaction Signature mechanism which supports the ability to authenticate the transactions between the root distribution source and each of the root nameservers.

The Department and ICANN play important roles in ensuring root server security. The Department has established an intergovernmental working group to discuss security and stability issues and to facilitate policy development work in these areas. In addition, through the working group, we continue to consult with the managers of root name servers operated by the U.S. Government to address operational and security matters. ICANN has established a Security and Stability Advisory Committee on which the root server operators and various industry experts partici-

pate. This committee advises both the ICANN Board of Directors and the ICANN community concerning matters relating to the security and integrity of the Internet's naming and addressing allocation systems. Both the Department and ICANN continue to be active participants in the Root Server Security Advisory Committee, which is charged with, among other actions, considering and providing advice on the operational requirements of root name servers, including host hardware capacities, operating systems and name server software versions, network connectivity and physical environment.

Root server security is an ongoing and ever-evolving process, involving constant monitoring of possible threats and updating of technologies designed to combat them. Through the continued cooperation among the Department, ICANN, and the root server operators, we can be assured of a secure and stable Internet infrastructure.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARIA CANTWELL TO HON. NANCY J. VICTORY

Question. Pursuant to ICANN's MOU with the Department of Commerce, Department approval is required for any material amendment to VeriSign's registry agreement. Is it the Department's position that the WLS is a material amendment requiring approval and if not, why not?

If the Department believes that approval is required, what is the current status of the approval process and when is it expected to be complete?

Will an analysis or consideration of the competitive effects of the WLS on existing wait-list type services be a consideration in the approval process?

Answer. At present, the Wait List Service (WLS) is not before the Department. I understand that ICANN and VeriSign are currently conducting negotiations on how to implement the WLS to take into account the modifications on which the ICANN Board of Directors conditioned its approval last summer. Once ICANN and VeriSign conclude negotiations and develop language to amend the .com registry agreement to incorporate WLS, I would expect ICANN to submit that language to the Department for approval, as this new service offering constitutes a material amendment to the .com registry agreement. Once the WLS has been submitted for approval, the Department would consult with appropriate U.S. Government agencies to review this amendment in light of competition concerns, among other issues.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN TO DR. PAUL TWOMEY

Question 1. "Whois" information is needed for certain purposes, such as addressing technical troubles or fighting fraud. But since the information is globally and publicly available, it could also be used by spammers, stalkers, and others. ICANN policies now require this information to be accurate and updated at least annually, but do not give any sort of privacy protection. Do you have any thoughts about either what kind of privacy safeguards are needed, or about what kind of process is needed to develop appropriate safeguards? Since "Whois" privacy is an issue that can have a direct impact on many ordinary Internet users who do not attend ICANN meetings, how can the process ensure that their privacy needs are addressed?

Answer. Registrants in generic top-level domains (such as .com, .net and .org) have historically been required to provide contact information associated with each registration. In the earlier days of the Internet, including prior to ICANN's creation, this information was used primarily for contacting operators of other Internet hosts to resolve technical problems. Now that the Internet has grown to be an important realm for commerce and other activities, Whois data also has crucial importance for law enforcement officials who use the data to trace criminal activity. Intellectual property holders use Whois data to identify and pursue trademark infringers and cybersquatters. Consumers also use Whois data to identify the source behind goods or services being offered over the Internet.

Access to accurate contact data is important, however Internet users might innocently desire use of an Internet domain name without exposing personally identifiable information to the public. ICANN's current policies do provide protections for privacy interests. One example is §3.7.7.3 of ICANN's Registrar Accreditation Agreement, which specifically makes provision for users who want to maintain their privacy by allowing the registrant to elect to list a responsible third party as the registrant of record in the Whois database. ICANN-Accredited Registrars are making use of this "proxy" registration provision today to offer privacy-protected domain

registrations for as little as $9.00 per year in addition to the regular registration rate, which can be as low as $10.00 per year. (This is analogous to the nominal fee one might pay for an unlisted telephone number.)

In addition, constituent groups within ICANN are involved in active discussions per ICANN's open and bottom-up policy development process for ways to further enhance safeguards for individuals while protecting important uses of Whois data. ICANN's recent meeting in Montréal inc luded a two-day "Whois Workshop" that was open to the public, including live streaming audio and video over the Internet. Speakers and panelists included law enforcement personnel (including representatives of the U.S. Department of Justice and the Federal Trade Commission), registries, registrars, ISPs, those representing intellectual property interests, and advocates for strong privacy safeguards (including Diana Alonso Blas of the Data Protection Unit of the Directorate General Internal Market of the European Commission, and also Alan Davidson from the Center for Democracy and Technology, a Washington based non-profit group working to promote civil liberties online.)

Question 2. Right now, the activities of registries are governed by lengthy and complicated contracts with ICANN. If a registry wants to add a new service, it needs to make changes to numerous contractual appendices, which in turn requires ICANN approval. Please explain the evolution in the relationship between ICANN and the registries that led to such long and complex contracts. Should the contracts seek to set forth in comprehensive fashion the specific and exclusive things a registry is permitted to do, with anything outside the scope of the contract assumed to be prohibited—or should the contracts generally specify what registries may not do, so that any innovation or activity that is not prohibited would be permitted?

Answer. At ICANN's meeting in Montreal, the ICANN board requested a report from ICANN's President entailing a detailed plan and schedule for development of an appropriate long-term policy for introduction of new gTLDs into the domain name system. This report will present for debate and community consideration a number of issues relating to the creation of new TLDs, intended to be distilled into a set of core principles. One of these issues is identifying the appropriate business model for the relationships between ICANN and TLDs on a forward-looking basis, and by relation the guiding principles for development of the contractual relationships. Historically, registry agreements were drafted conceptually within a start-up business model, and were intended to protect against unforeseen events and circumstances in light of the fledgling nature of the TLD industry. As the creation of new TLDs moves beyond the original proof of concept phase launched in 2001, a re-examination of the structure of ICANN's relationships with registries should be forth-coming. This re-examination may include, following receipt of community input and expert analysis, a liberalization of the relationships allowing for more flexibility to registry operators.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARIA CANTWELL TO DR. PAUL TWOMEY

Question. The Memorandum of Understanding between the Department of Commerce and ICANN requires that ICANN must approve any amendments to the VeriSign Registry agreement.

a. Is it ICANN's opinion that it must approve the VeriSign Wait List Service proposal (WLS) as an amendment to the Registry agreement before it can begin, and if not why not?

b. What is the status of this approval?

The ICANN Board at its most recent board meeting authorized the ICANN staff to conduct final negotiations on the plan to implement WLS. Please provide the status of those negotiations, the process of the negotiations, and an expected completion date.

Answer. a.: Yes. The WLS requires ICANN's approval of the amendments to the .com and .net registry agreements to implement the WLS because: (i) WLS changes the functional specification under which those two registries are to be operated (it involves a change in the name-allocation algorithm) and (ii) WLS involves VGRS offering a new registry (sole-source) service for a fee. In addition, as has been previously stated, approval by the U.S. Department of Commerce is also required, as Amendment no. 3 to ICANN's Memorandum of Understanding with the DOC provides that "ICANN will not enter into any material amendment of, or substitution for, [The agreements entitled ".com Registry Agreement," [and] ".net Registry Agreement," [. . .] between ICANN and VeriSign, Inc.], nor will said agreements be assigned by ICANN, without prior approval of the DOC.

b.: Negotiations between ICANN and VeriSign concerning the definitive terms for VeriSign's implementation of the WLS service have been ongoing, and it is ICANN's

hope that final resolution will be reached shortly. Under the conditions of ICANN's approval of the service, the WLS cannot be launched any earlier than 25 July 2003, but indications by VeriSign are to launch the service in October 2003. The WLS will not be implemented until the amendments to the .com and .net registry agreements that the ICANN Board's approval requires are completed, and the amendments to the agreements have been approved by the Department of Commerce, as required by the MOU between ICANN and the DOC.

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